



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL on the protection of the environment through criminal law

DIRECTIVE 2008/.../EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

**on the protection of the environment through criminal law
(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

¹ OJ C 10, 15.1.2008, p. 47.

² Opinion of the European Parliament of 21 May 2008 (not yet published in the Official Journal) and Council Decision of

Whereas:

- (1) According to Article 174(2) of the Treaty, Community policy on the environment must aim at a high level of protection.
- (2) The Community is concerned at the rise in environmental offences and at their effects, which are increasingly extending beyond the borders of the States in which the offences are committed. Such offences pose a threat to the environment and therefore call for an appropriate response.
- (3) Experience has shown that the existing systems of penalties have not been sufficient to achieve complete compliance with the laws for the protection of the environment. Such compliance can and should be strengthened by the availability of criminal penalties, which demonstrate a social disapproval of a qualitatively different nature compared to administrative penalties or a compensation mechanism under civil law.
- (4) Common rules on criminal offences make it possible to use effective methods of investigation and assistance within and between Member States.
- (5) In order to achieve effective protection of the environment, there is a particular need for more dissuasive penalties for environmentally harmful activities, which typically cause or are likely to cause substantial damage to the air, including the stratosphere, to soil, water, animals or plants, including to the conservation of species.

- (6) Failure to comply with a legal duty to act can have the same effect as active behaviour and should therefore also be subject to corresponding penalties.
- (7) Therefore, such conduct should be considered a criminal offence throughout the Community when committed intentionally or with serious negligence.
- (8) The legislation listed in the Annexes to this Directive contains provisions which should be subject to criminal law measures in order to ensure that the rules on environmental protection are fully effective.
- (9) The obligations under this Directive only relate to the provisions of the legislation listed in the Annexes to this Directive which entail an obligation for Member States, when implementing that legislation, to provide for prohibitive measures.
- (10) This Directive obliges Member States to provide for criminal penalties in their national legislation in respect of serious infringements of provisions of Community law on the protection of the environment. This Directive creates no obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases.
- (11) This Directive is without prejudice to other systems of liability for environmental damage under Community law or national law.
- (12) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent measures regarding the effective criminal law protection of the environment. Such measures must be compatible with the Treaty.

- (13) Member States should provide information to the Commission on the implementation of this Directive, in order to enable it to evaluate the effect of this Directive.
- (14) Since the objective of this Directive, namely to ensure a more effective protection of the environment, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (15) Whenever subsequent legislation on environmental matters is adopted, it should specify where appropriate that this Directive will apply. Where necessary, Article 3 should be amended.
- (16) This Directive respects the fundamental rights and observes the principles as recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes measures relating to criminal law in order to protect the environment more effectively.

Article 2
Definitions

For the purpose of this Directive:

- (a) "unlawful" means infringing:
- (i) the legislation adopted pursuant to the EC Treaty and listed in Annex A, or
 - (ii) with regard to activities covered by the Euratom Treaty, the legislation adopted pursuant to the Euratom Treaty and listed in Annex B, or
 - (iii) a law, an administrative regulation of a Member State or a decision taken by a competent authority of a Member State that gives effect to the Community legislation referred to in (i) or (ii);
- (b) "protected wild fauna and flora species" are:
- (i) for the purposes of Article 3(f), those listed in:
 - Annex IV to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora¹;
 - Annex I to, and referred to in Article 4(2) of, Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds²;

¹ OJ L 206, 22.7.1992, p. 7.

² OJ L 103, 25.4.1979, p. 1.

- (ii) for the purposes of Article 3(g), those listed in Annex A or B to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein¹;
- (c) "habitat within a protected site" means any habitat of species for which an area is classified as a special protection area pursuant to Article 4(1) or (2) of Directive 79/409/EEC, or any natural habitat or a habitat of species for which a site is designated as a special area of conservation pursuant to Article 4(4) of Directive 92/43/EEC;
- (d) "legal person" means any legal entity having such status under the applicable national law, except for States or public bodies exercising State authority and for public international organisations.

Article 3

Offences

Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:

- (a) the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;

¹ OJ L 61, 3.3.1997, p. 1.

- (b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste¹ and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;
- (d) the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (e) the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;

¹ OJ L 190, 12.7.2006, p. 1.

- (f) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;
- (g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;
- (h) any conduct which causes the significant deterioration of a habitat within a protected site;
- (i) the production, importation, exportation, placing on the market or use of ozone-depleting substances.

Article 4

Inciting, aiding and abetting

Member States shall ensure that inciting, aiding and abetting the intentional conduct referred to in Article 3 is punishable as a criminal offence.

Article 5

Penalties

Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.

Article 6

Liability of legal persons

1. Member States shall ensure that legal persons can be held liable for offences referred to in Articles 3 and 4 where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, based on:
 - (a) a power of representation of the legal person,
 - (b) an authority to take decisions on behalf of the legal person, or
 - (c) an authority to exercise control within the legal person.
2. Member States shall also ensure that legal persons can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offence referred to in Articles 3 and 4 for the benefit of the legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 3 and 4.

Article 7

Penalties for legal persons

Member States shall take the necessary measures to ensure that legal persons held liable pursuant to Article 6 are punishable by effective, proportionate and dissuasive penalties.

Article 8

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 provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive and a table indicating the correlation between those provisions and this Directive.

* 24 months from the date of entry into force of this Directive.

Article 9
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 10
Addressees

This Directive is addressed to the Member States.

Done at,

For the European Parliament
The President

For the Council
The President

ANNEX A

LIST OF COMMUNITY LEGISLATION ADOPTED PURSUANT TO THE EC TREATY, THE INFRINGEMENT OF WHICH CONSTITUTES UNLAWFUL CONDUCT PURSUANT TO ARTICLE 2(a)(i) OF THIS DIRECTIVE

- Council Directive 70/220/EEC of 20 March 1970 on the approximation of the laws of the Member States on measures to be taken against air pollution by emissions from motor vehicles¹;
- Council Directive 72/306/EEC of 2 August 1972 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of pollutants from diesel engines for use in vehicles²;
- Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils³;
- Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water⁴;

¹ OJ L 76, 6.4.1970, p. 1.

² OJ L 190, 20.8.1972, p. 1.

³ OJ L 194, 25.7.1975, p. 23.

⁴ OJ L 31, 5.2.1976, p. 1.

- 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 preparations¹;
- Council Directive 77/537/EEC of 28 June 1977 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of pollutants from diesel engines for use in wheeled agricultural or forestry tractors²;
- Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry³;
- Council Directive 79/117/EEC of 21 December 1978 prohibiting the placing on the market and use of plant protection products containing certain active substances⁴;
- Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds⁵;
- Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry⁶;
- Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges⁷;

¹ OJ L 262, 27.9.1976, p. 201.

² OJ L 220, 29.8.1977, p. 38.

³ OJ L 54, 25.2.1978, p. 19.

⁴ OJ L 33, 8.2.1979, p. 36.

⁵ OJ L 103, 25.4.1979, p. 1.

⁶ OJ L 81, 27.3.1982, p. 29.

⁷ OJ L 291, 24.10.1983, p. 1.

- Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry¹;
- Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants²;
- Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachlorocyclohexane³;
- Council Directive 85/203/EEC of 7 March 1985 on air quality standards for nitrogen dioxide⁴;
- Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture⁵;
- Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC⁶;

¹ OJ L 74, 17.3.1984, p. 49.

² OJ L 188, 16.7.1984, p. 20.

³ OJ L 274, 17.10.1984, p. 11.

⁴ OJ L 87, 27.3.1985, p. 1.

⁵ OJ L 181, 4.7.1986, p. 6.

⁶ OJ L 181, 4.7.1986, p. 16.

- Council Directive 87/217/EEC of 19 March 1987 on the prevention and reduction of environmental pollution by asbestos¹;
- Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms²;
- Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment³;
- Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market⁴;
- Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources⁵;
- Council Directive 91/689/EEC of 12 December 1991 on hazardous waste⁶;
- Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora⁷;

¹ OJ L 85, 28.3.1987, p. 40.

² OJ L 117, 8.5.1990, p. 1.

³ OJ L 135, 30.5.1991, p. 40.

⁴ OJ L 230, 19.8.1991, p. 1.

⁵ OJ L 375, 31.12.1991, p. 1.

⁶ OJ L 377, 31.12.1991, p. 20.

⁷ OJ L 206, 22.7.1992, p. 7.

- Council Directive 92/112/EEC of 15 December 1992 on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry¹;
- Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft²: the provisions amended by Directive 2003/44/EC;
- European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste³;
- European Parliament and Council Directive 94/63/EC of 20 December 1994 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations⁴;
- Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail⁵;
- Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT)⁶;
- Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management⁷;

¹ OJ L 409, 31.12.1992, p. 11.

² OJ L 214, 26.8.2003, p. 18.

³ OJ L 365, 31.12.1994, p. 10.

⁴ OJ L 365, 31.12.1994, p. 24.

⁵ OJ L 235, 17.9.1996, p. 25.

⁶ OJ L 243, 24.9.1996, p. 31.

⁷ OJ L 296, 21.11.1996, p. 55.

- Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances¹;
- Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery²;
- Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein³;
- Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market⁴;
- Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels⁵;
- Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption⁶;

¹ OJ L 10, 14.1.1997, p. 13.

² OJ L 59, 27.2.1998, p. 1.

³ OJ L 61, 3.3.1997, p. 1.

⁴ OJ L 123, 24.4.1998, p. 1.

⁵ OJ L 350, 28.12.1998, p. 58.

⁶ OJ L 330, 5.12.1998, p. 32.

- Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations¹;
- Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air²;
- Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste³;
- Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels⁴;
- Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end of life vehicles⁵;
- Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy⁶;

¹ OJ L 85, 29.3.1999, p. 1.

² OJ L 163, 29.6.1999, p. 41.

³ OJ L 182, 16.7.1999, p. 1.

⁴ OJ L 121, 11.5.1999, p. 13.

⁵ OJ L 269, 21.10.2000, p. 34.

⁶ OJ L 327, 22.12.2000, p. 1.

- Directive 2000/69/EC of the European Parliament and of the Council of 16 November 2000 relating to limit values for benzene and carbon monoxide in ambient air¹;
- Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste²;
- Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer³;
- Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms⁴;
- Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants⁵;
- Directive 2002/3/EC of the European Parliament and of the Council of 12 February 2002 relating to ozone in ambient air⁶;

¹ OJ L 313, 13.12.2000, p. 12.

² OJ L 332, 28.12.2000, p. 91.

³ OJ L 244, 29.9.2000, p. 1.

⁴ OJ L 106, 17.4.2001, p. 1.

⁵ OJ L 309, 27.11.2001, p. 1.

⁶ OJ L 67, 9.3.2002, p. 14.

- Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment¹;
- Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE)²;
- Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air³;
- Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents⁴;
- Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants⁵;

¹ OJ L 37, 13.2.2003, p. 19.

² OJ L 37, 13.2.2003, p. 24.

³ OJ L 23, 26.1.2005, p. 3.

⁴ OJ L 104, 8.4.2004, p. 1.

⁵ OJ L 158, 30.4.2004, p. 7.

- Directive 2005/55/EC of the European Parliament and of the Council of 28 September 2005 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles¹;
- Commission Directive 2005/78/EC of 14 November 2005 implementing Directive 2005/55/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles and amending Annexes I, II, III, IV and VI thereto²;
- Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality³;
- Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community⁴;

¹ OJ L 275, 20.10.2005, p. 1.

² OJ L 313, 29.11.2005, p. 1.

³ OJ L 64, 4.3.2006, p. 37.

⁴ OJ L 64, 4.3.2006, p. 52.

- Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste¹;
- Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries²;
- Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air conditioning systems in motor vehicles³;
- Directive 2006/44/EC of the European Parliament and of the Council of 6 September 2006 on the quality of fresh waters needing protection or improvement in order to support fish life⁴;
- Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators⁵;
- Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration⁶;

¹ OJ L 114, 27.4.2006, p. 9.
² OJ L 102, 11.4.2006, p. 15.
³ OJ L 161, 14.6.2006, p. 12.
⁴ OJ L 264, 25.9.2006, p. 20.
⁵ OJ L 266, 26.9.2006, p. 1.
⁶ OJ L 372, 27.12.2006, p. 19.

- Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases¹;
- Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste²;
- Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information³;
- Commission Regulation (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply⁴;
- Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control⁵.

¹ OJ L 161, 14.6.2006, p. 1.

² OJ L 190, 12.7.2006, p. 1.

³ OJ L 171, 29.6.2007, p. 1.

⁴ OJ L 316, 4.12.2007, p. 6.

⁵ OJ L 24, 29.1.2008, p. 8.

ANNEX B

LIST OF COMMUNITY LEGISLATION ADOPTED PURSUANT TO THE EURATOM
TREATY,
THE INFRINGEMENT OF WHICH CONSTITUTES UNLAWFUL CONDUCT
PURSUANT TO ARTICLE 2(a)(ii) OF THIS DIRECTIVE

- Council Directive 96/29/EURATOM of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation¹;
- Council Directive 2003/122/EURATOM of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources²;
- Council Directive 2006/117/EURATOM of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel³.

¹ OJ L 159, 29.6.1996, p. 1.
² OJ L 346, 31.12.2003, p. 57.
³ OJ L 337, 5.12.2006, p. 21.