Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells

DIRECTIVE 2004/23/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 31 March 2004

on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152(4)(a) thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Following consultation of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) The transplantation of human tissues and cells is a strongly expanding field of medicine offering great opportunities for the treatment of as yet incurable diseases. The quality and safety of these substances should be ensured, particularly in order to prevent the transmission of diseases.

(2) The availability of human tissues and cells used for therapeutic purposes is dependent on Community citizens who are prepared to donate them. In order to safeguard public health and to prevent the transmission of infectious diseases by these tissues and cells, all safety measures need to be taken during their donation, procurement, testing, processing, preservation, storage, distribution and use.

(3) It is necessary to promote information and awareness campaigns at national and European level on the donation of tissues, cells and organs based on the theme ‘we are all potential donors’. The aim of these campaigns should be to help European citizens decide to become donors during their lifetime and let their families or legal representatives know their wishes. As there is a need to ensure the availability of tissues and cells for medical treatments, Member States should promote the donation of tissues and cells, including haematopoietic progenitors, of high quality and safety, thereby also increasing self-sufficiency in the Community.

(4) There is an urgent need for a unified framework in order to ensure high standards of quality and safety with respect to the procurement, testing, processing, storage and distribution of tissues and cells across the Community and to facilitate exchanges

thereof for patients receiving this type of therapy each year. It is essential, therefore, that Community provisions ensure that human tissues and cells, whatever their intended use, are of comparable quality and safety. The establishment of such standards, therefore, will help to reassure the public that human tissues and cells that are procured in another Member State, nonetheless carry the same guarantees as those in their own country.

(5) As tissue and cell therapy is a field in which an intensive worldwide exchange is taking place, it is desirable to have worldwide standards. The Community should therefore endeavour to promote the highest possible level of protection to safeguard public health regarding quality and safety of tissues and cells. The Commission should include in its report to the European Parliament and to the Council information on the progress made in this respect.

(6) Tissues and cells intended to be used for industrially manufactured products, including medical devices, should be covered by this Directive only as far as donation, procurement and testing are concerned, where the processing, preservation, storage and distribution are regulated by other Community legislation. The further manufacturing steps are covered by Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use[(4)].

(7) This Directive should apply to tissues and cells including haematopoietic peripheral blood, umbilical-cord (blood) and bone-marrow stem cells, reproductive cells (eggs, sperm), foetal tissues and cells and adult and embryonic stem cells.

(8) This Directive excludes blood and blood products (other than haematopoietic progenitor cells) and human organs, as well as organs, tissues, or cells of animal origin. Blood and blood products are currently regulated by Directives 2001/83/EC and 2000/70/EC[(5)], Recommendation 98/463/EC[(6)] and Directive 2002/98/EC[(7)]. Tissues and cells used as an autologous graft (tissues removed and transplanted back to the same individual), within the same surgical procedure and without being subjected to any banking process, are also excluded from this Directive. The quality and safety considerations associated with this process are completely different.

(9) The use of organs to some extent raises the same issues as the use of tissues and cells, though there are serious differences, and the two subjects should therefore not be covered by one directive.

(10) This Directive covers tissues and cells intended for human applications, including human tissues and cells used for the preparation of cosmetic products. However, in view of the risk of transmission of communicable diseases, the use of human cells, tissues and products in cosmetic products is prohibited by Commission Directive 95/34/EC of 10 July 1995 adapting to technical progress Annexes II, III, VI and VII to Council Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products[(8)].

(11) This Directive does not cover research using human tissues and cells, such as when used for purposes other than application to the human body, e.g. *in vitro* research or in animal

models. Only those cells and tissues that in clinical trials are applied to the human body should comply with the quality and safety standards laid down in this Directive.

(12) This Directive should not interfere with decisions made by Member States concerning the use or non-use of any specific type of human cells, including germ cells and embryonic stem cells. If, however, any particular use of such cells is authorised in a Member State, this Directive will require the application of all provisions necessary to protect public health, given the specific risks of these cells based on the scientific knowledge and their particular nature, and guarantee respect for fundamental rights. Moreover, this Directive should not interfere with provisions of Member States defining the legal term ‘person’ or ‘individual’.

(13) The donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells intended for human applications should comply with high standards of quality and safety in order to ensure a high level of health protection in the Community. This Directive should establish standards for each one of the steps in the human tissues and cells application process.

(14) The clinical use of tissues and cells of human origin for human application may be constrained by limited availability. Therefore it would be desirable that the criteria for access to such tissues and cells are defined in a transparent manner, on the basis of an objective evaluation of medical needs.

(15) It is necessary to increase confidence among the Member States in the quality and safety of donated tissues and cells, in the health protection of living donors and respect for deceased donors and in the safety of the application process.

(16) Tissues and cells used for allogeneic therapeutic purposes can be procured from both living and deceased donors. In order to ensure that the health status of a living donor is not affected by the donation, a prior medical examination should be required. The dignity of the deceased donor should be respected, notably through the reconstruction of the donor's body, so that it is as similar as possible to its original anatomical shape.

(17) The use of tissues and cells for application in the human body can cause diseases and unwanted effects. Most of these can be prevented by careful donor evaluation and the testing of each donation in accordance with rules established and updated according to the best available scientific advice.

(18) As a matter of principle, tissue and cell application programmes should be founded on the philosophy of voluntary and unpaid donation, anonymity of both donor and recipient, altruism of the donor and solidarity between donor and recipient. Member States are urged to take steps to encourage a strong public and non-profit sector involvement in the provision of tissue and cell application services and the related research and development.

(19) Voluntary and unpaid tissue and cell donations are a factor which may contribute to high safety standards for tissues and cells and therefore to the protection of human health.

(20) Any establishment may also be accredited as a tissue and cell establishment, provided it complies with the standards.

(21) With due regard to the principle of transparency, all tissue establishments accredited, designated, authorised or licensed under the provisions of this Directive, including those manufacturing products from human tissues and cells, whether subject or not to other Community legislation, should have access to relevant tissues and cells procured in accordance with the provisions of this Directive, without prejudice to the provisions in force in Member States on the use of tissues and cells.

(22) This Directive respects the fundamental rights and observes the principles reflected in the Charter of Fundamental Rights of the European Union[9] and takes into account as appropriate the Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine: Convention on human rights and biomedicine. Neither the Charter nor the Convention makes express provision for harmonisation or prevents Member States from introducing more stringent requirements in their legislation.

(23) All necessary measures need to be taken in order to provide prospective donors of tissues and cells with assurances regarding the confidentiality of any health-related information provided to the authorised personnel, the results of tests on their donations, as well as any future traceability of their donation.

(24) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data[10] applies to personal data processed in application of this Directive. Article 8 of that directive prohibits in principle the processing of data concerning health. Limited exemptions to this prohibition principle are laid down. Directive 95/46/EC also provides for the controller to implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing.

(25) An accreditation system for tissue establishments and a system for notification of adverse events and reactions linked to the procurement, testing, processing, preservation, storage and distribution of human tissues and cells should be established in the Member States.

(26) Member States should organise inspections and control measures, to be carried out by officials representing the competent authority, to ensure that tissue establishments comply with the provisions of this Directive. Member States should ensure that the officials involved in inspections and control measures are appropriately qualified and receive adequate training.

(27) Personnel directly involved in the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells should be appropriately qualified and provided with timely and relevant training. The provisions laid down in this Directive as regards training should be applicable without prejudice to existing Community legislation on the recognition of professional qualifications.

(28) An adequate system to ensure the traceability of human tissues and cells should be established. This would also make it possible to verify compliance with quality and

safety standards. Traceability should be enforced through accurate substance, donor, recipient, tissue establishment and laboratory identification procedures as well as record maintenance and an appropriate labelling system.

(29) As a general principle, the identity of the recipient(s) should not be disclosed to the donor or his/her family and vice versa, without prejudice to legislation in force in Member States on the conditions of disclosure, which could authorise in exceptional cases, notably in the case of gametes donation, the lifting of donor anonymity.

(30) In order to increase the effective implementation of the provisions adopted in accordance with this Directive, it is appropriate to provide for penalties to be applied by Member States.

(31) Since the objective of this Directive, namely to set high standards of quality and safety for human tissues and cells throughout the Community, cannot be sufficiently achieved by the Member States and can therefore, by reason of scale and effects, 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.

(32) It is necessary that the best possible scientific advice is available to the Community in relation to the safety of tissues and cells; in particular in order to assist the Commission in adapting the provisions of this Directive to scientific and technical progress in the light of the rapid advance in biotechnology knowledge and practice in the field of human tissues and cells.

(33) The opinions of the Scientific Committee for Medicinal Products and Medical Devices and that of the European Group on Ethics in Science and New Technologies have been taken into account, as well as international experience in this field, and will be sought in the future whenever necessary.

(34) The measures necessary for the implementation of this Directive 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[(11)],

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Objective

This Directive lays down standards of quality and safety for human tissues and cells intended for human applications, in order to ensure a high level of protection of human health.

Article 2

Scope

1 This Directive shall apply to the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells intended for human applications and of manufactured products derived from human tissues and cells intended for human applications.

Where such manufactured products are covered by other directives, this Directive shall apply only to donation, procurement and testing.

2 This Directive shall not apply to:

a tissues and cells used as an autologous graft within the same surgical procedure;

b blood and blood components as defined by Directive 2002/98/EC;

c organs or parts of organs if it is their function to be used for the same purpose as the entire organ in the human body.

Article 3

Definitions

For the purposes of this Directive:

(a) ‘cells’ means individual human cells or a collection of human cells when not bound by any form of connective tissue;

(b) ‘tissue’ means all constituent parts of the human body formed by cells;

(c) ‘donor’ means every human source, whether living or deceased, of human cells or tissues;

(d) ‘donation’ means donating human tissues or cells intended for human applications;

(e) ‘organ’ means a differentiated and vital part of the human body, formed by different tissues, that maintains its structure, vascularisation and capacity to develop physiological functions with an important level of autonomy;

(f) ‘procurement’ means a process by which tissue or cells are made available;

(g) ‘processing’ means all operations involved in the preparation, manipulation, preservation and packaging of tissues or cells intended for human applications;

(h) ‘preservation’ means the use of chemical agents, alterations in environmental conditions or other means during processing to prevent or retard biological or physical deterioration of cells or tissues;

(i) ‘quarantine’ means the status of retrieved tissue or cells, or tissue isolated physically or by other effective means, whilst awaiting a decision on their acceptance or rejection;

(j) ‘storage’ means maintaining the product under appropriate controlled conditions until distribution;

(k) ‘distribution’ means transportation and delivery of tissues or cells intended for human applications;

(l) 'human application' means the use of tissues or cells on or in a human recipient and extracorporal applications;

(m) 'serious adverse event' means any untoward occurrence associated with the procurement, testing, processing, storage and distribution of tissues and cells that might lead to the transmission of a communicable disease, to death or life-threatening, disabling or incapacitating conditions for patients or which might result in, or prolong, hospitalisation or morbidity;

(n) 'serious adverse reaction' means an unintended response, including a communicable disease, in the donor or in the recipient associated with the procurement or human application of tissues and cells that is fatal, life-threatening, disabling, incapacitating or which results in, or prolongs, hospitalisation or morbidity;

(o) 'tissue establishment' means a tissue bank or a unit of a hospital or another body where activities of processing, preservation, storage or distribution of human tissues and cells are undertaken. It may also be responsible for procurement or testing of tissues and cells;

(p) 'allogeneic use' means cells or tissues removed from one person and applied to another;

(q) 'autologous use' means cells or tissues removed from and applied in the same person.

Article 4

Implementation

1 Member States shall designate the competent authority or authorities responsible for implementing the requirements of this Directive.

2 This Directive shall not prevent a Member State from maintaining or introducing more stringent protective measures, provided that they comply with the provisions of the Treaty.

In particular, a Member State may introduce requirements for voluntary unpaid donation, which include the prohibition or restriction of imports of human tissues and cells, to ensure a high level of health protection, provided that the conditions of the Treaty are met.

3 This Directive does not affect the decisions of the Member States prohibiting the donation, procurement, testing, processing, preservation, storage, distribution or use of any specific type of human tissues or cells or cells from any specified source, including where those decisions also concern imports of the same type of human tissues or cells.

4 In carrying out the activities covered by this Directive, the Commission may have recourse to technical and/or administrative assistance to the mutual benefit of the Commission and of the beneficiaries, relating to identification, preparation, management, monitoring, audit and control, as well as to support expenditure.

CHAPTER II

OBLIGATIONS ON MEMBER STATES' AUTHORITIES

Article 5

Supervision of human tissue and cell procurement

1 Member States shall ensure that tissue and cell procurement and testing are carried out by persons with appropriate training and experience and that they take place in conditions accredited, designated, authorised or licensed for that purpose by the competent authority or authorities.

2 The competent authority or authorities shall take all necessary measures to ensure that tissue and cell procurement complies with the requirements referred to in Article 28(b), (e) and (f). The tests required for donors shall be carried out by a qualified laboratory accredited, designated, authorised or licensed by the competent authority or authorities.

Article 6

Accreditation, designation, authorisation or licensing of tissue establishments and tissue and cell preparation processes

1 Member States shall ensure that all tissue establishments where activities of testing, processing, preservation, storage or distribution of human tissues and cells intended for human applications are undertaken have been accredited, designated, authorised or licensed by a competent authority for the purpose of those activities.

2 The competent authority or authorities, having verified that the tissue establishment complies with the requirements referred to in Article 28(a), shall accredit, designate, authorise or license the tissue establishment and indicate which activities it may undertake and which conditions apply. It or they shall authorise the tissue and cell preparation processes which the tissue establishment may carry out in accordance with the requirements referred to in Article 28(g). Agreements between tissue establishments and third parties, as referred to in Article 24, shall be examined within the framework of this procedure.

3 The tissue establishment shall not undertake any substantial changes to its activities without the prior written approval of the competent authority or authorities.

4 The competent authority or authorities may suspend or revoke the accreditation, designation, authorisation or licensing of a tissue establishment or of a tissue or cell preparation process if inspections or control measures demonstrate that such an establishment or process does not comply with the requirements of this Directive.

5 Some specified tissues and cells, which will be determined in accordance with the requirements referred to in Article 28(i), may, with the agreement of the competent authority or authorities, be distributed directly for immediate transplantation to the recipient as long as the supplier is provided with an accreditation, designation, authorisation or licence for this activity.

Article 7

Inspections and control measures

1 Member States shall ensure that the competent authority or authorities organise inspections and that tissue establishments carry out appropriate control measures in order to ensure compliance with the requirements of this Directive.

2 Member States shall also ensure that appropriate control measures are in place for the procurement of human tissues and cells.

3 Inspections shall be organised and control measures shall be carried out by the competent authority or authorities on a regular basis. The interval between two inspections shall not exceed two years.

4 Such inspections and control measures shall be carried out by officials representing the competent authority, who shall be empowered to:

a inspect tissue establishments and the facilities of any third parties as specified in Article 24;

b evaluate and verify the procedures and the activities carried out in tissue establishments and the facilities of third parties that are relevant to the requirements of this Directive;

c examine any documents or other records relating to the requirements of this Directive.

5 Guidelines concerning the conditions of the inspections and control measures, and on the training and qualification of the officials involved in order to reach a consistent level of competence and performance, shall be established in accordance with the procedure referred to in Article 29(2).

6 The competent authority or authorities shall organise inspections and carry out control measures as appropriate whenever there is any serious adverse reaction or serious adverse event. In addition, such an inspection shall be organised and control measures shall be carried out at the duly justified request of the competent authority or authorities in another Member State in any such case.

7 Member States shall, upon the request of another Member State or the Commission, provide information on the results of inspections and control measures carried out in relation to the requirements of this Directive.

Article 8

Traceability

1 Member States shall ensure that all tissues and cells procured, processed, stored or distributed on their territory can be traced from the donor to the recipient and vice versa. This traceability shall also apply to all relevant data relating to products and materials coming into contact with these tissues and cells.

2 Member States shall ensure the implementation of a donor identification system which assigns a unique code to each donation and to each of the products associated with it.

3 All tissues and cells must be identified with a label that contains the information or references allowing a link to the information referred to in Article 28(f) and (h).

4 Tissue establishments shall keep the data necessary to ensure traceability at all stages. Data required for full traceability shall be kept for a minimum of 30 years after clinical use. Data storage may also be in electronic form.

[F1 5 The traceability requirements for tissues and cells, as well as for products and materials coming into contact with those tissues and cells and having an effect on their quality and safety, shall be adopted by the Commission. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 29(3).**]**

[F1 6 The procedures for ensuring traceability at Community level shall be established by the Commission. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 29(3).**]**

Textual Amendments

F1 Substituted by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny Adaptation to the regulatory procedure with scrutiny — Part Four.

Article 9

Import/export of human tissues and cells

1 Member States shall take all necessary measures to ensure that all imports of tissues and cells from third countries are undertaken by tissue establishments accredited, designated, authorised or licensed for the purpose of those activities, and that imported tissues and cells can be traced from the donor to the recipient and vice versa in accordance with the procedures referred to in Article 8. Member States and tissue establishments that receive such imports from third countries shall ensure that they meet standards of quality and safety equivalent to the ones laid down in this Directive.

2 Member States shall take all necessary measures to ensure that all exports of tissues and cells to third countries are undertaken by tissue establishments accredited, designated, authorised or licensed for the purpose of those activities. Those Member States that send such exports to third countries shall ensure that the exports comply with the requirements of this Directive.

3

a The import or export of tissues and cells referred to in Article 6(5) may be authorised directly by the competent authority or authorities.

b In case of emergency, the import or export of certain tissues and cells may be authorised directly by the competent authority or authorities.

c The competent authority or authorities shall take all necessary measures to ensure that imports and exports of tissues and cells referred to in subparagraphs (a) and (b) meet quality and safety standards equivalent to those laid down in this Directive.

[F1 4 The procedures for verifying the equivalent standards of quality and safety in accordance with paragraph 1 shall be established by the Commission Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 29(3).**]**

Textual Amendments

F1 Substituted by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny Adaptation to the regulatory procedure with scrutiny — Part Four.

Article 10

Register of tissue establishments and reporting obligations

1 Tissue establishments shall keep a record of their activities, including the types and quantities of tissues and/or cells procured, tested, preserved, processed, stored and distributed, or otherwise disposed of, and on the origin and destination of the tissues and cells intended for human applications, in accordance with the requirements referred to in Article 28(f). They shall submit to the competent authority or authorities an annual report on these activities. This report shall be publicly accessible.

2 The competent authority or authorities shall establish and maintain a publicly accessible register of tissue establishments specifying the activities for which they have been accredited, designated, authorised or licensed.

3 Member States and the Commission shall establish a network linking the national tissue establishment registers.

Article 11

Notification of serious adverse events and reactions

1 Member States shall ensure that there is a system in place to report, investigate, register and transmit information about serious adverse events and reactions which may influence the quality and safety of tissues and cells and which may be attributed to the procurement, testing, processing, storage and distribution of tissues and cells, as well as any serious adverse reaction observed during or after clinical application which may be linked to the quality and safety of tissues and cells.

2 All persons or establishments using human tissues and cells regulated by this Directive shall report any relevant information to establishments engaged in the donation, procurement, testing, processing, storage and distribution of human tissues and cells in order to facilitate traceability and ensure quality and safety control.

3 The responsible person referred to in Article 17 shall ensure that the competent authority or authorities is or are notified of any serious adverse events and reactions referred to in paragraph 1 and is or are provided with a report analysing the cause and the ensuing outcome.

4 The procedure for notifying serious adverse events and reactions shall be established by the Commission, in accordance with the procedure referred to in Article 29(2).

5 Each tissue establishment shall ensure that an accurate, rapid and verifiable procedure is in place which will enable it to recall from distribution any product which may be related to an adverse event or reaction.

CHAPTER III

DONOR SELECTION AND EVALUATION

Article 12

Principles governing tissue and cell donation

1 Member States shall endeavour to ensure voluntary and unpaid donations of tissues and cells.

Donors may receive compensation, which is strictly limited to making good the expenses and inconveniences related to the donation. In that case, Member States define the conditions under which compensation may be granted.

Member States shall report to the Commission on these measures before 7 April 2006 and thereafter every three years. On the basis of these reports the Commission shall inform the European Parliament and the Council of any necessary further measures it intends to take at Community level.

2 Member States shall take all necessary measures to ensure that any promotion and publicity activities in support of the donation of human tissues and cells comply with guidelines or legislative provisions laid down by the Member States. Such guidelines or legislative provisions shall include appropriate restrictions or prohibitions on advertising the need for, or availability of, human tissues and cells with a view to offering or seeking financial gain or comparable advantage.

Member States shall endeavour to ensure that the procurement of tissues and cells as such is carried out on a non-profit basis.

Article 13

Consent

1 The procurement of human tissues or cells shall be authorised only after all mandatory consent or authorisation requirements in force in the Member State concerned have been met.

2 Member States shall, in keeping with their national legislation, take all necessary measures to ensure that donors, their relatives or any persons granting authorisation on behalf of the donors are provided with all appropriate information as referred to in the Annex.

Article 14

Data protection and confidentiality

1 Member States shall take all necessary measures to ensure that all data, including genetic information, collated within the scope of this Directive and to which third parties have access, have been rendered anonymous so that neither donors nor recipients remain identifiable.

2 For that purpose, they shall ensure that:

a data security measures are in place, as well as safeguards against any unauthorised data additions, deletions or modifications to donor files or deferral records, and transfer of information;

b procedures are in place to resolve data discrepancies; and

c no unauthorised disclosure of information occurs, whilst guaranteeing the traceability of donations.

3 Member States shall take all necessary measures to ensure that the identity of the recipient(s) is not disclosed to the donor or his family and vice versa, without prejudice to legislation in force in Member States on the conditions for disclosure, notably in the case of gametes donation.

Article 15

Selection, evaluation and procurement

1 The activities related to tissue procurement shall be carried out in such a way as to ensure that donor evaluation and selection is carried out in accordance with the requirements referred to in Article 28(d) and (e) and that the tissues and cells are procured, packaged and transported in accordance with the requirements referred to in Article 28(f).

2 In the case of an autologous donation, the suitability criteria shall be established in accordance with the requirements referred to in Article 28(d).

3 The results of the donor evaluation and testing procedures shall be documented and any major anomalies shall be reported in accordance with the requirements referred to in the Annex.

4 The competent authority or authorities shall ensure that all activities related to tissue procurement are carried out in accordance with the requirements referred to in Article 28(f).

CHAPTER IV

PROVISIONS ON THE QUALITY AND SAFETY OF TISSUES AND CELLS

Article 16

Quality management

1 Member States shall take all necessary measures to ensure that each tissue establishment puts in place and updates a quality system based on the principles of good practice.

2 The Commission shall establish the Community standards and specifications referred to in Article 28(c) for activities relating to a quality system.

3 Tissue establishments shall take all necessary measures to ensure that the quality system includes at least the following documentation:

— standard operating procedures,

— guidelines,

— training and reference manuals,

— reporting forms,

— donor records,

— information on the final destination of tissues or cells.

4 Tissue establishments shall take all necessary measures to ensure that this documentation is available for inspection by the competent authority or authorities.

5 Tissue establishments shall keep the data necessary to ensure traceability in accordance with Article 8.

Article 17

Responsible person

1 Every tissue establishment shall designate a responsible person who shall at least fulfil the following conditions and have the following qualifications:

a possession of a diploma, certificate or other evidence of formal qualifications in the field of medical or biological sciences awarded on completion of a university course of study or a course recognised as equivalent by the Member State concerned;

b at least two years' practical experience in the relevant fields.

2 The person designated in paragraph 1 shall be responsible for:

a ensuring that human tissues and cells intended for human applications in the establishment for which that person is responsible are procured, tested, processed, stored and distributed in accordance with this Directive and with the laws in force in the Member State;

b providing information to the competent authority or authorities as required in Article 6;

c implementing the requirements of Articles 7, 10, 11, 15, 16 and 18 to 24 within the tissue establishment.

3 Tissue establishments shall inform the competent authority or authorities of the name of the responsible person referred to in paragraph 1. Where the responsible person is permanently or temporarily replaced, the tissue establishment shall immediately inform the competent authority of the name of the new responsible person and the date on which the duties of that person commence.

Article 18

Personnel

Personnel directly involved in activities relating to the procurement, processing, preservation, storage and distribution of tissues and cells in a tissue establishment shall be qualified to perform such tasks and shall be provided with the training referred to in Article 28(c).

Article 19

Tissue and cell reception

1 Tissue establishments shall ensure that all donations of human tissues and cells are subjected to tests in accordance with the requirements referred to Article 28(e) and that the selection and acceptance of tissues and cells comply with the requirements referred to in Article 28(f).

2 Tissue establishments shall ensure that human tissue and cells and associated documentation comply with the requirements referred to in Article 28(f).

3 Tissue establishments shall verify and record the fact that the packaging of human tissue and cells received complies with the requirements referred to in Article 28(f). All tissues and cells that do not comply with those provisions shall be discarded.

4 The acceptance or rejection of received tissues/cells shall be documented.

5 Tissue establishments shall ensure that human tissues and cells are correctly identified at all times. Each delivery or batch of tissues or cells shall be assigned an identifying code, in accordance with Article 8.

6 Tissue and cells shall be held in quarantine until such time as the requirements relating to donor testing and information have been met in accordance with Article 15.

Article 20

Tissue and cell processing

1 Tissue establishments shall include in their standard operating procedures all processes that affect quality and safety and shall ensure that they are carried out under controlled conditions. Tissue establishments shall ensure that the equipment used, the working environment and process design, validation and control conditions are in compliance with the requirements referred to in Article 28(h).

2 Any modifications to the processes used in the preparation of tissues and cells shall also meet the criteria laid down in paragraph 1.

3 Tissue establishments shall include in their standard operating procedures special provisions for the handling of tissues and cells to be discarded, in order to prevent the contamination of other tissues or cells, the processing environment or personnel.

Article 21

Tissue and cell storage conditions

1 Tissue establishments shall ensure that all procedures associated with the storage of tissues and cells are documented in the standard operating procedures and that the storage conditions comply with the requirements referred to in Article 28(h).

2 Tissue establishments shall ensure that all storage processes are carried out under controlled conditions.

3 Tissue establishments shall establish and apply procedures for the control of packaging and storage areas, in order to prevent any situation arising that might adversely affect the functioning or integrity of tissues and cells.

4 Processed tissues or cells shall not be distributed until all the requirements laid down in this Directive have been met.

5 Member States shall ensure that tissue establishments have agreements and procedures in place to ensure that, in the event of termination of activities for whatever reason, stored tissues and cells shall be transferred to other tissue establishment or establishments accredited, designated, authorised or licensed in accordance with Article 6, without prejudice to Member States' legislation concerning the disposal of donated tissues or cells, according to the consent pertaining to them.

Article 22

Labelling, documentation and packaging

Tissue establishments shall ensure that labelling, documentation and packaging conform to the requirements referred to in Article 28(f).

Article 23

Distribution

Tissue establishments shall ensure the quality of tissues and cells during distribution. Distribution conditions shall comply with the requirements referred to in Article 28(h).

Article 24

Relations between tissue establishments and third parties

1 Tissue establishments shall establish written agreements with a third party each time an external activity takes place which influences the quality and safety of tissues and cells processed in cooperation with a third party, and in particular in the following circumstances:

a where a tissue establishment entrusts one of the stages of tissue or cell processing to a third party;

b where a third party provides goods and services that affect tissue or cell quality and safety assurance, including their distribution;

c where a tissue establishment provides services to a tissue establishment which is not accredited;

d where a tissue establishment distributes tissue or cells processed by third parties.

2 Tissue establishments shall evaluate and select third parties on the basis of their ability to meet the standards laid down in this Directive.

3 Tissue establishments shall keep a complete list of the agreements referred to in paragraph 1 that they have established with third parties.

4 Agreements between tissue establishments and third parties shall specify the responsibilities of the third parties and detailed procedures.

5 Tissue establishments shall provide copies of agreements with third parties at the request of the competent authority or authorities.

CHAPTER V

EXCHANGE OF INFORMATION, REPORTS AND PENALTIES

Article 25

Coding of information

1 Member States shall establish a system for the identification of human tissues and cells, in order to ensure the traceability of all human tissues and cells pursuant to Article 8.

2 The Commission, in cooperation with the Member States, shall design a single European coding system to provide information on the main characteristics and properties of tissues and cells.

Article 26

Reports

1 Member States shall send the Commission, before 7 April 2009 and every three years thereafter, a report on the activities undertaken in relation to the provisions of this Directive, including an account of the measures taken in relation to inspection and control.

2 The Commission shall transmit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions the reports submitted by the Member States on experience gained in implementing this Directive.

3 Before 7 April 2008 and every three years thereafter, the Commission shall transmit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the implementation of the requirements of this Directive, in particular as regards inspection and monitoring.

Article 27

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 7 April 2006 and shall notify it without delay of any subsequent amendments affecting them.

CHAPTER VI

CONSULTATION OF COMMITTEES

Article 28

Technical requirements and their adaptation to scientific and technical progress

[[F1]The following technical requirements and their adaptation to scientific and technical progress shall be decided by the Commission:**]**

(a) requirements for the accreditation, designation, authorisation or licensing of tissue establishments;

(b) requirements for the procurement of human tissues and cells;

(c) quality system, including training;

(d) selection criteria for the donor of tissues and/or cells;

(e) laboratory tests required for donors;

(f) cell and/or tissue procurement procedures and reception at the tissue establishment;

(g) requirements for the tissue and cell preparation process;

(h) tissue and cell processing, storage and distribution;

(i) requirements for the direct distribution to the recipient of specific tissues and cells.

[[F2]Technical requirements referred to in points (a) to (i), being measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 29(3).

On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 29(4) as regards technical requirements referred to in points (d) and (e) of this Article.**]**

Textual Amendments

F1 Substituted by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny Adaptation to the regulatory procedure with scrutiny — Part Four.

F2 Inserted by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny Adaptation to the regulatory procedure with scrutiny — Part Four.

Article 29

Committee

1 The Commission shall be assisted by a Committee.

2 Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

[[F1]3 Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.**]**

[[F2]4 Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.**]**

Textual Amendments

F1 Substituted by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny Adaptation to the regulatory procedure with scrutiny — Part Four.

F2 Inserted by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny Adaptation to the regulatory procedure with scrutiny — Part Four.

Article 30

Consultation of one or more scientific committees

The Commission may consult the relevant scientific committee(s) when defining or adapting the technical requirements referred to in Article 28 to scientific and technical progress.

CHAPTER VII

FINAL PROVISIONS

Article 31

Transposition

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 7 April 2006. They shall forthwith inform the Commission thereof.

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

2 Member States may decide for one year after the date laid down in the first subparagraph of paragraph 1 not to apply the requirements of this Directive to tissue establishments bound by national provisions before the entry into force of this Directive.

3 Member States shall communicate to the Commission the texts of the provisions of national law that they have already adopted or which they adopt in the field governed by this Directive.

Article 32

Entry into force

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

Article 33

Addressees

This Directive is addressed to the Member States.

ANNEX

INFORMATION TO BE PROVIDED ON THE DONATION OF CELLS AND/OR TISSUES

A.Living donors

1. The person in charge of the donation process shall ensure that the donor has been properly informed of at least those aspects relating to the donation and procurement process outlined in paragraph 3. Information must be given prior to the procurement.

2. The information must be given by a trained person able to transmit it in an appropriate and clear manner, using terms that are easily understood by the donor.

3. The information must cover: the purpose and nature of the procurement, its consequences and risks; analytical tests, if they are performed; recording and protection of donor data, medical confidentiality; therapeutic purpose and potential benefits and information on the applicable safeguards intended to protect the donor.

4. The donor must be informed that he/she has the right to receive the confirmed results of the analytical tests, clearly explained.

5. Information must be given on the necessity for requiring the applicable mandatory consent, certification and authorisation in order that the tissue and/or cell procurement can be carried out.

B. Deceased donors

1. All information must be given and all necessary consents and authorisations must be obtained in accordance with the legislation in force in Member States.

2. The confirmed results of the donor's evaluation must be communicated and clearly explained to the relevant persons in accordance with the legislation in Member States.

(**1**) OJ C 227 E, 24.9.2002, p. 505.

(**2**) OJ C 85, 8.4.2003, p. 44.

(**3**) Opinion of the European Parliament of 10 April 2003 (not yet published in the Official Journal), Council common position of 22 July 2003 (OJ C 240 E, 7.10.2003, p. 3), position of the European Parliament of 16 December 2003 (not yet published in the Official Journal) and decision of the Council of 2 March 2004.

(**4**) OJ L 311, 28.11.2001, p. 67. Directive as last amended by Commission Directive 2003/63/EC (OJ L 159, 27.6.2003, p. 46).

(**5**) Directive 2000/70/EC of the European Parliament and of the Council of 16 November 2000 amending Council Directive 93/42/EEC as regards medical devices incorporating stable derivates of human blood or human plasma (OJ L 313, 13.12.2000, p. 22).

(**6**) Council Recommendation of 29 June 1998 on the suitability of blood and plasma donors and the screening of donated blood in the European Community (OJ L 203, 21.7.1998, p. 14).

(**7**) Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components (OJ L 33, 8.2.2003, p. 30).

(**8**) OJ L 167, 18.7.1995, p. 19.

(**9**) OJ C 364, 18.12.2000, p. 1.

(**10**) OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

(**11**) OJ L 184, 17.7.1999, p. 23.