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### Legislation

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## I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

## REGULATIONS

## COUNCIL REGULATION (EC) No 75/2008

of 28 January 2008

**amending Regulation (EC) No 1207/2001 on procedures to facilitate the issue or the making out in the Community of proofs of origin and the issue of certain approved exporter authorisations under the provisions governing preferential trade between the European Community and certain countries**

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Regulation (EC) No 1207/2001<sup>(1)</sup> lays down provisions to support the correct issue or making out of proofs of origin in relation to exports of products from the Community in the context of its preferential trade relations with certain third countries.
- (2) Annexes III and IV of Regulation (EC) No 1207/2001 should be amended in order to ensure correct indication of the origin of materials used in the manufacture in the Community of originating products.
- (3) Regulation (EC) No 1207/2001 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1207/2001 is hereby amended as follows:

1. Annex III shall be replaced by the text set out in Annex I to this Regulation;
2. Annex IV shall be replaced by the text set out in Annex II to this Regulation.

*Article 2*

Supplier's declarations for products not having preferential origin status made before the date of entry into force of this Regulation shall remain valid.

*Article 3*

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

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

Done at Brussels, 28 January 2008.

*For the Council*

*The President*

D. RUPEL

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<sup>(1)</sup> OJ L 165, 21.6.2001, p. 1. Regulation as last amended by Regulation (EC) No 1617/2006 (OJ L 300, 31.10.2006, p. 5).

## ANNEX I

## 'ANNEX III

**Supplier's declaration for products not having preferential origin status**

The supplier's declaration, the text of which is given below, must be made out in accordance with the footnotes. However, the footnotes do not have to be reproduced.

**DECLARATION**

I, the undersigned, supplier of the goods covered by the annexed document, declare that:

1. The following materials which do not have preferential originating status have been used in the Community to produce these goods:

Description of goods supplied <sup>(1)</sup>	Description of non-originating materials used	HS heading of non-originating materials used <sup>(2)</sup>	Value of non-originating materials used <sup>(3)</sup>
			Total:

2. All the other materials used in the Community to produce these goods originate in ... <sup>(4)</sup> and satisfy the rules of origin governing preferential trade with ... <sup>(5)</sup>, and

I declare that: <sup>(6)</sup>

Cumulation applied with ..... (name of the country/countries)

No cumulation applied

I undertake to make available to the customs authorities any further supporting documents they require:

..... <sup>(7)</sup>

..... <sup>(8)</sup>

..... <sup>(9)</sup>

<sup>(1)</sup> When the invoice, delivery note or other commercial document to which the declaration is annexed relates to a variety of goods, or goods not incorporating the same proportion of non-originating materials, the supplier must clearly differentiate between them. Example:

The document covers different models of electric motors of heading 8501 to be used in the manufacture of washing machines of heading 8450. The nature and value of the non-originating materials used in the manufacture of the motors vary from one model to another. The models must be listed separately in column 1 and the information in the other columns must be given for each, so that the manufacturer of the washing machines can correctly assess the originating status of each of his products depending on the type of motor it incorporates.

<sup>(2)</sup> To be completed only where relevant. Example:

The rule for garments of ex Chapter 62 allows the use of non-originating yarn. Thus if a French garment manufacturer uses fabric woven in Portugal from non-originating yarn, the Portuguese supplier need only enter "yarn" as non-originating materials in column 2 of his declaration – the HS heading and the value of the yarn are irrelevant.

A firm manufacturing wire of HS heading 7217 from non-originating iron bars must enter "iron bars" in column 2. If the wire is to be incorporated in a machine for which the rule of origin sets a percentage limit on the value of non-originating materials used, the value of the bars must be entered in column 4.

<sup>(3)</sup> "Value" means the customs value of the materials at the time of import or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the Community.

For each type of non-originating material used, specify the exact value per unit of the goods shown in column 1.

<sup>(4)</sup> The Community, country, group of countries or territory from which the materials originate.

<sup>(5)</sup> Country, group of countries or territory concerned.

<sup>(6)</sup> To be completed where necessary, only for goods having preferential originating status in the context of preferential trade relations with one of the countries referred to in Articles 3 and 4 of the relevant origin protocol, with which pan-Euro-Mediterranean cumulation of origin is applicable.

<sup>(7)</sup> Place and date.

<sup>(8)</sup> Name and function, name and address of company.

<sup>(9)</sup> Signature.

## ANNEX II

## 'ANNEX IV

**Long-term supplier's declaration for products not having preferential origin status**

The supplier's declaration, the text of which is given below, must be made out in accordance with the footnotes. However, the footnotes do not have to be reproduced.

**DECLARATION**

I, the undersigned, supplier of the goods covered by this document, which are regularly sent to .....<sup>(1)</sup>, declare that:

1. The following materials which do not have preferential originating status have been used in the Community to produce these goods:

Description of goods supplied <sup>(2)</sup>	Description of non-originating materials used	HS heading of non-originating materials used <sup>(3)</sup>	Value of non-originating materials used <sup>(4)</sup>
			Total:

2. All the other materials used in the Community to produce these goods originate in ...<sup>(5)</sup> and satisfy the rules of origin governing preferential trade with ...<sup>(6)</sup>, and

I declare that<sup>(7)</sup>:

- Cumulation applied with ..... (name of the country/countries)
- No cumulation applied

This declaration is valid for all further shipments of these products dispatched from ..... to .....<sup>(8)</sup>.

I undertake to inform ..... immediately if this declaration is no longer valid.

I undertake to make available to the customs authorities any further supporting documents they require:

.....<sup>(9)</sup>

.....<sup>(10)</sup>

.....<sup>(11)</sup>

<sup>(1)</sup> Customer's name and address.

<sup>(2)</sup> When the invoice, delivery note or other commercial document to which the declaration is annexed relates to a variety of goods, or goods not incorporating the same proportion of non-originating materials, the supplier must clearly differentiate between them.

Example:

The document covers different models of electric motor of heading 8501 to be used in the manufacture of washing machines of heading 8450. The nature and value of the non-originating materials used in the manufacture of the motors vary from one model to another. The models must be listed separately in column 1 and the information in the other columns must be given for each, so that the manufacturer of the washing machines can correctly assess the originating status of each of his products depending on the type of motor it incorporates.

<sup>(3)</sup> To be completed only where relevant.

Example:

The rule for garments of ex Chapter 62 allows the use of non-originating yarn. Thus if a French garment manufacturer uses fabric woven in Portugal from non-originating yarn, the Portuguese supplier need only enter "yarn" as non-originating materials in column 2 of his declaration, - the HS heading and the value of the yarn are irrelevant.

A firm manufacturing wire of HS heading 7217 from non-originating iron bars must enter "iron bars" in column 2. If the wire is to be incorporated in a machine for which the rule of origin sets a percentage limit on the value of non-originating materials used, the value of the bars must be entered in column 4.

<sup>(4)</sup> "Value" means the customs value of the materials at the time of import or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the Community.

For each type of non-originating material used, specify the exact value per unit of the goods shown in column 1.

<sup>(5)</sup> The Community, country, group of countries or territory from which the materials originate.

<sup>(6)</sup> Country, group of countries or territory concerned.

<sup>(7)</sup> To be completed where necessary, only for goods having preferential originating status in the context of preferential trade relations with one of the countries referred to in Articles 3 and 4 of the relevant origin protocol, with which pan-Euro-Mediterranean cumulation of origin is applicable.

<sup>(8)</sup> Give the dates. The period should not exceed 12 months.

<sup>(9)</sup> Place and date.

<sup>(10)</sup> Name and function, name and address of company.

<sup>(11)</sup> Signature.

**COMMISSION REGULATION (EC) No 76/2008**  
**of 28 January 2008**  
**establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector <sup>(1)</sup>, and in particular Article 138(1) thereof,

Whereas:

- (1) Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes

the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 shall be fixed as indicated in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 29 January 2008.

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

Done at Brussels, 28 January 2008.

*For the Commission*  
Jean-Luc DEMARTY  
*Director-General for Agriculture and*  
*Rural Development*

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<sup>(1)</sup> OJ L 350, 31.12.2007, p. 1.

## ANNEX

## to Commission Regulation of 28 January 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	IL	154,9
	MA	47,4
	TN	132,6
	TR	87,1
	ZZ	105,5
0707 00 05	EG	190,8
	JO	178,8
	TR	119,1
	ZZ	162,9
0709 90 70	MA	78,2
	TR	150,9
	ZZ	114,6
0709 90 80	EG	121,8
	ZZ	121,8
0805 10 20	EG	46,2
	IL	49,2
	MA	71,2
	TN	59,9
	TR	77,4
	ZZ	60,8
0805 20 10	MA	104,0
	TR	104,0
	ZZ	104,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	84,1
	IL	71,4
	MA	152,6
	PK	48,1
	TR	86,0
	US	60,1
	ZZ	83,7
0805 50 10	EG	74,2
	IL	120,2
	TR	123,9
	ZZ	106,1
0808 10 80	CA	84,1
	CL	60,8
	CN	85,1
	MK	37,5
	US	109,9
	ZA	60,7
	ZZ	73,0
0808 20 50	CL	59,3
	CN	42,8
	TR	159,1
	US	110,7
	ZA	107,0
	ZZ	95,8

<sup>(1)</sup> Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.



**COMMISSION REGULATION (EC) No 77/2008****of 28 January 2008****setting delivery obligations for cane sugar to be imported under the ACP Protocol and the Agreement with India for the 2007/2008 delivery period**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector <sup>(1)</sup>, and in particular Article 31 thereof,

Whereas:

- (1) Article 12 of Commission Regulation (EC) No 950/2006 of 28 June 2006 laying down detailed rules of application for the 2006/2007, 2007/2008 and 2008/2009 marketing years for the import and refining of sugar products under certain tariff quotas and preferential agreements <sup>(2)</sup> provides for detailed rules for setting delivery obligations at zero duty for products falling within CN code 1701, expressed in white-sugar equivalent, for imports originating in the countries that are signatories to the ACP Protocol and to the Agreement with India.
- (2) Application of Articles 3 and 7 of the ACP Protocol, Articles 3 and 7 of the Agreement with India and Article 12(3) and Articles 14 and 15 of Regulation (EC) No 950/2006 has resulted in the Commission setting delivery obligations for each exporting country for the 2007/2008 delivery period, on the basis of the information currently available.

(3) Commission Regulation (EC) No 505/2007 <sup>(3)</sup> has determined provisionally the delivery obligations for cane sugar to be imported under the ACP Protocol and the Agreement with India for the 2007/2008 delivery period.

(4) It is therefore necessary to set the delivery obligations for the period 2007/2008 in accordance with point (b) of Article 12(2) of Regulation (EC) No 950/2006.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

*Article 1*

The delivery obligations for imports originating in the countries that are signatories to the ACP Protocol and to the Agreement with India in respect of products falling within CN code 1701, expressed in white-sugar equivalent, in the 2007/2008 delivery period for each exporting country concerned, shall be as set out in the Annex.

*Article 2*

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

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

Done at Brussels, 28 January 2008.

*For the Commission*

Mariann FISCHER BOEL

*Member of the Commission*

<sup>(1)</sup> OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Regulation (EC) No 1260/2007 (OJ L 283, 27.10.2007, p. 1).

<sup>(2)</sup> OJ L 178, 1.7.2006, p. 1. Regulation as last amended by Regulation (EC) No 371/2007 (OJ L 92, 3.4.2007, p. 6).

<sup>(3)</sup> OJ L 119, 9.5.2007, p. 22.

## ANNEX

Delivery obligations for imports of preferential sugar originating in countries which are signatories to the ACP Protocol and to the Agreement with India for the 2007/2008 delivery period, expressed in white-sugar equivalent:

(tonnes)

ACP Protocol/Agreement with India signatory country	Delivery obligations 2007/2008
Barbados	32 864,83
Belize	53 741,88
Congo	10 186,10
Côte-d'Ivoire	10 123,12
Fiji	162 656,25
Guyana	170 203,57
India	9 999,83
Jamaica	132 129,06
Kenya	5 017,07
Madagascar	9 905,00
Malawi	19 898,32
Mauritius	476 789,70
Mozambique	5 965,92
St Kitts and Nevis	0,00
Suriname	0,00
Swaziland	117 368,72
Tanzania	9 672,60
Trinidad and Tobago	47 513,60
Uganda	0,00
Zambia	8 179,91
Zimbabwe	37 660,14
Total	1 319 875,62

## DIRECTIVES

## DIRECTIVE 2008/1/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 January 2008

concerning integrated pollution prevention and control

(Codified version)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

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

Whereas:

(1) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control <sup>(3)</sup> has been substantially amended several times <sup>(4)</sup>. In the interests of clarity and rationality the said Directive should be codified.

(2) The objectives and principles of the Community's environment policy, as set out in Article 174 of the Treaty, consist in particular of preventing, reducing and as far as possible eliminating pollution by giving priority to intervention at source and ensuring prudent management of natural resources, in compliance with the 'polluter pays' principle and the principle of pollution prevention.

(3) The Fifth Environmental Action Programme, the broad outline of which was approved by the Council and the Representatives of the Governments of the Member States, meeting within the Council, in the Resolution of 1 February 1993 on a Community programme of policy and action in relation to the environment and sustainable development <sup>(5)</sup>, accorded priority to integrated pollution control as an important part of the move towards a more sustainable balance between human activity and socioeconomic development, on the one hand, and the resources and regenerative capacity of nature, on the other.

(4) The implementation of an integrated approach to reduce pollution requires action at Community level in order to modify and supplement existing Community legislation concerning the prevention and control of pollution from industrial plants.

(5) Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants <sup>(6)</sup> introduced a general framework requiring authorisation prior to any operation or substantial modification of industrial installations which may cause air pollution.

(6) Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community <sup>(7)</sup> provides for an authorisation requirement for the discharge of those substances.

(7) Although Community legislation exists on the combating of air pollution and the prevention or minimisation of the discharge of dangerous substances into water, there is no comparable Community legislation aimed at preventing or minimising emissions into soil.

<sup>(1)</sup> OJ C 97, 28.4.2007, p. 12.

<sup>(2)</sup> Opinion of the European Parliament of 19 June 2007 (not yet published in the Official Journal) and Council Decision of 17 December 2007.

<sup>(3)</sup> OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council (OJ L 33, 4.2.2006, p. 1).

<sup>(4)</sup> See Annex VI, Part A.

<sup>(5)</sup> OJ C 138, 17.5.1993, p. 1.

<sup>(6)</sup> OJ L 188, 16.7.1984, p. 20. Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

<sup>(7)</sup> OJ L 64, 4.3.2006, p. 52.

- (8) Different approaches to controlling emissions into the air, water or soil separately may encourage the shifting of pollution between the various environmental media rather than protecting the environment as a whole.
- (9) The objective of an integrated approach to pollution control is to prevent emissions into air, water or soil wherever this is practicable, taking into account waste management, and, where it is not, to minimise them in order to achieve a high level of protection for the environment as a whole.
- (10) This Directive should establish a general framework for integrated pollution prevention and control. It should lay down the measures necessary to implement integrated pollution prevention and control in order to achieve a high level of protection for the environment as a whole. Application of the principle of sustainable development should be promoted by an integrated approach to pollution control.
- (11) The provisions of this Directive should apply without prejudice to the provisions of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment <sup>(1)</sup>. When information or conclusions obtained further to the application of that Directive have to be taken into consideration for the granting of authorisation, this Directive should not affect the implementation of Directive 85/337/EEC.
- (12) Member States should take the necessary steps in order to ensure that the operator of the industrial activities referred to in this Directive is complying with the general principles of certain basic obligations. For that purpose it would suffice for the competent authorities to take those general principles into account when laying down the authorisation conditions.
- (13) Some of the provisions adopted pursuant to this Directive must be applied to existing installations after 30 October 2007 and others had to be applied as from 30 October 1999.
- (14) In order to tackle pollution problems more effectively and efficiently, environmental aspects should be taken into consideration by the operator. Those aspects should be communicated to the competent authority or authorities so that they can satisfy themselves, before granting a permit, that all appropriate preventive or pollution-control measures have been laid down. Very different application procedures may give rise to different levels of environmental protection and public awareness. Therefore, applications for permits under this Directive should include minimum data.
- (15) Full coordination of the authorisation procedure and conditions between competent authorities should make it possible to achieve the highest practicable level of protection for the environment as a whole.
- (16) The competent authority or authorities should grant or amend a permit only when integrated environmental protection measures for air, water and land have been laid down.
- (17) The permit should include all necessary measures to fulfil the authorisation conditions in order thus to achieve a high level of protection for the environment as a whole. Without prejudice to the authorisation procedure, those measures may also be the subject of general binding requirements.
- (18) Emission limit values, parameters or equivalent technical measures should be based on the best available techniques, without prescribing the use of one specific technique or technology and taking into consideration the technical characteristics of the installation concerned, its geographical location and local environmental conditions. In all cases the authorisation conditions should lay down provisions on minimising long-distance or transfrontier pollution and ensure a high level of protection for the environment as a whole.
- (19) It is for the Member States to determine how the technical characteristics of the installation concerned, its geographical location and local environmental conditions can, where appropriate, be taken into consideration.
- (20) When an environmental quality standard requires more stringent conditions than those that can be achieved by using the best available techniques, supplementary conditions should in particular be required by the permit, without prejudice to other measures that may be taken to comply with the environmental quality standards.

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

- (21) Because best available techniques will change with time, particularly in the light of technical advances, the competent authorities should monitor or be informed of such progress.
- (22) Changes to an installation may give rise to pollution. The competent authority or authorities should therefore be notified of any change which might affect the environment. Substantial changes to plant must be subject to the granting of prior authorisation in accordance with this Directive.
- (23) The authorisation conditions should be periodically reviewed and if necessary updated. Under certain conditions, they should in any event be re-examined.
- (24) Effective public participation in the taking of decisions should enable the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken. In particular, the public should have access to information on the operation of installations and their potential effect on the environment, and, before any decision is taken, to information relating to applications for permits for new installations or substantial changes and to the permits themselves, their updating and the relevant monitoring data.
- (25) Participation, including participation by associations, organisations and groups, in particular non-governmental organisations promoting environmental protection, should accordingly be fostered, including by promoting environmental education of the public.
- (26) On 25 June 1998 the Community signed the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Århus Convention). Among the objectives of the Århus Convention is the desire to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.
- (27) The development and exchange of information at Community level about best available techniques should help to redress the technological imbalances in the Community, should promote the worldwide dissemination of limit values and techniques used in the Community and should help the Member States in the efficient implementation of this Directive.
- (28) Reports on the implementation and effectiveness of this Directive should be drawn up regularly.
- (29) This Directive is concerned with installations whose potential for pollution, and therefore transfrontier pollution, is significant. Transboundary consultation should be organised where applications relate to the licensing of new installations or substantial changes to installations which are likely to have significant negative environmental effects. The applications relating to such proposals or substantial changes should be available to the public of the Member State likely to be affected.
- (30) The need for action may be identified at Community level to lay down emission limit values for certain categories of installation and pollutant covered by this Directive. The European Parliament and the Council should set such emission limit values in accordance with the provisions of the Treaty.
- (31) The provisions of this Directive should apply without prejudice to Community provisions on health and safety at the workplace.
- (32) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives as set out in Annex VI, Part B,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Purpose and scope**

The purpose of this Directive is to achieve integrated prevention and control of pollution arising from the activities listed in Annex I. It lays down measures designed to prevent or, where that is not practicable, to reduce emissions in the air, water and land from the abovementioned activities, including measures concerning waste, in order to achieve a high level of protection of the environment taken as a whole, without prejudice to Directive 85/337/EEC and other relevant Community provisions.

## Article 2

**Definitions**

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

1. 'substance' means any chemical element and its compounds, with the exception of radioactive substances within the meaning of Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation <sup>(1)</sup> and genetically modified organisms within the meaning of Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms <sup>(2)</sup> and Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms <sup>(3)</sup>;
2. 'pollution' means the direct or indirect introduction, as a result of human activity, of substances, vibrations, heat or noise into the air, water or land which may be harmful to human health or the quality of the environment, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment;
3. 'installation' means a stationary technical unit where one or more activities listed in Annex I are carried out, and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution;
4. 'existing installation' means an installation which on 30 October 1999, in accordance with legislation existing before that date, was in operation or was authorised or, in the view of the competent authority, was the subject of a full request for authorisation, provided that that installation was put into operation no later than 30 October 2000;
5. 'emission' means the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into the air, water or land;
6. 'emission limit values' means the mass, expressed in terms of certain specific parameters, concentration and/or level of an emission, which may not be exceeded during one or more periods of time; emission limit values may also be laid down for certain groups, families or categories of substances, in particular for those listed in Annex III. The emission limit values for substances normally apply at the point where the emissions leave the installation, any dilution being disregarded when determining them; with regard to indirect releases into water, the effect of a water treatment plant may be taken into account when determining the emission limit values of the installation involved, provided that an equivalent level is guaranteed for the protection of the environment as a whole and provided this does not lead to higher levels of pollution in the environment, without prejudice to Directive 2006/11/EC or the Directives implementing it;
7. 'environmental quality standard' means the set of requirements which must be fulfilled at a given time by a given environment or particular part thereof, as set out in Community legislation;
8. 'competent authority' means the authority or authorities or bodies responsible under the legal provisions of the Member States for carrying out the obligations arising from this Directive;
9. 'permit' means that part or the whole of a written decision (or several such decisions) granting authorisation to operate all or part of an installation, subject to certain conditions which guarantee that the installation complies with the requirements of this Directive. A permit may cover one or more installations or parts of installations on the same site operated by the same operator;
10. 'change in operation' means a change in the nature or functioning, or an extension, of the installation which may have consequences for the environment;
11. 'substantial change' means a change in operation which, in the opinion of the competent authority, may have significant negative effects on human beings or the environment; for the purposes of this definition, any change to or extension of an operation shall be deemed to be substantial if the change or extension in itself meets the thresholds, if any, set out in Annex I;
12. 'best available techniques' means the most effective and advanced stage in the development of activities and their methods of operation which indicate the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole;

<sup>(1)</sup> OJ L 159, 29.6.1996, p. 1.

<sup>(2)</sup> OJ L 117, 8.5.1990, p. 1. Directive as last amended by Commission Decision 2005/174/EC (OJ L 59, 5.3.2005, p. 20).

<sup>(3)</sup> OJ L 106, 17.4.2001, p. 1. Directive as last amended by Regulation (EC) No 1830/2003 (OJ L 268, 18.10.2003, p. 24).



- (a) 'techniques' shall include both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;
- (b) 'available techniques' means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator;
- (c) 'best' means most effective in achieving a high general level of protection of the environment as a whole.

In determining the best available techniques, special consideration should be given to the items listed in Annex IV;

13. 'operator' means any natural or legal person who operates or controls the installation or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of the installation has been delegated;
14. 'the public' means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;
15. 'the public concerned' means the public affected or likely to be affected by, or having an interest in, the taking of a decision on the issuing or the updating of a permit or of permit conditions; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

#### Article 3

### General principles governing the basic obligations of the operator

1. Member States shall take the necessary measures to provide that the competent authorities ensure that installations are operated in such a way that:

- (a) all the appropriate preventive measures are taken against pollution, in particular through application of the best available techniques;
- (b) no significant pollution is caused;

- (c) waste production is avoided in accordance with Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste <sup>(1)</sup>; where waste is produced, it is recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment;
- (d) energy is used efficiently;
- (e) the necessary measures are taken to prevent accidents and limit their consequences;
- (f) the necessary measures are taken upon definitive cessation of activities to avoid any pollution risk and return the site of operation to a satisfactory state.

2. For the purposes of compliance with this Article, it shall be sufficient if Member States ensure that the competent authorities take account of the general principles set out in paragraph 1 when they determine the conditions of the permit.

#### Article 4

### Permits for new installations

Member States shall take the necessary measures to ensure that no new installation is operated without a permit issued in accordance with this Directive, without prejudice to the exceptions provided for in Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants <sup>(2)</sup>.

#### Article 5

### Requirements for the granting of permits for existing installations

1. Member States shall take the necessary measures to ensure that the competent authorities see to it, by means of permits in accordance with Articles 6 and 8 or, as appropriate, by reconsidering and, where necessary, by updating the conditions, that existing installations operate in accordance with the requirements of Articles 3, 7, 9, 10 and 13, Article 14(a) and (b) and Article 15(2) not later than 30 October 2007, without prejudice to specific Community legislation.

2. Member States shall take the necessary measures to apply the provisions of Articles 1, 2, 11 and 12, Article 14(c), Article 15(1) and (3), Articles 17, 18 and Article 19(2) to existing installations as from 30 October 1999.

<sup>(1)</sup> OJ L 114, 27.4.2006, p. 9.

<sup>(2)</sup> OJ L 309, 27.11.2001, p. 1. Directive as last amended by Council Directive 2006/105/EC (OJ L 363, 20.12.2006, p. 368).

*Article 6***Applications for permits**

1. Member States shall take the necessary measures to ensure that an application to the competent authority for a permit includes a description of:

- (a) the installation and its activities;
- (b) the raw and auxiliary materials, other substances and the energy used in or generated by the installation;
- (c) the sources of emissions from the installation;
- (d) the conditions of the site of the installation;
- (e) the nature and quantities of foreseeable emissions from the installation into each medium as well as identification of significant effects of the emissions on the environment;
- (f) the proposed technology and other techniques for preventing or, where this not possible, reducing emissions from the installation;
- (g) where necessary, measures for the prevention and recovery of waste generated by the installation;
- (h) further measures planned to comply with the general principles of the basic obligations of the operator as provided for in Article 3;
- (i) measures planned to monitor emissions into the environment;
- (j) the main alternatives, if any, studied by the applicant in outline.

An application for a permit shall also include a non-technical summary of the details referred to in points (a) to (j).

2. Where information supplied in accordance with the requirements provided for in Directive 85/337/EEC or a safety report prepared in accordance with Council Directive 96/82/EC

of 9 December 1996 on the control of major-accident hazards involving dangerous substances<sup>(1)</sup> or other information produced in response to other legislation fulfils any of the requirements of this Article, that information may be included in, or attached to, the application.

*Article 7***Integrated approach to issuing permits**

Member States shall take the measures necessary to ensure that the conditions of, and procedure for the grant of, the permit are fully coordinated where more than one competent authority is involved, in order to guarantee an effective integrated approach by all authorities competent for this procedure.

*Article 8***Decisions**

Without prejudice to other requirements laid down in national or Community legislation, the competent authority shall grant a permit containing conditions guaranteeing that the installation complies with the requirements of this Directive or, if it does not, shall refuse to grant the permit.

All permits granted and modified permits must include details of the arrangements made for air, water and land protection as referred to in this Directive.

*Article 9***Conditions of the permit**

1. Member States shall ensure that the permit includes all measures necessary for compliance with the requirements of Articles 3 and 10 for the granting of permits in order to achieve a high level of protection for the environment as a whole by means of protection of the air, water and land.

2. In the case of a new installation or a substantial change where Article 4 of Directive 85/337/EEC applies, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6 and 7 of that Directive shall be taken into consideration for the purposes of granting the permit.

3. The permit shall include emission limit values for polluting substances, in particular those listed in Annex III, likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another (water, air and land). If necessary, the permit shall include appropriate requirements ensuring protection of the soil and ground water and measures concerning the management of waste generated by the installation. Where appropriate, limit values may be supplemented or replaced by equivalent parameters or technical measures.

<sup>(1)</sup> OJ L 10, 14.1.1997, p. 13. 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).



For installations under point 6.6 in Annex I, emission limit values laid down in accordance with this paragraph shall take into account practical considerations appropriate to these categories of installation.

Where emissions of a greenhouse gas from an installation are specified in Annex I to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community <sup>(1)</sup> in relation to an activity carried out in that installation, the permit shall not include an emission limit value for direct emissions of that gas unless it is necessary to ensure that no significant local pollution is caused.

For activities listed in Annex I to Directive 2003/87/EC, Member States may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site.

Where necessary, the competent authorities shall amend the permit as appropriate.

The third, fourth and fifth subparagraphs shall not apply to installations temporarily excluded from the scheme for greenhouse gas emission allowance trading within the Community in accordance with Article 27 of Directive 2003/87/EC.

4. Without prejudice to Article 10, the emission limit values and the equivalent parameters and technical measures referred to in paragraph 3 shall be based on the best available techniques, without prescribing the use of any technique or specific technology, but taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions. In all circumstances, the conditions of the permit shall contain provisions on the minimisation of long-distance or transboundary pollution and ensure a high level of protection for the environment as a whole.

5. The permit shall contain suitable release monitoring requirements, specifying measurement methodology and frequency, evaluation procedure and an obligation to supply the competent authority with data required for checking compliance with the permit.

For installations under point 6.6 in Annex I, the measures referred to in this paragraph may take account of costs and benefits.

6. The permit shall contain measures relating to conditions other than normal operating conditions. Thus, where there is a risk that the environment may be affected, appropriate provision shall be made for start-up, leaks, malfunctions, momentary stoppages and definitive cessation of operations.

The permit may also contain temporary derogations from the requirements of paragraph 4 if a rehabilitation plan approved by the competent authority ensures that these requirements will be met within six months and if the project leads to a reduction of pollution.

7. The permit may contain such other specific conditions for the purposes of this Directive as the Member State or competent authority may think fit.

8. Without prejudice to the obligation to implement a permit procedure pursuant to this Directive, Member States may prescribe certain requirements for certain categories of installations in general binding rules instead of including them in individual permit conditions, provided that an integrated approach and an equivalent high level of environmental protection as a whole are ensured.

#### Article 10

##### **Best available techniques and environmental quality standards**

Where an environmental quality standard requires stricter conditions than those achievable by the use of the best available techniques, additional measures shall in particular be required in the permit, without prejudice to other measures which might be taken to comply with environmental quality standards.

#### Article 11

##### **Developments in best available techniques**

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

#### Article 12

##### **Changes by operators to installations**

1. Member States shall take the necessary measures to ensure that the operator informs the competent authorities of any planned change in the operation. Where appropriate, the competent authorities shall update the permit or the conditions.

<sup>(1)</sup> OJ L 275, 25.10.2003, p. 32. Directive as amended by Directive 2004/101/EC (OJ L 338, 13.11.2004, p. 18).

2. Member States shall take the necessary measures to ensure that no substantial change planned by the operator is made without a permit issued in accordance with this Directive. The application for a permit and the decision by the competent authority must cover those parts of the installation and those aspects listed in Article 6 that may be affected by the change. The relevant provisions of Article 3, Articles 6 to 10 and Article 15(1), (2) and (3) shall apply *mutatis mutandis*.

#### Article 13

##### **Reconsideration and updating of permit conditions by the competent authority**

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

2. The reconsideration shall be undertaken in any event where:

- (a) the pollution caused by the installation is of such significance that the existing emission limit values of the permit need to be revised or new such values need to be included in the permit;
- (b) substantial changes in the best available techniques make it possible to reduce emissions significantly without imposing excessive costs;
- (c) the operational safety of the process or activity requires other techniques to be used;
- (d) new provisions of Community or national legislation so dictate.

#### Article 14

##### **Compliance with permit conditions**

Member States shall take the necessary measures to ensure that:

- (a) the conditions of the permit are complied with by the operator when operating the installation;
- (b) the operator regularly informs the competent authority of the results of the monitoring of releases and without delay of any incident or accident significantly affecting the environment;

(c) operators of installations afford the representatives of the competent authority all necessary assistance to enable them to carry out any inspections within the installation, to take samples and to gather any information necessary for the performance of their duties for the purposes of this Directive.

#### Article 15

##### **Access to information and public participation in the permit procedure**

1. Member States shall ensure that the public concerned is given early and effective opportunities to participate in the procedure for:

- (a) issuing a permit for new installations;
- (b) issuing a permit for any substantial change;
- (c) updating of a permit or permit conditions for an installation in accordance with Article 13(2)(a).

The procedure set out in Annex V shall apply for the purposes of such participation.

2. The results of monitoring of releases as required under the permit conditions referred to in Article 9 and held by the competent authority shall be made available to the public.

3. Paragraphs 1 and 2 shall apply subject to the restrictions laid down in Article 4(1), (2) and (4) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information<sup>(1)</sup>.

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

- (a) the content of the decision, including a copy of the permit and of any conditions and any subsequent updates; and
- (b) having examined the concerns and opinions expressed by the public concerned, the reasons and considerations on which the decision is based, including information on the public participation process.

<sup>(1)</sup> OJ L 41, 14.2.2003, p. 26.

### Article 16

#### Access to justice

1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive when:

- (a) they have a sufficient interest; or
  - (b) they maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition.
2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.
3. What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of paragraph 1(a).

Such organisations shall also be deemed to have rights capable of being impaired for the purpose of paragraph 1(b).

4. The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

5. In order to further the effectiveness of the provisions of this Article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.

### Article 17

#### Exchange of information

1. With a view to exchanging information, Member States shall take the necessary measures to send the Commission every three years, and for the first time before 30 April 2001, the available representative data on the limit values laid down by specific category of activities in accordance with Annex I and, if appropriate, the best available techniques from which those values are derived in accordance with, in particular, Article 9.

On subsequent occasions the data shall be supplemented in accordance with the procedures laid down in paragraph 3 of this Article.

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

Every three years the Commission shall publish the results of the exchanges of information.

3. At intervals of three years, and for the first time for the period 30 October 1999 to 30 October 2002 inclusive, Member States shall send information to the Commission on the implementation of this Directive in the form of a report. The report shall be drawn up on the basis of a questionnaire or outline drafted by the Commission in accordance with the procedure laid down in Article 6(2) of Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment<sup>(1)</sup>. The questionnaire or outline shall be sent to the Member States six months before the start of the period covered by the report. The report shall be submitted to the Commission within nine months of the end of the three-year period covered by it.

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

The Commission shall submit the Community report to the European Parliament and to the Council, accompanied by proposals if necessary.

4. Member States shall establish or designate the authority or authorities which are to be responsible for the exchange of information under paragraphs 1, 2 and 3 and shall inform the Commission accordingly.

### Article 18

#### Transboundary effects

1. Where a Member State is aware that the operation of an installation is likely to have significant negative effects on the environment of another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the application for a permit pursuant to Article 4 or Article 12(2) was submitted shall forward to the other Member State any information required to be given or made available pursuant to Annex V at the same time as it makes it available to its own nationals. Such information shall serve as a basis for any consultations necessary in the framework of the bilateral relations between the two Member States on a reciprocal and equivalent basis.

<sup>(1)</sup> OJ L 377, 31.12.1991, p. 48. Directive as amended by Regulation (EC) No 1882/2003.

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

3. The results of any consultations pursuant to paragraphs 1 and 2 must be taken into consideration when the competent authority reaches a decision on the application.

4. The competent authority shall inform any Member State which has been consulted pursuant to paragraph 1 of the decision reached on the application and shall forward to it the information referred to in Article 15(4). That Member State shall take the measures necessary to ensure that that information is made available in an appropriate manner to the public concerned in its own territory.

#### Article 19

##### Community emission limit values

1. Where the need for Community action has been identified, on the basis, in particular, of the exchange of information provided for in Article 17, the European Parliament and the Council, acting on a proposal from the Commission, shall set emission limit values, in accordance with the procedures laid down in the Treaty, for:

(a) the categories of installations listed in Annex I except for the landfills covered by points 5,1 and 5,4 of that Annex,

and

(b) the polluting substances referred to in Annex III.

2. In the absence of Community emission limit values defined pursuant to this Directive, the relevant emission limit values contained in the Directives listed in Annex II and in other Community legislation shall be applied as minimum emission limit values pursuant to this Directive for the installations listed in Annex I.

3. Without prejudice to the requirements of this Directive, the technical requirements applicable for the landfills covered by

points 5,1 and 5,4 of Annex I, have been fixed in Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste <sup>(1)</sup>.

#### Article 20

##### Transitional provisions

1. The provisions of Directive 84/360/EEC, the provisions of Articles 4, 5 and 6(2) of Directive 2006/11/EC and the relevant provisions concerning authorisation systems in the Directives listed in Annex II shall apply, without prejudice to the exceptions provided for in Directive 2001/80/EC, to existing installations in respect of activities listed in Annex I until the measures required pursuant to Article 5 of this Directive have been taken by the competent authorities.

2. The relevant provisions concerning authorisation systems in the Directives listed in Annex II shall not, in respect of the activities listed in Annex I, apply to installations which are not existing installations within the meaning of point 4 of Article 2.

3. Directive 84/360/EEC shall be repealed on 30 October 2007.

Acting on a proposal from the Commission, the Council or the European Parliament and the Council shall, where necessary, amend the relevant provisions of the Directives listed in Annex II in order to adapt them to the requirements of this Directive before 30 October 2007.

#### Article 21

##### Communication

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

#### Article 22

##### Repeal

Directive 96/61/EC, as amended by the acts listed in Annex VI, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives as set out in Annex VI, Part B.

<sup>(1)</sup> OJ L 182, 16.7.1999, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

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

*Article 23*

**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 24*

**Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 15 January 2008.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

J. LENARČIČ

## ANNEX I

## CATEGORIES OF INDUSTRIAL ACTIVITIES REFERRED TO IN ARTICLE 1

1. Installations or parts of installations used for research, development and testing of new products and processes are not covered by this Directive.
2. The threshold values given below generally refer to production capacities or outputs. Where one operator carries out several activities falling under the same subheading in the same installation or on the same site, the capacities of such activities are added together.

**1. Energy industries**

- 1.1. Combustion installations with a rated thermal input exceeding 50 MW.
- 1.2. Mineral oil and gas refineries.
- 1.3. Coke ovens.
- 1.4. Coal gasification and liquefaction plants.

**2. Production and processing of metals**

- 2.1. Metal ore (including sulphide ore) roasting or sintering installations.
- 2.2. Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour.
- 2.3. Installations for the processing of ferrous metals:
  - (a) hot-rolling mills with a capacity exceeding 20 tonnes of crude steel per hour;
  - (b) smitheries with hammers the energy of which exceeds 50 kilojoules per hammer, where the calorific power used exceeds 20 MW;
  - (c) application of protective fused metal coats with an input exceeding 2 tonnes of crude steel per hour.
- 2.4. Ferrous metal foundries with a production capacity exceeding 20 tonnes per day.
- 2.5. Installations:
  - (a) for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes;
  - (b) for the smelting, including the alloyage, of non-ferrous metals, including recovered products, (refining, foundry casting, etc.) with a melting capacity exceeding 4 tonnes per day for lead and cadmium or 20 tonnes per day for all other metals.
- 2.6. Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process where the volume of the treatment vats exceeds 30 m<sup>3</sup>.

**3. Mineral industry**

- 3.1. Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or lime in rotary kilns with a production capacity exceeding 50 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day.
- 3.2. Installations for the production of asbestos and the manufacture of asbestos-based products.

- 3.3. Installations for the manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day.
- 3.4. Installations for melting mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tonnes per day.
- 3.5. Installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day, and/or with a kiln capacity exceeding 4 m<sup>3</sup> and with a setting density per kiln exceeding 300 kg/m<sup>3</sup>.

#### 4. Chemical industry

Production within the meaning of the categories of activities contained in this section means the production on an industrial scale by chemical processing of substances or groups of substances listed in points 4.1 to 4.6.

- 4.1. Chemical installations for the production of basic organic chemicals, such as:
  - (a) simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic);
  - (b) oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, esters, acetates, ethers, peroxides, epoxy resins;
  - (c) sulphurous hydrocarbons;
  - (d) nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates;
  - (e) phosphorus-containing hydrocarbons;
  - (f) halogenic hydrocarbons;
  - (g) organometallic compounds;
  - (h) basic plastic materials (polymers, synthetic fibres and cellulose-based fibres);
  - (i) synthetic rubbers;
  - (j) dyes and pigments;
  - (k) surface-active agents and surfactants.
- 4.2. Chemical installations for the production of basic inorganic chemicals, such as:
  - (a) gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride;
  - (b) acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids;
  - (c) bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide;
  - (d) salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate;
  - (e) non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide.



- 4.3. Chemical installations for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers).
- 4.4. Chemical installations for the production of basic plant health products and of biocides.
- 4.5. Installations using a chemical or biological process for the production of basic pharmaceutical products.
- 4.6. Chemical installations for the production of explosives.

## 5. **Waste management**

Without prejudice to Article 11 of Directive 2006/12/EC or Article 3 of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste <sup>(1)</sup>:

- 5.1. Installations for the disposal or recovery of hazardous waste as defined in the list referred to in Article 1(4) of Directive 91/689/EEC, as defined in Annexes II A and II B (operations R1, R5, R6, R8 and R9) to Directive 2006/12/EC and in Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils <sup>(2)</sup>, with a capacity exceeding 10 tonnes per day.
- 5.2. Installations for the incineration of municipal waste (household waste and similar commercial, industrial and institutional wastes) with a capacity exceeding 3 tonnes per hour.
- 5.3. Installations for the disposal of non-hazardous waste as defined in Annex II A to Directive 2006/12/EC under headings D8 and D9, with a capacity exceeding 50 tonnes per day.
- 5.4. Landfills receiving more than 10 tonnes per day or with a total capacity exceeding 25 000 tonnes, excluding landfills of inert waste.

## 6. **Other activities**

- 6.1. Industrial plants for the production of:
  - (a) pulp from timber or other fibrous materials;
  - (b) paper and cardboard with a production capacity exceeding 20 tonnes per day.
- 6.2. Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles where the treatment capacity exceeds 10 tonnes per day.
- 6.3. Plants for the tanning of hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day.
- 6.4. (a) Slaughterhouses with a carcase production capacity greater than 50 tonnes per day.
  - (b) Treatment and processing intended for the production of food products from:
    - animal raw materials (other than milk) with a finished product production capacity greater than 75 tonnes per day,
    - vegetable raw materials with a finished product production capacity greater than 300 tonnes per day (average value on a quarterly basis).
  - (c) Treatment and processing of milk, the quantity of milk received being greater than 200 tonnes per day (average value on an annual basis).

<sup>(1)</sup> OJ L 377, 31.12.1991, p. 20. Directive as last amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council (OJ L 33, 4.2.2006, p. 1).

<sup>(2)</sup> OJ L 194, 25.7.1975, p. 23. Directive as last amended by Directive 2000/76/EC of the European Parliament and of the Council (OJ L 332, 28.12.2000, p. 91).



- 6.5. Installations for the disposal or recycling of animal carcasses and animal waste with a treatment capacity exceeding 10 tonnes per day.
  - 6.6. Installations for the intensive rearing of poultry or pigs with more than:
    - (a) 40 000 places for poultry;
    - (b) 2 000 places for production pigs (over 30 kg); or
    - (c) 750 places for sows.
  - 6.7. Installations for the surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating, with a consumption capacity of more than 150 kg per hour or more than 200 tonnes per year.
  - 6.8. Installations for the production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitisation.
-

## ANNEX II

**LIST OF THE DIRECTIVES REFERRED TO IN ARTICLES 19(2), (3) AND 20**

1. Council Directive 87/217/EEC of 19 March 1987 on the prevention and reduction of environmental pollution by asbestos.
  2. Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry.
  3. Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges.
  4. Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry.
  5. Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachlorocyclohexane.
  6. Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC.
  7. Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste.
  8. Council Directive 92/112/EEC of 15 December 1992 on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry.
  9. Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants.
  10. Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community.
  11. Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste.
  12. Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils.
  13. Council Directive 91/689/EEC of 12 December 1991 on hazardous waste.
  14. Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste.
-

## ANNEX III

**INDICATIVE LIST OF THE MAIN POLLUTING SUBSTANCES TO BE TAKEN INTO ACCOUNT IF THEY ARE RELEVANT FOR FIXING EMISSION LIMIT VALUES****Air**

1. Sulphur dioxide and other sulphur compounds.
2. Oxides of nitrogen and other nitrogen compounds.
3. Carbon monoxide.
4. Volatile organic compounds.
5. Metals and their compounds.
6. Dust.
7. Asbestos (suspended particulates, fibres).
8. Chlorine and its compounds.
9. Fluorine and its compounds.
10. Arsenic and its compounds.
11. Cyanides.
12. Substances and preparations which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction via the air.
13. Polychlorinated dibenzodioxins and polychlorinated dibenzofurans.

**Water**

1. Organohalogen compounds and substances which may form such compounds in the aquatic environment.
  2. Organophosphorus compounds.
  3. Organotin compounds.
  4. Substances and preparations which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction in or via the aquatic environment.
  5. Persistent hydrocarbons and persistent and bioaccumulable organic toxic substances.
  6. Cyanides.
  7. Metals and their compounds.
  8. Arsenic and its compounds.
  9. Biocides and plant health products.
  10. Materials in suspension.
  11. Substances which contribute to eutrophication (in particular, nitrates and phosphates).
  12. Substances which have an unfavourable influence on the oxygen balance (and can be measured using parameters such as BOD, COD, etc.).
-

## ANNEX IV

Considerations to be taken into account generally or in specific cases when determining best available techniques, as defined in Article 2(12), bearing in mind the likely costs and benefits of a measure and the principles of precaution and prevention:

1. the use of low-waste technology;
  2. the use of less hazardous substances;
  3. the furthering of recovery and recycling of substances generated and used in the process and of waste, where appropriate;
  4. comparable processes, facilities or methods of operation which have been tried with success on an industrial scale;
  5. technological advances and changes in scientific knowledge and understanding;
  6. the nature, effects and volume of the emissions concerned;
  7. the commissioning dates for new or existing installations;
  8. the length of time needed to introduce the best available technique;
  9. the consumption and nature of raw materials (including water) used in the process and energy efficiency;
  10. the need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it;
  11. the need to prevent accidents and to minimise the consequences for the environment;
  12. the information published by the Commission pursuant to Article 17(2), second subparagraph, or by international organisations.
-

## ANNEX V

**PUBLIC PARTICIPATION IN DECISION-MAKING**

1. The public shall be informed (by public notices or other appropriate means such as electronic media where available) of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided:
    - (a) the application for a permit or, as the case may be, the proposal for the updating of a permit or of permit conditions in accordance with Article 15(1), including the description of the elements listed in Article 6(1);
    - (b) where applicable, the fact that a decision is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 18;
    - (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
    - (d) the nature of possible decisions or, where there is one, the draft decision;
    - (e) where applicable, the details relating to a proposal for the updating of a permit or of permit conditions;
    - (f) an indication of the times and places where, or means by which, the relevant information will be made available;
    - (g) details of the arrangements for public participation and consultation made pursuant to point 5.
  2. Member States shall ensure that, within appropriate time-frames, the following is made available to the public concerned:
    - (a) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned were informed in accordance with point 1;
    - (b) in accordance with the provisions of Directive 2003/4/EC, information other than that referred to in point 1 which is relevant for the decision in accordance with Article 8 and which only becomes available after the time the public concerned was informed in accordance with point 1.
  3. The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.
  4. The results of the consultations held pursuant to this Annex must be taken into due account in the taking of a decision.
  5. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States. Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Annex.
-

## ANNEX VI

## PART A

**Repealed Directive with its successive amendments (referred to in Article 22)**

Council Directive 96/61/EC (OJ L 257, 10.10.1996, p. 26).	
Directive 2003/35/EC of the European Parliament and of the Council (OJ L 156, 25.6.2003, p. 17).	only Article 4 and Annex II
Directive 2003/87/EC of the European Parliament and of the Council (OJ L 275, 25.10.2003, p. 32).	only Article 26
Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).	only point (61) of Annex III
Regulation (EC) No 166/2006 of the European Parliament and of the Council (OJ L 33, 4.2.2006, p. 1).	only Article 21(2)

## PART B

**List of time-limits for transposition into national law (referred to in Article 22)**

Directive	Time-limit for transposition
96/61/EC	30 October 1999
2003/35/EC	25 June 2005
2003/87/EC	31 December 2003

## ANNEX VII

## CORRELATION TABLE

Directive 96/61/EC	This Directive
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2(1-9)	Article 2(1-9)
Article 2(10)(a)	Article 2(10)
Article 2(10)(b)	Article 2(11)
Article 2(11), first subparagraph, introductory wording	Article 2(12), first subparagraph, introductory wording
Article 2(11), first subparagraph, first indent	Article 2(12), first subparagraph, (a)
Article 2(11), first subparagraph, second indent	Article 2(12), first subparagraph, (b)
Article 2(11), first subparagraph, third indent	Article 2(12), first subparagraph, (c)
Article 2(11), second subparagraph	Article 2(12), second subparagraph
Article 2(12)	Article 2(13)
Article 2(13)	Article 2(14)
Article 2(14)	Article 2(15)
Article 3, first subparagraph	Article 3(1)
Article 3, second subparagraph	Article 3(2)
Article 4	Article 4
Article 5	Article 5
Article 6(1), first subparagraph, introductory wording	Article 6(1), first subparagraph, introductory wording
Article 6(1), first subparagraph, first to tenth indent	Article 6(1), first subparagraph, (a) to (j)
Article 6(1), second subparagraph	Article 6(1), second subparagraph
Article 6(2)	Article 6(2)
Article 7 to 12	Article 7 to 12
Article 13(1)	Article 13(1)
Article 13(2), introductory wording	Article 13(2), introductory wording
Article 13(2), first to fourth indent	Article 13(2)(a) to (d)
Article 14, introductory wording	Article 14, introductory wording
Article 14, first to third indent	Article 14(a) to (c)
Article 15(1), first subparagraph, introductory wording	Article 15(1), first subparagraph, introductory wording
Article 15(1), first subparagraph, first to third indent	Article 15(1), first subparagraph, (a) to (c)
Article 15(1), second subparagraph	Article 15(1), second subparagraph
Article 15(2)	Article 15(2)
Article 15(4)	Article 15(3)
Article 15(5)	Article 15(4)
Article 15a, first subparagraph, introductory and final words	Article 16(1)
Article 15a, first subparagraph, (a) and (b)	Article 16(1)(a) and (b)

Directive 96/61/EC	This Directive
Article 15a, second subparagraph	Article 16(2)
Article 15a, third subparagraph, first and second sentence	Article 16(3), first subparagraph
Article 15a, third subparagraph, third sentence	Article 16(3), second subparagraph
Article 15a, fourth subparagraph	Article 16(4), first subparagraph
Article 15a, fifth subparagraph	Article 16(4), second subparagraph
Article 15a, sixth subparagraph	Article 16(5)
Article 16	Article 17
Article 17	Article 18
Article 18(1), introductory and final words	Article 19(1)
Article 18(1), first and second indent	Article 19(1)(a) and (b)
Article 18(2), first subparagraph	Article 19(2)
Article 18(2), second subparagraph	Article 19(3)
Article 19	—
Article 20(1)	Article 20(1)
Article 20(2)	Article 20(2)
Article 20(3), first subparagraph	Article 20(3), first subparagraph
Article 20(3), second subparagraph	—
Article 20(3), third subparagraph	Article 20(3), second subparagraph
Article 21(1)	—
Article 21(2)	Article 21
—	Article 22
Article 22	Article 23
Article 23	Article 24
Annex I	Annex I
Annex II	Annex II
Annex III	Annex III
Annex IV	Annex IV
Annex V	Annex V
—	Annex VI
—	Annex VII



**DIRECTIVE 2008/2/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 15 January 2008**  
**on the field of vision and windscreen wipers for wheeled agricultural or forestry tractors**  
**(Codified version)**  
**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

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

Whereas:

- (1) Council Directive 74/347/EEC of 25 June 1974 on the approximation of the laws of the Member States relating to the field of vision and windscreen wipers for wheeled agricultural or forestry tractors <sup>(3)</sup> has been substantially amended several times <sup>(4)</sup>. In the interests of clarity and rationality the said Directive should be codified.
- (2) Directive 74/347/EEC is one of the separate Directives of the EC type-approval system provided for in Council Directive 74/150/EEC as replaced by Directive 2003/37/EC of the European Parliament and of the Council of 26 May 2003 on type-approval of agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units <sup>(5)</sup>, and lays down technical prescriptions concerning the design and construction of wheeled agricultural or forestry tractors as regards the field of vision and windscreen wipers. These technical prescriptions concern the approximation of the laws of the Member States to enable the EC type-

approval procedure, provided for in Directive 2003/37/EC, to be applied in respect of each type of tractor. Consequently, the provisions laid down in Directive 2003/37/EC relating to agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units, apply to this Directive.

- (3) 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 as set out in Annex II, Part B,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

1. 'Agricultural or forestry tractor' means any motor vehicle, fitted with wheels or endless tracks and having at least two axles, the main function of which lies in its tractive power and which is specially designed to tow, push, carry or power certain tools, machinery or trailers intended for agricultural or forestry use. It may be equipped to carry a load and passengers.

2. This Directive shall apply only to tractors defined in paragraph 1 which are equipped with pneumatic tyres and have a maximum design speed of between 6 and 40 km/h.

*Article 2*

No Member State may refuse to grant EC type-approval or national type-approval of a tractor on grounds relating to windscreen wipers if these satisfy the requirements set out in Annex I.

*Article 3*

No Member State may refuse the registration or prohibit the sale, entry into service or use of tractors on grounds relating to windscreen wipers, if these satisfy the requirements set out in Annex I.

*Article 4*

The amendments necessary to adapt the requirements of Annex I to technical progress shall be adopted in accordance with the procedure referred to in Article 20(2) of Directive 2003/37/EC.

<sup>(1)</sup> OJ C 161, 13.7.2007, p. 35.

<sup>(2)</sup> Opinion of the European Parliament of 19 June 2007 (not yet published in the Official Journal) and Council Decision of 17 December 2007.

<sup>(3)</sup> OJ L 191, 15.7.1974, p. 5. Directive as last amended by Directive 97/54/EC of the European Parliament and of the Council (OJ L 277, 10.10.1997, p. 24).

<sup>(4)</sup> See Annex II, Part A.

<sup>(5)</sup> OJ L 171, 9.7.2003, p. 1. Directive as last amended by Council Directive 2006/96/EC (OJ L 363, 20.12.2006, p. 81).

*Article 5*

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

*Article 6*

Directive 74/347/EEC, as amended by the Directives listed in Annex II, Part A, is hereby 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 as set out in Annex II, Part B.

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

*Article 7*

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

It shall apply from 1 May 2008.

*Article 8*

This Directive is addressed to the Member States.

Done at Strasbourg, 15 January 2008.

*For the European Parliament*  
*The President*  
H.-G. PÖTTERING

*For the Council*  
*The President*  
J. LENARČIČ

## ANNEX I

**FIELD OF VISION**

## DEFINITIONS AND REQUIREMENTS

## 1. DEFINITIONS

1.1. **Field of vision**

'Field of vision' means all forward and lateral directions in which the driver of the tractor can see.

1.2. **Reference point**

'Reference point' means the position, fixed by convention, of the tractor driver's eyes notionally located at a single point. The reference point is situated in the plane parallel to the longitudinal median plane of the tractor and passing through the centre of the seat, 700 mm vertically above the line of intersection of that plane and the surface of the seat and 270 mm in the direction of the pelvic support from the vertical plane passing through the front edge of the surface of the seat and perpendicular to the longitudinal median plane of the tractor (Figure 1). The reference point thus determined relates to the seat when unoccupied and fitted in the central position specified by the tractor manufacturer.

1.3. **Semi-circle of vision**

'Semi-circle of vision' means the semi-circle described by a radius of 12 m about a point situated in the horizontal plane of the road vertically below the reference point, in such a way that, when facing the direction of motion, the arc of the semi-circle lies in front of the tractor, while the diameter bounding the semi-circle is at right angles to the longitudinal axis of the tractor (Figure 2).

1.4. **Masking effect**

'Masking effect' means the chords of the sectors of the semi-circle of vision which cannot be seen owing to structural components such as roof-pillars, air intakes or exhaust stacks and the frame of the windscreen.

1.5. **Sector of vision**

'Sector of vision' means that part of the field of vision bounded:

## 1.5.1. at the top,

by a horizontal plane passing through the reference point;

## 1.5.2. in the plane of the road,

by the zone lying outside the semi-circle of vision, and forming the continuation of the sector of the semi-circle of vision, the chord of which is 9,5 m long, perpendicular to the plane parallel to the longitudinal median plane of the tractor passing through the centre of the driver's seat and bisected by that plane.

1.6. **Swept area of the windscreen wipers**

'Swept area of the windscreen wipers' means the area of the outer surface of the windscreen swept by the windscreen wipers.

## 2. REQUIREMENTS

2.1. **General**

The tractor shall be constructed and equipped in such a way that, in road traffic and in farm and forest use, the driver has an adequate field of vision, under all the usual conditions pertaining to highway use and to work undertaken in fields and forests. The field of vision is considered adequate when the driver has, as far as possible, a view of part of each front wheel and when the following requirements are fulfilled.

## 2.2. Checking of the field of vision

### 2.2.1. Procedure for determining masking effects

2.2.1.1. The tractor must be placed on a horizontal surface as shown in Figure 2. On a horizontal support level with the reference point, there must be mounted two point sources of light, e.g. 2 × 150 W, 12 V, 65 mm apart and symmetrically located with respect to the reference point. The support must be rotatable at its centre point about a vertical axis passing through the reference point. For the purpose of measuring the masking effects, the support must be so aligned that the line joining the two light sources is perpendicular to the line joining the masking component and the reference point.

The silhouette (deepest shadow) overlaps projected on to the semi-circle of vision by the masking component when the light sources are switched on simultaneously or alternately must be measured in accordance with point 1.4 (Figure 3).

2.2.1.2. Masking effects must not exceed 700 mm.

2.2.1.3. Masking effects due to adjacent structural components over 80 mm in width must be so configured that there is an interval of not less than 2 200 mm — measured as a chord of the semi-circle of vision — between the centres of two masking effects.

2.2.1.4. There may be no more than six masking effects in the semi-circle of vision and no more than two inside the sector of vision defined in point 1.5.

2.2.1.5. Outside the sector of vision, masking effects exceeding 700 mm but not exceeding 1 500 mm are, however, permissible if the components causing them cannot be redesigned or relocated: on each side there may be a total of either two such masking effects, one not exceeding 700 mm and the other not exceeding 1 500 mm, or two such masking effects, neither exceeding 1 200 mm.

2.2.1.6. Blind spots caused by type-approved rear-view mirrors may be disregarded if the design of these mirrors is such that they cannot be installed in any other way.

### 2.2.2. Mathematical determination of masking effects for binocular vision:

2.2.2.1. as an alternative to the procedure set out in point 2.2.1, the acceptability of individual masking effects can be determined mathematically. The requirements of points 2.2.1.2 to 2.2.1.6 shall apply in respect of the size, distribution and number of the masking effects;

2.2.2.2. for binocular vision with an inter-ocular distance of 65 mm, the masking effect expressed in mm is given by the formula:

$$v = \frac{b - 65}{a} \times 12\,000 + 65$$

in which:

a is the distance in millimetres between the component obstructing vision and the reference point measured along the visual radius joining the reference point, the centre of the component and the perimeter of the semi-circle of vision; and

b is the width in millimetres of the component obstructing vision measured horizontally and perpendicular to the visual radius.

2.3. The test methods referred to under point 2.2 may be replaced by others if the latter can be shown to be equivalent.

2.4. **Transparent area of the windscreen**

For the purpose of determining the masking effects in the sector of vision, the masking effects due to the frame of the windscreen and to any other obstacle may, in accordance with the provisions of point 2.2.1.4, be considered as a single effect, provided that the distance between the outermost points of this masking effect does not exceed 700 mm.

2.5. **Windscreen wipers**

2.5.1. Tractors fitted with windscreens must also be equipped with motor-driven windscreen wipers. The area swept by these wipers must ensure an unobstructed forward view corresponding to a chord of the semi-circle of vision at least 8 m long within the sector of vision.

2.5.2. The rate of operation of the windscreen wipers must be at least 20 cycles per minute.

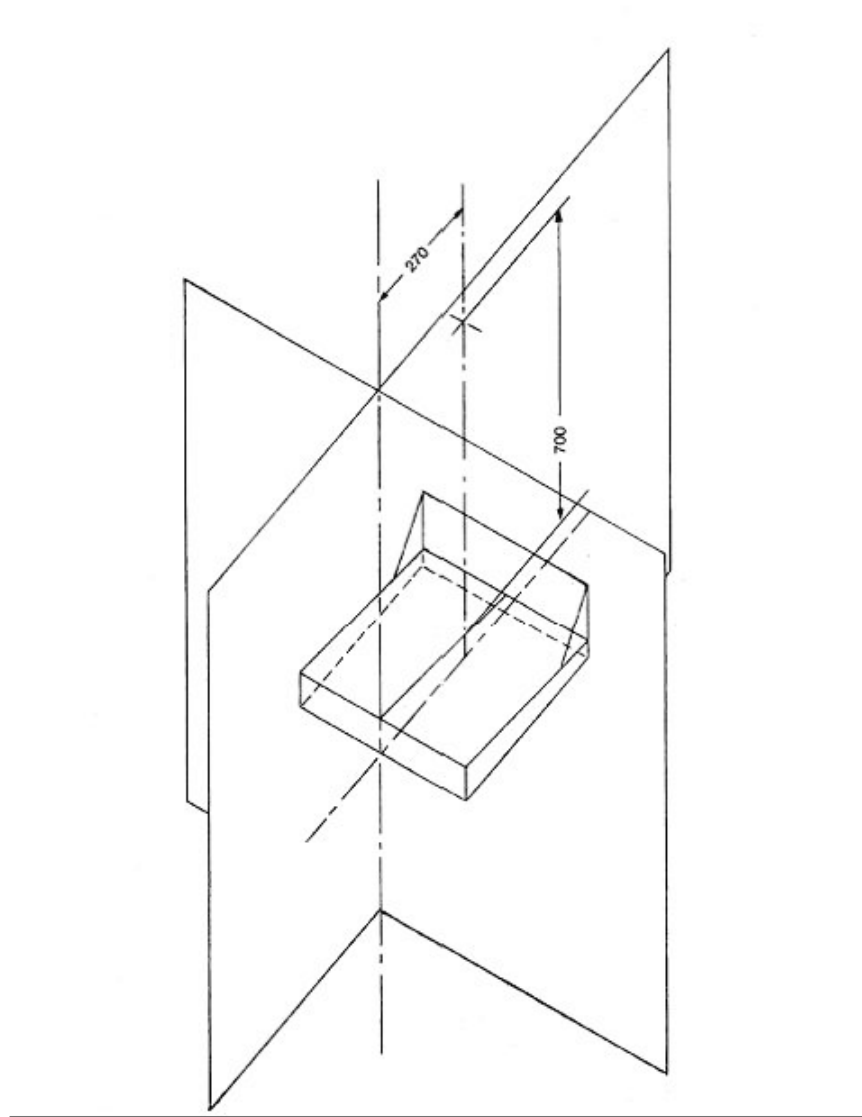


Figure 1

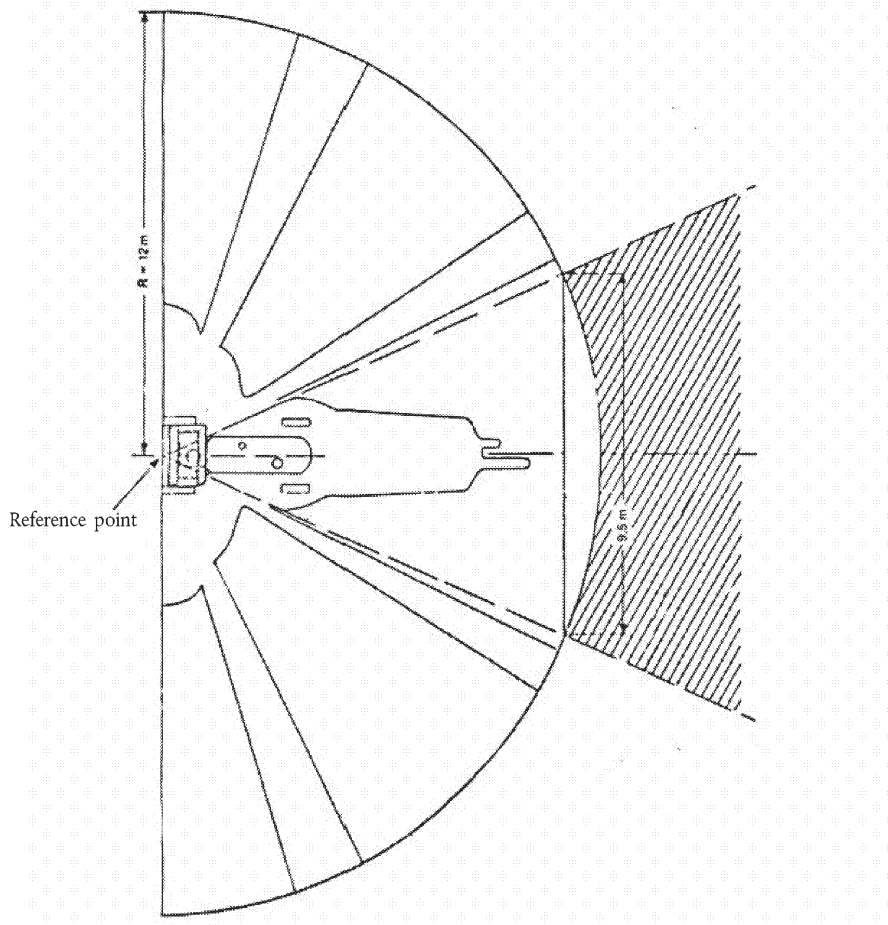


Figure 2

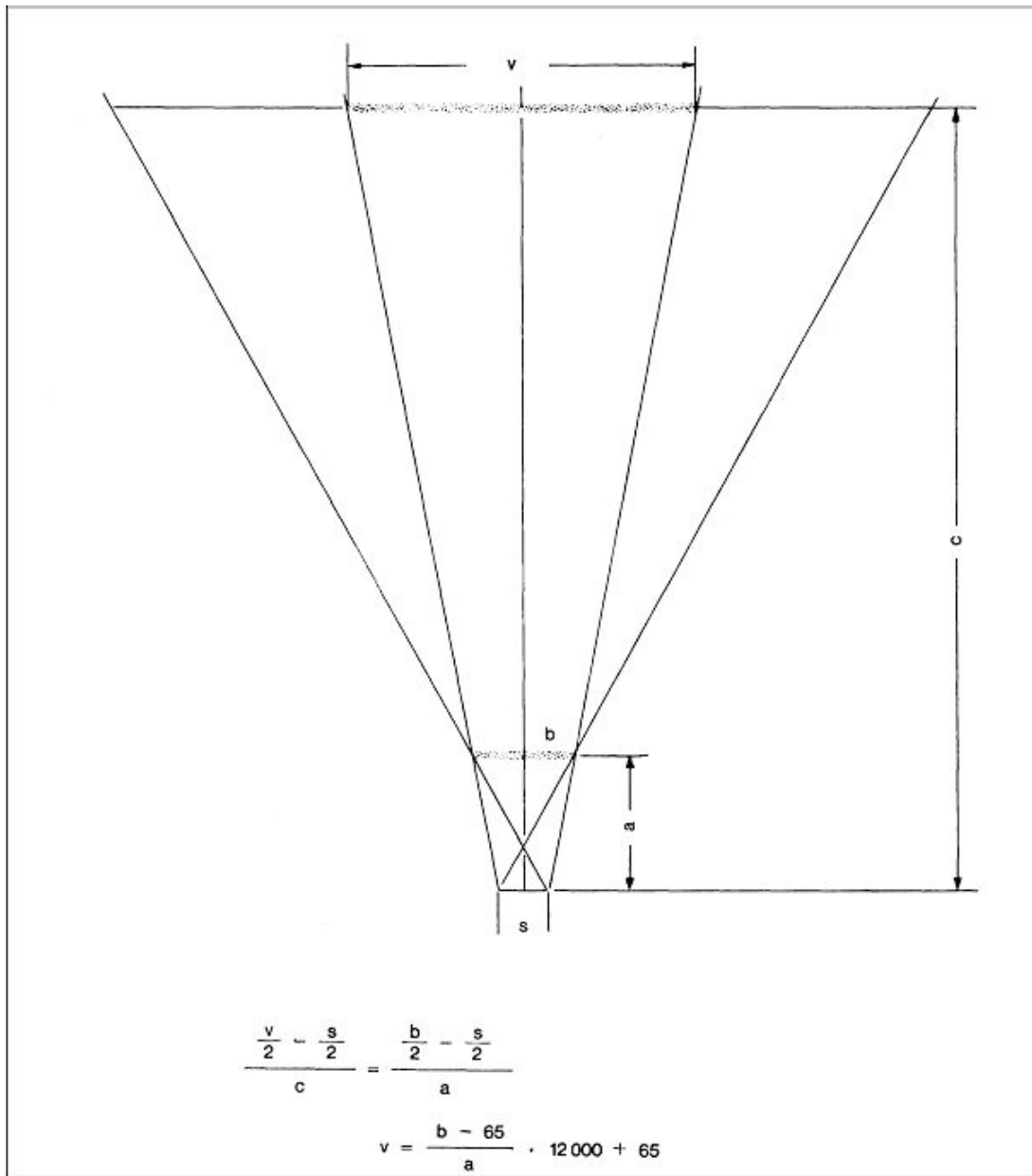


Figure 3

## ANNEX II

## PART A

**Repealed Directive with its successive amendments (referred to in Article 6)**

Council Directive 74/347/EEC  
(OJ L 191, 15.7.1974, p. 5)

Commission Directive 79/1073/EEC  
(OJ L 331, 27.12.1979, p. 20)

Council Directive 82/890/EEC  
(OJ L 378, 31.12.1982, p. 45)

Only as regards the references to Directive  
74/347/EEC in Article 1(1)

Directive 97/54/EC of the European Parliament and of the Council  
(OJ L 277, 10.10.1997, p. 24)

Only as regards the references to Directive  
74/347/EEC in the first indent of Article 1

## PART B

**List of time-limits for transposition into national law and application (referred to in Article 6)**

Directive	Time-limit for transposition	Date of application
74/347/EEC	2 January 1976 (*)	
79/1073/EEC	30 April 1980	
82/890/EEC	22 June 1984	
97/54/EC	22 September 1998	23 September 1998

(\*) In compliance with Article 3a, inserted by point 2 of Article 1 of Directive 79/1073/EEC:

1. With effect from 1 May 1980 no Member State may, on grounds relating to the field of vision of tractors:
  - refuse, in respect of a type of tractor, to grant EEC type-approval, to issue the document referred to in the last indent of Article 10(1) of Directive 74/150/EEC, or to grant national type-approval,
  - or prohibit the entry into service of tractors,
 if the field of vision of this type of tractor or of these tractors complies with the provisions of this Directive.
2. With effect from 1 October 1980 Member States:
  - may no longer issue the document referred to in the last indent of Article 10(1) of Directive 74/150/EEC in respect of a type of tractor in which the field of vision does not comply with the provisions of this Directive,
  - may refuse to grant national type-approval in respect of a type of tractor whose field of vision does not comply with the provisions of this Directive.
3. With effect from 1 January 1983, Member States may prohibit the entry into service of any tractor whose field of vision does not comply with the provisions of this Directive.



## ANNEX III

## CORRELATION TABLE

Directive 74/347/EEC	This Directive
Articles 1 to 3	Articles 1 to 3
Article 3a	Table note (*), Annex II
Article 4	Article 4
Article 5(1)	—
Article 5(2)	Article 5
—	Articles 6 and 7
Article 6	Article 8
Annex	Annex I
Annex, points 1 to 2.3	Annex I, points 1 to 2.3
Annex, point 2.4	—
Annex, point 2.5	Annex I, point 2.4
Annex, point 2.6	Annex I, point 2.5
Annex, figures 1, 2 and 3	Annex I, figures 1, 2 and 3
—	Annex II
—	Annex III

## RULES OF PROCEDURE

### AMENDMENTS TO THE RULES OF PROCEDURE OF THE COURT OF JUSTICE

THE COURT,

Having regard to the Treaty establishing the European Community, and in particular the sixth paragraph of Article 223 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the sixth paragraph of Article 139 thereof,

Whereas:

- (1) References for a preliminary ruling which may be submitted to the Court of Justice in the areas covered by Title VI of the Treaty on European Union or Title IV of Part Three of the Treaty establishing the European Community, which seek to maintain and develop an area of freedom, security and justice, require, in certain cases, a rapid response from the Court by reason of the urgency with which the case has to be dealt with before the national court or tribunal.
- (2) The normal preliminary ruling procedure, as set out in Article 23 of the Statute of the Court of Justice and in the Rules of Procedure, does not allow the Court to rule on the questions submitted to it with the rapidity required in the types of case referred to above. The accelerated procedure provided for in Article 104a of the Rules of Procedure for references for a preliminary ruling comprises the same stages as the normal procedure for preliminary rulings and can be applied only in exceptional cases, since acceleration is achieved primarily by giving priority to the reference for a preliminary ruling in question over all other pending cases at all stages of the proceedings.
- (3) It is possible to deal rapidly with a significant number of references for a preliminary ruling only by introducing an urgent preliminary ruling procedure which limits and simplifies the stages of the preliminary ruling procedure.

With the Council's approval given on 20 December 2007,

HAS ADOPTED THE FOLLOWING AMENDMENTS TO ITS RULES OF PROCEDURE:

#### *Article 1*

The Rules of Procedure of the Court of Justice of the European Communities of 19 June 1991 (OJ L 176, 4.7.1991, p. 7, with corrigendum in OJ L 383, 29.12.1992, p. 117), as amended on 21 February 1995 (OJ L 44, 28.2.1995, p. 61), 11 March 1997 (OJ L 103, 19.4.1997, p. 1, with corrigendum in OJ L 351, 23.12.1997, p. 72), 16 May 2000 (OJ L 122, 24.5.2000, p. 43), 28 November 2000 (OJ L 322, 19.12.2000, p. 1), 3 April 2001 (OJ L 119, 27.4.2001, p. 1), 17 September 2002 (OJ L 272, 10.10.2002, p. 24, with corrigendum in OJ L 281, 19.10.2002, p. 24), 8 April 2003 (OJ L 147, 14.6.2003, p. 17), 19 April 2004 (OJ L 132, 29.4.2004, p. 2), 20 April 2004 (OJ L 127, 29.4.2004, p. 107), 12 July 2005 (OJ L 203, 4.8.2005, p. 19), 18 October 2005 (OJ L 288, 29.10.2005, p. 51) and 18 December 2006 (OJ L 386, 29.12.2006, p. 44) are hereby amended as follows:

1. Article 9 shall be amended as follows:

(a) Paragraph 1 shall be replaced by the following:

'1. The Court shall set up Chambers of five and three Judges in accordance with Article 16 of the Statute and shall decide which Judges shall be attached to them.'

The Court shall designate the Chamber or Chambers of five Judges which, for a period of one year, shall be responsible for cases of the kind referred to in Article 104b.

The composition of the Chambers and the designation of the Chamber or Chambers responsible for cases of the kind referred to in Article 104b shall be published in the *Official Journal of the European Union*.

- (b) The following two subparagraphs shall be added to paragraph 2:

‘For cases of the kind referred to in Article 104b, the Judge-Rapporteur shall be selected from among the Judges of the Chamber designated in accordance with paragraph 1 of this Article, on a proposal from the President of that Chamber. If the Chamber decides that the case is not to be dealt with under the urgent procedure, the President of the Court may reassign the case to a Judge-Rapporteur attached to another Chamber.

The President of the Court shall take the necessary steps if a Judge-Rapporteur is absent or prevented from acting.’

2. The following shall be added after Article 104a:

*‘Article 104b*

1. A reference for a preliminary ruling which raises one or more questions in the areas covered by Title VI of the Union Treaty or Title IV of Part Three of the EC Treaty may, at the request of the national court or tribunal or, exceptionally, of the Court’s own motion, be dealt with under an urgent procedure which derogates from the provisions of these Rules.

The national court or tribunal shall set out, in its request, the matters of fact and law which establish the urgency and justify the application of that exceptional procedure and shall, insofar as possible, indicate the answer it proposes to the questions referred.

If the national court or tribunal has not submitted a request for the urgent procedure to be applied, the President of the Court may, if the application of that procedure appears, *prima facie*, to be required, ask the Chamber referred to below to consider whether it is necessary to deal with the reference under that procedure.

The decision to deal with a reference for a preliminary ruling under the urgent procedure shall be taken by the designated Chamber, acting on a report of the Judge-Rapporteur and after hearing the Advocate General. The composition of that Chamber shall be determined in accordance with Article 11c on the day on which the case is assigned to the Judge-Rapporteur if the application of the urgent procedure is requested by the national court or tribunal, or, if the application of that procedure is considered at the request of the President of the Court, on the day on which that request is made.

2. A reference for a preliminary ruling of the kind referred to in the preceding paragraph shall, where the national court or tribunal has requested the application of the urgent procedure or where the President has requested the designated Chamber to consider whether it is necessary to deal with the reference under that procedure, be notified forthwith by the Registrar to the parties to the action before the national court or tribunal, to the Member State from which the reference is made and to the institutions referred to in the first paragraph of Article 23 of the Statute, in accordance with that provision.

The decision as to whether or not to deal with the reference for a preliminary ruling under the urgent procedure shall be notified forthwith to the national court or tribunal and to the parties, Member State and institutions referred to in the preceding subparagraph. The decision to deal with the reference under the urgent procedure shall prescribe the period within which those parties or entities may lodge statements of case or written observations. The decision may specify the matters of law to which such statements of case or written observations must relate and may specify the maximum length of those documents.

As soon as the notification referred to in the first subparagraph above has been made, the reference for a preliminary ruling shall also be communicated to the interested persons referred to in Article 23 of the Statute, other than the persons notified, and the decision whether or not to deal with the reference for a preliminary ruling under the urgent procedure shall be communicated to those interested persons as soon as the notification referred to in the second subparagraph has been made.

The parties and other interested persons referred to in Article 23 of the Statute shall be informed as soon as may be possible of the foreseeable date of the hearing.

Where the reference is not to be dealt with under the urgent procedure, the proceedings shall continue in accordance with the provisions of Article 23 of the Statute and the applicable provisions of these Rules.

3. A reference for a preliminary ruling which is to be dealt with under an urgent procedure, together with the statements of case or written observations which have been lodged, shall be served on the persons referred to in Article 23 of the Statute other than the parties and the entities referred to in the first subparagraph of the preceding paragraph of this Article. The reference for a preliminary ruling shall be accompanied by a translation, where appropriate in summary form, in accordance with Article 104(1).

The statements of case or written observations which have been lodged shall also be served on the parties and the other persons referred to in the first subparagraph of Article 104b(2).

The date of the hearing shall be notified to the parties and those other persons at the same time as the documents referred to in the preceding paragraphs are served.

4. The Chamber may, in cases of extreme urgency, decide to omit the written part of the procedure referred to in the second subparagraph of paragraph 2 of this Article.

5. The designated Chamber shall rule after hearing the Advocate General.

It may decide to sit in a formation of three Judges. In that event, it shall be composed of the President of the designated Chamber, the Judge-Rapporteur and the first Judge or, as the case may be, the first two Judges designated from the list referred to in Article 11c(2) on the date on which the composition of the designated Chamber is determined in accordance with the fourth subparagraph of paragraph 1 of this Article.

It may also decide to refer the case back to the Court in order for it to be assigned to a formation composed of a greater number of Judges. The urgent procedure shall continue before the new formation, where necessary after the reopening of the oral procedure.

6. The procedural documents referred to in this Article shall be deemed to have been lodged on the transmission to the Registry, by telefax or other technical means of communication available to the Court, of a copy of the signed original and the documents relied on in support of it, together with the schedule referred to in Article 37(4). The original of the document and the annexes referred to above shall be sent to the Registry.

Where this Article requires that a document be notified to or served on a person, such notification or service may be effected by the transmission of a copy of the document by telefax or other technical means of communication available to the Court and the addressee.'

#### Article 2

These amendments to the Rules of Procedure, which are authentic in the languages referred to in Article 29(1) of these Rules, shall be published in the Official Journal of the European Union and shall enter into force on the first day of the second month following their publication.

Done at Luxembourg, 15 January 2008.

## II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

## DECISIONS

## COUNCIL

## COUNCIL DECISION

of 20 December 2007

**amending the Protocol on the Statute of the Court of Justice**

(2008/79/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

refer to the expedited and accelerated procedures laid down in the Rules of Procedure of the Court of Justice,

Having regard to the Treaty establishing the European Community, and in particular the second paragraph of Article 245 thereof,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the second paragraph of Article 160 thereof,

*Article 1*

The following Article shall be inserted after Article 23 of the Protocol on the Statute of the Court of Justice:

Having regard to the request of the Court of Justice of 11 July 2007,

*'Article 23a*

The Rules of Procedure may provide for an expedited or accelerated procedure and, for references for a preliminary ruling relating to the area of freedom, security and justice, an urgent procedure.

Having regard to the opinion of the Commission of 20 November 2007,

Having regard to the opinion of the European Parliament of 29 November 2007,

Those procedures may provide, in respect of the submission of statements of case or written observations, for a shorter period than that provided for by Article 23, and, in derogation from the fourth paragraph of Article 20, for the case to be determined without a submission from the Advocate General.

Whereas:

Provision should be made to allow derogations from certain provisions of the Protocol on the Statute of the Court of Justice with regard to the procedure governing urgent references for a preliminary ruling concerning the area of freedom, security and justice, and it is appropriate, for the sake of good order, that the provision authorising such derogations should also

In addition, the urgent procedure may provide for restriction of the parties and other interested persons mentioned in Article 23, authorised to submit statements of case or written observations and, in cases of extreme urgency, for the written stage of the procedure to be omitted.'

*Article 2*

This Decision shall enter into force on the first day of the second month following its publication in the *Official Journal of the European Union*.

Done at Brussels, 20 December 2007.

*For the Council*  
*The President*  
F. NUNES CORREIA

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## STATEMENT

The Council calls upon the Court to provide, in the information note on national courts' referrals for preliminary ruling procedures, useful guidance for them as to cases in which to apply for an urgent preliminary ruling procedure, in particular in view of tight time limits imposed by national or Community law or serious consequences for the person concerned. The Council calls upon the Court to apply the urgent preliminary ruling procedure in situations involving deprivation of liberty.

The Council notes the Court's intention of ensuring, with due regard for the urgency of the case concerned, that Member States are allowed the time and translations necessary for drafting written observations and preparing oral arguments in order to guarantee effective and useful participation in the procedure. The Council calls upon the Court to ensure that deadlines in this regard are not, in principle, less than 10 working days, and to adapt the oral procedure to the requirements of the urgent procedure. The Council notes that the urgent preliminary ruling procedure should be concluded within three months.

Lastly, the Council notes the Court's intention of ensuring, as in the case of any procedure before it, transparency in applying the urgent preliminary ruling procedure, and requests it to submit, no later than three years following its entry into force, a report — the content of which will be updated annually — on its use and, in particular, the Court's practice for deciding whether or not to launch it.

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# COMMISSION

## COMMISSION DECISION

of 21 December 2007

### concerning national provisions notified by the Republic of Austria on certain fluorinated greenhouse gases

(notified under document number C(2007) 6646)

(Only the German text is authentic)

(Text with EEA relevance)

(2008/80/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

1. COMMUNITY LEGISLATION

Having regard to the Treaty establishing the European Community, and in particular Article 95(6) thereof,

(3) Article 95(4) of the EC Treaty provides that 'If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.'

Having regard to Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases <sup>(1)</sup>, and in particular Article 9(3) thereof,

(4) Article 95(5) of the EC Treaty provides that '[...], without prejudice to paragraph 4, if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them'.

Whereas:

(5) According to Article 95(6), the Commission shall, within six months of the notification, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

#### I. FACTS AND PROCEDURE

(1) On 29 June 2007, the Republic of Austria informed the Commission, pursuant to Article 9(3)(b) of Regulation (EC) No 842/2006 on certain fluorinated greenhouse gases, about national measures adopted in 2002 (BGBl. II No 447/2002 — Ordinance of the Federal Minister for Agriculture, Forestry, Environment and Water Management on bans and restrictions for partly fluorinated and fully fluorinated hydrocarbons and sulphur hexafluoride (HFC-PFC-SF<sub>6</sub> Ordinance), published in the Federal Law Gazette on 10 December 2002) as subsequently amended by Ordinance BGBl. II No 139/2007, 21.6.2007.

(2) In this letter the Austrian Government points out that the Republic of Austria intends to maintain its national provisions which are more stringent than the Regulation, in accordance with Article 9(3)(a) of Regulation (EC) No 842/2006 until 31 December 2012.

1.2. REGULATION (EC) No 842/2006

(6) Regulation (EC) No 842/2006 on certain fluorinated greenhouse gases (F-gases) aims at preventing and containing the emissions of certain F-gases (HFCs, PFCs and SF<sub>6</sub>) covered by the Kyoto Protocol.

<sup>(1)</sup> OJ L 161, 14.6.2006, p. 1.



- (7) It also contains a limited number of use bans and placing on the market prohibitions when alternatives were considered available and cost effective at Community level and where improvement of containment and recovery were regarded as not feasible.
- (8) The Regulation has a double legal basis, Article 175(1) of the EC Treaty with respect to all provisions and Article 95 of the EC Treaty for Articles 7, 8 and 9, due to their implications in terms of free circulation of goods within the EC single market.
- (9) Article 9 of the Regulation governs the placing on the market and, more precisely, prohibits the marketing of a number of products and equipment containing, or whose functioning relies upon, F-gases covered by the Regulation. In its paragraph 3(a) it stipulates that Member States that have, by 31 December 2005, adopted national measures which are stricter than those laid down in the Article and which fall under the scope of the Regulation may maintain those national measures until 31 December 2012. In accordance with its paragraph 3(b), these measures and their justification shall be notified to the Commission and they shall be compatible with the Treaty.
- (10) The Regulation shall apply with effect from 4 July 2007, with the exception of Article 9 and Annex II, which shall apply from 4 July 2006.

## 2. NATIONAL PROVISIONS NOTIFIED

- (11) The national provisions notified by the Republic of Austria were introduced by Ordinance No 447/2002 of 10 December 2002 and amended by Ordinance No 139/2007 of 21 June 2007.
- (12) Ordinance No 447/2002 as amended by Ordinance No 139/2007 (hereafter the Ordinance) concerns greenhouse gases classified under the Kyoto Protocol, most of which have high global warming potentials: hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF<sub>6</sub>), with a view of meeting Austria's emission reduction targets.
- (13) The Ordinance bans the placing on the market and use of the abovementioned greenhouse gases and their use in certain equipment, units and products, unless they are used for research, development and analytical purposes. The detailed provisions on bans and the conditions of
- permissibility are laid down in Articles 4 to 17 of the Ordinance.
- (14) The amendment in 2007 takes into account the decision of the Austrian Constitutional Court to annul (in decisions of 9 June 2005 and 1 December 2005, published in the Federal Law Gazette on 9 August 2005 and 24 February 2006 respectively) the limit value of Global Warming Potential 3 000 for HFC laid down in Article 12(2) line 3 of Ordinance No 447/2002, as well as the exception clause laid down in Article 12(2) line 3(a) thereof, with the reason of their being unlawful.
- (15) Furthermore, the amendment in 2007 introduced relaxations of the restrictions relating to the refrigeration and air-conditioning sector bringing them into line with provisions under Regulation (EC) No 842/2006. Mobile refrigeration and air-conditioning are no longer covered by the amended Ordinance. As regards stationary applications, the bans only apply to small plug in units with a refrigerant charge of 150 g or less and to stand alone equipment with a refrigerant charge of 20 kg or over. For other applications technical parameters are defined ensuring that no more refrigerants are used than necessary in accordance with the state of art. Changes have also been made with respect to the treatment of aerosols containing HFCs and the use of SF<sub>6</sub> to bring them in line with EU legislation.
- (16) By letter of 1 August 2007 the Commission informed the Austrian Government that it had received the notification and that the six-month period for its examination under Article 95(6) started on 30 June 2007, the day following the day on which the notification was received.
- (17) By letter of 12 October 2007, the Commission informed the other Member States of the notification providing them a period of 30 days to submit any comments. The Commission also published a notice regarding the notification in the *Official Journal of the European Union* <sup>(1)</sup> in order to inform other interested parties of Austria's national provisions, as well as the grounds invoked to that effect.

## II. ASSESSMENT

### 1. CONSIDERATION OF ADMISSIBILITY

- (18) The present notification has been examined in the light of Article 95(4) and (5) of the EC Treaty and in accordance with Regulation (EC) No 842/2006.

<sup>(1)</sup> OJ C 245, 19.10.2007, p. 4.

- (19) Article 95(4) concerns cases where, after the adoption of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment.
- (20) However, since the measures adopted in 2002 have been amended in 2007 it is appropriate to examine if Article 95(5) applies with regard to such provisions of the Ordinance which were modified after adoption of Regulation (EC) No 842/2006. If such provisions had changed the substance of those already enacted before the harmonisation act, they should have been notified to the Commission before adoption and justified on the basis of on new scientific evidence on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure.
- (21) The analysis of the amending act concluded that the amendments introduced in 2007 aimed either at deleting provisions (points 10, 12 of the amending Ordinance), reducing their scope to more specific products or applications without adding new requirements (points 1, 3 and 10 of the amending Ordinance), or at introducing additional possibilities to derogate from restriction imposed by the 2002 Ordinance (points 6, 7 of the amending Ordinance). Furthermore, references to Regulation (EC) No 842/2006 and explicit requirements taking account of the harmonisation measures were introduced (points 1, 8, 9 of the amending Ordinance).
- (22) No measures were identified which changed the substance of the measures enacted before the adoption of the harmonisation measure in a way that additional restrictions were introduced. Thus this amendment did not contain new measures which have to be considered as more stringent than Regulation (EC) No 842/2006, but reduced their impact on the internal market. Therefore, it is appropriate to apply Article 95(4) for the evaluation of all provisions of the Ordinance, also to those amended in 2007.
- (23) The Ordinance continues to consist, however, of more stringent provisions than Regulation (EC) No 842/2006 since it contains bans on the import, sale and use of new products containing F-gases after 1 January 2006 as well as a ban on the import, sale and use of F-gases, new and recovered, after 1 January 2006, while the Regulation contains a less restrictive ban on the placing on the market since it only applies to products as listed in its Annex II. Furthermore, the Regulation imposes restrictions on the use only on SF<sub>6</sub>, while the Austrian measure controls also the use of HFCs and PFCs. By going further in terms of placing on the market and control of use, the Ordinance is more stringent than the legislation now in force at Community level.
- (24) The Republic of Austria argues that such legislation is necessary in order for it to meet its obligations under the Kyoto Protocol, namely the reduction of 13 % of its total level of greenhouse gas emissions compared to the 1990 level by 2012, which arguably requires a concerted effort in tackling every source of greenhouse gas emissions.
- (25) The compatibility is examined on the basis of Article 95(4) and 95(6) of the Treaty, taking Regulation 842/2006 into account. Article 95(4) requires that the notification be accompanied by a description of the grounds relating to one or more of the major needs referred to in Article 30 or to the protection of the environment or the working environment.
- (26) In the light of the foregoing, the Commission considers that the application submitted by the Republic of Austria with a view to obtaining authorisation to maintain its national provisions on certain industrial greenhouse gases is admissible under Article 95(4) of the EC Treaty.

## 2. ASSESSMENT OF MERITS

- (27) In accordance with Article 95(4) and (6), first subparagraph, of the EC Treaty, the Commission must ascertain that all the conditions enabling a Member State to maintain its national provisions derogating from a Community harmonisation measure provided for in that Article are fulfilled. In particular, the national provisions have to be justified by the major needs referred to in Article 30 of the Treaty, or relating to the protection of the environment or the working environment, must not be a means of arbitrary discrimination or a disguised restriction on trade between Member States and must not constitute an obstacle to the functioning of the internal market which would not be proportionate or necessary.

### 2.1. THE BURDEN OF PROOF

- (28) The Commission, when examining whether the national measures notified under Article 95(4) are justified, has to take as a basis 'the grounds' put forward by the notifying Member State. This means that, according to the provisions of the EC Treaty, the responsibility of proving that the national measures are justified lies with the requesting Member State which seeks to maintain them.

## 2.2. JUSTIFICATION ON GROUNDS OF MAJOR NEEDS REFERRED TO IN ARTICLE 30 OR RELATING TO THE PROTECTION OF THE ENVIRONMENT OR THE WORKING ENVIRONMENT

### 2.2.1. Austrian position

- (29) To justify the maintenance of their national provisions, the Austrian authorities refer to the commitment of the Republic of Austria under the Kyoto protocol. The adoption of the Ordinance was a contribution to fulfilling the commitment to reduce its emissions by 13 % below its 1990 level by 2012, which corresponds to a maximum emission of 67 million tonnes of CO<sub>2</sub> equivalents.
- (30) Austria submitted a review study 'Examination of the state-of-art in selected areas of application of fluorinated gases with global-warming potential' of May 2006. The study states that F-gases covered by the Ordinance made up for over 2 % of Austria's greenhouse gas emission as of 2003, and that a doubling was expected by around 2010. Therefore the Ordinance was an integral part of the national climate strategy.
- (31) The Austrian Government takes the view that the purpose of the Ordinance is to protect the environment and that it is necessary and proportionate in terms of preventing and reducing emissions of fluorinated gases. Therefore, in its view, it is compatible with the Treaty.

### 2.2.2. Evaluation of the position of Austria

- (32) After having examined the information submitted by Austria, the Commission considers that the request to maintain more stringent measures than those contained in Regulation (EC) 842/2006, notably after those measures have been brought closer in line with the said Regulation, can be considered compatible with the Treaty for the following reasons.
- (33) Ordinance No 447/2002 was object of an infringement procedure launched by the Commission in 2004, i.e. before Regulation (EC) No 842/2006 came into force. In the letter of formal notice to Austria the Commission pointed out that the ban of HFCs in refrigerating and air-conditioning systems could be considered disproportionate, because these systems are closed systems and as long as proper functioning, maintenance and recycling can be guaranteed, the release of HFCs can be kept to a minimum.

(34) This procedure was based on Articles 28 to 30 of the EC-Treaty. Following the adoption of Regulation (EC) No 842/2006 and the notification of stricter national measures under its Article 9(3) by Austria, the infringement procedure was closed.

(35) In the letter of formal notice the Commission took the view that the Austrian measures could be contrary to Article 28 of the EC Treaty for the following reasons: firstly, the ban on using HFCs as cooling and refrigerating agents did not seem to be necessary and proportionate with a view to guaranteeing the adequate reduction, by reasonable and effective means, of the releases of greenhouse gases in the interests of environmental protection. Secondly, as far as using HFCs as fire extinguishing agents were concerned, the Commission considered that the GWP threshold as foreseen in the Ordinance might have constituted an arbitrary discrimination against products from other Member States.

(36) These concerns have been addressed by the amending Ordinance No 139/2007. The modification of the Ordinance in 2007 resulted in the lifting and relaxation of some of the bans and thus the notified measures shall not constitute an obstacle to the functioning of the internal market as required by Article 95(6) of the EC Treaty.

(37) As regards the use of HFCs in refrigeration and air-conditioning equipment and uses, the revised prohibition does no longer apply to equipment used for cooling computers, irrespective of charge size, to equipment containing between 150 g and not more than 20 kg, to stand alone units with refrigerant charges up to 20 kg, for compact units with charges of 0,5 kg per kw and for large interconnected stationary units with charges up to 100 kg. Thus the ban does not apply to most refrigeration and air-conditioning systems. These amendments take account of the review study of May 2006, which was submitted to the Commission. The ban on the use of HFCs as fire extinguishing agents was lifted by the revision.

#### 2.2.2.1. The environmental justification

(38) Under the Kyoto Protocol, the EC committed to reducing its collective emissions of greenhouse gases from Member States by at least 8 % below the level in 1990 in the 2008-2012 period. During the subsequent discussions within the EC, the Republic of Austria committed to reduce its overall level of greenhouse gases emissions by 13 % during this period <sup>(1)</sup>.

<sup>(1)</sup> Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate change and the joint fulfilment of commitments thereunder, OJ L 130, 15.5.2002, p. 1.

(39) The Ordinance forms part of a broader strategy put in place by Austria in order to meet its emission reduction target under the Kyoto Protocol and the subsequent burden sharing agreement adopted at Community level.

(40) This strategy covers every source of greenhouse gas emissions covered by the Kyoto Protocol. Measures on F-gases are therefore part of its overall effort to fulfil its obligations. Emissions of these F-gases are estimated to double by 2010 in the absence of further regulation with increasing use of refrigeration and also as a result of the ongoing phase out of HCFCs from refrigeration under Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer <sup>(1)</sup>.

(41) Considering the above, the Commission considers that the environmental justification given by the Republic of Austria, namely the reduction and prevention of fluorinated gases emissions, is reasonable and valid.

*2.2.2.2. Relevance and proportionality of the Austrian Ordinance in relation to the objective of achieving further reduction of fluorinated greenhouse gases*

(42) In order to further reduce and prevent F-gases emissions, Austria has decided already in 2002 to opt for selective placing on the market bans of new equipment. This decision was based on investigations into the existence and availability of F-gas-free alternatives. The measures have been subsequently reviewed in 2006 to take account of new scientific and technological evidence and developments, and to address Commission's concerns with regard to their proportionality.

(43) It is also recalled that Article 9.3(a) of Regulation (EC) No 842/2006 allows national measures to be maintained only until 31 December 2012, therefore, and considering that the notification made by the Republic of Austria referred to this Article of the Regulation, it follows that the Ordinance would apply for a limited period.

(44) The Ordinance allows for exemptions to be possibly granted where it turns out that alternatives for the use of HFCs in foams and foam containing products are not available. Furthermore, exemptions for the use of HFCs for novelty aerosols intended for export have been extended.

(45) While noting that the Ordinance has certain implications on the free circulation of goods within the EC, the Commission nevertheless draws the conclusion from the above analysis that the Ordinance is justified from an environmental point of view and takes into consideration the implications of the envisaged bans on the internal market, in particular since it is based on an analysis of the existence and availability of alternatives in the specific circumstances in Austria, reinforced by the possibility to grant individual exemptions.

**2.3. ABSENCE OF ANY ARBITRARY DISCRIMINATION OR ANY DISGUISED RESTRICTION OF TRADE BETWEEN MEMBER STATES**

(46) Pursuant to Article 95(6) of the EC Treaty, the Commission shall approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States.

(47) It should be recalled that an application under Article 95(4) of the EC Treaty must be assessed in the light of the conditions laid down in both that paragraph and paragraph 6 of that Article. If any one of those conditions is not met, the application must be rejected without there being a need to examine the others.

(48) The notified national provisions are general and apply to national and imported products alike. After bringing the rules concerning the use of HFCs in line with Regulation (EC) No 842/2006, there is no evidence that the notified national provisions can be used as a means of arbitrary discrimination between economic operators in the Community.

(49) With regard to the limitations of purchases from other EEA States, including the Member States of the European Union, it is understood that these provisions are intended to ensure, within the scope of the measures, equal treatment of all substances or products, irrespective of their origin, that means domestically manufactured, imported or purchased on the internal market. Goods imported from outside the EEA are covered by the provisions on the placing on the market. This is also the case for goods purchased from an EEA State which is not Member State of the EU, whereby for these goods the measures are based on two different elements of the provision, as the transaction represents in the same time placing on the market and purchase from an EEA state. However, this should not lead to a discriminatory treatment of those goods.

<sup>(1)</sup> OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Commission Regulation (EC) No 899/2007 (OJ L 196, 28.7.2007, p. 24).

- (50) The objective behind the Ordinance is the protection of the environment; there is no indication that the Ordinance, in its intention or implementation, would result in any arbitrary discrimination or disguised barriers to trade.
- (51) The Commission considers that there is no evidence indicating that the national provisions notified by the Austrian authorities do constitute a disproportionate obstacle to the functioning of the internal market in relation to the pursued objectives.

### III. CONCLUSION

- (52) In the light of the above considerations, the Commission is of the opinion that the request by the Republic of Austria, submitted on 29 June 2007, for maintaining until 31 December 2012 its national legislation more stringent than Regulation (EC) No 842/2006 with respect to the placing on the market of products and equipment containing, or whose functioning relies upon, F-gases, is admissible.
- (53) Moreover, the Commission finds that the national provisions adopted in 2002, as amended in 2007:
- meet needs on grounds of the protection of the environment,
  - take into account the existence and technical and economic availability of alternatives to the banned applications in Austria, and are likely to result in limited economic impact,
  - are not a means of arbitrary discrimination,
  - do not constitute a disguised restriction on trade between Member States, and

— are thus compatible with the Treaty.

The Commission therefore considers that they can be maintained.

However, it should be noted that the exemptions provided for in paragraph 8(2) of the Ordinance cannot be granted after the 4 July 2008 in relation to one component foams as referred to in Article 9(1) and Annex II of Regulation (EC) No 842/2006 unless required to meet national safety standards,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The national provisions on certain fluorinated greenhouse gases, which the Republic of Austria notified to the Commission by letter, dated 29 June 2007, and which are more stringent than Regulation (EC) No 842/2006 with respect to the placing on the market of products and equipment containing, or whose functioning relies upon, F-gases, are hereby approved. The Republic of Austria is authorised to maintain them until 31 December 2012.

#### *Article 2*

This Decision is addressed to the Republic of Austria.

Done at Brussels, 21 December 2007.

*For the Commission*  
Stavros DIMAS  
*Member of the Commission*



## AGREEMENTS

## COUNCIL

**Information relating to the entry into force of the Agreement between the European Community and the Republic of Moldova on the re-admission of persons residing without authorisation**

The Agreement between the European Community and the Republic of Moldova on the re-admission of persons residing without authorisation entered into force on 1 January 2008, the procedure provided for in Article 22 of the Agreement having been completed on 20 November 2007.

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**Information relating to the entry into force of the Agreement between the European Community and the Republic of Montenegro on the re-admission of persons residing without authorisation**

The Agreement between the European Community and the Republic of Montenegro on the re-admission of persons residing without authorisation entered into force on 1 January 2008, the procedure provided for in Article 22 of the Agreement having been completed on 14 November 2007.

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**Information relating to the entry into force of the Agreement between the European Community and the Republic of Serbia on the re-admission of persons residing without authorisation**

The Agreement between the European Community and the Republic of Serbia on the re-admission of persons residing without authorisation entered into force on 1 January 2008, the procedure provided for in Article 22 of the Agreement having been completed on 12 November 2007.

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**Information relating to the entry into force of the Agreement between the European Community and the former Yugoslav Republic of Macedonia on the re-admission of persons residing without authorisation**

The Agreement between the European Community and the former Yugoslav Republic of Macedonia on the re-admission of persons residing without authorisation entered into force on 1 January 2008, the procedure provided for in Article 22 of the Agreement having been completed on 29 November 2007.

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**Information relating to the entry into force of the Agreement between the European Community and Bosnia and Herzegovina on the re-admission of persons residing without authorisation**

The Agreement between the European Community and Bosnia and Herzegovina on the re-admission of persons residing without authorisation entered into force on 1 January 2008, the procedure provided for in Article 22 of the Agreement having been completed on 30 November 2007.

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**Information relating to the entry into force of the Agreement between the European Community and Ukraine on the re-admission of persons**

The Agreement between the European Community and Ukraine on the re-admission of persons entered into force on 1 January 2008, the procedure provided for in Article 22 of the Agreement having been completed on 30 November 2007.

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**Information relating to the entry into force of the Agreement between the European Community and the Republic of Albania on the facilitation of the issuance of visas**

The Agreement between the European Community and the Republic of Albania on the facilitation of the issuance of visas entered into force on 1 January 2008, the procedure provided for in Article 14 of the Agreement having been completed on 13 November 2007.

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**Information relating to the entry into force of the Agreement between the European Community and Bosnia and Herzegovina on the facilitation of the issuance of visas**

The Agreement between the European Community and Bosnia and Herzegovina on the facilitation of the issuance of visas entered into force on 1 January 2008, the procedure provided for in Article 14 of the Agreement having been completed on 30 November 2007.

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**Information relating to the entry into force of the Agreement between the European Community and the Republic of Montenegro on the facilitation of the issuance of visas**

The Agreement between the European Community and the Republic of Montenegro on the facilitation of the issuance of visas entered into force on 1 January 2008, the procedure provided for in Article 14 of the Agreement having been completed on 14 November 2007.

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**Information relating to the entry into force of the Agreement between the European Community and the former Yugoslav Republic of Macedonia on the facilitation of the issuance of visas**

The Agreement between the European Community and the former Yugoslav Republic of Macedonia on the facilitation of the issuance of visas entered into force on 1 January 2008, the procedure provided for in Article 14 of the Agreement having been completed on 30 November 2007.

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**Information relating to the entry into force of the Agreement between the European Community and the Republic of Serbia on the facilitation of the issuance of visas**

The Agreement between the European Community and the Republic of Serbia on the facilitation of the issuance of visas entered into force on 1 January 2008, the procedure provided for in Article 14 of the Agreement having been completed on 12 November 2007.

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**Information relating to the entry into force of the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas**

The Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas entered into force on 1 January 2008, the procedure provided for in Article 15 of the Agreement having been completed on 20 November 2007.

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**Information relating to the entry into force of the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas**

The Agreement between the European Community and Ukraine on the facilitation of the issuance of visas entered into force on 1 January 2008, the procedure provided for in Article 14 of the Agreement having been completed on 30 November 2007.

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## III

(Acts adopted under the EU Treaty)

## ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

## COUNCIL COMMON POSITION 2008/81/CFSP

of 28 January 2008

## amending Common Position 98/409/CFSP concerning Sierra Leone

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

- (1) On 29 June 1998, the Council adopted Common Position 98/409/CFSP concerning Sierra Leone<sup>(1)</sup> in order to implement the measures imposed by United Nations Security Council Resolution (UNSCR) 1171(1998).
- (2) On 21 December 2007, the United Nations Security Council adopted Resolution 1793(2007) providing for an exemption to the measures imposed by paragraph 5 of UNSCR 1171(1998). Common Position 98/409/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS COMMON POSITION:

*Article 1*

In Article 4 of Common Position 98/409/CFSP the following third paragraph shall be inserted:

'The measure provided for in the first paragraph shall not apply to the travel of any witnesses whose presence at trial before the Special Court for Sierra Leone is required.'

*Article 2*

This Common Position shall take effect on the date of its adoption.

*Article 3*

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels, 28 January 2008.

*For the Council*

*The President*

D. RUPEL

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<sup>(1)</sup> OJ L 187, 1.7.1998, p. 1.

## CORRIGENDA

Corrigendum to the paper version of *Official Journal of the European Union* L 337 of 21 December 2007

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