

Official Journal

of the European Union

ISSN 1725-2555

L 158

Volume 47

30 April 2004

English edition

Legislation

Contents

I *Acts whose publication is obligatory*

- * **Regulation (EC) No 849/2004 of the European Parliament and of the Council of 29 April 2004 amending Regulation (EC) No 2320/2002 establishing common rules in the field of civil aviation security ⁽¹⁾** 1
- * **Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC** 7
- * **Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) (codified version) ⁽¹⁾** 50
- * **Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC ⁽¹⁾** 77

⁽¹⁾ Text with EEA relevance

Price: EUR 22

EN

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

The titles of all other acts are printed in bold type and preceded by an asterisk.

I

(Acts whose publication is obligatory)

**REGULATION (EC) No 849/2004 OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL
of 29 April 2004**

amending Regulation (EC) No 2320/2002
establishing common rules in the field of civil aviation security

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ¹,

After consulting the Committee of the Regions,

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

¹ Opinion delivered on 28 January 2004 (not yet published in the Official Journal).

² Opinion of the European Parliament of 11 March 2004 (not yet published in the Official Journal), Council Decision of 29 April 2004.

Whereas:

- (1) Regulation (EC) No 2320/2002¹ establishes harmonised common rules in the field of civil aviation security.
- (2) The application of Regulation (EC) No 2320/2002 has demonstrated that there is a need for technical amendments. These amendments do not seek to change the scope of the Regulation, nor do they prejudice in any way the security of civil aviation passengers.
- (3) Regulation (EC) No 2320/2002 permits different but adequate levels of security to be set at the smallest airports. It is consistent to permit the same adequate levels of security at both ends of a flight.
- (4) Regulation (EC) No 2320/2002 should be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) 2320/2002 is hereby amended as follows:

- 1) The following definition shall be added to Article 2:

"(4) "demarcated area" shall mean an area that is separated from other security restricted areas of an airport by means of access control.";

¹ OJ L 355, 30.12.2002, p. 1.

2) Article 4 shall be amended as follows:

– paragraph 3 shall be replaced by the following:

"3. The appropriate authority of a Member State may, on the basis of a local risk assessment, and where the application of the security measures specified in the Annex may be disproportionate, or where they cannot be implemented for objective practical reasons, adopt national security measures to provide an adequate level of protection, at airports,:

(a) with a yearly average of no more than 2 commercial flights per day; or

(b) with only general aviation flights; or

(c) with commercial activity limited to aircraft with less than 10 tonnes of Maximum Take Off Weight (MTOW) or fewer than 20 seats,

taking into account the particularities of such small airports.

The Member State concerned shall inform the Commission of these measures.";

– the following paragraph shall be inserted:

"3(a) Paragraph 3 may also apply to demarcated areas of airports with:

- (a) only general aviation flights; or
- (b) with commercial activity limited to aircraft with less than 10 tonnes MTOW or fewer than 20 seats.

A demarcated area shall be indicated in the airport security programme.

Each flight originating from a demarcated area of an airport shall indicate this fact to the destination airport in advance of the arrival of the flight.";

- 3) in Article 7 the words "audited", "audits", "auditors" and "audit reports" shall be replaced by "monitored", "compliance monitoring activities", "persons" and "compliance monitoring reports" respectively.;

4) the Annex shall be amended as follows:

- in point 5.2 the following paragraph shall be added:

"3. Exemptions

Hold baggage of those parties listed under point 4.1, paragraph 3, may be subject to special screening measures or exempt from screening.";

- in point 7.3, paragraph 1(b), the final phrase shall be replaced by:

"so as reasonably to ensure that it does not contain any prohibited article as listed in points (iv) and (v) of the Attachment, unless it has been declared and properly subjected to applicable safety measures; and".

Article 2

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

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

Done at Strasbourg, 29 April 2004.

For the European Parliament

The President

P. COX

For the Council

The President

M. McDOWELL

**REGULATION (EC) No 850/2004 OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL
of 29 April 2004**

**on persistent organic pollutants
and amending Directive 79/117/EEC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ¹,

Having regard to the Opinion of the European Economic and Social Committee ²,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ³,

¹ OJ C

² OJ C

³ Opinion of the European Parliament of 26 February 2004 (not yet published in the Official Journal) and Decision of the Council of 26 April 2004.

Whereas:

- (1) This Regulation primarily concerns environmental protection and the protection of human health. The legal basis is therefore Article 175(1) of the Treaty.
- (2) The Community is seriously concerned by the continuous release of persistent organic pollutants into the environment. These chemical substances are transported across international boundaries far from their sources and they persist in the environment, bioaccumulate through the food web, and pose a risk to human health and the environment. Further measures need therefore to be taken in order to protect human health and the environment against these pollutants.
- (3) In view of its responsibilities for the protection of the environment, the Community signed on 24 June 1998 the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, hereinafter "the Protocol", and on 22 May 2001 the Stockholm Convention on Persistent Organic Pollutants, hereinafter "the Convention".

-
- (4) While legislation at Community level relating to persistent organic pollutants has been put in place, its main deficiencies are that there is an absence of, or incomplete legislation on, prohibition of the production and use of any of the currently listed chemicals, that there is no framework to subject additional persistent organic pollutant substances to prohibitions, restrictions or elimination, nor any framework to prevent the production and use of new substances that exhibit persistent organic pollutant characteristics. No emission reduction targets, as such, have been set at Community level and the current release inventories do not cover all sources of persistent organic pollutants.
- (5) In order to ensure coherent and effective implementation of the Community's obligations under the Protocol and the Convention, it is necessary to establish a common legal framework, within which to take measures designed in particular to eliminate the production, placing on the market and use of intentionally produced persistent organic pollutants. Furthermore, persistent organic pollutants' characteristics should be taken into consideration in the framework of the relevant Community assessment and authorisation schemes.
- (6) Coordination and coherence should be ensured when implementing at Community level the provisions of the Rotterdam ¹, Stockholm and Basel Conventions ² and when participating in the development of the Strategic Approach to International Chemicals Management (SAICM) within the United Nations framework.

¹ Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade.

² Convention on the control of transboundary movements of hazardous wastes and their disposal.

- (7) Moreover, considering that the provisions of this Regulation are underpinned by the precautionary principle as set forth in the Treaty, and mindful of Principle 15 of the Rio Declaration on Environment and Development and in view of the aim of elimination, where feasible, of the release of persistent organic pollutants into the environment, it is appropriate in certain cases to provide for control measures stricter than those under the Protocol and the Convention.
- (8) In the future, the proposed REACH Regulation could be an appropriate instrument by which to implement the necessary control measures on production, placing on the market and use of the listed substances and the control measures on existing and new chemicals and pesticides exhibiting persistent organic pollutants' characteristics. However, without prejudice to the future REACH Regulation and since it is important to implement these control measures on the listed substances of the Protocol and the Convention as soon as possible, this Regulation should for now implement those measures.

- (9) In the Community, the placing on the market and use of most of the persistent organic pollutants listed in the Protocol or the Convention has already been phased out as a result of the prohibitions laid down in Council Directive 79/117/EEC of 21 December 1978 prohibiting the placing on the market and use of plant protection products containing certain active substances ¹ and Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations ². However, in order to fulfil the Community's obligations under the Protocol and the Convention and to minimise the release of persistent organic pollutants, it is necessary and appropriate also to prohibit the production of those substances and to restrict exemptions to a minimum so that exemptions only apply where a substance fulfils an essential function in a specific application.
- (10) Exports of substances covered by the Convention and exports of lindane are regulated by Regulation (EC) No 304/2003 of the European Parliament and of the Council of 28 January 2003 concerning the export and import of dangerous chemicals ³.

¹ OJ L 33, 8.2.1979, p. 36. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

² OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 2004/21/EC (OJ L 57, 25.2.2004, p. 4).

³ OJ L 63, 6.3.2003, p. 1. Regulation as amended by Commission Regulation (EC) No 1213/2003 (OJ L 169, 8.7.2003, p. 27).

-
- (11) The production and use of hexachlorocyclohexane (HCH), including lindane, is subject to restrictions under the Protocol but not totally prohibited. That substance is still used in some Member States and therefore it is not possible to prohibit immediately all existing uses. However, in view of the harmful properties of HCH and the possible risks related to its release into the environment, its production and uses should be confined to a minimum and ultimately phased out by the end of 2007 at the latest.
- (12) Obsolete or carelessly managed stockpiles of persistent organic pollutants may seriously endanger the environment and human health through, for instance, contamination of soil and ground water. It is appropriate, therefore, to adopt provisions that go beyond the provisions laid down in the Convention. Stockpiles of prohibited substances should be treated as waste, while stockpiles of substances the production or use of which is still allowed should be notified to the authorities and properly supervised. In particular, existing stockpiles which consist of or contain banned persistent organic pollutants should be managed as waste as soon as possible. If other substances are banned in the future, their stocks should also be destroyed without delay and no new stockpiles should be built up. In view of the particular problems of certain new Member States, adequate financial and technical assistance should be provided through existing Community financial instruments, such as the Cohesion and Structural Funds.

- (13) In line with the Communication from the Commission on the Community Strategy for Dioxins, Furans and Polychlorinated Biphenyls (PCBs)¹, and with the Protocol and the Convention, releases of persistent organic pollutants which are unintentional by-products of industrial processes should be identified and reduced as soon as possible with the ultimate aim of elimination, where feasible. Appropriate national action plans, covering all sources and measures, including those provided for under existing Community legislation, should be drawn up and implemented to reduce the releases continuously and cost-effectively as soon as possible. To this end, appropriate tools should be developed in the framework of the Convention.
- (14) In line with that Communication, appropriate programmes and mechanisms should be established to provide adequate monitoring data on the presence of dioxins, furans and PCBs in the environment. However, it is necessary to ensure that appropriate tools are available and can be used under economically and technically viable conditions.

¹ OJ C 322, 17.11.2001, p. 2.

- (15) Under the Convention, the persistent organic pollutant content in waste is to be destroyed or irreversibly transformed into substances that do not exhibit similar characteristics, unless other operations are environmentally preferable. Since current Community legislation on waste does not lay down specific rules as regards those substances, they should be laid down in this Regulation. To ensure a high level of protection, common concentration limits for the substances in waste should be established before 31 December 2005.
- (16) The importance of identifying and separating waste consisting of, containing or contaminated by persistent organic pollutants at source in order to minimise the spreading of these chemicals into other waste is recognised. Council Directive 91/689/EEC of 12 December 1991 on hazardous waste ¹ established Community rules on the management of hazardous waste obliging Member States to take the necessary measures to require that establishments and undertakings which dispose of, recover, collect or transport hazardous waste do not mix different categories of hazardous waste or mix hazardous waste with non-hazardous waste.

¹ OJ L 377, 31.12.1991, p. 20. Directive as amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p. 28).

- (17) The Convention provides that each Party is to draw up a plan for the implementation of its obligations under the Convention. Member States should provide opportunities for public participation in drawing up their implementation plans. Since the Community and the Member States share competence in that regard, implementation plans should be drawn up both at national and Community level. Cooperation and an exchange of information between the Commission and the authorities of the Member States should be promoted.
- (18) In accordance with the Convention and the Protocol, information on persistent organic pollutants should be provided to other Parties. The exchange of information with third countries not party to those Agreements should also be promoted.
- (19) Public awareness of the hazards that persistent organic pollutants pose to the health of present and future generations as well as to the environment, particularly in developing countries, is often lacking, and wide-scale information is therefore needed to increase the level of caution and gain support for restrictions and bans. In accordance with the Convention, public awareness programmes on these substances, especially for the most vulnerable groups, as well as training of workers, scientists, educators, technical and managerial personnel should be promoted and facilitated, as appropriate.

- (20) Upon request and within available resources, the Commission and the Member States should cooperate in providing appropriate and timely technical assistance designed especially to strengthen the capacity of developing countries and countries with economies in transition to implement the Convention. Technical assistance should include the development and implementation of suitable alternative products, methods and strategies, inter alia, to the use of DDT in disease vector control which, under the Convention, can only be used in accordance with World Health Organisation recommendations and guidelines and when locally safe, effective and affordable alternatives are not available to the country in question.
- (21) There should be regular evaluation of the effectiveness of the measures taken to reduce releases of persistent organic pollutants. To that end, Member States should report regularly to the Commission, in particular as regards release inventories, notified stockpiles and the production and placing on the market of restricted substances. The Commission, in cooperation with Member States, should develop a common format for Member States' reports.

- (22) The Convention and the Protocol provide that Parties thereto may propose other substances for international action and consequently additional substances may be listed under those Agreements, in which case this Regulation should be amended accordingly. Furthermore, it should be possible to modify the existing entries in Annexes to this Regulation, inter alia for the purposes of adapting them to scientific and technical progress.
- (23) When Annexes to this Regulation are amended to implement any listings of an additional, intentionally produced persistent organic pollutant in the Protocol or in the Convention, it should be included in Annex II, instead of Annex I, only in exceptional cases and when duly justified.
- (24) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ¹.
- (25) In order to ensure transparency, impartiality and consistency at the level of enforcement activities, Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive, since non-compliance can result in damage to human health and the environment. Information on infringements of the provisions of this Regulation should be made public, where appropriate.

¹ OJ L 184, 17.7.1999, p. 23.

(26) Since the objectives of this Regulation, namely to protect the environment and human health from persistent organic pollutants, cannot be sufficiently achieved by the Member States, owing to the transboundary effects of those pollutants, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(27) In the light of the above, Directive 79/117/EEC should be amended,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective and scope

1. Taking into account, in particular, the precautionary principle, the objective of this Regulation is to protect human health and the environment from persistent organic pollutants by prohibiting, phasing out as soon as possible, or restricting the production, placing on the market and use of substances subject to the Stockholm Convention on Persistent Organic Pollutants, hereinafter "the Convention", or the 1998 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, hereinafter "the Protocol", and by minimising, with a view to eliminating where feasible as soon as possible, releases of such substances, and by establishing provisions regarding waste consisting of, containing or contaminated by any of these substances.

2. Articles 3 and 4 shall not apply to waste consisting of, containing or contaminated by any substance listed in Annexes I or II.

Article 2

Definitions

For the purposes of this Regulation:

- (a) "placing on the market" means supplying or making available to third persons against payment or free of charge. Imports into the customs territory of the Community shall also be deemed to be placed on the market;

-
- (b) "article" means an object composed of one or more substances and/or preparations which during production is given a specific shape, surface or design determining its end use function to a greater extent than its chemical composition does;
- (c) "substance" is as defined in Article 2 of Council Directive 67/548/EEC ¹;
- (d) "preparation" is as defined in Article 2 of Directive 67/548/EEC;
- (e) "waste" is as defined in Article 1(a) of Council Directive 75/442/EEC ²;
- (f) "disposal" is as defined in Article 1(e) of Directive 75/442/EEC;
- (g) "recovery" is as defined in Article 1(f) of Directive 75/442/EEC.

Article 3

Control of production, placing on the market and use

1. The production, placing on the market and use of substances listed in Annex I, whether on their own, in preparations or as constituents of articles, shall be prohibited.

¹ Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ P 196, 16.8.1967, p. 1). Directive as last amended by Council Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

² Council Directive 75/442/EEC of 15 July 1975 on waste (OJ L 194, 25.7.1975, p. 39). Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

2. The production, placing on the market and use of substances listed in Annex II, whether on their own, in preparations or as constituents of articles, shall be restricted in accordance with the conditions set out in that Annex.

3. Member States and the Commission shall, within the assessment and authorisation schemes for existing and new chemicals and pesticides under the relevant Community legislation, take into consideration the criteria set out in paragraph 1 of Annex D to the Convention and take appropriate measures to control existing chemicals and pesticides and prevent the production, placing on the market and use of new chemicals and pesticides, which exhibit characteristics of persistent organic pollutants.

Article 4

Exemptions from control measures

1. Article 3 shall not apply in the case of:

- (a) a substance used for laboratory-scale research or as a reference standard;
- (b) a substance occurring as an unintentional trace contaminant in substances, preparations or articles.

2. Article 3 shall not apply in respect of substances occurring as a constituent of articles produced before or on the date of entry into force of this Regulation until six months after the date of its entry into force.

Article 3 shall not apply in the case of a substance occurring as a constituent of articles already in use before or on the date of entry into force of this Regulation.

However, immediately upon becoming aware of articles referred to in the first and second subparagraph, a Member State shall inform the Commission accordingly.

Whenever the Commission is so informed or otherwise learns of such articles, it shall, where appropriate, notify the Secretariat of the Convention accordingly without further delay.

3. Where a substance is listed in Part A of Annex I or in Part A of Annex II, a Member State wishing to permit, until the deadline specified in the relevant Annex, the production and use of that substance as a closed-system site-limited intermediate shall notify accordingly the Secretariat of the Convention.

However, such notification may be made only if the following conditions are satisfied:

- (a) an annotation has been entered in the relevant Annex expressly to the effect that such production and use of that substance may be permitted;
- (b) the manufacturing process will transform the substance into one or more other substances that do not exhibit the characteristics of a persistent organic pollutant;

- (c) it is not expected that either humans or the environment will be exposed to any significant quantities of the substance during its production and use, as shown through assessment of that closed system in accordance with Commission Directive 2001/59/EC ¹.

The notification shall be communicated also to the other Member States and to the Commission and shall give details of actual or estimated total production and use of the substance concerned and the nature of the closed-system site-limited process, specifying the amount of any non-transformed and unintentional trace contamination by any persistent organic pollutant starting material in the final product.

The deadlines referred to in the first subparagraph may be amended in cases where, following a repeat notification from the Member State concerned to the Secretariat of the Convention, express or tacit consent is issued under the Convention for the continued production and use of the substance for another period.

Article 5

Stockpiles

1. The holder of a stockpile, which consists of or contains any substance listed in Annex I or Annex II, for which no use is permitted, shall manage that stockpile as waste and in accordance with Article 7.

¹ Commission Directive 2001/59/EC of 6 August 2001 adapting to technical progress for the 28th time Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ L 225, 21.8.2001, p. 1).

2. The holder of a stockpile greater than 50 kg, consisting of or containing any substance listed in Annex I or Annex II, and the use of which is permitted shall provide the competent authority of the Member State in which the stockpile is established with information concerning the nature and size of that stockpile. Such information shall be provided within 12 months of the entry into force of this Regulation and of amendments to Annexes I or II and annually thereafter until the deadline specified in Annex I or II for restricted use.

The holder shall manage the stockpile in a safe, efficient and environmentally sound manner.

3. Member States shall monitor the use and management of notified stockpiles.

Article 6

Release reduction, minimisation and elimination

1. Within two years of the date of entry into force of this Regulation, Member States shall draw up and maintain release inventories for the substances listed in Annex III into air, water and land in accordance with their obligations under the Convention and the Protocol.

2. A Member State shall communicate its action plan on measures to identify, characterise and minimise with a view to eliminating where feasible as soon as possible the total releases developed in accordance with its obligations under the Convention, to both the Commission and the other Member States as part of its national implementation plan, pursuant to Article 8.

The action plan shall include measures to promote the development and, where it deems appropriate, shall require the use of substitute or modified materials, products and processes to prevent the formation and release of the substances listed in Annex III.

3. Member States shall, when considering proposals to construct new facilities or significantly to modify existing facilities using processes that release chemicals listed in Annex III, without prejudice to Council Directive 1996/61/EC ¹, give priority consideration to alternative processes, techniques or practices that have similar usefulness but which avoid the formation and release of substances listed in Annex III.

Article 7

Waste management

1. Producers and holders of waste shall undertake all reasonable efforts to avoid, where feasible, contamination of this waste with substances listed in Annex IV.

2. Notwithstanding Directive 96/59/EC ², waste consisting of, containing or contaminated by any substance listed in Annex IV shall be disposed of or recovered, without undue delay and in accordance with Annex V, part 1 in such a way as to ensure that the persistent organic pollutant content is destroyed or irreversibly transformed so that the remaining waste and releases do not exhibit the characteristics of persistent organic pollutants.

¹ Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 1882/2003.

² Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ L 243, 24.9.1996, p. 31).

In carrying out such a disposal or recovery, any substance listed in Annex IV may be isolated from the waste, provided that this substance is subsequently disposed of in accordance with the first subparagraph.

3. Disposal or recovery operations that may lead to recovery, recycling, reclamation or re-use of the substances listed in Annex IV shall be prohibited.

4. By way of derogation from paragraph 2:

- (a) waste containing or contaminated by any substance listed in Annex IV may be otherwise disposed of or recovered in accordance with the relevant Community legislation, provided that the content of the listed substances in the waste is below the concentration limits to be specified in Annex IV before 31 December 2005, in accordance with the procedure referred to in Article 17(2). Until such time as concentration limits are specified in accordance with such procedure, the competent authority of a Member State may adopt or apply concentration limits or specific technical requirements in respect of the disposal or recovery of waste under this subparagraph;
- (b) a Member State or the competent authority designated by that Member State may, in exceptional cases, allow wastes listed in Annex V, part 2 containing or contaminated by any substance listed in Annex IV up to concentration limits to be specified in Annex V, part 2, to be otherwise dealt with in accordance with a method listed in Annex V, part 2 provided that:

- (i) the holder concerned has demonstrated to the satisfaction of the competent authority of the Member State concerned that decontamination of the waste in relation to substances listed in Annex IV was not feasible, and that destruction or irreversible transformation of the persistent organic pollutant content, performed in accordance with best environmental practice or best available techniques, does not represent the environmentally preferable option and the competent authority has subsequently authorised the alternative operation;
- (ii) this operation is in accordance with the relevant Community legislation and the conditions laid down in relevant additional measures referred to in paragraph 6; and
- (iii) the Member State concerned has informed the other Member States and the Commission of its authorisation and the justification for it.

5. Concentration limits in Annex V, part 2 shall be established for the purposes of paragraph 4(b) before 31 December 2005 in accordance with the procedure referred to in Article 17(2).

Until such time as these concentration limits are established:

- (a) the competent authority may adopt or apply concentration limits or specific technical requirements in respect of waste being dealt with under paragraph 4(b);

(b) where waste is being dealt with under paragraph 4(b), the holders concerned shall provide information on the persistent organic pollutant content of the waste to the competent authority.

6. The Commission may, where appropriate, and taking into consideration technical developments and relevant international guidelines and decisions and any authorisations granted by a Member State, or the competent authority designated by that Member State in accordance with paragraph 4 and Annex V, adopt additional measures relating to the implementation of this Article. The Commission shall define a format for the submission of the information by Member States in accordance with paragraph 4(b)(iii). Such measures shall be decided in accordance with the procedure laid down in Article 17(2).

7. The Commission shall, before 31 December 2009, review the derogations in paragraph 4 in the light of international and technical developments, in particular with regard to their environmental preferability.

Article 8

Implementation plans

1. When preparing their national implementation plans, Member States shall, in accordance with their national procedures, give the public early and effective opportunities to participate in this process.

2. As soon as a Member State has adopted its national implementation plan in accordance with its obligations under the Convention, it shall communicate it both to the Commission and to the other Member States.

3. When preparing their implementation plans, the Commission and the Member States shall exchange information on the content, as appropriate.

4. The Commission shall, within two years of the entry into force of this Regulation, draw up a plan for the implementation of Community obligations under the Convention.

As soon as the Commission has adopted the Community implementation plan, it shall communicate it to the Member States.

The Commission shall review and update the Community implementation plan, as appropriate.

Article 9

Monitoring

The Commission and the Member States shall establish, in close cooperation, appropriate programmes and mechanisms, consistent with the state of the art, for the regular provision of comparable monitoring data on the presence of dioxins, furans and PCBs as identified in Annex III in the environment. When establishing such programmes and mechanisms, due account shall be taken of developments under the Protocol and the Convention.

Article 10

Information exchange

1. The Commission and the Member States shall facilitate and undertake the exchange within the Community and with third countries of information relevant to the reduction, minimisation or elimination, where feasible, of the production, use and release of persistent organic pollutants and to alternatives to those substances, specifying the risks and the economic and social costs related to such alternatives.

2. The Commission and Member States, as appropriate, shall promote and facilitate with regard to persistent organic pollutants:
 - (a) awareness programmes, including relating to their health and environmental effects and their alternatives and on the reduction or elimination of their production, use and release, especially for
 - (i) policy and decision makers,
 - (ii) particularly vulnerable groups;

 - (b) the provision of public information;

 - (c) training, including workers, scientists, educators and technical and managerial personnel.

3. Without prejudice to Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information ¹, information on health and safety of humans and the environment shall not be regarded as confidential. The Commission and the Member States that exchange other information with a third country shall protect any confidential information as mutually agreed.

Article 11

Technical assistance

In accordance with Articles 12 and 13 of the Convention, the Commission and the Member States shall cooperate in providing appropriate and timely technical and financial assistance to developing countries and countries with economies in transition to assist them, upon request and within available resources and taking into account their particular needs, to develop and strengthen their capacity to fully implement their obligations under the Convention. Such support may also be channelled through non-governmental organisations.

Article 12

Reporting

1. Member States shall every three years forward to the Commission information on the application of this Regulation, including information on infringements and penalties.

¹ OJ L 41, 14.2.2003, p. 26.

2. Member States shall provide the Commission every year with statistical data on the actual or estimated total production and placing on the market of any substance listed in Annex I or II.
3. Within three years of the date of entry into force of this Regulation and every three years thereafter, Member States shall provide the Commission with:
 - (a) summary information compiled from the notifications, concerning stockpiles, received pursuant to Article 5(2);
 - (b) summary information compiled from the release inventories drawn up pursuant to Article 6(1);
 - (c) summary information on the presence of dioxins, furans and PCBs as identified in Annex III in the environment, as compiled pursuant to Article 9.
4. As regards the data and information to be provided by Member States pursuant to paragraphs 1, 2 and 3, the Commission shall develop in advance a common format in accordance with the procedure referred to in Article 16(2).
5. Regarding the substances listed in the Convention, the Commission shall, at intervals to be determined by the Conference of the Parties of the Convention, compile a report on the basis of the information provided by the Member States in accordance with paragraph 2 and communicate it to the Secretariat of the Convention.

6. The Commission shall every three years compile a report on the application of this Regulation and shall integrate it with the information already available in the context of the EPER, as established by Commission Decision 2000/479/EC ¹, and CORINAIR Emission Inventory of EMEP (Cooperative Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe), and with the information provided by the Member States under paragraphs 1, 2 and 3 to form a synthesis report. This report shall include information on the use of derogations as referred to in Article 7(4). It shall forward a summary of the synthesis report to the European Parliament and to the Council and make it available to the public without delay.

Article 13

Penalties

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

¹ Commission Decision 2000/479/EC of 17 July 2000 on the implementation of a European pollutant emission register (EPER) according to Article 15 of Council Directive 96/61/EC concerning integrated pollution prevention and control (IPPC) (OJ L 192, 28.7.2000, p. 36).

Article 14

Amendment of Annexes

1. Whenever a substance is listed in the Convention or the Protocol, the Commission shall, where appropriate, amend Annexes I to III accordingly, in accordance with the procedure referred to in Article 16(2).

Whenever a substance is listed in the Convention or the Protocol, the Commission shall, where appropriate, amend Annex IV in accordance with the procedure referred to in Article 17(2).

2. Modifications to the existing entries in Annexes I to III, including their adaptation to scientific and technical progress, shall be adopted by the Commission in accordance with the procedure referred to in Article 16(2).

3. Modifications to the existing entries in Annex IV and modifications to Annex V, including their adaptation to scientific and technical progress, shall be adopted by the Commission in accordance with the procedure referred to in Article 17(2).

Article 15

Competent authorities

Each Member State shall designate the competent authority or authorities responsible for the administrative tasks required by this Regulation. It shall inform the Commission of such designation at the latest three months after the entry into force of this Regulation.

Article 16

Committee for general matters

1. The Commission shall be assisted by the Committee established by Article 29 of Directive 67/548/EEC for all matters under this Regulation except for those relating to waste.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

3. The Committee shall adopt its rules of procedure.

Article 17

Committee for waste matters

1. The Commission shall be assisted by the Committee established by Article 18 of Directive 75/442/EEC, for matters relating to waste under this Regulation.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

3. The Committee shall adopt its rules of procedure.

Article 18

Amendments to Directive 79/117/EEC

In Part B of the Annex to Directive 79/117/EEC, "Persistent Organochlorine compounds", items 1 to 8 shall be deleted.

Article 19

Entry into force

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

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

Done at Strasbourg, 29 April 2004.

For the European Parliament

The President

P. COX

For the Council

The President

M. McDOWELL

ANNEX I

LIST OF SUBSTANCES SUBJECT TO PROHIBITIONS

Part A – Substances listed in the Convention and in the Protocol

SUBSTANCE	CAS No	EC No	SPECIFIC EXEMPTION ON INTERMEDIATE USE OR OTHER SPECIFICATION
Aldrin	309-00-2	206-215-8	-
Chlordane	57-74-9	200-349-0	-
Dieldrin	60-57-1	200-484-5	-
Endrin	72-20-8	200-775-7	-
Heptachlor	76-44-8	200-962-3	-
Hexachlorobenzene	118-74-1	200-273-9	-
Mirex	2385-85-5	219-196-6	-
Toxaphene	8001-35-2	232-283-3	-

Polychlorinated Biphenyls (PCB)	1336-36-3 and others	215-648-1 and others	Without prejudice to Directive 96/59/EC, articles already in use at the time of entry into force of this Regulation are allowed to be used.
DDT (1,1,1-trichloro-2,2-bis(4-chlorophenyl) ethane)	50-29-3	200-024-3	Member States may allow the existing production and use of DDT as a closed-system site-limited intermediate for the production of dicofol until 1 January 2014, in accordance with Article 4(3) of this Regulation. The Commission shall review this exemption by 31.12.2008 in the light of the outcome of the evaluation in the framework of Directive 91/414/EEC ¹ .

¹ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

Part B – Substances listed only in the Protocol

SUBSTANCE	CAS No	EC No	SPECIFIC EXEMPTION ON INTERMEDIATE USE OR OTHER SPECIFICATION
Chlordecone	143-50-0	205-601-3	-
Hexabromobiphenyl	36355-01-8	252-994-2	-
HCH, including lindane	608-73-1, 58-89-9	210-168-9, 200-401-2	<p>By way of derogation, Member States may allow the following uses</p> <p>(a) until 1.9.2006:</p> <ul style="list-style-type: none"> – Professional remedial and industrial treatment of lumber, timber and logs; – Indoor industrial and residential applications; <p>(b) until 31.12.2007:</p> <ul style="list-style-type: none"> – Technical HCH for use as an intermediate in chemical manufacturing; – Products in which at least 99% of the HCH isomer is in the gamma form (lindane) are restricted for use as public health and veterinary topical insecticide.

ANNEX II

LIST OF SUBSTANCES SUBJECT TO RESTRICTIONS

Part A – Substances listed in the Convention and in the Protocol

SUBSTANCE	CAS No	EC No	CONDITIONS OF RESTRICTION
-			

Part B – Substances listed only in the Protocol

SUBSTANCE	CAS No	EC No	CONDITIONS OF RESTRICTION

ANNEX III

LIST OF SUBSTANCES SUBJECT TO RELEASE REDUCTION PROVISIONS

SUBSTANCE (CAS No)
Polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/PCDF)
Hexachlorobenzene (HCB) (CAS No: 118-74-1)
Polychlorinated biphenyls (PCB)
Polycyclic aromatic hydrocarbons (PAHs) ¹
¹ For the purpose of emission inventories, the following four compound indicators shall be used: benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene and indeno(1,2,3-cd)pyrene.

ANNEX IV

LIST OF SUBSTANCES SUBJECT TO WASTE MANAGEMENT PROVISIONS
SET OUT IN ARTICLE 7

SUBSTANCE	CAS No	EC No	CONCENTRATION LIMIT REFERRED TO IN ARTICLE 7(4)(a), ppm (parts per million)
Aldrin	309-00-2	206-215-8	
Chlordane	57-74-9	200-349-0	
Dieldrin	60-57-1	200-484-5	
Endrin	72-20-8	200-775-7	
Heptachlor	76-44-8	200-962-3	
Hexachlorobenzene	118-74-1	200-273-9	
Mirex	2385-85-5	219-196-6	
Toxaphene	8001-35-2	232-283-3	
Polychlorinated Biphenyls (PCB)	1336-36-3 and others	215-648-1	
DDT (1,1,1-trichloro-2,2- bis(4-chlorophenyl) ethane)	50-29-3	200-024-3	
Chlordecone	143-50-0	205-601-3	
Polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/PCDF)			
HCH, including lindane	608-73-1, 58-89-9	210-168-9, 200-401-2	
Hexabromobiphenyl	36355-01-8	252-994-2	

ANNEX V

WASTE MANAGEMENT

Part 1 Disposal and recovery under Article 7(2)

The following disposal and recovery operations, as provided for in Annex IIA and IIB of Directive 75/442/EEC, are permitted for the purposes of Article 7(2) when applied in such a way as to ensure that the persistent organic pollutant content is destroyed or irreversibly transformed

- D9 Physico-chemical treatment,
- D10 Incineration on land, and
- R1 Use principally as a fuel or other means to generate energy, excluding waste containing PCBs.

Pre-treatment operation prior to destruction or irreversible transformation pursuant to this Part of this Annex may be performed, provided that a substance listed in Annex IV that is isolated from the waste during the pre-treatment is subsequently disposed of in accordance with this Part of this Annex. In addition, repackaging and temporary storage operations may be performed prior to such pre-treatment or prior to destruction or irreversible transformation pursuant to this part of this Annex.

Part 2 Wastes and operations to which Article 7(4)(b) applies

The following operations are permitted for the purposes of Article 7(4)(b) in respect of the wastes specified, defined by the six-digit code as classified in Commission Decision 2000/532/EC¹.

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

Wastes as classified in Commission Decision 2000/532/EC		Maximum concentration limits of substances listed in Annex IV	Operation
10	WASTES FROM THERMAL PROCESSES		Permanent storage only in: – safe, deep, underground, hard rock formations, – salt mines or – a landfill site for hazardous waste (provided that the waste is solidified or stabilised where technically feasible as required for classification of the waste in subchapter 19 03 of Decision 2000/532/EC) whereby the provisions of Council Directive 1999/31/EC ¹ and Council Decision 2003/33/EC ² have to be adhered to and whereby it has been demonstrated that the selected operation is environmentally preferable.
10 01	Wastes from power stations and other combustion plants (except 19)		
10 01 14 *	Bottom ash, slag and boiler dust from co-incineration containing dangerous substances		
10 01 16 *	Fly ash from co-incineration containing dangerous substances		
10 02	Wastes from the iron and steel industry		

¹ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1). Directive as last amended by Regulation (EC) No 1882/2003.

² Council Decision 2003/33/EC of 19 December 2002 establishing criteria and procedures for the acceptance of waste and landfills pursuant to Article 16 of and Annex II to Directive 1999/31/EC (OJ L 11, 16.1.2003, p. 27).

Wastes as classified in Commission Decision 2000/532/EC		Maximum concentration limits of substances listed in Annex IV	Operation
10 02 07 *	Solid wastes from gas treatment containing dangerous substances		
10 03	Wastes from aluminium thermal metallurgy		
10 03 04 *	Primary production slags		
10 03 08 *	Salt slags from secondary production		
10 03 09 *	Black drosses from secondary production		
10 03 19 *	Flue-gas dust containing dangerous substances		
10 03 21 *	Other particulates and dust (including ball-mill dust) containing dangerous substances		
10 03 29 *	Wastes from treatment of salt slags and black drosses containing dangerous substances		
10 04	Wastes from lead thermal metallurgy		
10 04 01 *	Slags from primary and secondary production		
10 04 02 *	Dross and skimmings from primary and secondary production		
10 04 04 *	Flue-gas dust		
10 04 05 *	Other particulates and dust		
10 04 06 *	Solid wastes from gas treatment		

10 05	Wastes from zinc thermal metallurgy		
10 05 03 *	Flue-gas dust		
10 05 05 *	Solid waste from gas treatment		
10 06	Wastes from copper thermal metallurgy		
10 06 03 *	Flue-gas dust		
10 06 06 *	Solid wastes from gas treatment		
10 08	Wastes from other non-ferrous thermal metallurgy		
10 08 08 *	Salt slag from primary and secondary production		
10 08 15 *	Flue-gas dust containing dangerous substances		
10 09	Wastes from casting of ferrous pieces		
10 09 09 *	Flue-gas dust containing dangerous substances		
16	WASTES NOT OTHERWISE SPECIFIED IN THE LIST		
16 11	Waste linings and refractories		
16 11 01 *	Carbon-based linings and refractories from metallurgical processes containing dangerous substances		
16 11 03 *	Other linings and refractories from metallurgical processes containing dangerous substances		

Wastes as classified in Commission Decision 2000/532/EC		Maximum concentration limits of substances listed in Annex IV	Operation
17	CONSTRUCTION AND DEMOLITION WASTES (INCLUDING EXCAVATED SOIL FROM CONTAMINATED SITES)		Permanent storage only in: – safe, deep, underground, hard rock formations, – salt mines or – a landfill site for hazardous waste ¹ (provided that the waste is solidified or stabilised where technically feasible as required for classification of the waste in subchapter 19 03 of Decision 2000/532/EC)
17 01	concrete, bricks, tiles and ceramics		
17 01 06 *	Mixtures of, or separate fractions of concrete, bricks, tiles and ceramics containing dangerous substances.		
17 05	Soil including excavated soil from contaminated sites, stones and dredging spoil		
17 05 03 *	Inorganic fraction of soil and stones containing dangerous substances		
17 09	Other construction and demolition wastes		
17 09 02 *	Construction and demolition wastes containing PCB, excluding PCB containing equipment.		
17 09 03 *	Other construction and demolition wastes containing dangerous substances		

¹ Except in the case of waste containing or contaminated by PCBs above the concentration of 50 ppm.

Wastes as classified in Commission Decision 2000/532/EC	Maximum concentration limits of substances listed in Annex IV	Operation
		whereby the provisions of Directive 1999/31/EC and Decision 2003/33 /EC have to be adhered to and whereby it has been demonstrated that the selected operation is environmentally preferable.

19	WASTES FROM WASTE MANAGEMENT FACILITIES, OFF-SITE WASTE WATER TREATMENT PLANTS AND THE PREPARATION OF WATER INTENDED FOR HUMAN CONSUMPTION AND WATER FROM INDUSTRIAL USE		Permanent storage only in: – safe, deep, underground, hard rock formations, – salt mines or – a landfill site for hazardous waste (provided that the waste is solidified or stabilised where technically feasible as required for classification of the waste in subchapter 19 03 of Decision 2000/532/EC) whereby the provisions of Directive 1999/31/EC and Decision 2003/33/EC have to be adhered to and whereby it has been demonstrated that the selected operation is environmentally preferable.
19 01	Wastes from incineration or pyrolysis of waste		
19 01 07 *	Solid wastes from gas treatment		
19 01 11 *	Bottom ash and slag containing dangerous substances		
19 01 13 *	Fly ash containing dangerous substances		
19 01 15 *	Boiler dust containing dangerous substances		
19 04	Vitrified waste and waste from vitrification		
19 04 02*	Fly ash and other flue-gas treatment wastes		
19 04 03 *	Non-vitrified solid phase		

* Any waste marked with an asterisk (*) is considered as hazardous waste pursuant to Directive 91/689/EEC on hazardous waste, and is subject to the provisions of that Directive.

DIRECTIVE 2004/37/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 29 April 2004****on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) (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 137(2) thereof,
Having regard to the proposal from the Commission,
Having regard to the Opinion of the European Economic and Social Committee¹,
Having consulted the Committee of the Regions,
Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

¹ OJ C 368, 20.12.1999, p. 18.

² Opinion of the European Parliament of 2 September 2003 (not yet published in the Official Journal) and Council Decision of 30 March 2004.

Whereas:

- (1) Council Directive 90/394/EEC of 28 June 1990 on the protection of workers from the risks related to exposure to carcinogens at work (Sixth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)¹ has been substantially amended several times². In the interests of clarity and rationality, the said Directive should therefore be codified.
- (2) Compliance with the minimum requirements designed to guarantee a better standard of health and safety as regards the protection of workers from the risks related to exposure to carcinogens or mutagens at work is essential to ensure the health and safety of workers and is also intended to provide a level of minimum protection for all workers in the Community.
- (3) This Directive is an individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work³. Therefore the provisions of that Directive are fully applicable to the exposure of workers to carcinogens or mutagens, without prejudice to more stringent and/or specific provisions contained in this Directive.
- (4) A consistent level of protection from the risks related to carcinogens or mutagens has to be established for the Community as a whole and that level of protection has to be set not by detailed prescriptive requirements but by a framework of general principles to enable Member States to apply the minimum requirements consistently.

¹ OJ L 196, 26.7.1990, p. 1. Directive as last amended by Directive 1999/38/EC (OJ L 138, 1.6.1999, p. 66).

² See Annex IV, Part A.

³ OJ L 183, 29.6.1989, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

-
- (5) Germ cell mutagens are substances that can cause a permanent change in the amount or structure of the genetic material of a cell resulting in a change in the phenotypic characteristics of that cell, which may be transferred to descendent daughter cells.
 - (6) Because of their mechanism of action, germ cell mutagens are likely to have carcinogenic effects.
 - (7) Annex VI to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances¹ contains the classification criteria and labelling procedures in respect of each substance.
 - (8) Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations² contains particulars on the classification criteria and labelling procedures in respect of such preparations.
 - (9) In all work situations workers must be protected in respect of preparations containing one or more carcinogens or mutagens and from carcinogenic or mutagenic compounds arising at work.
 - (10) For some agents it is necessary to consider all absorption pathways, including the possibility of penetration through the skin, in order to ensure the best possible level of protection.

¹ OJ 196, 16.8.1967, p. 1. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

² OJ L 200, 30.7.1999, p. 1. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

-
- (11) Although current scientific knowledge is not such that a level can be established below which risks to health cease to exist, a reduction in exposure to carcinogens or mutagens will nonetheless reduce those risks.
 - (12) In order to contribute to a reduction in these risks, limit values and other directly related provisions should be established for all those carcinogens or mutagens for which the available information, including scientific and technical data, make this possible.
 - (13) Occupational exposure limit values must be regarded as an important component of the general arrangements for the protection of workers. Such limit values must be revised whenever this becomes necessary in the light of more recent scientific data.
 - (14) The precautionary principle should be applied in the protection of workers' health.
 - (15) Preventive measures must be taken for the protection of the health and safety of workers exposed to carcinogens or mutagens.
 - (16) This Directive constitutes a practical aspect of the realisation of the social dimension of the internal market.
 - (17) Pursuant to Council Decision 74/325/EEC¹, the Commission consulted the Advisory Committee on Safety and Health at Work with a view to drawing up proposals for the Directives taken over in this Directive.
 - (18) This Directive is without prejudice to the obligations of the Member States concerning the time limits for transposition set out in Part B of Annex IV,

¹ OJ L 185, 9.7.1974, p. 15. Decision as repealed by the Council Decision of 22 July 2003 (OJ C 218, 13.9.2003, p. 1).

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Objective

1. This Directive has as its aim the protection of workers against risks to their health and safety, including the prevention of such risks, arising or likely to arise from exposure to carcinogens or mutagens at work.

It lays down particular minimum requirements in this area, including limit values.

2. This Directive shall not apply to workers exposed only to radiation covered by the Treaty establishing the European Atomic Energy Community.
3. Directive 89/391/EEC shall apply fully to the whole area referred to in paragraph 1, without prejudice to more stringent and/or specific provisions contained in this Directive.

4. As regards asbestos, which is dealt with by Directive 83/477/EEC¹, the provisions of this Directive shall apply whenever they are more favourable to health and safety at work.

Article 2

Definitions

For the purposes of this Directive,

- a) "carcinogen" means:
- i) a substance which meets the criteria for classification as a category 1 or 2 carcinogen set out in Annex VI to Directive 67/548/EEC;
 - ii) a preparation composed of one or more substances referred to in point (i) where the concentration of one or more of the individual substances meets the requirements for concentration limits for the classification of a preparation as a category 1 or 2 carcinogen set out either:

in Annex I to Directive 67/548/EEC; or

in Part B of Annex II to Directive 1999/45/EC where the substance or substances do not appear in Annex I to Directive 67/548/EEC or appear in it without concentration limits;

¹ Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (second individual Directive within the meaning of Article 8 of Directive 80/1107/EEC) (OJ L 263, 24.9.1983, p. 25). Directive as last amended by Directive 2003/18/EC of the European Parliament and of the Council (OJ L 97, 15.4.2003, p. 48).

-
- iii) a substance, preparation or process referred to in Annex I to this Directive as well as a substance or preparation released by a process referred to in that Annex;
- b) "mutagen" means:
- i) a substance which meets the criteria for classification as a category 1 or 2 mutagen set out in Annex VI to Directive 67/548/EEC;
- ii) a preparation composed of one or more substances referred to in point (i) where the concentration of one or more of the individual substances meets the requirements for concentration limits for the classification of a preparation as a category 1 or 2 mutagen set out in either:
- Annex I to Directive 67/548/EEC; or
- Part B of Annex II to Directive 1999/45/EC where the substance or substances do not appear in Annex I to Directive 67/548/EEC or appear in it without concentration limits;
- c) "limit value" means, unless otherwise specified, the limit of the time-weighted average of the concentration for a "carcinogen or mutagen" in the air within the breathing zone of a worker in relation to a specified reference period as set out in Annex III to this Directive.

Article 3

Scope — determination and assessment of risks

1. This Directive shall apply to activities in which workers are or are likely to be exposed to carcinogens or mutagens as a result of their work.
2. In the case of any activity likely to involve a risk of exposure to carcinogens or mutagens, the nature, degree and duration of workers' exposure shall be determined in order to make it possible to assess any risk to the workers' health or safety and to lay down the measures to be taken.

The assessment shall be renewed regularly and in any event when any change occurs in the conditions which may affect workers' exposure to carcinogens or mutagens.

The employer shall supply the authorities responsible at their request with the information used for making the assessment.

3. When assessing the risk, account shall be taken of all other routes of exposure, such as absorption into and/or through the skin.
4. When the risk assessment is carried out, employers shall give particular attention to any effects concerning the health or safety of workers at particular risk and shall, *inter alia*, take account of the desirability of not employing such workers in areas where they may come into contact with carcinogens or mutagens.

CHAPTER II

EMPLOYERS' OBLIGATIONS

Article 4

Reduction and replacement

1. The employer shall reduce the use of a carcinogen or mutagen at the place of work, in particular by replacing it, in so far as is technically possible, by a substance, preparation or process which, under its conditions of use, is not dangerous or is less dangerous to workers' health or safety, as the case may be.
2. The employer shall, upon request, submit the findings of his investigations to the relevant authorities.

Article 5

Prevention and reduction of exposure

1. Where the results of the assessment referred to in Article 3(2) reveal a risk to workers' health or safety, workers' exposure must be prevented.
2. Where it is not technically possible to replace the carcinogen or mutagen by a substance, preparation or process which, under its conditions of use, is not dangerous or is less dangerous to health or safety, the employer shall ensure that the carcinogen or mutagen is, in so far as is technically possible, manufactured and used in a closed system.

3. Where a closed system is not technically possible, the employer shall ensure that the level of exposure of workers is reduced to as low a level as is technically possible.
4. Exposure shall not exceed the limit value of a carcinogen as set out in Annex III.
5. Wherever a carcinogen or mutagen is used, the employer shall apply all the following measures:
 - a) limitation of the quantities of a carcinogen or mutagen at the place of work;
 - b) keeping as low as possible the number of workers exposed or likely to be exposed;
 - c) design of work processes and engineering control measures so as to avoid or minimise the release of carcinogens or mutagens into the place of work;
 - d) evacuation of carcinogens or mutagens at source, local extraction system or general ventilation, all such methods to be appropriate and compatible with the need to protect public health and the environment;
 - e) use of existing appropriate procedures for the measurement of carcinogens or mutagens, in particular for the early detection of abnormal exposures resulting from an unforeseeable event or an accident;
 - f) application of suitable working procedures and methods;

- g) collective protection measures and/or, where exposure cannot be avoided by other means, individual protection measures;
- h) hygiene measures, in particular regular cleaning of floors, walls and other surfaces;
- i) information for workers;
- j) demarcation of risk areas and use of adequate warning and safety signs including "no smoking" signs in areas where workers are exposed or likely to be exposed to carcinogens or mutagens;
- k) drawing up plans to deal with emergencies likely to result in abnormally high exposure;
- l) means for safe storage, handling and transportation, in particular by using sealed and clearly and visibly labelled containers;
- m) means for safe collection, storage and disposal of waste by workers, including the use of sealed and clearly and visibly labelled containers.

*Article 6***Information for the competent authority**

Where the results of the assessment referred to in Article 3(2) reveal a risk to workers' health or safety, employers shall, when requested, make available to the competent authority appropriate information on:

- a) the activities and/or industrial processes carried out, including the reasons for which carcinogens or mutagens are used;
- b) the quantities of substances or preparations manufactured or used which contain carcinogens or mutagens;
- c) the number of workers exposed;
- d) the preventive measures taken;
- e) the type of protective equipment used;
- f) the nature and degree of exposure;
- g) the cases of replacement.

*Article 7***Unforeseen exposure**

1. In the event of an unforeseeable event or an accident which is likely to result in an abnormal exposure of workers, the employer shall inform the workers thereof.

2. Until the situation has been restored to normal and the causes of the abnormal exposure have been eliminated:
 - a) only those workers who are essential to the carrying out of repairs and other necessary work shall be permitted to work in the affected area;
 - b) the workers concerned shall be provided with protective clothing and individual respiratory protection equipment which they must wear; the exposure may not be permanent and shall be kept to the strict minimum of time necessary for each worker;
 - c) unprotected workers shall not be allowed to work in the affected area.

Article 8

Foreseeable exposure

1. For certain activities such as maintenance, in respect of which it is foreseeable that there is the potential for a significant increase in exposure of workers, and in respect of which all scope for further technical preventive measures for limiting workers' exposure has already been exhausted, the employer shall determine, after consultation of the workers and/or their representatives in the undertaking or establishment, without prejudice to the employer's responsibility, the measures necessary to reduce the duration of workers' exposure to the minimum possible and to ensure protection of workers while they are engaged in such activities.

Pursuant to the first subparagraph, the workers concerned shall be provided with protective clothing and individual respiratory protection equipment which they must wear as long as the abnormal exposure persists; that exposure may not be permanent and shall be kept to the strict minimum of time necessary for each worker.

2. Appropriate measures shall be taken to ensure that the areas in which the activities referred to in the first subparagraph of paragraph 1 take place are clearly demarcated and indicated or that unauthorised persons are prevented by other means from having access to such areas.

Article 9

Access to risk areas

Appropriate measures shall be taken by employers to ensure that access to areas in which the activities in respect of which the results of the assessment referred to in Article 3(2) reveal a risk to workers' safety or health take place are accessible solely to workers who, by reason of their work or duties, are required to enter them.

Article 10

Hygiene and individual protection

1. Employers shall be obliged, in the case of all activities for which there is a risk of contamination by carcinogens or mutagens, to take appropriate measures to ensure that:
 - a) workers do not eat, drink or smoke in working areas where there is a risk of contamination by carcinogens or mutagens;
 - b) workers are provided with appropriate protective clothing or other appropriate special clothing;

- c) separate storage places are provided for working or protective clothing and for street clothes;
 - d) workers are provided with appropriate and adequate washing and toilet facilities;
 - e) protective equipment is properly stored in a well-defined place and is checked and cleaned if possible before, and in any case after, each use;
 - f) defective equipment is repaired or replaced before further use.
2. Workers may not be charged for the cost of the measures set out in paragraph 1.

Article 11

Information and training of workers

1. Appropriate measures shall be taken by the employer to ensure that workers and/or workers' representatives in the undertaking or establishment receive sufficient and appropriate training, on the basis of all available information, in particular in the form of information and instructions, concerning:
- a) potential risks to health, including the additional risks due to tobacco consumption;
 - b) precautions to be taken to prevent exposure;

- c) hygiene requirements;
- d) wearing and use of protective equipment and clothing;
- e) steps to be taken by workers, including rescue workers, in the case of incidents and to prevent incidents.

The training shall be:

adapted to take account of new or changed risk; and

repeated periodically if necessary.

2. Employers shall inform workers of installations and related containers containing carcinogens or mutagens, ensure that all containers, packages and installations containing carcinogens or mutagens are labelled clearly and legibly, and display clearly visible warning and hazard signs.

Article 12

Information for workers

Appropriate measures shall be taken to ensure that:

- a) workers and/or any workers' representatives in the undertaking or establishment can check that this Directive is applied or can be involved in its application, in particular with regard to:

- i) the consequences for workers' safety and health of the selection, wearing and use of protective clothing and equipment, without prejudice to the employer's responsibility for determining the effectiveness of protective clothing and equipment;
 - ii) the measures determined by the employer which are referred to in the first subparagraph of Article 8(1), without prejudice to the employer's responsibility for determining such measures;
- b) workers and/or any workers' representatives in the undertaking or establishment are informed as quickly as possible of abnormal exposures, including those referred to in Article 8, of the causes thereof and of the measures taken or to be taken to rectify the situation;
- c) the employer keeps an up-to-date list of the workers engaged in the activities in respect of which the results of the assessment referred to in Article 3(2) reveal a risk to workers' health or safety, indicating, if the information is available, the exposure to which they have been subjected;
- d) the doctor and/or the competent authority as well as all other persons who have responsibility for health and safety at work have access to the list referred to in point (c);
- e) each worker has access to the information on the list which relates to him personally;
- f) workers and/or any workers' representatives in the undertaking or establishment have access to anonymous collective information.

Article 13

Consultation and participation of workers

Consultation and participation of workers and/or their representatives in connection with matters covered by this Directive shall take place in accordance with Article 11 of Directive 89/391/EEC.

CHAPTER III

MISCELLANEOUS PROVISIONS

Article 14

Health surveillance

1. The Member States shall establish, in accordance with national laws and/or practice, arrangements for carrying out relevant health surveillance of workers for whom the results of the assessment referred to in Article 3(2) reveal a risk to health or safety.
2. The arrangements referred to in paragraph 1 shall be such that each worker shall be able to undergo, if appropriate, relevant health surveillance:

prior to exposure;

at regular intervals thereafter.

Those arrangements shall be such that it is directly possible to implement individual and occupational hygiene measures.

3. If a worker is found to be suffering from an abnormality which is suspected to be the result of exposure to carcinogens or mutagens, the doctor or authority responsible for the health surveillance of workers may require other workers who have been similarly exposed to undergo health surveillance.

In that event, a reassessment of the risk of exposure shall be carried out in accordance with Article 3(2).

4. In cases where health surveillance is carried out, an individual medical record shall be kept and the doctor or authority responsible for health surveillance shall propose any protective or preventive measures to be taken in respect of any individual workers.
5. Information and advice must be given to workers regarding any health surveillance which they may undergo following the end of exposure.
6. In accordance with national laws and/or practice:

workers shall have access to the results of the health surveillance which concern them; and

the workers concerned or the employer may request a review of the results of the health surveillance.
7. Practical recommendations for the health surveillance of workers are given in Annex II.

8. All cases of cancer identified in accordance with national laws and/or practice as resulting from occupational exposure to a carcinogen or mutagen shall be notified to the competent authority.

Article 15

Record-keeping

1. The list referred to in point (c) of Article 12 and the medical record referred to in Article 14(4) shall be kept for at least 40 years following the end of exposure, in accordance with national laws and/or practice.
2. Those documents shall be made available to the responsible authority in cases where the undertaking ceases activity, in accordance with national laws and/or practice.

Article 16

Limit values

1. The Council shall, in accordance with the procedure laid down in Article 137(2) of the Treaty, set out limit values in Directives on the basis of the available information, including scientific and technical data, in respect of all those carcinogens or mutagens for which this is possible, and, where necessary, other directly related provisions.
2. Limit values and other directly related provisions are set out in Annex III.

*Article 17***Annexes**

1. Annexes I and III may be amended in accordance only with the procedure laid down in Article 137(2) of the Treaty.
2. Purely technical adjustments to Annex II in the light of technical progress, changes in international regulations or specifications and new findings in the field of carcinogens or mutagens shall be adopted in accordance with the procedure laid down in Article 17 of Directive 89/391/EEC.

*Article 18***Use of data**

The Commission shall have access to the use made by the competent national authorities of the information referred to in Article 14(8).

*Article 19***Notifying the Commission**

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

*Article 20***Repeal**

Directive 90/394/EEC, as amended by the Directives referred to in Annex IV, Part A of this Directive is repealed, without prejudice to the obligations of the Member States concerning the time limits for transposition set out in Annex IV, Part B of this Directive.

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 V.

*Article 21***Entry into force**

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

*Article 22***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 29 April 2004.

For the European Parliament
The President
P. COX

For the Council
The President
M. McDOWELL

ANNEX I**List of substances, preparations and processes***(Article 2(a)(iii))*

1. Manufacture of auramine.
2. Work involving exposure to polycyclic aromatic hydrocarbons present in coal soot, coal tar or coal pitch.
3. Work involving exposure to dusts, fumes and sprays produced during the roasting and electro-refining of cupro-nickel mattes.
4. Strong acid process in the manufacture of isopropyl alcohol.
5. Work involving exposure to hardwood dusts¹.

¹ A list of some hardwoods is to be found in Volume 62 of the Monographs on the Evaluation of Carcinogenic Risks to Humans «Wood Dust and Formaldehyde», published by the International Agency for Research on Cancer, Lyon, 1995.

ANNEX II**Practical recommendations for the health surveillance of workers**

(Article 14(7))

1. The doctor and/or authority responsible for the health surveillance of workers exposed to carcinogens or mutagens must be familiar with the exposure conditions or circumstances of each worker.
2. Health surveillance of workers must be carried out in accordance with the principles and practices of occupational medicine; it must include at least the following measures:

keeping records of a worker's medical and occupational history,

a personal interview,

where appropriate, biological surveillance, as well as detection of early and reversible effects.

Further tests may be decided upon for each worker when he is the subject of health surveillance, in the light of the most recent knowledge available to occupational medicine.

ANNEX III**Limit values and other directly related provisions***(Article 16)***A. LIMIT VALUES FOR OCCUPATIONAL EXPOSURE**

Name of agent	EINECS ⁽¹⁾	CAS ⁽²⁾	Limit values		Notation	Transitional measures
			mg/m ³ ⁽³⁾	ppm ⁽⁴⁾		
Benzene	200-753-7	71-43-2	3,25 ⁽⁵⁾	1 ⁽⁵⁾	Skin ⁽⁶⁾	Limit value: 3 ppm (=9,75 mg/m ³) (until 27 June 2003)
Vinyl chloride monomer	200-831	75-01-4	7,77 ⁽⁵⁾	3 ⁽⁵⁾	—	—
Hardwood dusts	—	—	5,0 ⁽⁵⁾⁽⁷⁾	—	—	—

B. OTHER DIRECTLY RELATED PROVISIONS

p.m.

¹ EINECS: European Inventory of Existing Chemical Substances.

² CAS: Chemical Abstract Service Number.

³ mg/m³ = milligrams per cubic metre of air at 20°C and 101,3 kPa (760 mm mercury pressure).

⁴ ppm = parts per million by volume in air (ml/m³).

⁵ Measured or calculated in relation to a reference period of eight hours.

⁶ Substantial contribution to the total body burden via dermal exposure possible.

⁷ Inhalable fraction: if hardwood dusts are mixed with other wood dusts, the limit value shall apply to all wood dusts present in that mixture.

ANNEX IV**Part A****Repealed Directive and its successive amendments***(referred to by Article 20)*

Council Directive 90/394/EEC	(OJ L 196, 26.7.1990, p. 1)
Council Directive 97/42/EC	(OJ L 179, 8.7.1997, p. 4)
Council Directive 1999/38/EC	(OJ L 138, 1.6.1999, p. 66)

Part B**Deadlines for transposition into national law***(referred to by Article 20)*

Directive	Deadline for transposition
90/394/EEC	31 December 1992
97/42/EC	27 June 2000
1999/38/EC	29 April 2003

ANNEX V**CORRELATION TABLE**

Directive 90/394/EC	This Directive
Article 1	Article 1
Article 2(a)	Article 2 (a)
Article 2(aa)	Article 2(b)
Article 2(b)	Article 2 (c)
Articles 3 to 9	Article 3 to 9
Article 10(1)(a)	Article 10(1)(a)
Article 10(1)(b), first sentence	Article 10(1)(b)
Article 10(1)(b), second sentence	Article 10(1)(c)
Article 10(1)(c)	Article 10(1)(d)
Article 10(1)(d), first and second sentences	Article 10(1)(e)
Article 10(1)(d), third sentence	Article 10(1) (f)
Article 10(2)	Article 10 (2)
Articles 11 to 18	Articles 11 to 18
Article 19(1) first subparagraph	_____
Article 19(1) second subparagraph	_____
Article 19(1) third subparagraph	_____
Article 19(2)	Article 19
_____	Article 20
_____	Article 21
Article 20	Article 22
Annex I	Annex I
Annex II	Annex II
Annex III	Annex III
_____	Annex IV
_____	Annex V

**DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL
of 29 April 2004**

on the right of citizens of the Union and their family members
to move and reside freely within the territory of the Member States
amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC,
68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC,
90/364/EEC, 90/365/EEC and 93/96/EEC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 12, 18, 40, 44 and 52 thereof,

Having regard to the proposal from the Commission ¹,

Having regard to the Opinion of the European Economic and Social Committee ²,

Having regard to the Opinion of the Committee of the Regions ³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁴,

¹ OJ C 270 E, 25.9.2001, p. 150.

² OJ C 149, 21.6.2002, p. 46.

³ OJ C 192, 12.8.2002, p. 17.

⁴ Opinion of the European Parliament of 11 February 2003 (OJ C 43 E, 19.2.2004, p. 42), Council Common Position of 5 December 2003 (OJ C 54 E, 2.3.2004, p. 12) and Position of the European Parliament of 10 March 2004 (not yet published in the Official Journal).

Whereas:

- (1) Citizenship of the Union confers on every citizen of the Union a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and to the measures adopted to give it effect.
- (2) The free movement of persons constitutes one of the fundamental freedoms of the internal market, which comprises an area without internal frontiers, in which freedom is ensured in accordance with the provisions of the Treaty.
- (3) Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence. It is therefore necessary to codify and review the existing Community instruments dealing separately with workers, self-employed persons, as well as students and other inactive persons in order to simplify and strengthen the right of free movement and residence of all Union citizens.

- (4) With a view to remedying this sector-by-sector, piecemeal approach to the right of free movement and residence and facilitating the exercise of this right, there needs to be a single legislative act to amend Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community¹, and to repeal the following acts: Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families², Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services³, Council Directive 90/364/EEC of 28 June 1990 on the right of residence⁴, Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity⁵ and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students⁶.
- (5) The right of all Union citizens to move and reside freely within the territory of the Member States should, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members, irrespective of nationality. For the purposes of this Directive, the definition of "family member" should also include the registered partner if the legislation of the host Member State treats registered partnership as equivalent to marriage.

¹ OJ L 257, 19.10.1968, p. 2. Regulation as last amended by Regulation (EEC) No 2434/92 (OJ L 245, 26.8.1992, p. 1).

² OJ L 257, 19.10.1968, p. 13. Directive as last amended by the 2003 Act of Accession.

³ OJ L 172, 28.6.1973, p. 14.

⁴ OJ L 180, 13.7.1990, p. 26.

⁵ OJ L 180, 13.7.1990, p. 28.

⁶ OJ L 317, 18.12.1993, p. 59.

-
- (6) In order to maintain the unity of the family in a broader sense and without prejudice to the prohibition of discrimination on grounds of nationality, the situation of those persons who are not included in the definition of family members under this Directive, and who therefore do not enjoy an automatic right of entry and residence in the host Member State, should be examined by the host Member State on the basis of its own national legislation, in order to decide whether entry and residence could be granted to such persons, taking into consideration their relationship with the Union citizen or any other circumstances, such as their financial or physical dependence on the Union citizen.
- (7) The formalities connected with the free movement of Union citizens within the territory of Member States should be clearly defined, without prejudice to the provisions applicable to national border controls.
- (8) With a view to facilitating the free movement of family members who are not nationals of a Member State, those who have already obtained a residence card should be exempted from the requirement to obtain an entry visa within the meaning of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement ¹ or, where appropriate, of the applicable national legislation.
- (9) Union citizens should have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport, without prejudice to a more favourable treatment applicable to job-seekers as recognised by the case-law of the Court of Justice.

¹ OJ L 81, 21.3.2001, p. 1. Regulation as last amended by Regulation (EC) No 453/2003 (OJ L 69, 13.3.2003, p. 10).

- (10) Persons exercising their right of residence should not, however, become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence. Therefore, the right of residence for Union citizens and their family members for periods in excess of three months should be subject to conditions.
- (11) The fundamental and personal right of residence in another Member State is conferred directly on Union citizens by the Treaty and is not dependent upon their having fulfilled administrative procedures.
- (12) For periods of residence of longer than three months, Member States should have the possibility to require Union citizens to register with the competent authorities in the place of residence, attested by a registration certificate issued to that effect.
- (13) The residence card requirement should be restricted to family members of Union citizens who are not nationals of a Member State for periods of residence of longer than three months.
- (14) The supporting documents required by the competent authorities for the issuing of a registration certificate or of a residence card should be comprehensively specified in order to avoid divergent administrative practices or interpretations constituting an undue obstacle to the exercise of the right of residence by Union citizens and their family members.

-
- (15) Family members should be legally safeguarded in the event of the death of the Union citizen, divorce, annulment of marriage or termination of a registered partnership. With due regard for family life and human dignity, and in certain conditions to guard against abuse, measures should therefore be taken to ensure that in such circumstances family members already residing within the territory of the host Member State retain their right of residence exclusively on a personal basis.
- (16) As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host Member State they should not be expelled. Therefore, an expulsion measure should not be the automatic consequence of recourse to the social assistance system. The host Member State should examine whether it is a case of temporary difficulties and take into account the duration of residence, the personal circumstances and the amount of aid granted in order to consider whether the beneficiary has become an unreasonable burden on its social assistance system and to proceed to his expulsion. In no case should an expulsion measure be adopted against workers, self-employed persons or job-seekers as defined by the Court of Justice save on grounds of public policy or public security.
- (17) Enjoyment of permanent residence by Union citizens who have chosen to settle long term in the host Member State would strengthen the feeling of Union citizenship and is a key element in promoting social cohesion, which is one of the fundamental objectives of the Union. A right of permanent residence should therefore be laid down for all Union citizens and their family members who have resided in the host Member State in compliance with the conditions laid down in this Directive during a continuous period of five years without becoming subject to an expulsion measure.

- (18) In order to be a genuine vehicle for integration into the society of the host Member State in which the Union citizen resides, the right of permanent residence, once obtained, should not be subject to any conditions.
- (19) Certain advantages specific to Union citizens who are workers or self-employed persons and to their family members, which may allow these persons to acquire a right of permanent residence before they have resided five years in the host Member State, should be maintained, as these constitute acquired rights, conferred by Commission Regulation (EEC) No 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State ¹ and Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity ².
- (20) In accordance with the prohibition of discrimination on grounds of nationality, all Union citizens and their family members residing in a Member State on the basis of this Directive should enjoy, in that Member State, equal treatment with nationals in areas covered by the Treaty, subject to such specific provisions as are expressly provided for in the Treaty and secondary law.

¹ OJ L 142, 30.6.1970, p. 24.

² OJ L 14, 20.1.1975, p. 10.

-
- (21) However, it should be left to the host Member State to decide whether it will grant social assistance during the first three months of residence, or for a longer period in the case of job-seekers, to Union citizens other than those who are workers or self-employed persons or who retain that status or their family members, or maintenance assistance for studies, including vocational training, prior to acquisition of the right of permanent residence, to these same persons.
- (22) The Treaty allows restrictions to be placed on the right of free movement and residence on grounds of public policy, public security or public health. In order to ensure a tighter definition of the circumstances and procedural safeguards subject to which Union citizens and their family members may be denied leave to enter or may be expelled, this Directive should replace Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals, which are justified on grounds of public policy, public security or public health ¹.
- (23) Expulsion of Union citizens and their family members on grounds of public policy or public security is a measure that can seriously harm persons who, having availed themselves of the rights and freedoms conferred on them by the Treaty, have become genuinely integrated into the host Member State. The scope for such measures should therefore be limited in accordance with the principle of proportionality to take account of the degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, family and economic situation and the links with their country of origin.

¹ OJ 56, 4.4.1964, p. 850. Directive as last amended by Directive 75/35/EEC (OJ 14, 20.1.1975, p. 14).

- (24) Accordingly, the greater the degree of integration of Union citizens and their family members in the host Member State, the greater the degree of protection against expulsion should be. Only in exceptional circumstances, where there are imperative grounds of public security, should an expulsion measure be taken against Union citizens who have resided for many years in the territory of the host Member State, in particular when they were born and have resided there throughout their life. In addition, such exceptional circumstances should also apply to an expulsion measure taken against minors, in order to protect their links with their family, in accordance with the United Nations Convention on the Rights of the Child, of 20 November 1989.
- (25) Procedural safeguards should also be specified in detail in order to ensure a high level of protection of the rights of Union citizens and their family members in the event of their being denied leave to enter or reside in another Member State, as well as to uphold the principle that any action taken by the authorities must be properly justified.
- (26) In all events, judicial redress procedures should be available to Union citizens and their family members who have been refused leave to enter or reside in another Member State.
- (27) In line with the case-law of the Court of Justice prohibiting Member States from issuing orders excluding for life persons covered by this Directive from their territory, the right of Union citizens and their family members who have been excluded from the territory of a Member State to submit a fresh application after a reasonable period, and in any event after a three year period from enforcement of the final exclusion order, should be confirmed.

- (28) To guard against abuse of rights or fraud, notably marriages of convenience or any other form of relationships contracted for the sole purpose of enjoying the right of free movement and residence, Member States should have the possibility to adopt the necessary measures.
- (29) This Directive should not affect more favourable national provisions.
- (30) With a view to examining how further to facilitate the exercise of the right of free movement and residence, a report should be prepared by the Commission in order to evaluate the opportunity to present any necessary proposals to this effect, notably on the extension of the period of residence with no conditions.
- (31) This Directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In accordance with the prohibition of discrimination contained in the Charter, Member States should implement this Directive without discrimination between the beneficiaries of this Directive on grounds such as sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, membership of an ethnic minority, property, birth, disability, age or sexual orientation,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

Subject

This Directive lays down:

- (a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members;
- (b) the right of permanent residence in the territory of the Member States for Union citizens and their family members;
- (c) the limits placed on the rights set out in (a) and (b) on grounds of public policy, public security or public health.

Article 2

Definitions

For the purposes of this Directive:

- 1) "Union citizen" means any person having the nationality of a Member State;

- 2) "Family member" means:
- (a) the spouse;
 - (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;
 - (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);
 - (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);
- 3) "Host Member State" means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence.

Article 3

Beneficiaries

1. This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.

2. Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

- (a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;
- (b) the partner with whom the Union citizen has a durable relationship, duly attested.

The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.

CHAPTER II

Right of exit and entry

Article 4

Right of exit

1. Without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport and their family members who are not nationals of a Member State and who hold a valid passport shall have the right to leave the territory of a Member State to travel to another Member State.
2. No exit visa or equivalent formality may be imposed on the persons to whom paragraph 1 applies.
3. Member States shall, acting in accordance with their laws, issue to their own nationals, and renew, an identity card or passport stating their nationality.
4. The passport shall be valid at least for all Member States and for countries through which the holder must pass when travelling between Member States. Where the law of a Member State does not provide for identity cards to be issued, the period of validity of any passport on being issued or renewed shall be not less than five years.

Article 5

Right of entry

1. Without prejudice to the provisions on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport and shall grant family members who are not nationals of a Member State leave to enter their territory with a valid passport.

No entry visa or equivalent formality may be imposed on Union citizens.

2. Family members who are not nationals of a Member State shall only be required to have an entry visa in accordance with Regulation (EC) No 539/2001 or, where appropriate, with national law. For the purposes of this Directive, possession of the valid residence card referred to in Article 10 shall exempt such family members from the visa requirement.

Member States shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure.

3. The host Member State shall not place an entry or exit stamp in the passport of family members who are not nationals of a Member State provided that they present the residence card provided for in Article 10.

4. Where a Union citizen, or a family member who is not a national of a Member State, does not have the necessary travel documents or, if required, the necessary visas, the Member State concerned shall, before turning them back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence.

5. The Member State may require the person concerned to report his/her presence within its territory within a reasonable and non-discriminatory period of time. Failure to comply with this requirement may make the person concerned liable to proportionate and non-discriminatory sanctions.

CHAPTER III

Right of residence

Article 6

Right of residence for up to three months

1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.
2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.

Article 7

Right of residence for more than three months

1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

- (a) are workers or self-employed persons in the host Member State; or
- (b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or
- (c) – are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and
 - have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or

(d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).

2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c).

3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances:

(a) he/she is temporarily unable to work as the result of an illness or accident;

(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with the relevant employment office;

(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;

(d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.

4. By way of derogation from paragraphs 1(d) and 2 above, only the spouse, the registered partner provided for in Article 2(2)(b) and dependent children shall have the right of residence as family members of a Union citizen meeting the conditions under 1(c) above. Article 3(2) shall apply to his/her dependent direct relatives in the ascending lines and those of his/her spouse or registered partner.

Article 8

Administrative formalities for Union citizens

1. Without prejudice to Article 5(5), for periods of residence longer than three months, the host Member State may require Union citizens to register with the relevant authorities.
2. The deadline for registration may not be less than three months from the date of arrival. A registration certificate shall be issued immediately, stating the name and address of the person registering and the date of the registration. Failure to comply with the registration requirement may render the person concerned liable to proportionate and non-discriminatory sanctions.
3. For the registration certificate to be issued, Member States may only require that
 - Union citizens to whom point (a) of Article 7(1) applies present a valid identity card or passport, a confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed persons;

- Union citizens to whom point (b) of Article 7(1) applies present a valid identity card or passport and provide proof that they satisfy the conditions laid down therein;
- Union citizens to whom point (c) of Article 7(1) applies present a valid identity card or passport, provide proof of enrolment at an accredited establishment and of comprehensive sickness insurance cover and the declaration or equivalent means referred to in point (c) of Article 7(1). Member States may not require this declaration to refer to any specific amount of resources.

4. Member States may not lay down a fixed amount which they regard as "sufficient resources" but they must take into account the personal situation of the person concerned. In all cases this amount shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State.

5. For the registration certificate to be issued to family members of Union citizens, who are themselves Union citizens, Member States may require the following documents to be presented:

- (a) a valid identity card or passport;
- (b) a document attesting to the existence of a family relationship or of a registered partnership;

- (c) where appropriate, the registration certificate of the Union citizen whom they are accompanying or joining;
- (d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;
- (e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen;
- (f) in cases falling under Article 3(2)(b), proof of the existence of a durable relationship with the Union citizen.

Article 9

Administrative formalities for family members

who are not nationals of a Member State

1. Member States shall issue a residence card to family members of a Union citizen who are not nationals of a Member State, where the planned period of residence is for more than three months.
2. The deadline for submitting the residence card application may not be less than three months from the date of arrival.

3. Failure to comply with the requirement to apply for a residence card may make the person concerned liable to proportionate and non-discriminatory sanctions.

Article 10

Issue of residence cards

1. The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issuing of a document called "Residence card of a family member of a Union citizen" no later than six months from the date on which they submit the application. A certificate of application for the residence card shall be issued immediately.

2. For the residence card to be issued, Member States shall require presentation of the following documents:

- (a) a valid passport;
- (b) a document attesting to the existence of a family relationship or of a registered partnership;
- (c) the registration certificate or, in the absence of a registration system, any other proof of residence in the host Member State of the Union citizen whom they are accompanying or joining;

- (d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;
- (e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen;
- (f) in cases falling under Article 3(2)(b), proof of the existence of a durable relationship with the Union citizen.

Article 11

Validity of the residence card

1. The residence card provided for by Article 10(1) shall be valid for five years from the date of issue or for the envisaged period of residence of the Union citizen, if this period is less than five years.
2. The validity of the residence card shall not be affected by temporary absences not exceeding six months a year, or by absences of a longer duration for compulsory military service or by one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

Article 12

Retention of the right of residence by family members
in the event of death or departure of the Union citizen

1. Without prejudice to the second subparagraph, the Union citizen's death or departure from the host Member State shall not affect the right of residence of his/her family members who are nationals of a Member State.

Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1).

2. Without prejudice to the second subparagraph, the Union citizen's death shall not entail loss of the right of residence of his/her family members who are not nationals of a Member State and who have been residing in the host Member State as family members for at least one year before the Union citizen's death.

Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. "Sufficient resources" shall be as defined in Article 8(4).

Such family members shall retain their right of residence exclusively on a personal basis.

3. The Union citizen's departure from the host Member State or his/her death shall not entail loss of the right of residence of his/her children or of the parent who has actual custody of the children, irrespective of nationality, if the children reside in the host Member State and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies.

Article 13

Retention of the right of residence by family members in the event
of divorce, annulment of marriage or termination of registered partnership

1. Without prejudice to the second subparagraph, divorce, annulment of the Union citizen's marriage or termination of his/her registered partnership, as referred to in point 2(b) of Article 2 shall not affect the right of residence of his/her family members who are nationals of a Member State.

Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1).

2. Without prejudice to the second subparagraph, divorce, annulment of marriage or termination of the registered partnership referred to in point 2(b) of Article 2 shall not entail loss of the right of residence of a Union citizen's family members who are not nationals of a Member State where:

- (a) prior to initiation of the divorce or annulment proceedings or termination of the registered partnership referred to in point 2(b) of Article 2, the marriage or registered partnership has lasted at least three years, including one year in the host Member State; or
- (b) by agreement between the spouses or the partners referred to in point 2(b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has custody of the Union citizen's children; or
- (c) this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting; or
- (d) by agreement between the spouses or partners referred to in point 2(b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has the right of access to a minor child, provided that the court has ruled that such access must be in the host Member State, and for as long as is required.

Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. "Sufficient resources" shall be as defined in Article 8(4).

Such family members shall retain their right of residence exclusively on personal basis.

Article 14

Retention of the right of residence

1. Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.
2. Union citizens and their family members shall have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein.

In specific cases where there is a reasonable doubt as to whether a Union citizen or his/her family members satisfies the conditions set out in Articles 7, 12 and 13, Member States may verify if these conditions are fulfilled. This verification shall not be carried out systematically.

3. An expulsion measure shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system of the host Member State.
4. By way of derogation from paragraphs 1 and 2 and without prejudice to the provisions of Chapter VI, an expulsion measure may in no case be adopted against Union citizens or their family members if:
 - (a) the Union citizens are workers or self-employed persons, or
 - (b) the Union citizens entered the territory of the host Member State in order to seek employment. In this case, the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged.

Article 15

Procedural safeguards

1. The procedures provided for by Articles 30 and 31 shall apply by analogy to all decisions restricting free movement of Union citizens and their family members on grounds other than public policy, public security or public health.
2. Expiry of the identity card or passport on the basis of which the person concerned entered the host Member State and was issued with a registration certificate or residence card shall not constitute a ground for expulsion from the host Member State.
3. The host Member State may not impose a ban on entry in the context of an expulsion decision to which paragraph 1 applies.

CHAPTER IV

Right of permanent residence

Section I

Eligibility

Article 16

General rule for Union citizens and their family members

1. Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.
2. Paragraph 1 shall apply also to family members who are not nationals of a Member State and have legally resided with the Union citizen in the host Member State for a continuous period of five years.
3. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

4. Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years.

Article 17

Exemptions for persons no longer working in the host Member State and their family members

1. By way of derogation from Article 16, the right of permanent residence in the host Member State shall be enjoyed before completion of a continuous period of five years of residence by:

- (a) workers or self-employed persons who, at the time they stop working, have reached the age laid down by the law of that Member State for entitlement to an old age pension or workers who cease paid employment to take early retirement, provided that they have been working in that Member State for at least the preceding twelve months and have resided there continuously for more than three years.

If the law of the host Member State does not grant the right to an old age pension to certain categories of self-employed persons, the age condition shall be deemed to have been met once the person concerned has reached the age of 60;

- (b) workers or self-employed persons who have resided continuously in the host Member State for more than two years and stop working there as a result of permanent incapacity to work.

If such incapacity is the result of an accident at work or an occupational disease entitling the person concerned to a benefit payable in full or in part by an institution in the host Member State, no condition shall be imposed as to length of residence;

- (c) workers or self-employed persons who, after three years of continuous employment and residence in the host Member State, work in an employed or self-employed capacity in another Member State, while retaining their place of residence in the host Member State, to which they return, as a rule, each day or at least once a week.

For the purposes of entitlement to the rights referred to in points (a) and (b), periods of employment spent in the Member State in which the person concerned is working shall be regarded as having been spent in the host Member State.

Periods of involuntary unemployment duly recorded by the relevant employment office, periods not worked for reasons not of the person's own making and absences from work or cessation of work due to illness or accident shall be regarded as periods of employment.

2. The conditions as to length of residence and employment laid down in point (a) of paragraph 1 and the condition as to length of residence laid down in point (b) of paragraph 1 shall not apply if the worker's or the self-employed person's spouse or partner as referred to in point 2(b) of Article 2 is a national of the host Member State or has lost the nationality of that Member State by marriage to that worker or self-employed person.

3. Irrespective of nationality, the family members of a worker or a self-employed person who are residing with him in the territory of the host Member State shall have the right of permanent residence in that Member State, if the worker or self-employed person has acquired himself the right of permanent residence in that Member State on the basis of paragraph 1.

4. If, however, the worker or self-employed person dies while still working but before acquiring permanent residence status in the host Member State on the basis of paragraph 1, his family members who are residing with him in the host Member State shall acquire the right of permanent residence there, on condition that:

- (a) the worker or self-employed person had, at the time of death, resided continuously on the territory of that Member State for two years; or
- (b) the death resulted from an accident at work or an occupational disease; or
- (c) the surviving spouse lost the nationality of that Member State following marriage to the worker or self-employed person.

Article 18

Acquisition of the right of permanent residence by certain family members
who are not nationals of a Member State

Without prejudice to Article 17, the family members of a Union citizen to whom Articles 12(2) and 13(2) apply, who satisfy the conditions laid down therein, shall acquire the right of permanent residence after residing legally for a period of five consecutive years in the host Member State.

Section II

Administrative formalities

Article 19

Document certifying permanent residence for Union citizens

1. Upon application Member States shall issue Union citizens entitled to permanent residence, after having verified duration of residence, with a document certifying permanent residence.
2. The document certifying permanent residence shall be issued as soon as possible.

Article 20

Permanent residence card for family members who are not nationals of a Member State

1. Member States shall issue family members who are not nationals of a Member State entitled to permanent residence with a permanent residence card within six months of the submission of the application. The permanent residence card shall be renewable automatically every ten years.
2. The application for a permanent residence card shall be submitted before the residence card expires. Failure to comply with the requirement to apply for a permanent residence card may render the person concerned liable to proportionate and non-discriminatory sanctions.
3. Interruption in residence not exceeding two consecutive years shall not affect the validity of the permanent residence card.

Article 21

Continuity of residence

For the purposes of this Directive, continuity of residence may be attested by any means of proof in use in the host Member State. Continuity of residence is broken by any expulsion decision duly enforced against the person concerned.

CHAPTER V

Provisions common to the right of residence
and the right of permanent residenceArticle 22

Territorial scope

The right of residence and the right of permanent residence shall cover the whole territory of the host Member State. Member States may impose territorial restrictions on the right of residence and the right of permanent residence only where the same restrictions apply to their own nationals.

Article 23

Related rights

Irrespective of nationality, the family members of a Union citizen who have the right of residence or the right of permanent residence in a Member State shall be entitled to take up employment or self-employment there.

Article 24

Equal treatment

1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.
2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.

Article 25

General provisions concerning residence documents

1. Possession of a registration certificate as referred to in Article 8, of a document certifying permanent residence, of a certificate attesting submission of an application for a family member residence card, of a residence card or of a permanent residence card, may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof.

2. All documents mentioned in paragraph 1 shall be issued free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents.

Article 26

Checks

Member States may carry out checks on compliance with any requirement deriving from their national legislation for non-nationals always to carry their registration certificate or residence card, provided that the same requirement applies to their own nationals as regards their identity card. In the event of failure to comply with this requirement, Member States may impose the same sanctions as those imposed on their own nationals for failure to carry their identity card.

CHAPTER VI

Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health

Article 27

General principles

1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

3. In order to ascertain whether the person concerned represents a danger for public policy or public security, when issuing the registration certificate or, in the absence of a registration system, not later than three months from the date of arrival of the person concerned on its territory or from the date of reporting his/her presence within the territory, as provided for in Article 5(5), or when issuing the residence card, the host Member State may, should it consider this essential, request the Member State of origin and, if need be, other Member States to provide information concerning any previous police record the person concerned may have. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.

4. The Member State which issued the passport or identity card shall allow the holder of the document who has been expelled on grounds of public policy, public security, or public health from another Member State to re-enter its territory without any formality even if the document is no longer valid or the nationality of the holder is in dispute.

Article 28

Protection against expulsion

1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.

2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.

3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they:
 - (a) have resided in the host Member State for the previous ten years; or

 - (b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.

Article 29

Public health

1. The only diseases justifying measures restricting freedom of movement shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State.
2. Diseases occurring after a three-month period from the date of arrival shall not constitute grounds for expulsion from the territory.
3. Where there are serious indications that it is necessary, Member States may, within three months of the date of arrival, require persons entitled to the right of residence to undergo, free of charge, a medical examination to certify that they are not suffering from any of the conditions referred to in paragraph 1. Such medical examinations may not be required as a matter of routine.

Article 30

Notification of decisions

1. The persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.
2. The persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security.

3. The notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal and, where applicable, the time allowed for the person to leave the territory of the Member State. Save in duly substantiated cases of urgency, the time allowed to leave the territory shall be not less than one month from the date of notification.

Article 31

Procedural safeguards

1. The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health.

2. Where the application for appeal against or judicial review of the expulsion decision is accompanied by an application for an interim order to suspend enforcement of that decision, actual removal from the territory may not take place until such time as the decision on the interim order has been taken, except:

– where the expulsion decision is based on a previous judicial decision; or

- where the persons concerned have had previous access to judicial review; or
 - where the expulsion decision is based on imperative grounds of public security under Article 28(3).
3. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate, particularly in view of the requirements laid down in Article 28.
4. Member States may exclude the individual concerned from their territory pending the redress procedure, but they may not prevent the individual from submitting his/her defence in person, except when his/her appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory.

Article 32

Duration of exclusion orders

1. Persons excluded on grounds of public policy or public security may submit an application for lifting of the exclusion order after a reasonable period, depending on the circumstances, and in any event after three years from enforcement of the final exclusion order which has been validly adopted in accordance with Community law, by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion.

The Member State concerned shall reach a decision on this application within six months of its submission.

2. The persons referred to in paragraph 1 shall have no right of entry to the territory of the Member State concerned while their application is being considered.

Article 33

Expulsion as a penalty or legal consequence

1. Expulsion orders may not be issued by the host Member State as a penalty or legal consequence of a custodial penalty, unless they conform to the requirements of Articles 27, 28 and 29.

2. If an expulsion order, as provided for in paragraph 1, is enforced more than two years after it was issued, the Member State shall check that the individual concerned is currently and genuinely a threat to public policy or public security and shall assess whether there has been any material change in the circumstances since the expulsion order was issued.

CHAPTER VII

Final provisions

Article 34

Publicity

Member States shall disseminate information concerning the rights and obligations of Union citizens and their family members on the subjects covered by this Directive, particularly by means of awareness-raising campaigns conducted through national and local media and other means of communication.

Article 35

Abuse of rights

Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience. Any such measure shall be proportionate and subject to the procedural safeguards provided for in Articles 30 and 31.

Article 36

Sanctions

Member States shall lay down provisions on the sanctions applicable to breaches of national rules adopted for the implementation of this Directive and shall take the measures required for their application. The sanctions laid down shall be effective and proportionate. Member States shall notify the Commission of these provisions not later than* and as promptly as possible in the case of any subsequent changes.

Article 37

More favourable national provisions

The provisions of this Directive shall not affect any laws, regulations or administrative provisions laid down by a Member State which would be more favourable to the persons covered by this Directive.

Article 38

Repeals

1. Articles 10 and 11 of Regulation (EEC) No 1612/68 shall be repealed with effect from ... *.
2. Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC shall be repealed with effect from *.

* Two years from the date of entry into force of this Directive.

3. References made to the repealed provisions and Directives shall be construed as being made to this Directive.

Article 39

Report

No later than.....* the Commission shall submit a report on the application of this Directive to the European Parliament and the Council, together with any necessary proposals, notably on the opportunity to extend the period of time during which Union citizens and their family members may reside in the territory of the host Member State without any conditions. The Member States shall provide the Commission with the information needed to produce the report.

Article 40

Transposition

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

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

* Four years from the date of entry into force of this Directive

** Two years from the date of entry into force of this Directive.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive together with a table showing how the provisions of this Directive correspond to the national provisions adopted.

Article 41

Entry into force

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

Article 42

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 29 April 2004.

For the European Parliament

The President

P. COX

For the Council

The President

M. McDOWELL