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Legislation

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

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II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 July 1985

relating to a proceeding under Article 85 of the EEC Treaty
(IV/29.420 – Grundig's EEC distribution system)

(Only the German text is authentic)

(85/404/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty (1), as last amended by the Act of Accession of Greece, and in particular Articles 6 and 8 thereof,

Having regard to the notification filed by Grundig AG on 29 March 1977 of its EEC dealership agreements with specialist wholesalers and retailers,

Having published a summary of the agreements in accordance with Article 19 (3) of Regulation No 17 (2),

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

I. FACTS

A. Grundig's distribution system and market position

On 29 March 1977, Grundig AG, Fürth, Federal Republic of Germany (hereinafter 'Grundig'), notified to the Commission the dealership agreements forming the basis of a selective distribution system for its consumer electronics products in the common market. It introduced the system on 1 April 1977.

Grundig distributes its television sets, video recorders, hi-fi equipment and related accessories in the Federal Republic of Germany through a network of specialist wholesalers and retailers and in the other Member States through sole distributors (some of them subsidiaries of Grundig) supplying specialist wholesalers and retailers. Altogether, some 28 000 dealers belong to the Grundig sales network in the Community. Grundig does not issue recommended prices for its products.

Grundig is one of Europe's largest manufacturers of consumer electronics equipment with a turnover in 1983/84 of approximately DM 2,8 billion. For its top-selling lines, colour televisions and video recorders, it has EEC market shares of 10,6 % and 6 % respectively. In some Member States its shares are higher. For colour televisions it has a share of 19,5 % in the Federal Republic of Germany, 12,4 % in Italy and 9,6 % in France. For video recorders its market share in the same countries is 16,5 %, 5,5 % and 3,3 %.

Since 1 April 1984 Grundig has been controlled by Philips (Philips-Gloeilampenfabrieken, Eindhoven, the Netherlands), which had had a 24,5 % stake in the company since 1979.

B. Grundig's distribution system

The dealership agreements forming the basis of the selective distribution system which Grundig introduced on 1 April 1977 were framed in the light of the principles which the Commission had established in its Decision 76/159/EEC (3)

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No C 276, 16. 10. 1984, p. 2.
(3) OJ No L 28, 3. 2. 1979, p. 19.

on SABA's distribution system. Following the modifications in the Commission's policy towards selective distribution in the consumer electronics sector signalled in its second Decision on the SABA system, Decision 83/672/EEC (hereinefter 'SABA II') (1), Grundig amended its dealership agreements to meet the new requirements.

Grundig's distribution of its products in the EEC is now based on:

— the Grundig EEC dealership agreement with wholesalers and

— the Grundig EEC dealership agreement with retailers.

The main terms of these agreements are as follows:

1. (a) Under the Grundig EEC dealership agreement with wholesalers, Grundig admits to its network as a wholesaler any wholesaler who, *inter alia:*

— carries on a wholesale business specializing in the sale of consumer electronics equipment, or has within his business a department specializing in the sale of such equipment which is equivalent to such a specialist wholesale business,

— employs a technically trained staff and a professional sales force capable of providing expert advice to customers,

— has the necessary facilities and resources to carry and stock as far as possible the whole Grundig range and ensure prompt delivery to his customers, and

— signs the Grundig EEC dealership agreement.

If Grundig fails to process a wholesaler's application for admission to the network within four weeks, the wholesaler is deemed admitted and Grundig undertakes to sign a dealership agreement with him immediately and to place him on the list of authorized Grundig dealers.

(b) Grundig specialist wholesalers undertake the following obligations, *inter alia:*

— to supply Grundig products for resale in the common market only to authorized Grundig dealers and before supplying a dealer to check if necessary with the trustee appointed by Grundig whether he is authorized by Grundig to sell its products;

— to sell Grundig products to consumers only where they carry on a business, purchase the goods for use in that business and furnish objectively verifiable evidence to that effect by signing a special declaration;

— to keep records of all Grundig products sold so that they can, if necessary, be traced by their serial numbers, and to preserve such records for at least three years;

— to assist Grundig in keeping the selective distribution system intact and in proceeding against breaches of the dealership agreement.

(c) Grundig specialist wholesalers are entitled to admit to the Grundig specialist dealer network any specialist retailer who satisfies the selection criteria laid down in the Grundig EEC dealership agreement with retailers.

(d) Grundig specialist wholesalers are free to supply or take supplies from any Grundig dealer anywhere in the common market and to set their own resale prices.

(e) Grundig undertakes, *inter alia*, to guarantee the integrity of its EEC selective distribution system and to maintain an up-to-date list of all authorized Grundig dealers with a trustee, who is responsible for answering inquiries as to whether particular dealers are members of the network.

(f) Where a Grundig specialist wholesaler is found not, or no longer, to satisfy the admission criteria Grundig may terminate the wholesaler's dealership forthwith, specifying in writing its reasons for so doing. Where a wholesaler is found to have breached the terms of the dealership in a manner which endangers the distribution system, Grundig may temporarily or, in the case of repeated breaches, indefinitely withhold supplies from the wholesaler and terminate his dealership forthwith. Where the breach involves an infringement of national law against unfair competition, Grundig may apply this sanction only if the infringement is not denied or has been proved in a court of law. A power of ordinary termination is enjoyed by Grundig only in the event of its abandoning its EEC distribution system.

2. (a) Under the Grundig EEC dealership agreement with retailers, a retailer must satisfy, *inter alia*, the following criteria to be admitted to the Grundig network as a specialist retailer. He must:

— carry on a retail business specializing in the sale of consumer electronics equipment, or alternatively;

— have within his business a department specializing in the sale of consumer electronics equipment which is comparable to a specialist consumer electronics business;

(1) OJ No L 376, 31. 12. 1983, p. 41.

— demonstrate Grundig products and display a representative selection of them in sales premises whose appearance is in keeping with the prestige of the Grundig brand. Specialist departments in stores must be separate from the store's other departments;

— employ trained sales staff possessing the requisite technical knowledge to advise customers in a competent manner;

— present as full a range of Grundig products as is reasonable for a specialist business or department of that size;

— keep adequate stocks of a representative selection of the relevant Grundig range, commensurate with the size, local importance and turnover of the business, and order immediately any Grundig products demanded by customers which he does not have in stock;

— provide competent and prompt after-sales service and all repairs and servicing under warranty, either in his own workshop or in a workshop under permanent contract to him;

— sign the Grundig EEC dealership agreement with retailers.

The retailer is prohibited from advertising or conducting his business in such a way as to put his exclusive capacity as a retailer in doubt, from making misleading references in notices or advertising, in connection with the sale of Grundig products, to sell at cash-and-carry, self-service or take-away prices and from selling Grundig products by mail order.

(b) Grundig will admit to its network any retailer fulfilling the selection criteria. Grundig wholesalers are also entitled to admit retailers, as stated above. Applications to Grundig will be deemed to have been accepted if Grundig fails to process them within four weeks, in which case Grundig undertakes to sign the dealership agreement with the retailer immediately and to put him on the Grundig dealer list.

In view of the fact that the dealership agreement is standard throughout the common market, Grundig has reserved the right to waive individual admission conditions in the light of national circumstances. However, it insists on the requirements that retailers be specialists, run a shop with unrestricted access to any member of the public, display Grundig products attractively, employ trained sales staff and provide after-sales and warranty services.

(c) Grundig specialist retailers undertake the following obligations, *inter alia:*

— to supply Grundig products for resale in the common market only to authorized Grundig dealers and before supplying a dealer to check if necessary with the trustee that he is a member ot the Grundig network;

— to keep records of all Grundig products sold to dealers so that the products can if necessary be traced by their serial numbers, to preserve such records for at least three years and to let Grundig know should there appear to be a need to check distribution channels either for technical reasons or in cases of reasonable suspicion of a breach of the EEC dealership agreement.

The Grundig EEC dealership agreement with retailers expressly provides that the retailers are free to supply or to take supplies from any approved Grundig dealer anywhere in the common market and to set their own resale prices.

(d) Grundig's obligation to guarantee the integrity of the distribution system and to appoint a trustee, and the rules governing ordinary termination and termination for breach of contract, correspond to those for wholesalers (see I.B.1. (e) and (f) above).

C. The extent of selective distribution for consumer electronics products

The extent of selective distribution in the consumer electronics industry varies in different Member States. In the Federal Republic of Germany, in particular, it has traditionally been a common method of distributing consumer electronics products. In other Member States, it is much less widespread. At all events, in all Member States there are a large number of manufacturers selling their products without dealer selection and in most cases these account for the bulk of sales of the products in the Member State concerned. The distribution systems of the manufacturers who do require their dealers to meet selection criteria also vary widely. Some of the systems notified to the Commission are purely national and so do not cover the whole Community. Some only lay down requirements pertaining to the dealer's professional, specialist status, which do not fall under Article 85 (1). Finally, several of the manufacturers practising dealer selection do not sell a full

range of consumer electronics products but are only represented in particular segments of the market. All in all, the number of selective distribution systems notified to the Commission has not increased since the judgment of the Court of Justice of 24 October 1977 in Case 26/76, *Metro* (1).

D. Comments by third parties

In response to publication of a summary of the Grundig dealership agreements the Commission received four submissions from interested parties. Their principal arguments were that the Grundig distribution system, in combination with the similar systems operated by other manufacturers, led to the *de facto* exclusion of the non-specialist trade from this sector and to a restriction of competition between Grundig dealers, especially on prices, and to price rigidity. Doubt was expressed as to whether in practice the approved dealers actually provided the advice and after-sales service required under the dealership agreements. After-sales service was, it was suggested, in any case no longer essential for a proper distribution of modern consumer electronics products since they were less likely to need repair than was the case in the past. One submission also criticized one of the selection criteria for retailers, concerning the character of sales premises and the attractive display of the products, as being too vague.

II. LEGAL ASSESSMENT

A. Article 85 (1)

1. The majority of the obligations contained in the standard dealership agreements with wholesalers and retailers which form the basis of Grundig's EEC distribution system are purely qualitative and, as such, do not fall under Article 85 (1). The agreements contain few clauses which have as their object and effect a restriction of competition within the common market and which are liable to affect trade between Member States, and which therefore require exemption under Article 85 (3).

2. In so far as the Grundig EEC dealership agreements merely lay down professional criteria for dealers, which are applied in a non-discriminatory fashion and which determine the procedure for admission to the network and impose ancillary policing obligations, they do not bring the agreements within the scope of Article 85 (1). This applies, in particular, to the following provisions of the agreements:

   (a) The requirements regarding the professional qualifications of dealers, the specialist knowledge of their sales staff, the provision of after-sales service and the character of sales premises are no more onerous than is necessary in a selective distribution system based on qualitative criteria for such technically sophisticated goods as consumer electronics products. The fast pace of innovation that is characteristic of the industry not only means that completely new products are being developed all the time but also that the uses of established products are constantly being extended. Another feature of the present-day industry is the increasing interpenetration between consumer electronics and data transmission and processing, which means, for instance, that domestic television sets are now used as terminals for connecting up many types of peripheral equipment as well as for their original purpose. Requirements as to the dealer's technical competence to provide advice and warranty services are therefore still necessary. This is true even though modern consumer electronics products are less likely to need repair than they used to. Apart from the fact that warranty and repair work is only one of the comprehensive range of services provided by specialist dealers, a competent repair service still needs to be provided to rectify such faults as do occur, even if they are not as frequent as in the past.

   (b) The requirement that dealers should demonstrate Grundig products in suitable sales premises and display them attractively must also be regarded as necessary. Grundig has a legitimate interest in ensuring that its high-quality products are presented to the consumer in appropriate surroundings, and an obligation of this nature is bound to be couched in general terms which leave some room for discretion. Furthermore, there is little danger of Grundig's being able to apply this condition in a discriminatory fashion, since the power to admit retailers, and hence the power to check that this condition is fulfilled, is also delegated to wholesalers and any retailer refused admission by Grundig is free to challenge the decision in court.

   (c) The prohibition on dealers advertising Grundig products at 'cash-and-carry, self-service or take-away prices' is justified because all dealers are obliged under the dealership agreement to provide certain types of advisory and after-sales services. This means that dealers are not allowed to pursue a marketing policy which does not in general include these services. Yet if a dealer advertises or offers for sale Grundig products at 'take-away prices' or the like, he is encouraging the consumer to waive such services. The contractual prohibition of such marketing practices can thus be subsumed under the qualitative selection criteria. There is no ground to fear that a dealer is consistently abandoning a policy of providing after-sales services, however, where he does not provide such services to a customer at the

(1) ECR 1875 (1977).

customer's own request. In such cases there is nothing in the dealership agreement to prevent the dealer from granting the customer a discount for the resultant cost savings.

The ban on selling Grundig products by mail order can also be subsumed under the obligation to provide customers with advice and to display the products. A dealer is not prohibited from mailing equipment to a customer at the customer's own request, however.

(d) The qualitative selection criteria applied by Grundig are a legitimate means of ensuring that its products are distributed by suitably qualified dealers. The vetting of dealers before they are admitted to the network, and the checks made on them afterwards where necessary, are intended to ensure that all dealers actually meet the selection criteria. With such a large number of dealers in the Grundig network, there is bound to be a possibility that individual dealers will fail to discharge their obligations properly. However, this possibility does not take away Grundig's right to continue to select its dealers on the basis of qualitative criteria.

(e) The policing obligations laid upon dealers when selling to other dealers and the obligation on wholesalers to assist Grundig in keeping the selective distribution system intact do not have an independent anti-competitive character. Grundig's exercise of its right to inspect a dealer's records is expressly limited to cases of reasonable suspicion of a breach of contract by the dealer or by another customer. The obligatory check on whether a prospective trade customer is (still) on the approved Grundig dealer list can be made either with Grundig or with a trustee. Thus, any possibility of these clauses being applied in an anti-competitive manner can be ruled out.

(f) The ban on wholesalers supplying private consumers does not fall within Article 85 (1) because it is meant to underpin the division of functions between wholesaling and retailing and prevent distortions of competition (cf. judgment of the Court of Justice in Case 26/76, *Metro/1977/* ECR 1875 at 1908, ground 28).

(g) Nor are the rules of the procedure for admitting dealers to and excluding them from the network liable to cause any significant restriction of competition, since here Grundig has followed the principles established in the Commission's SABA II Decision (at II.A.6 (b) and (c) thereof):

(aa) Grundig must decide on applications to join the network within four weeks.

(bb) Approved wholesalers, too, can admit qualified retailers to the network.

(cc) Dealerships cannot be terminated, other than for breaches of the terms of the dealership, except in the event of Grundig's abandoning the entire selective distribution network.

(dd) Termination of a dealership and/or withdrawal of the dealer's supplies on the ground of a breach of the law against unfair competition is only possible if the allegations are not denied or, if denied, have been proved in court.

3. A different view must be taken, however, of selective distribution systems which impose obligations on the undertakings concerned or contain selection criteria which go beyond the limits indicated above. They then fall under Article 85 (1), but can in appropriate cases be exempted under Article 85 (3).

In its dealership agreements with wholesalers and retailers Grundig undertakes not to supply dealers who do not belong to its distribution network. Grundig dealers, for their part, are forbidden to supply dealers who have not been admitted to the network by Grundig itself or by a Grundig wholesaler.

In the present case these obligations constitute a restriction of competition because in order to be admitted to the network dealers must not only satisfy certain general technical and professional criteria but must also be prepared to make specific commitments in terms of sales effort and to provide particular services.

Grundig retailers must display as full a range of Grundig products as is reasonable for a specialist business or department of that size and must keep stocks of a representative selection of the current Grundig range.

Grundig wholesalers must have the necessary facilities and resources to carry and stock as far as possible the whole Grundig range.

These obligations go beyond what is necessary for a competent distribution of the products and do constitute restrictions of competition, since they create impediments to the commercial independence of the authorized dealers.

4. Grundig's EEC-wide distribution system, which contains the restrictions of competition described above at point 2, is inherently likely to affect trade between Member States. There can be no doubt that this effect is appreciable, in view of the market shares held by Grundig in individual Member States.

B. Article 85 (3)

The agreements making up Grundig's EEC distribution system fulfil the conditions of Article 85 (3).

1. The qualitative selection criteria and the special commitments which wholesalers and retailers must make in terms of sales effort together contribute to improving the distribution of Grundig products, because they ensure that the products are distributed only by dealers who will give customers competent advice and provide after-sales service to install, run in and maintain the equipment and are also prepared to make a particular effort to sell the manufacturer's products. In this way, Grundig can rely on a network of professionally qualified dealers to present a suitably broad selection of its products to the consumer and have them in stock so they are readily available to intending purchasers. These arrangement are likely to make the distribution of its products more efficient. They will therefore tend to increase competition between Grundig and other brands without lessening competition between individual Grundig dealers.

2. The resulting advantages, particularly the efficient after-sales service and the availability of a wider range and faster delivery from wholesalers and retailers, are of immediate benefit to the consumer.

With their professional expertise, Grundig dealers are able both to advise consumers on general technical developments in consumer electronics, explaining how new products work and established products can be used in new ways, and to give them an indication of the specific characteristics of different brands. Manufacturers' sales brochures and even reports in technical journals and consumer magazines are only a partial substitute for a person-to-person talk between the specialist dealer and the consumer, and then only for the relatively small section of the population that is technically interested. From Grundig dealers, consumers can also gain a good idea of at least the main items in the Grundig range and can be sure of immediate, or at least very quick, delivery should they decide to buy a Grundig product. Finally, having decided to buy, the consumer can be sure that the dealer will give him expert advice on how to operate the equipment and if necessary will install and set it up for him in his home and provide after-sales service and carry out repairs of the product both during and after the guaranteee period.

These benefits will accrue to the consumer without his having to pay significantly higher prices as a result, given the continuing fierce price competition that exists in the sector, especially between specialist dealers (see 4 below).

3. The restrictions of competition contained in the Grundig selective distribution system are indispensable for the attainment of the above advantages. This applies both to the ban on supplying Grundig products to dealers not in the network and to the sales commitment required of dealers who are. Without these clauses in the dealership agreement, the advantage in terms of the distribution of the products and the resulting benefits for the consumer could not be attained. It should be noted that indispensability does not mean that there must be no other feasible way of distributing the products, but only that the restrictions of competition are necessary for the particular marketing strategy adopted by the manufacturer, which is judged to have the beneficial effects referred to in Article 85 (3). Another relevant consideration is the fact that since the Commission's SABA II Decision, Grundig has made changes to the procedure for granting and terminating dealerships which make such decisions more objective and offer no scope for the manufacturer to misuse the selective distribution system for anticompetitive ends.

4. Finally, the agreements making up the Grundig selective distribution system do not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

(a) The restrictions contained in the dealership agreements affect only the relations between Grundig and its dealers. They have no appreciable effect on competition between Grundig and other consumer electronics manufacturers. In particular, dealers are in no way prevented by the dealership agreement from selling or promoting competing brands.

(b) Nor does Grundig's selective distribution system eliminate competition between dealers.

This is guaranteed by the terms of the dealership agreement itself:

The admission procedure in its present form ensures that any dealer fulfilling the selection conditions can be admitted to the network. Within the network dealers throughout the common market, at both wholesale and retail levels, can compete with one another, are free to set their own prices and can take advantage of the most favourable source of supply in the particular circumstances since there are no restrictions at all on dealers within the network supplying one another.

Also, Grundig does not have a strong enough position either in the common market as a whole or in a substantial part of it to eliminate competition between dealers.

Even in the geographical and product market where Grundig is strongest, the German colour television market, where it has a share of 19,5 %, Grundig faces effective competition from firms in the Thomson-Brandt group (Telefunken, SABA, Nordmende), which have a market share of around 23 %, and other large firms, and so cannot exert a decisive influence on competition between dealers through its selective distribution system. In the prevailing competitive conditions this still holds true even if the share of this market segment held by Philips, which controls Grundig, is added to Grundig's own, making a combined share of 33,5 %. This does not put Grundig and Philips together in a position to eliminate competition in the distribution of colour televisions in Germany. In any case, a danger of a reduction in competition at the distribution stage would only arise if Grundig and Philips had a uniform or at least very similar policy for distributing their products. This is not the case. Philips does not operate a selective distribution system in any Member State.

Finally, this conclusion is not upset by a consideration of the similar selective distribution systems operated by other manufacturers – an aspect which only requires examination in the case of the Federal Republic of Germany. Apart from the fact that these systems show considerable differences from one another (EEC-wide or purely national, open to any specialist dealer or subject to additional sales commitments, and covering one or two levels of distribution), they have not led to price rigidity or to the *de facto* exclusion of certain types of sales outlet.

(aa) Although the Court of Justice in its leading judgments in Case 26/76, *Metro,* ground 21, and in Case 107/82, *AEG-Telefunken,* ground 42 [1], assumed that in selective distribution systems the emphasis will be on service rather than price competition and accepted this reduced price competition in return for the stimulation of competition in other areas, the Commission's experience over many years of monitoring the situation in the Member State where selective distribution in this sector is most widespread has been that there is in fact fierce price competition in the retail trade generally, and between Grundig dealers in particular. This is also true of different product lines, with even completely new products showing substantial falls in prices soon after being launched on the market because of the pressure of competition. The prices of consumer electronics products have in general, despite technical improvements, risen much less than the rate of inflation. Colour television sets, for example, are in real terms only half as expensive as in 1968 despite their improved performance.

(bb) Nor has the Commission found that because of selective distribution systems certain types of outlet such as discount stores, cash-and-carry wholesalers and retail supermarkets are systematically excluded from selling such products. Self-service stores, like any other outlet, are naturally excluded from selling Grundig products by the selective distribution system if they are not prepared to fulfil the selection conditions, most of which are qualitative and so do not fall within Article 85 (1), provided they are not applied in a discriminatory fashion. If such outlets do meet the conditions for a dealership, however, they can sell Grundig products and several stores that sell mainly by self-service but have set up specialized consumer electronics departments with specialist staff are in fact in the Grundig network.

Apart from the fact that it is open to any interested dealer to take the necessary steps himself to gain admission to the network of a manufacturer operating a selective distribution system, only a minority of manufacturers in the Community, and even in the Federal Republic of Germany not all the major ones, have such a system. Furthermore, in the case of the manufacturers who only operate a national selective distribution system, self-service stores can bypass the system by obtaining the manufacturer's products for example through parallel imports and cannot legally be prevented from selling those goods in Germany.

Therefore, there is no *de facto* exclusion of the above types of outlet from the sale of consumer electronics products either in the Community as a whole or in a substantial part of it.

C. Articles 6 and 8 of Regulation No 17

Grundig notified its EEC dealership agreements with wholesalers and retailers to the Commission on 29 March 1977. At that time the agreements conformed in all essential respects to the standards set for such agreements in the

[1] ECR (1983) 3151, pp. 3196 – 97.

Commission's practice and the Court's case law. Subsequently, in the light of numerous investigations of the consumer electronics business the Commission modified its policy on certain common provisions of selective distribution systems governing the procedure for admitting dealers to and excluding them from the network, although not on the qualitative selection criteria and sales commitments which form the substantive core of such systems.

After the Commission had informed Grundig of its modified approach towards admission and exclusion procedures, Grundig brought its agreements into line with the new standards. It is therefore appropriate to set the date for the exemption pursuant to Article 85 (3) of the EEC Treaty to take effect under Article 6 of Regulation No 17 at 29 March 1977. Up to the time the Commission informed Grundig of the change in its approach and gave it an opportunity to bring its agreements into line with the new standards, the agreements can be judged against the old standards. It is found that Grundig's EEC selective distribution system in its old form fulfilled the exemption conditions set by the Commission and confirmed by the Court of Justice at the time. Furthermore, the Commission's investigations into price competition and Grundig's operation of the selective distribution system did not reveal any factors liable to render the selective distribution system ineligible for exemption. The Commission's aim in setting the new standards for admission and exclusion is to provide stronger safeguards against potential discriminatory application of selective distribution systems in the future. There are no grounds for applying the new standards to past practice, since how selective distribution systems were operated in practice in the past can be investigated, as it has been in Grundig's case. The new standards should therefore be applicable only from the time Grundig was informed of them.

The Grundig selective distribution system, the substantive core of which conformed from the outset to the Commission's standards, which have not changed, has therefore been eligible for exemption in its amended and its original form since the date of notification.

In view of the time that has elapsed since the notification, it is desirable to fix the period of exemption under Article 8 (1) of Regulation No 17 as extending until 28 March 1989. The Commission will then be able to look again at the effects on competition of Grundig's distribution system after a relatively short time.

Certain obligations must be attached to the Decision to enable the Commission to check that Grundig does not act in a discriminatory fashion in refusing admission to or excluding wholesalers or retailers from the network. Grundig must therefore be required to send the Commission every year a report of every case in which it has refused to grant a wholesaler or retailer a dealership or has terminated a dealership or withdrawn a dealer's supplies or has demanded to inspect a dealer's records of the serial numbers of equipment passing through his hands. This part of the Decision is based on Article 8 (1) of Regulation No 17,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3) of the EEC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable to:

— the Grundig EEC dealership agreement with wholesalers, and

— the Grundig EEC dealership agreement with retailers.

This exemption shall apply from 29 March 1977 until 28 March 1989.

Article 2

Grundig AG shall submit annual reports to the Commission, the first of them by 31 December 1985, setting out all cases in which it has:

— refused to grant a wholesaler or retailer a dealership or has terminated a dealership or withdrawn a dealer's supplies;

— exercised its right to inspect a dealer's records of serial numbers.

Article 3

This Decision is addressed to:

Grundig AG,
Kurgartenstraße 37,
D-8510 Fürth.

Done at Brussels, 10 July 1985.

For the Commission
Peter SUTHERLAND
Member of the Commission

COMMISSION DIRECTIVE

of 11 July 1985

adapting to technical progress Council Directive 79/113/EEC on the approximation of the laws of the Member States relating to the determination of the noise emission of construction plant and equipment

(85/405/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 79/113/EEC of 19 December 1978 on the approximation of the laws of the Member States relating to the determination of the noise emission of construction plant and equipment (1), as last amended by Directive 81/1051/EEC (2), and in particular Articles 3, 4 and 5 thereof,

Whereas, in view of experience gained and of the state of the art, it is now necessary to match the requirements of Annex I and Annex II of Directive 79/113/EEC to the actual test conditions;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee on the Adaptation to Technical Progress of the Directive on the Determination of the Noise Emission of Construction Plant and Equipment,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I and Annex II to Directive 79/113/EEC are hereby amended in accordance with the Annex to this Directive.

Article 2

The Member States shall, by 26 March 1986, adopt and publish the provisions required to comply with this Directive and shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 11 July 1985.

For the Commission
Stanley CLINTON DAVIS
Member of the Commission

(1) OJ No L 33, 8. 2. 1979, p. 15.
(2) OJ No L 376, 30. 12. 1981, p. 49.

ANNEX

AMENDMENTS TO ANNEX I TO DIRECTIVE 79/113/EEC

5. MEASURING INSTRUMENTS

Point 5.2 shall be reworded as follows:

5.2. **Measuring instruments**

The following instrument may be used to meet the preceding requirement:

(a) a sound level meter which at least meets the requirements of IEC Publication 651, first edition, 1979 for the type of meters in Class 1. The meter must be used in the S response mode.

Subparagrraph (b) is not changed.

In the comments under point 5.2 and under 5.3 and 5.4, the words 'IEC Publication 179, 1973 second edition' shall be replaced by 'IEC Publication 651, first edition, 1979'.

7. MEASUREMENTS

7.3.1. *Detection of impulsive noise*

The phrase 'IEC Publication 179 A/1973', occuring between the second and third line shall be replaced by: 'IEC Publication 651, first edition, 1979'.

AMENDMENT TO ANNEX II OF DIRECTIVE 79/113/EEC

3. DEFINITIONS

3.2 **Equivalent continuous sound pressure level $L_{Aeq}(t_1, t_2)$**

The words 'IEC Publication 179, 1973, second edition' in the second line shall be replaced by 'IEC Publication 651, first edition, 1979'.

COMMISSION DIRECTIVE

of 11 July 1985

adapting to technical progress Council Directive 84/533/EEC on the approximation of the laws of the Member States relating to the permissible sound power level of compressors

(85/406/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 84/533/EEC of 17 September 1984 on the approximation of the laws of the Member States relating to the permissible sound power level of compressors (1) and in particular Article 7 thereof,

Whereas, in view of experience gained and of the state of the art, it is now necessary to match the requirements of Annex I and Annex II of Directive 84/533/EEC to the actual test conditions;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee on the Adaptation to Technical Progress of the Directive on the Determination of the Noise Emission of Construction Plant and Equipment,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I and Annex II to Directive 84/533/EEC are hereby amended in accordance with the Annex to this Directive.

Article 2

The Member States shall, by 26 March 1986, adopt and publish the provisions required to comply with this Directive and shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 11 July 1985.

For the Commission

Stanley CLINTON DAVIS

Member of the Commission

(1) OJ No L 300, 19. 11. 1984, p. 123.

ANNEX

AMENDMENTS TO ANNEX I TO DIRECTIVE 84/533/EEC

6.2. **Operation of the sound source during measurement**

The last paragraph of point 6.2.2 shall be reworded as follows:

In these operating conditions, the air flow shall be checked as laid down in point 12 of Annex I.

6.3. **Measuring site**

The measuring site must be flat and horizontal. This site, up to and including the vertical projection of the microphone positions, shall be of concrete or non-porous asphalt. Skid-mounted compressors shall be placed on supports 0,40 m high unless otherwise required by the manufacturer's conditions of installation.

6.4.1. *Measuring surface, measuring distance*

Point 6.4.1 shall be reworded as follows:

The measuring surface to be used for the test shall be a hemisphere.

The radius shall be:

— 4 m, where the greatest dimension of the compressor to be tested is not more than 1,5 m,

— 10 m, where the greatest dimension of the compressor to be tested is more than 1,5 m but not more than 4 m,

— 16 m, where the greatest dimension of the compressor to be tested is more than 4 m.

6.4.2.1. General

Point 6.4.2.1 shall be reworded as follows:

For measurements there shall be six measuring points, i.e. point 2, 4, 6, 8, 10 and 12, arranged as defined in section 6.4.2.2 of Annex I to Directive 79/113/EEC.

For testing the compressor, the geometric centre of the compressor shall be positioned vertically above the centre of the hemisphere.

The x axis of the set of coordinates, in relation to which the positions of the measuring points are fixed, shall be parallel to the main axis of the compressor.

A new point 12 shall be added, worded as follows:

12. A METHOD FOR MEASURING THE AIR VOLUME FLOW RATE OF AIR COMPRESSORS BY MEANS OF CIRCULAR ARC VENTURI NOZZLES UNDER CRITICAL FLOW CONDITIONS

12.1. **General**

The purpose of this Annex is to provide a simple, quick and economical method for measuring the flow rate of air compressors.

This method has an accuracy of ± 2,5 %.

12.2. **Test arrangement**

The nozzle diameter is to be chosen so as to ensure that the pressure ratio across the nozzle produces sonic velocity in the throat.

The nozzle is to be inserted in a pipe with a diameter equal to or greater than four times the nozzle throat diameter. Upstream of the nozzle shall be a length of pipe equal to at least two pipe diameters, in the wall of which are fitted means for measuring the pressure and temperature of the air flowing through the pipe. At the upstream end of this pipe, a flow straightener shall be fitted consisting of two perforated plates mounted one pipe diameter apart. See Figures 1 and 2.

Downstream of the nozzle a pipe and silencer can be fitted provided the pressure drop across this downstream piping does not invalidate the critical flow conditions across the nozzle.

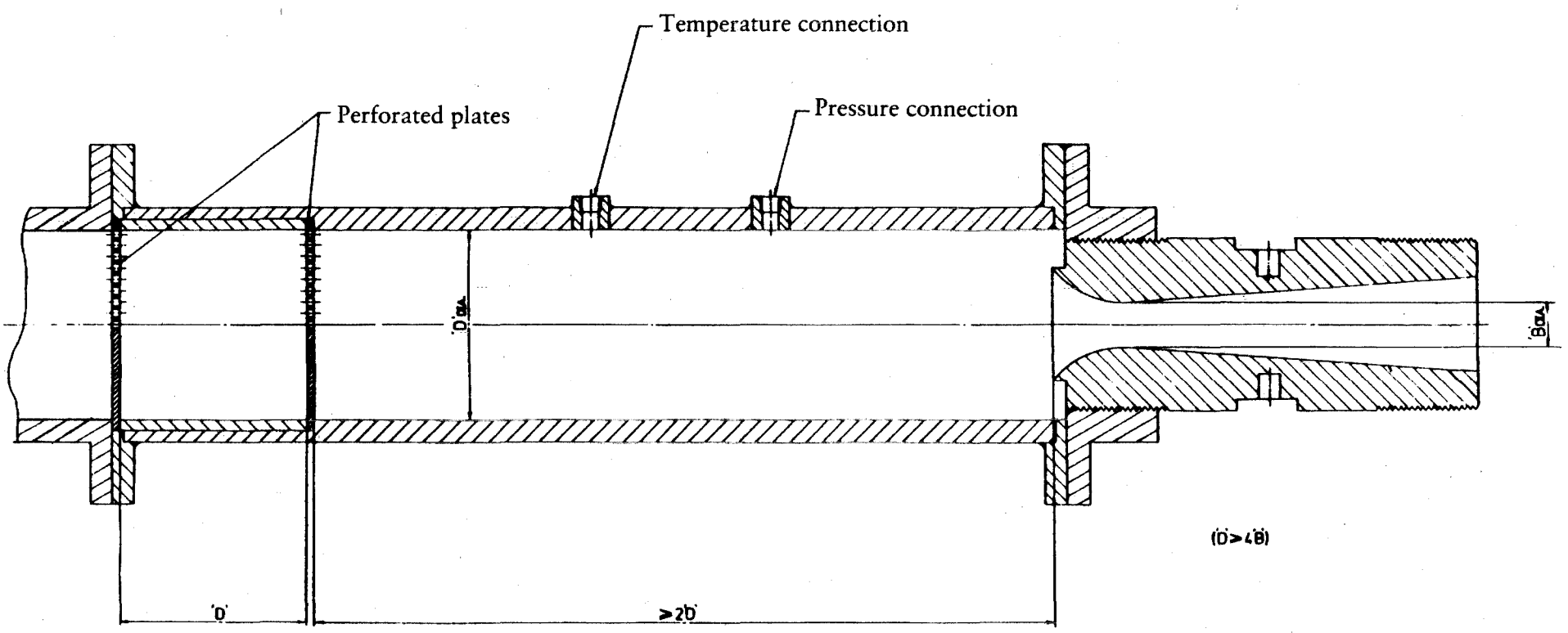

Figure 1 – **Measuring pipe**

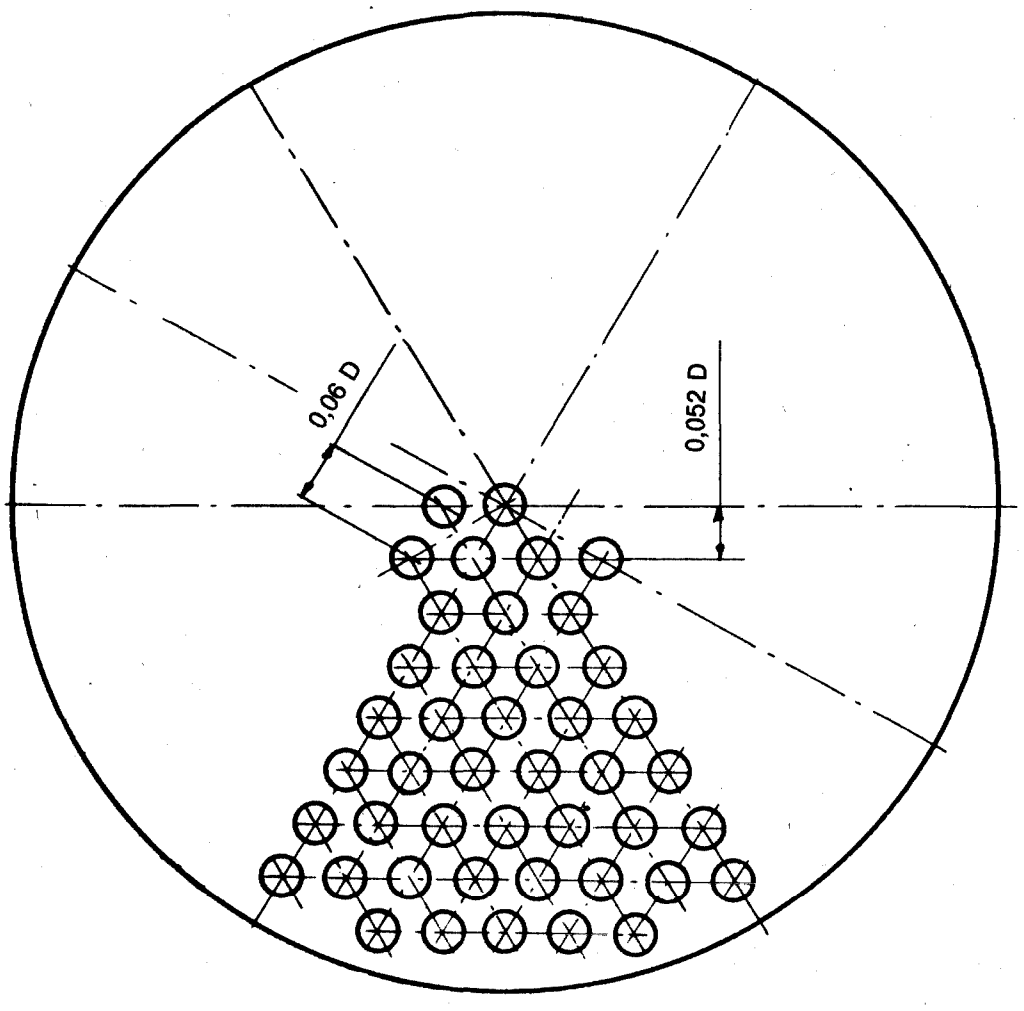

Figure 2 – **Perforated plate for flow straightener**

d = 0,04 D
t = d
where d is the hole diameter
D is the pipe diameter
t is the thickness of the plate

12.3. **Circular arc venturi**

The design shall be as shown in Figure 3, the internal surfaces shall be polished and the throat diameter measured accurately. Suggested dimensions are given in Table 1.

12.4. **Pressure and temperature readings**

The pressure shall be read with an accuracy of 0,5 % and the temperature with an accuracy of ± 1K.

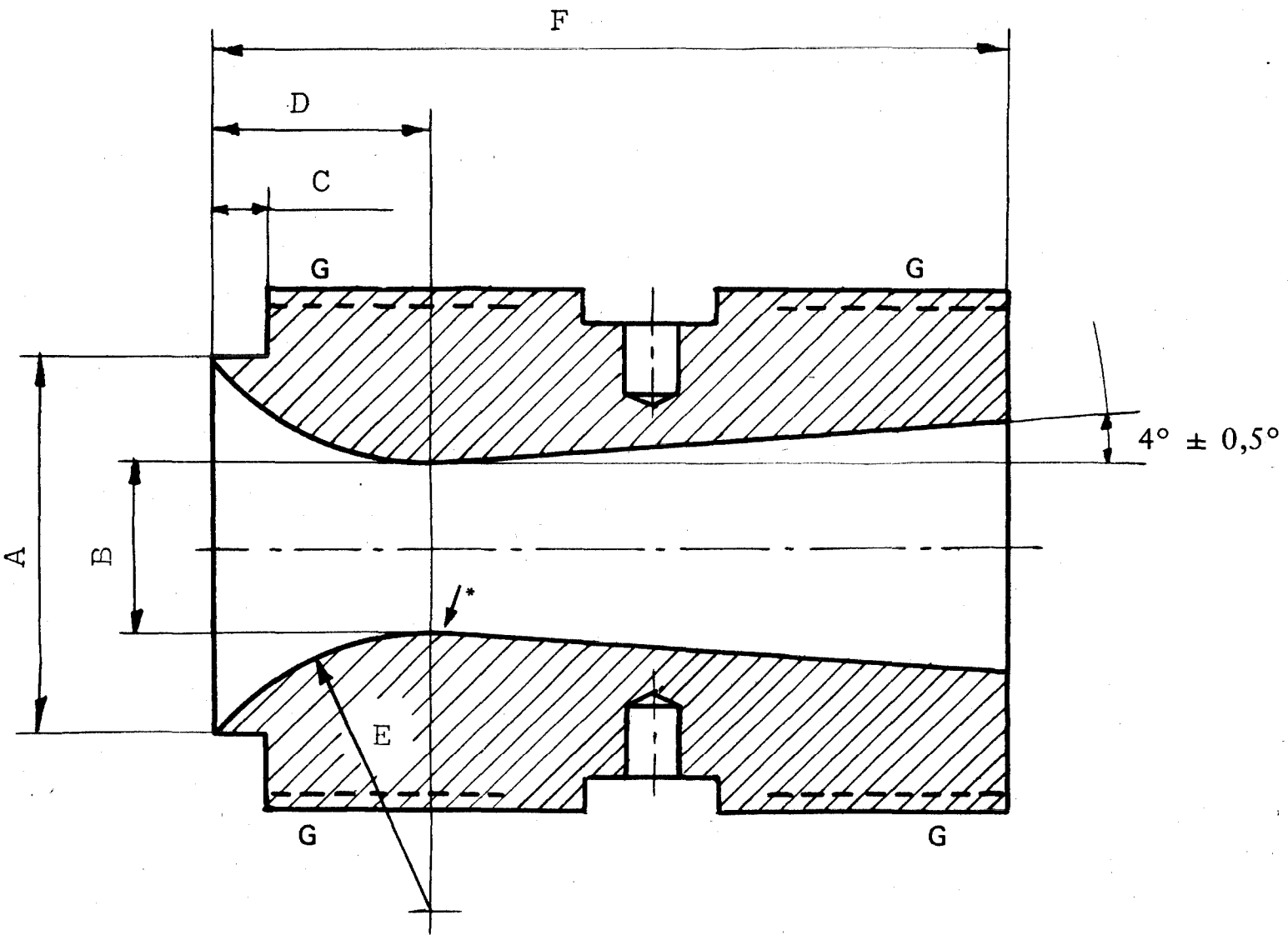

Figure 3 – **Circular arc venturi nozzle**

(*) = Taper tangential to radius
G = Taper thread both ends
Internal surface finish 0,4 µm C.L.A.

Table 1

Nozzle dimensions

Flow rate in l/s	A mm	B mm	C mm	D mm	E mm	F mm	G Denomination
12 – 40	16,00	6,350	2,40	9,93	12,70	60,5	R 1,0
24 – 90	24,00	9,525	3,60	14,86	19,05	91,0	R 1,5
50 – 160	32,00	12,700	4,60	19,81	25,40	121,5	R 2,0
100 – 360	48,00	19,050	7,10	29,72	38,10	182,0	R 2,5
180 – 650	64,00	25,400	9,60	39,65	50,80	243,0	R 3,0
280 – 1000	80,00	31,750	12,00	49,53	63,50	303,5	R 3,5
400 – 1500	95,00	38,100	14,20	59,44	76,20	364,0	R 4,0

12.5. **The test**

When steady flow conditions have been reached the following readings shall be taken:

barometric pressure (P_b)
nozzle upstream pressure (P_N)
nozzle upstream temperature (t_n)
temperature and pressure at which volume flow rate is required (t_o, P_o)

12.6. **Volume rate of flow calculations**

$$q_m = 0{,}1 \cdot \pi \cdot B^2 \cdot C_D \cdot C^* \cdot P_N/[4 \cdot (R \cdot T_N)^{1/2}]$$

Where

q_m is the mass flow rate in kg/s
B is the nozzle diameter in mm
C_D is the discharge coefficient
C^* is the critical flow factor
P_N is the absolute pressure upstream of the nozzle in bar
T_N is the absolute temperature upstream of the nozzle in K
R is the gas constant in J/(kg·K) (for air R = 287,1)

$$C^* = 0{,}684858 + (3{,}70575 - 4{,}76902 \cdot 10^{-2} \cdot t_N + 2{,}63019 \cdot 10^{-4} \cdot t_N 2) \cdot p_N \cdot 10^{-4}$$

Where

t_N = temperature upstream of the nozzle in °C. On the basis of test results and for the accuracy stipulated, C_D = 0,9888.

When used at the discharge of portable or packaged air compressors, t_n will vary from 20 °C to 70 °C and P_N from 2 to 8 bar. C^* will therefore vary from 0,6871 to 0,6852 and an average value of 0,6862 can be used. Under these conditions the equation can be simplified to:

$$q_m = 0{,}1 \cdot \pi \cdot B^2 \cdot 0{,}9888 \cdot 0{,}6862 \cdot P_N/[4 \cdot (287{,}1 \cdot T_N)^{1/2}]$$
$$= 3{,}143 \cdot 10^{-3} \cdot B^2 \cdot P_N/T_N{}^{1/2} \text{ kg/s}$$

or converted to volume flow rate (q_v) under the reference conditions:

$$q_v = 9 \cdot 10^{-3} \cdot B^2 \cdot P_N \cdot T_o/(P_o \cdot T_N{}^{1/2}) \text{ l/s}$$

where

P_o = is the absolute reference pressure in bar
T_o = is the absolute reference temperature in K.

AMENDMENTS TO ANNEX II TO DIRECTIVE 84/533/EEC

3. **Operating conditions**

3.1.4. *Motor power*

The text in brackets 'DIN 6270B' shall be replaced by 'Council Directive 80/1269/EEC'.

3.2.4. *Nominal air flow*

The words 'ISO 1217' shall be replaced by 'Point 12 of Annex I'.

COMMISSION DIRECTIVE

of 11 July 1985

adapting to technical progress Council Directive 84/535/EEC on the approximation of the laws of the Member States relating to the permissible sound power level of welding generators

(85/407/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 84/535/EEC of 17 September 1984 on the approximation of the laws of the Member States relating to the permissible sound power level of welding generators (1) and in particular Article 7 thereof,

Whereas, in view of experience gained and of the state of the art, it is now necessary to match the requirements of Annex I of Directive 84/535/EEC to the actual test conditions;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee on the Adaptation to Technical Progress of the Directive on the Determination of the Noise Emission of Construction Plant and Equipment,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 84/535/EEC is hereby amended in accordance with the Annex to this Directive.

Article 2

The Member States shall, by 26 March 1986, adopt and publish the provisions required to comply with this Directive and shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 11 July 1985.

For the Commission
Stanley CLINTON DAVIS
Member of the Commission

(1) OJ No L 300, 19. 11. 1984, p. 142.

ANNEX

AMENDMENTS TO ANNEX I TO THE DIRECTIVE 84/535/EEC

6.3. **Measuring site**

Point 6.3 shall be reworded as follows:

The measuring site must be flat and horizontal. This site, up to and including the vertical projection of the microphone positions, shall be of concrete or non-porous asphalt. Skid-mounted welding generators shall be placed on supports 0,40 m high, unless otherwise required by the manufacturer's conditions of installation.

6.4.1. *Measuring surface, measuring distance*

Point 6.4.1 shall be reworded as follows:

The measuring surface to be used for the test shall be a hemisphere.

The radius shall be:

— 4 m, where the greatest dimension of the welding generator to be tested is not more than 1,5 m,

— 10 m, where the greatest dimension of the welding generator to be tested is more than 1,5 m but not more than 4 m,

— 16 m, where the greatest dimension of the welding generator to be tested is more than 4 m.

6.4.2.1. General

Point 6.4.2.1 shall be reworded as follows:

For measurements there shall be six measuring points, i.e. points 2, 4, 6, 8, 10 and 12, arranged as defined in section 6.4.2.2 of Annex I to Directive 79/113/EEC.

For testing the welding generator, the geometric centre of the welding generator shall be positioned vertically above the centre of the hemisphere.

The x axis of the set of coordinates, in relation to which the positions of the measuring points are fixed, shall be parallel to the main axis of the welding generator.

COMMISSION DIRECTIVE

of 11 July 1985

adapting to technical progress Council Directive 84/536/EEC on the approximation of the laws of the Member States relating to the permissible sound power level of power generators

(88/408/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 84/536/EEC of 17 September 1984 on the approximation of the laws of the Member States relating to the permissible sound power level of power generators [1] and in particular Article 7 thereof,

Whereas, in view of experience gained and of the state of the art, it is now necessary to match the requirements of Annex I of Directive 84/536/EEC to the actual test conditions;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee on the Adaptation to Technical Progress of the Directive on the Determination of the Noise Emission of Construction Plant and Equipment,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 84/536/EEC is hereby amended in accordance with the Annex to this Directive.

Article 2

The Member States shall, by 26 March 1986, adopt and publish the provisions required to comply with this Directive and shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 11 July 1985.

For the Commission

Stanley CLINTON DAVIS

Member of the Commission

(1) OJ No L 300, 19. 11. 1984, p. 149.

ANNEX

AMENDMENTS TO ANNEX I TO DIRECTIVE 84/536/EEC

6.3. **Measuring site**

Point 6.3 shall be reworded as follows:

The measuring site must be flat and horizontal. This site, up to and including the vertical projection of the microphone positions, shall be of concrete or non-porous asphalt. Skid-mounted power generators shall be placed on supports 0,40 m high, unless otherwise required by the manufacturer's conditions of installation.

6.4.1. *Measuring surface, measuring distance*

Point 6.4.1 shall be reworded as follows:

The measuring surface to be used for the test shall be a hemisphere.

The radius shall be:

— 4 m, where the greatest dimension of the power generator to be tested is not more than 1,5 m,

— 10 m, where the greatest dimension of the power generator to be tested is more than 1,5 m but not more than 4 m,

— 16 m, where the greatest dimension of the power generator to be tested is more than 4 m.

6.4.2.1. General

Point 6.4.2.1 shall be reworded as follows:

For measurements there shall be six measuring points, i.e. points 2, 4, 6, 8, 10 and 12, arranged as defined in section 6.4.2.2 of Annex I to Directive 79/113/EEC.

For testing the power generator, the geometric centre of the power generator shall be positioned vertically above the centre of the hemisphere.

The x axis of the set of coordinates, in relation to which the positions of the measuring points are fixed, shall be parallel to the main axis of the power generator.

COMMISSION DIRECTIVE

of 11 July 1985

adapting to technical progress Council Directive 84/537/EEC on the approximation of the laws of the Member States relating to the permissible sound power level of powered hand-held concrete-breakers and picks

(85/409/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 84/537/EEC of 17 September 1984 on the approximation of the laws of the Member States relating to the permissible sound power level of powered hand-held concrete-breakers and picks [1] and in particular Article 6 thereof,

Whereas, in view of experience gained and of the state of the art, it is now necessary to match the requirements of Annex I of Directive 84/537/EEC to the actual test conditions;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee on the Adaptation to Technical Progress of the Directive on the Determination of the Noise Emission of Construction Plant and Equipment,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 84/537/EEC is hereby amended in accordance with the Annex to this Directive.

Article 2

The Member States shall, by 26 March 1986, adopt and publish the provisions required to comply with this Directive and shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 11 July 1985.

For the Commission
Stanley CLINTON DAVIS
Member of the Commission

(1) OJ No L 300, 19. 11. 1984, p. 156.

ANNEX

AMENDMENTS TO ANNEX I TO THE DIRECTIVE 84/537/EEC

6.1.4. *Composition of the concrete*

Point 6.1.4 shall be reworded as follows:

For one 50-kilogram sack of pure Portland cement, category 400 or equivalent:

— 65 litres of ungraded, non-calcareous sand with grain size of 0,1 to 5 mm,

— 115 litres of non-calcareous alluvial gravel with grain size of 5 to 25 mm,

— 15 litres water,

— with possible adding of hardener.

The cube shall be reinforced by 8-mm-diameter steel rods without ties, each rod being independent of the others; the design concept is illustrated in Figure 1.

6.3. **Measuring site**

Point 6.3 shall be reworded as follows:

The measuring site must be flat and horizontal. This site, shall be of concrete or non-porous asphalt and shall be a minimum of 4 m in radius.

6.4.1. *Measuring surface, measuring distance*

Point 6.4.1 shall be reworded as follows:

The measuring surface to be used for the test shall be a hemisphere. The radius is given in the following table:

Mass of the appliance as normally used	Radius of the hemisphere	Value of z for points 2, 4, 6 and 8
Less than 10 kg	2 m	0,75 m
10 kg or more	4 m	1,50 m

Point 6.4.1 shall be followed by a new point 6.4.2.1 worded as follows:

6.4.2.1. General

For the measurements there shall be six measuring points, i.e. points 2, 4, 6, 8, 10 and 12, arranged as defined in section 6.4.2.2 of Annex I to Directive 79/113/EEC, with the variations in the value of z of points 2, 4, 6 and 8 as shown in the previous table.

For testing the appliances, the geometric centre of the appliance shall be positioned vertically above the centre of the hemisphere.

6.4.2.2. Measuring points

6.4.2.2. is deleted.

FIGURE 1 – TEST BLOCK

The composition to be reworded as given in point 6.1.4 above.

COMMISSION DECISION

of 12 July 1985

relating to a proceeding under Article 85 of the EEC Treaty (IV/4.204 Velcro/Aplix)

(only the French text is authentic)

(85/410/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty (1), as last amended by the Act of Accession of Greece, and in particular Articles 3 and 5 thereof,

Having regard to the notification filed on 30 January 1963 by Velcro France, Paris, later renamed Aplix SA (and hereinafter referred to as 'Aplix'), of the licensing agreement which Overseas Textile Machinery Sàrl (to whose rights Aplix succeeded on 16 February 1959) had signed on 14 October 1958 with Velcro SA (hereinafter referred to as 'Velcro'), of Nyon, Switzerland,

Having regard to the complaint made to the Commission under Article 3 of Regulation No 17 on 10 November 1981 by Velcro acting jointly with Velcro Europe BV (hereinafter referred to as 'Velcro Europe'), of Haaksbergen, the Netherlands, that the notified agreement infringed Article 85 (1),

Having regard to the Commission Decision of 26 June 1984 to initiate proceedings in this case,

Having given the untertakings concerned the opportunity to make known their views on the objections raised by the Commission, in accordance with Article 19 (1) of Regulation No 17 and Commission Regulation No 99/63/EEC on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 (2) and having regard to the written submissions made by Aplix and Velcro and their statements at an oral hearing held on 25 October 1984,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

A. FACTS

I. The notified agreement

The agreement of 14 Ocotber 1958 contains the following clauses:

1. Under clauses 1 and 2, Velcro grants Aplix the exclusive manufacturing and exploitation rights in France, Morocco, Tunisia and all the countries belonging to the French Economic Union for an invention of a type of textile fastener formed of two hook-bearing tapes, which was protected by French patent No 1.064.360.

   Aplix undertakes to exploit the patents in accordance with Velcro's directions or generally to manufacture a technically equivalent product (clause 5). It also agrees to pay Velcro, in consideration of the patent rights and technical support granted to it, a lump sum plus annual royalties on its sales at a fixed percentage of the net selling price ex-works. Velcro is guaranteed a certain minimum amount of annual royalties and is to be allowed to check Aplix's production and sales records for this purpose.

2. Under the first and second sentences of clause 6 Aplix is obliged to sell all the products arising from its exploitation of the patents under the trade mark 'Velcro'. The right to use the trade mark is granted to Aplix free of charge.

3. Under clause 8, Aplix is free to sell the products covered by the agreement in countries in which Velcro has not yet granted an exclusive licence.

   However, the products may under no circumstances be exported directly or indirectly to countries covered by another Velcro licence (clause 2).

4. Clause 19 provides that the agreement, which came into effect on 14 October 1958, is to last for as long as the patents covered by it and any patents that might be obtained in the same field remain valid.

   Clause 7 makes Aplix responsible for defraying the cost of maintaining the patents for the licensed invention, and any patents that might be obtained later in the field of the invention and which Aplix wishes to use, in force in the licensed territories during the currency of the agreement. In the first sentence of clause 9 the parties also undertake to communicate to one another without delay, and free of charge to the other party, any improvements that might be made to the invention.

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No 127, 20. 8. 1963, p. 2268/63.

Supplementary agreements ('avenants') to the initial agreement were signed between Aplix and Velcro on 17 November 1958, 29 May 1972 and 10 December 1973 under which the following further patents were added to that originally licensed, which expired on 12 October 1972:

(a) patents Nos 1.182.436 and 1.188.714 covering a process for manufacturing a loop tape and a hook and loop fastener, which expired on 9 August and 15 December 1977, and

(b) patent No 2.015.550 covering a metal tape fastener, which does not expire until 11 August 1989.

However, it is not contested between the parties that the supplementary agreement of 10 December 1973 was intended to allow Aplix to intervene in an action for illicit copying brought by Velcro against a third party in France.

In these supplementary agreements the parties expressly referred to the clause of the agreement of 14 October 1958 which provides that the exclusive licence covers any patent subsequently obtained in the field of the invention, and agreed that the abovementioned patents also fell within the scope of the exclusive licence.

Aplix maintains that Velcro breached its contractual obligations by failing to communicate to Aplix all the patents that Velcro itself or companies belonging to its group obtained in France.

5. Aplix undertakes to order all its requirements of manufacturing equipment, machinery and accessories from the tape loom manufacturer Jakob Müller, of Frick, Switzerland (third sentence of clause 6).

6. Aplix also agrees not to use this equipment outside the licensed territories (fourth sentence of clause 6).

7. Under clause 12, Aplix undertakes not to manufacture or sell any fastener that might compete with the licensed invention during the currency of the agreement. Velcro similarly agrees not to compete with Aplix directly or indirectly in this field and, in particular, not to grant rights to its inventions to any competitor of Aplix.

8. If Aplix makes any potentially patentable invention in the field covered by the agreement which is subsequently patented in Germany, the United Kingdom, the Netherlands or the US, such patent is to be obtained by Velcro or assigned to it. Fair compensation would be paid to the inventor or the person who has succeeded to the rights of the inventor. Velcro's other licensees would be authorized to use the invention (clauses 9.2, 9.3 and 15), just as Aplix could use any inventions of other licensees or of Velcro.

9. Clause 17 provides for arbitration to settle any disputes arising from the interpretation or application of the agreement and lays down the procedure to be followed.

II. The undertakings concerned in the case

1. Velcro SA ('Velcro') is a Swiss company founded by the engineer M. G. de Mestral, who assigned all his patents to the company. Until 1977 Velcro was not in the business of manufacturing and selling the patented hook and loop fasteners itself, but exploited the patents by licensing and by defending them in infringement actions, of which it has brought a number in recent years in the Netherlands, France and other countries. Besides Aplix, Velcro also licensed the following other companies in the EEC: Ausonia SpA for Italy, Gottlieb Binder for Germany, Van Damme & Cie NV for the Benelux countries and Selectus Ltd for the United Kingdom, Ireland and Denmark. All these licensing agreements were entered into before 1963 and were notified to the Commission and, except for that with Selectus Ltd, have expired. The basic Velcro patents were taken out in all Community countries; they have all since expired long ago.

Being itself unable to provide its licensees with adequate technical support, which they initially obtained from the loom manufacturer Jakob Müller, Velcro set up with its licensees a research association, initially called Eavil and later Dinco. This association was dissolved in 1971.

Since 1969 Velcro's shares have been held by the Netherlands Antilles corporation Velcro Industries NV, Curaçao, which acts as a holding company for the Velcro group. The Velcro group also includes Velcro USA Inc. (Velcro's American licensee), Canadian Velcro, Velcro Israël, Velcro New Zealand and Velcro Europe BV. The main business of the group, which has production units for Velcro fasteners in the US, Canada, India and New Zealand, is the manufacture and sale of hook-and-loop fasteners under the 'Velcro' trade mark in a large number of countries including, in the last few years, European countries.

2. Velcro Europe BV, a member of the Velcro group, was registered in 1977 at Haaksbergen, the Netherlands, as the manufacturing and marketing centre for Velcro products in the European Community.

The fasteners manufactured at Haaksbergen and exported from the Netherlands under the 'Velcro' trade mark qualify as products of Community origin under

Commission Regulation (EEC) No 749/78 [1] because the value of the fabric imported from the US that Velcro Europe uses in making the fasteners is within the limits for the percentage of imported materials in the finished product stated in the Regulation. Since 1984 the fasteners produced by Velcro Europe are entirely manufactured in the common market.

3. The loom manufacturer Jakob Müller, to whom Velcro had already assigned under earlier agreements the development of looms and other equipment necessary for manufacturing the patented product, was designated in Velcro's agreement with Aplix of 14 October 1958 as the exclusive supplier of such equipment, which was in part the subject of patents which had expired in the meantime. The licensees' purchases of this equipment from Jakob Müller have provided the latter's recompense for the effort of developing it. Other manufacturers, especially in Europe and the Far East, have been able to supply equipment comparable to that of Jakob Müller at least since 1977.

4. Aplix manufactures and sells wall coverings as well as self-gripping fasteners, but achieves the bulk of its turnover in fasteners. It is thanks to the exclusive Velcro licence that Aplix has been able successfully to enter the field of plastic fasteners in France, where, at present, it has two factories. It holds a number of patents and registered trade marks in France and in various other countries. It set up a factory in the US in 1982, another in Taiwan in 1984, and established subsidiaries in the Federal Republic of Germany and in Italy in 1983. Between 1978 and 1983 Aplix's turnover tripled, and it reached nearly FF . . . [2] in 1984.

III. The products

(a) The self-gripping hook-and-loop textile fasteners marketed by Aplix under the 'Velcro' trade mark and, since 1977, partly under its own 'Aplix' mark are composed of a tape covered with loops, commercially called 'Astrakan', and a tape covered with hooks, commercially called 'Hooks'. Both tapes are woven in polyamide yarn which can stand temperatures of over 140 °C. When the two tapes are pressed together, the hooks engage the loops. By pulling from one end, the hooks open and release the loops, and then return to their original position because they are set in this position by a heat-setting process.

The hook-and-loop fasteners combining two tapes that are manufactured and sold by Aplix conform to the fastener described in French patents Nos 1.182.436 and 1.188.714, which are referred to as the basic patents and which expired during the year 1977. This is the only type of fastener ever marketed by Aplix or by any other Velcro licensee. The fastener covered by the original French patent No 1.064.360, made up of two tapes each covered with hooks, has never been exploited, because it did not meet the technical requirements of the market.

Aplix does not exploit any improvement patents currently held by Velcro. In particular, it does not manufacture metal-hooked tape, patent No 2.015.550, which was the subject of the supplementary agreement of 10 December 1973.

In accordance with clause 9 assigning to Velcro any patents in the Federal Republic of Germany, the United Kingdom, The Netherlands or the United States for improvements made by Aplix, Velcro holds several patents for inventions made by Aplix and its chairman. Only a few of these patents have been exploited commercially for limited periods.

(b) The hook-and-loop fastener had a novel character when the patents were first exploited and required substantial technical and commercial development by the licensee.

Protracted technical development work was necessary even to produce the materials and it was several months after the agreement was signed before trial production could begin. In France, as in the other territories for which licences were issued, commercial production of Velcro fasteners did not really begin until the end of 1960. Promotion work was also necessary to stimulate demand for what was a completely new product marketed under a trade mark not previously used.

The technical data the parties supplied during the investigation of the case give as the main advantages of the hook-and-loop fastener its ability to withstand a very large number of opening and closing operations with very little wear and the fact that it can be sewn, stuck, bonded or stapled on to the backing material, which enables it to be used to make a quick-release closure in or between a wide variety of different materials, fabrics, cardboard, paper, metal, glass, leather, etc., including those which have to be washed or dry-cleaned.

The main users of the fasteners are, in descending order of importance, household furnishing and clothing manufacturers and distributors, the automotive and transport equipment industries and the leather and footwear industries.

(c) The hook-and-loop fasteners sold under the 'Velcro' or 'Aplix' trade marks are in competition with other types

[1] OJ No L 101, 1. 4. 1978, p. 7.

[2] In the published version of the Decision, some figures have hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

of textile fasteners, which are cheaper, partly because of the greater age of the underlying invention and quality differences.

The market for textile fasteners can be divided into two groups of products of widely differing importance:

— slide (zip) fasteners, whose market is about 20 times that for self-gripping fasteners and which to a limited extent are substitutes for self-gripping fasteners;

— self-gripping fasteners, which besides Velcro (hook and loop) fasteners also includes 'mushroom' type fasteners, which directly compete with Velcro fasteners but have a more limited range of applications and inferior performance (they cannot withstand boiling and are suited only to applications involving a very limited number of opening and closing operations).

The French market for self-gripping fasteners (both hook-and-loop and mushroom type) is currently estimated at some 22 million metres of tape, of which about 8 million is mushroom type. Aplix holds about . . . % of this market. At present, its sales are mainly of hook-and-loop fasteners sold exclusively under the 'Aplix' trade mark, with the rest accounted for by mushroom-type fasteners sold under the 'Fixa' mark and new self-gripping plastic fasteners sold under the 'Plasti-Aplix' mark. The market for self-gripping fasteners is contracting because of a fall in consumption by the footwear industry.

The other firms besides Aplix that supply self-gripping fasteners to the French market are Niedick (Federal Republic of Germany), Kanebo (Japan), Kuny (Switzerland) and Louison (France), which sell mushroom-type fasteners under the trade marks 'Brisa', 'Magicloth', 'Fix Velours' and 'Cric Crac' respectively. These manufacturers also sell in other EEC countries. Hook-and-loop fasteners are sold in other EEC countries by Velcro Europe and the Velcro licensee Selectus, which use the 'Velcro' trade mark, and by the ex-licensees of Velcro and the American firm 3M.

IV. The dispute between the parties

(a) At a meeting held in Geneva on 31 May and 1 June 1976 with all its European licensees, Velcro told them that as the licensing agreements contained a large number of clauses prohibited by the EC Commission in its Decision 76/29/EEC (AOIP/Beyrar) (1), they would have to be substantially amended. Velcro mentioned the possibility of terminating the agreements and forbidding the licensees to use the trade mark after expiry of the basic patents.

In an exchange of correspondence with Aplix in November 1977, Velcro told Aplix that the agreement of 14 October 1958 would end with the expiry of French patent No 1.188.714 on 15 December 1977.

Aplix, which had earlier unsuccesfully tried to obtain a licence from Velcro to continue to use its trade mark for a long period after the basic patents expired, contested Velcro's position and declared itself entitled to withhold certain sums Velcro claimed Aplix owed it. In particular, it alleged that it had suffered serious harm because of Velcro's failure to pass on improvement patents to it and to comply with the formalities for registering licences for such patents with the INPI (Institut National de la Propriété Industrielle). Aplix also changed its company name from Velcro France Sàrl, which it had used since 1959 with Velcro's consent, to its present one, Aplix SA, and began to use the 'Aplix' trade mark.
The parties decided to refer their dispute to arbitration as provided for in clause 17 of the agreement, but the arbitrators declined to give a ruling, feeling that they must await a decision by the Commission on whether or not the notified agreement was valid.

(b) Velcro later brought the dispute before the Paris Regional Court (Tribunal de Grande Instance) claiming that Aplix was engaging in unfair competition by taking various steps to deprive the 'Velcro' trade mark of its distinctiveness, and in particular by using the words 'la plus forte production de Velcro en Europe' in its letter headings, and asking the court to declare the agreement terminated through the fault of Aplix.

In its judgment given on 17 March 1981, the court held that the entire dispute was subject to the arbitration clause stipulated in the agreement and declined jurisdiction. Its decision was upheld by the Paris Court of Appeal on 19 October 1981, on the ground that the agreement notified to the Commission enjoyed provisional validity until such time as the Commission took a decision and must be enforced by national courts without reference to Article 85 of the Treaty. The agreement was also held to enjoy provisional validity by a Dutch court when it refused on 23 June 1983 an application for an injunction against one of Aplix's French dealers who was exporting hook-and-loop fasteners to the Netherlands. It found that the exported fasteners must be considered as having been legitimately put on the market in France (by Aplix) under the 'Velcro' trade mark with Velcro's consent.

(c) Meanwhile, following request for information by the Commission, the parties had entered into negotiations early in 1979 with a view to reaching an amicable settlement incorporating the changes the Commission

(1) OJ No L 6, 13. 1. 1976, p. 8.

had asked to be made in the notified agreement, in particular to remove the territorial exclusivity granted to Aplix and the exclusive purchasing obligation, the non-competition clause, the export ban imposed on Aplix and the compulsory assignment of Aplix improvement patents in the Federal Republic of Germany, the United Kingdom, The Netherlands or the United States. The need for these changes was confirmed by the Commission by letters dated 7 June 1979 and 16 November 1981 to Velcro and Aplix respectively.

The negotiations between the parties continued, despite interruptions during which Velcro asked the Commission to issue a statement of objections against the agreement, at least until the summer of 1982, as is shown by letters which the parties' lawyers sent to the Commission on 27 July and 17 September 1982. In the end the negotiations broke down, with each side blaming the other for the failure. Aplix had throughout expressed a willingness to delete the following clauses, which were mainly to the benefit of the licensor:

(i) the ban on exports to countries covered by an exclusive Velcro licence;

(ii) the obligation to purchase exclusively from Jakob Müller;

(iii) the licensee's obligation to assign its rights in improvement patents in the Federal Republic of Germany, the United Kingdom, The Netherlands and the United States; and

(iv) the non-competition clause, except for countries covered by the licence but outside the scope of Community law.

It should be noted that notwithstanding the non-competition clause, Aplix in fact exploited products competing directly with Velcro fasteners, in particular 'mushroom' fasteners and fasteners made under a competing patent invented and obtained by Aplix in 1967.

(d) Since 1979 Velcro Europe has been selling self-gripping fasteners under the 'Velcro' trade mark to French distributors. On 4 November 1981 Aplix wrote to one of these French distributors claiming that its industrial property rights were being infringed, though it did not specify how and, in particular, made no reference to the 'Velcro' trade mark or to the recent French court judgments. In April 1983 it also sent letters and telexes to Velcro Europe alleging that it had infringed a patent Aplix had obtained in 1973 by exporting bonded tapes to France. Subsequently, Aplix explained to the Commission that it was on the basis of this patent that it had written to the distributor on 4 November 1981. According to Velcro, the letter, though hedged with legal safeguards, was extremely threatening and calculated to drive its customers over to Aplix through fear of court action.

(e) In its reply to the Commission, Aplix maintained that its agreement with Velcro was valid until at least 11 August 1989, the date of the expiry of patent No 2.015.550, which was the subject of the supplementary agreement of 10 December 1973. This supplementary agreement, Aplix argued, had been entered into in the same way as the previous ones which had extended the agreement until December 1977, without any objection from Velcro, which had received royalties until that time Aplix contended that it therefore had every justification for claiming that the territorial exclusivity granted to it under the original agreement had been extended until 11 August 1989.

Aplix made it clear, however, that in view of the principle established by the Court of Justice of the European Communities in Centrafarm v. Winthrop (1), it would never have attempted to oppose the entry into its territory of products bearing the 'Velcro' trade mark that had been placed on the market in another Member State under the trade mark by the trade mark owner or with his consent. On the other hand, it contended that the agreement of 1958 granted it an exlusive right to use the trade mark Velcro in France and that this exclusive right entitled it to oppose the entry on to the French market of products bearing the 'Velcro' mark that were directly sold by Velcro Europe to French buyers without having first been placed on the market in the Netherlands. Although repeatedly voicing this position of principle, Aplix does not appear, apart from its action in sending the above mentioned letter to a French distributor supplied by Velcro, to have actually tried to prevent direct imports by Velcro from the Netherlands. Furthermore, Aplix, considering itself bound by the export ban, never made any sales in the EEC countries covered by an exclusive licence from Velcro.

(f) In a letter to the Commission dated 11 July 1983, Velcro again disputed that the notified agreement could be considered to be in force after December 1977, arguing that the agreement could not have been extended by the supplementary agreement of 10 December 1973 because the patent to which it referred had (a) been licensed to Aplix at Aplix's request solely to enable it to intervene in a patent infringement action Velcro had brought against the French company Décor and (b) had never been exploited.

(1) Case 16/74, ECR (1974) 1183.

The following assessment of the clauses of the notified agreement in relation to the competition rules of the EEC Treaty is without prejudice to the view a national court might take of the question whether or not the agreement was extended by the supplementary agreement of 10 December 1973.

(g) At the oral hearing held on 25 October 1984, the parties reiterated their basic positions. In particular, Aplix asked the Commission to recognize its right to oppose direct imports of products bearing the 'Velcro' trade mark should its status as the exclusive licensee of the mark be upheld by a national court.

It also complained of a lack of cooperation by Velcro in connection with the removal from the agreement of the exclusive purchasing clause, the export ban, the non-competition clause and the obligation to assign the rights to improvement patents, which would at least have enabled the Commission to exempt the agreement for the past. Aplix also reaffirmed its wish to reach an agreement with Velcro that was consistent with the competition rules. Velcro, for its part, submitted that the supplementary agreement of 10 December 1973 could not be regarded as a separate later agreement capable of validly extending the life of the 1958 agreement, since in this as in the previous supplementary agreements the parties explicitly referred to clause 19 of the 1958 agreement, which provided for automatic extension.

Velcro also contested the right of Aplix to use the 'Velcro' trade mark in a direct or indirect manner in France after expiry of the basic patents in December 1977 and ruled out the possibility of an amicable settlement in the near future.

B. LEGAL ASSESSMENT

I. The scope of this Decision

This Decision concerns an agreement dated 14 October 1958 to which only two undertakings are party and which was notified to the Commission pursuant to Article 5 of Regulation No 17 before 1 February 1963. It is thus an agreement which – on the assumption that it is caught by Article 85 (1) and that the conditions for the application of Article 85 (3) are fulfilled – the Commission could exempt retroactively under Article 6 (2) of Regulation No 17. The Commission in fact considers it possible that until 15 December 1977, certain of the agreement's clauses could either have fallen outside the scope of Article 85 (1) – the circumstances of the case justifying the protection of the investments made by the licensee in France up to 15 December 1977, which date coincides in the present case with the date of expiry of the basic Velcro patents in France – or have benefited from exemption pursuant to Article 85 (3). However, the Commission considers that at present, there is no need to make a finding as to the validity of the 1958 agreement during the period prior to 15 December 1977, during which the parties honoured the agreement in good faith. Furthermore, the Commission has no knowledge of any claim by a third party, before the Commission or a national court, concerning that period.

On the contrary, the Commission considers it desirable to determine the validity of the agreement in the period following 15 December 1977, on the subject of which the Commission has received a complaint from Velcro SA and one of its licensees. The Commission also considers that there is no doubt that since the expiry of Velcro's basic patents in France in December 1977, the notified agreement is caught by the prohibition contained in Article 85 (1) and does not qualify for exemption pursuant to Article 85 (3).

II. Article 85 (1)

The licensing agreement of 14 October 1958, supplemented by the supplementary agreements of 17 November 1958 and 29 May 1972, and possibly also by the supplementary agreement of 10 December 1973, is an agreement between undertakings within the meaning of Article 85. The agreement has the object and effect of restricting competition within the common market by means of the provisions discussed below. The resulting restrictions have an appreciable effect on the relevant fastener market, given the share of the French market held by Aplix.

1. The provisions of the agreement listed in paragraphs 1 – 8 of section A I above constitute, since 15 December 1977, restrictions of competition in the meaning of Article 85 (1).

Paragraphs 1 and 2 The exclusivity granted to Aplix under the agreement and operated by the parties prevents Velcro from itself exploiting its patents for the fasteners and the 'Velcro' trade mark in France and from offering licences to other firms that might be interested in the patents or trade mark, and so prevents competition in these territories between different persons exploiting the same inventions and the same trade mark.

This restriction on the owner of the industrial property rights has fallen under the prohibition contained in Article 85 (1) at least since the expiry of the basic patents. Assuming that the agreement was validly extended until 1989 and that Aplix exploited until that time Velcro patents that were still valid, an exclusivity for such patents could only be considered compatible with Article 85 (1) of the Treaty if it concerned the introduction and protection of a new technology in the contract

territory, within the meaning of the Court's judgment in the 'Maize seed' case (1), which cannot be maintained in this case.

The exclusivity, as so far applied by the parties, has had the effect of restricting the freedom of Velcro to market directly in France not only any new products resulting from still-valid improvement patents but also products made under the expired basic patents, which are at present the only ones exploited by either Aplix or Velcro.

Article 85 (1) is not excluded from applying to this restriction on the free movement of goods by the fact that the goods are marketed under the 'Velcro' trade mark while under the agreement Aplix has undertaken to sell all products arising from the exploitation of the patents, under the name Velcro. Apart from the fact that such use of the mark is not stipulated as exclusive to Aplix, it must be pointed out that Aplix is wrong in saying that Community law only requires free movement of trade-marked goods which have already been placed on the market in another Member State.

In its Hag judgment (2), the Court of Justice held that it would be contrary to the EEC Treaty to prohibit the marketing in a Member State of goods on which a trade mark had been lawfully placed in another Member State on the ground that an identical trade mark having the same origin existed in the first Member State.

It is clear from this judgment that the assignment of a national mark does not alter the position regarding the applicability of trade-mark law: it does not permit either the assignee or the assignor of a national mark to oppose direct imports by the other on the basis of that law. If it is unlawful to invoke trade-mark law against direct imports even where the mark has been assigned or otherwise transferred (by court order or expropriation), this applies all the more where the mark has merely been licensed.

Thus, in the absence of any justification resulting from a need to protect the introduction of the Velcro mark in France even after December 1977, it is not part of the essential function of a trade mark to enable Velcro or Aplix to isolate national markets by prohibiting imports of products manufactured in another Member State and lawfully bearing the 'Velcro' trade mark affixed by the trade mark owner himself or by any of his licensees. In the present case, the criteria for judging such a restiction on free trade between Member States can only be those laid down in Article 85 (3).

(1) Case 258/78 ECR (1982) 2015.
(2) Case 192/73 ECR (1974) 731.

Paragraph 3 The export ban prevents Aplix from selling its products outside the licensed territory in countries where Velcro has granted exclusive licences. Since exclusive licences are still in force in the United Kingdom, Ireland and Denmark, Aplix cannot export its hook-and-loop fasteners made under Velcro patents from France to those countries. Indeed, Aplix gave a formal undertaking not to make such exports to the United Kingdom in the settlement on 2 November 1983 of an action brought against it by Velcro's United Kingdom licensee, Selectus Ltd, in the High Court of Justice, Chancery Division, London.

As is stated in the AOIP/Beyrard Decision, referred to above, it is no part of the essential function of patent rights to enable the licensor to prohibit the licensee from exporting to countries in which the licensor has granted a licence. The protection of one licensee against the competition of another licensee through a contractual ban on exporting or importing is at least after expiry of the basic patents a restriction of competition within the meaning of Article 85 (1). Furthermore, as stated above, the invocation of the Velcro mark also does not permit such isolation of markets.

Paragraph 4 The automatic extension of the term of the licensing agreement, on condition only that Aplix defrays the cost of maintaining in force the improvement patents it desires to use, denies the licensor the possibility of escaping the restrictive obligations upon him at the end of the statutory period of protection for the basic patents. The restriction of competition resulting from the denial of this possibility to Velcro is all the more serious in that the agreement does not provide a right of early termination, except for serious breach of contract.

As the Commission stated in the AOIP-Beyrard Decision, the parties are free to agree subsequently to extend the term of the original agreement; but the Commission would reiterate the principle that a unilateral extension of the term of an agreement, that is to say, in the absence of a specific agreement to that effect, is not permissible. In the present case, it should be noted that the contract was validly extended to December 1977 by the specific agreements of 17 November 1958 and 29 May 1972 concerning the so-called basic patents, which alone permitted the effective exploitation of the Velcro fasteners.

Paragraph 5 As interpreted and applied by the parties, the obligation to obtain looms and other equipment exclusively from the tape loom manufacturer Jakob Müller relates only to plant specifically for the production of self-gripping fasteners, such as looms for weaving the tape and cutting machines for making the hooks. At least with effect from 1977, when it may be considered that substitute products were on the market (see point A.II.3 above), such an obligation prevents the licensee from obtaining the equipment from other manufacturers in the common market, possibly on more favourable terms.

Besides restricting the freedom of the licensee, this obligation also significantly affects the position of third parties, especially loom builders, who are thereby deprived of an important potential customer.

Paragraph 6 The obligation not to use the looms outside the licensed territory restricts the licensee's freedom to manufacture in Member States other than France the Velcro fasteners for which it has received a patent licence and prevents it doing so in the Member States where it could manufacture most advantageously.

Paragraph 7 The obligation on the parties not to compete with one another prevents the licensee and the licensor from carrying on research in fields connected with the licensed patents or from manufacturing or selling competing products while the agreement is in force.

Paragraph 8 The obligation to allow Velcro to acquire the title to patents in the Federal Republic of Germany, in the United Kingdom and in The Netherlands for improvements discovered by Aplix is, in principle, an unwarranted extension of the licensed patents in that the licensor is using his industrial property rights to appropriate certain foreign patents covering improvement inventions that are wholly or partly the work of his licensee.

2. The restrictions of competition discussed above have been, since the expiry of the basic patents in December 1977, likely to affect trade between Member States. The exclusivity prevents Velcro from exploiting its patents and trade mark directly in France and hence from exporting from or to that territory. The indefinite term of the agreement influences trade between Member States at least when combined, as in the present case, with other restrictive clauses likely to affect trade. The obligation on the licensee to obtain looms and other production plant from a specific supplier in Switzerland prevents it from obtaining these supplies from other Member States and so restricts trade in such products between France and those States. The restriction of the licensee's manufacturing rights to French territory prevents it from transferring its production base to or setting up a new production unit in other Member States. The ban on either party taking an interest in competing products prevents them from engaging in trade in such products across Member State frontiers or obtaining licences for them from firms in other Member States. The export ban isolates certain other Member States from the French market. The obligation to assign Velcro certain improvement inventions prevents the licensee from obtaining patents for such improvements in other Member States and hence from exploiting them in such States, whether directly or by licensing.

III. Article 85 (3)

Under Article 85 (3), the provisions of Article 85 (1) of the EEC Treaty may be declared inapplicable in the case of agreements between undertakings which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which do not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

1. (a) To the extent that the agreement gives Aplix the benefit of a prohibition on the licensor from exploiting the products in France and from granting further licences there during the life of the patents which expired in 1977, the Commission considers that the agreement was outside the scope of Article 85 (1) to the extent that circumstances of the kind described in the abovementioned 'Maize seed' judgment, especially new technology, the need for investment and a beneficial effect on competition *vis-à-vis* other products, were present in this case until December 1977, or that it could in any event have been exempted under Article 85 (3).

The exclusivity no doubt made it easier for Aplix to take upon itself the risk of investing in the exploitation of the Velcro patents and thus facilited the development of a new product, self-gripping fasteners, in competition with slide fasteners, so contributing to technical and economic progress.

The industrial exploitation of the Velcro patents through licensing provided the user industries with a product which they came to appreciate for its qualities and its suitability for particular applications. The user industries can thus be said to have received a fair share of the benefit resulting from the agreement. The territorial protection resulting from the licensee's exclusive sales rights and the related ban on the licensor exporting into the territory can be considered to be indispensable for inducing the licensee to undertake a commitment to develop and manufacture a new product, which when the agreement was signed was still at an experimental stage, and to build up from scratch a

market for the product and considerable goodwill for the 'Velcro' trade mark. The agreement did not eliminate competition for a substantial part of the products in question, since there are many other producers in France manufacturing competing products.

(b) The Commission sees no justification under Article 85 (3), however, for restrictions on the marketing in France of products manufactured by Velcro Europe after the patents for the processes used by Velcro Europe, notably the so-called basic French patents Nos 1.182.436 and 1.188.714, had expired on 9 August and 15 December 1977 respectively.

The Commission would point out that any exclusivity that may be granted for patents under an agreement is indissolubly linked to the existence and continuing validity of the patents. Therefore, in the present case exclusivity can no longer apply between the parties for the Velcro patents, which the licensee exploited throughout their life, and no obstacle can on that basis be placed on the importation and marketing in France of products manufactured using processes that are no longer protected.

Nor can the import of Velcro products into France be justifiably opposed on the basis of use of the trade mark. Although trade mark rights, unlike patent rights, are not subject to a time limit provided the mark continues to be used or its registration is renewed, a trade mark owner or his licensees cannot enforce the rights held in a mark where one of them exports to the other's territory within the common market unless special reasons such as the protection of the introduction of the mark into those territories justifies such action.

In a case like the present one, it can be accepted that exclusive user rights for a trade mark help to promote the entry of a new product in a new respective territory in which the licensor or a licensee operates. However, such exclusive rights must cease at the latest when the basic patents expire, so that the products, which up till then have been protected from competition within national territories, can spread beyond these territories and become established throughout the enlarged market of the Community. In fact, nearly 20 years after the introduction of the Velcro mark to France and other EEC countries, including the Netherlands, the Commission cannot find that in the present case there are special circumstances which might still justify exclusivity of the mark in favour of Aplix or of Velcro after the expiry of the basic patents in December 1977.

(c) Finally, supposing that the contractual relations between the parties did continue after December 1977 for the exploitation of patent No 2.015.550 (and of any other patented processes that Aplix might be entitled to exploit until August 1989), no exclusive manufacturing and sales rights on Aplix's part with respect to this or any other more recent patent could be accepted under Article 85 (3), or even considered as falling outside the scope of Article 85 (1) for a certain period, unless it were established that such patents were actually exploited. The Commission understands that no such more recent patent has been exploited by Aplix. Even if Aplix had done so and exclusive rights in Aplix's favour could be justified, this would not entitle Aplix to oppose imports of products bearing the 'Velcro' mark manufactured in other Member States not according to these patents but to patents that have expired.

2. The export ban on Aplix, the automatic extension of the term of the agreement, the obligation to obtain supplies exclusively from the loom builder Jakob Müller, the prohibition of Aplix from manufacturing the patented product outside the licensed territory, the non-competition clause, and the obligation on the licensee to assign the licensor its rights to certain improvement inventions are not justified since December 1977 by valid patents or by trade-mark rights and do not fulfil the conditions for exemption laid down in Article 85 (3).

(a) The export ban on Aplix is designed to underpin a system of territorial protection for other licensees in other common market countries and for Velcro itself. Whilst export bans imposed by Velcro on Aplix and the other licensees might in the past have been eligible for exemption for a certain period during the validity of the basic patents in France and the other common market countries on account of the novelty of the licensed technology and the investment undertaken by the licensees, there is no longer any justification for such an exemption at least since 1977. This export ban therefore represents a serious limitation of Aplix's freedom to compete within the common market.

(b) The provision in clause 19 of the notified agreement is, in the absence of specific agreements validly extending the agreement beyond December 1977, a serious restriction of Velcro's freedom to escape the restrictive obligations imposed on it in the agreement, and it is difficult to see how this clause

could contribute to improving the production or distribution of the products or promote technical or economic progress.

(c) The obligation upon the licensee to obtain the special equipment it requires for the production of hook-and-loop tape exclusively from Jakob Müller, although it is established that at least since 1977 the licensee could have obtained similar equipment from other suppliers in the common market, is a serious restriction on the licensee's freedom to choose his source of supply. This restriction is thus not necessary to ensure a technically satisfactory exploitation of the invention. Furthermore, after 1977, there is no justification by way of legitimate recompense to Jakob Müller for the effort of developing the equipment necessary to exploit the invention, as Jakob Müller was able to obtain such recompense from supplying Aplix and the other licensees up to that date.

(d) After the expiry of the basic patents, the ban on manufacturing the patented products outside the licensed territory has no beneficial effects for the purposes of Article 85 (3), but acts rather as a brake on better allocation of resources within the common market.

(e) Given that Aplix has not exploited any valid patent since December 1977, the non-competition clause cannot be justified by reason of an improved exploitation of patents. There is also no justification based on a more intensive use of the Velcro mark by the licensee, as Velcro has been disputing the legality of such exploitation since 1977 and Aplix has been using a mark of its own since then.

(f) The restriction of competition involving the compulsory assignment to Velcro of the title to certain foreign improvement inventions made by the licensee also cannot be justified after December 1977. Velcro's basic patents having come into the public domain since then, Velcro can no longer invoke rights to obtain title to any improvement patents.

3. Since not all the conditions laid down in Article 85 (3) are fulfilled in respect of the period following the expiry of Velcro's basic patents, namely 15 December 1977, the notified agreement cannot be exempted after that date.

IV. Article 7 (1)

Where agreements notified before 1 February 1963 do not fulfil the conditions of applicability of Article 85 (3) of the Treaty, and the parties terminate them or amend them so that they are no longer caught by Article 85 (1) or fulfil the conditions of applicability of Article 85 (3), the Commission is empowered, when adopting a decision pursuant to Article 85 (1), to determine the period to which the prohibition laid down in Article 85 (1) applies.

In the present case, Aplix wanted to amend certain clauses of the agreement (see point A. IV (c) above), while Velcro wanted to terminate the agreement in December 1977 (see point A. IV (f). Notwithstanding this disagreement over the amendment or termination of the agreement within the meaning of Article 7 of Regulation No 17, both parties were bound by the agreement until the date of this Decision, as it is an old agreement which benefits from provisional validity. This validity was confirmed by the French and Dutch courts in 1981 and 1983 (see point A. IV (b) above). The Commission considers that in the present case, despite the absence of the conditions laid down in Article 7 of Regulation No 17, since the parties were bound by the agreement until the date of this Decision, the principle of legal security should prevail, at least as regards the effects of the agreement as between the parties, over that of the retroactivity of the Commission Decision. However, the Commission does not consider itself empowered to limit the period during which the prohibition laid down in Article 85 (1) applies if the conditions of Article 7 of Regulation No 17 are not fulfilled.

V. Article 3 (1)

Article 3 (1) of Regulation No 17 provides that where the Commission, upon application or upon its own initiative, finds an infringement of Article 85 of the Treaty, it may by decision require the undertakings or associations of undertakings concerned to bring such infringement to an end. On the basis of the findings set out in sections I, II, III and IV above, the Commission considers that since 15 December 1977 the undertakings in question have committed an infringement of Article 85 (1) and that no exemption may be granted for the notified agreement,

HAS ADOPTED THIS DECISION:

Article 1

As regards the territory of the common market and, in particular, of France, the clauses listed below of the licensing agreement signed by the undertakings referred to in Article 4 on 14 October 1958, and supplemented by supplementary agreements signed on 17 November 1958, 29 May 1972 and 10 December 1973, constitute infringements of Article 85 (1) of the EEC Treaty since 15 December 1977:

1. clause 1 (exclusivity);

2. clauses 2 and 8 (export bans);

3. clause 19 (extension of the term of the restrictive clauses of the agreement beyond the life of the so-called basic patents, namely patents Nos 1.064.360, 1.182.436 and 1.188.714);
4. third sentence of clause 6 (exclusive purchasing obligation);
5. fourth sentence of clause 6 (prohibition on manufacturing outside the licensed territory);
6. clause 12 (non-competition clause); and
7. clause 9 (compulsory assignment of improvement patents in the Federal Republic of Germany, the United Kingdom and The Netherlands).

Article 2

Application of Article 85 (3) of the EEC Treaty is hereby refused.

Article 3

The undertakings referred to in Article 4 shall immediately bring the infringements listed in Article 1 to an end.

Article 4

This Decision is addressed to:

1. Velcro SA,
rue César-Soulié 3,
CH-1260 Nyon
2. Aplix SA,
avenue Marceau, 75bis
F-75116 Paris

Done at Brussels, 12 July 1985.

For the Commission
Peter SUTHERLAND
Member of the Commission

COMMISSION DIRECTIVE

of 25 July 1985

amending Council Directive 79/409/EEC on the conservation of wild birds

(85/411/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (1), as last amended by Directive 81/854/EEC (2), in particular Article 15 thereof,

Whereas Annex I to Directive 79/409/EEC should be altered to take account of the latest information on the situation as regards avifauna;

Whereas the provisions of this Directive are in accordance with the opinion of the Committee to adapt Directive 79/409/EEC to technical and scientific progress,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 79/409/EEC shall be replaced by the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on 31 July 1986.

2. They shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 25 July 1985.

For the Commission,

Stanley CLINTON DAVIS

Member of the Commission

(1) OJ No L 103, 25. 4. 1979, p. 1.
(2) OJ No L 319, 7. 11. 1981, p. 3.

BILAG – ANHANG – ΠΑΡΑΡΤΗΜΑ – ANNEX – ANNEXE – ALLEGATO – BIJLAGE

	Dansk	Deutsch	Ελληνικά	English	Francais	Italiano	Nederlands
1. Gavia arctica	Sortstrubet Lom	Prachttaucher	Λαμπροβούτι	Black-throated Diver	Plongeon arctique	Strolaga mezzana	Parelduiker
2. Gavia stellata	Rødstrubet Lom	Sterntaucher	Κηλιδοβούτι	Red-throated Diver	Plongeon catmarin	Strolaga minore	Roodkeelduiker
3. Gavia immer	Islom	Eistaucher	Παγοβούτι	Great Northern Diver	Plongeon imbrin	Strolaga maggiore	IJsduiker
4. Podiceps auritus	Nordisk Lappedykker	Ohrentaucher	Ωτοβουτηχτάρα	Slavonian Grebe	Grèbe esclavon	Svasso cornuto	Kuifduiker
5. Calonectris diomedea	Kuhls Skråpe	Gelbschnabelsturm-taucher	Αρτέμις	Cory's Shearwater	Puffin cendré	Berta maggiore	Kuhls Pijlstormvogel
6. Hydrobates pelagicus	Lille Stormsvale	Sturmschwalbe	Πετρίλος	Storm Petrel	Pétrel tempête	Uccello delle tempeste	Stormvogeltje
7. Oceanodroma leucorhoa	Stor Stormsvale	Wellenläufer	Κυματοβατής	Leach's Storm-petrel	Pétrel culblanc	Uccello delle tempeste codaforcuta	Vaal Stormvogeltje
8. Phalacrocorax carbo sinensis	Skarv (kontinental underart)	Kormoran (kontinentale Unterart)	Κορμοράνος (Ηπειρωτική φυλή)	Cormorant (continental subspecies)	Grand Cormoran (sous-espèce continentale)	Cormorano (sottospecie continentale)	Aalscholver (continentale ondersoort)
9. Phalacrocorax aristotelis desmarestii	Topskarv (Middelhavs-underart)	Krähenscharbe (Mittelmeer-Unterart)	Θαλασσοκόρακας	Shag (Mediterranean subspecies)	Cormoran huppé (sous-espèce méditerranéenne)	Marangone dal ciuffo (sottospecie del Mediterraneo)	Kuifaalscholver (Middellandse Zee ondersoort)
10. Phalacrocorax pygmeus	Dværgskarv	Zwergscharbe	Λαγγόνα	Pygmy Cormorant	Cormoran pygmée	Marangone minore	Dwergaalscholver
11. Pelecanus onocrotalus	Almindelig Pelikan	Rosapelikan	Ροδοπελεκάνος	White Pelican	Pélican blanc	Pellicano	Pelikaan
12. Pelecanus crispus	Krøltoppet Pelikan	Krauskopfpelikan	Αργυροπελεκάνος	Dalmatian Pelican	Pélican frisé	Pellicano riccio	Kroeskoppelikaan
13. Ixobrychus minutus	Dværghejre	Zwergrohrdommel	Νανομουγκανά	Little Bittern	Blongios nain (Butor blongios)	Tarabusino	Woudaapje
14. Botaurus stellaris	Rørdrum	Rohrdommel	Τρανομουγκάνα	Bittern	Butor étoilé	Tarabuso	Roerdomp
15. Nycticorax nycticorax	Nathejre	Nachtreiher	Νυχτοκόρακας	Night Heron	Héron bihoreau	Nitticora	Kwak
16. Ardeola ralloides	Tophejre	Rallenreiher	Κρυπτοτσικνιάς	Squacco Heron	Héron crabier	Sgarza ciuffetto	Ralreiger
17. Egretta garzetta	Silkehejre	Seidenreiher	Λευκοτσικνιάς	Little Egret	Aigrette garzette	Garzetta	Kleine Zilverreiger
18. Egretta alba	Sølvhejre	Silberreiher	Αργυροτσικνιάς	Great White Egret	Grande aigrette	Airone bianco maggiore	Grote Zilverreiger

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19. Ardea purpurea	Purpurhejre	Purpurreiher	Πορφυροτσικνιάς	Purple Heron	Héron pourpré	Airone rosso	Purperreiger
20. Ciconia nigra	Sort Stork	Schwarzstorch	Μαυροπελαργός	Black Stork	Cigogne noire	Cicogna nera	Zwarte Ooievaar
21. Ciconia ciconia	Hvid Stork	Weißstorch	Λευκοπελαργός	White Stork	Cigogne blanche	Cicogna bianca	Ooievaar
22. Plegadis falcinellus	Sort Ibis	Sichler	Χαλκόκοτα	Glossy Ibis	Ibis falcinelle	Mignattaio	Zwarte Ibis
23. Platalea leucorodia	Skestork	Löffler	Χουλιαρομύτα	Spoonbill	Spatule blanche	Spatola	Lepelaar
24. Phoenicopterus ruber	Flamingo	Flamingo	Φλαμίγκο	Greater Flamingo	Flamant rose	Fenicottero	Flamingo
25. Cygnus columbianus bewickii (Cygnus bewickii)	Pibesvane	Zwergschwan	Νανόκυκνος	Bewick's Swan	Cygne de Bewick	Cigno minore	Kleine Zwaan
26. Cygnus cygnus	Sangsvane	Singschwan	Αγριόκυκνος	Whooper Swan	Cygne sauvage	Cigno selvatico	Wilde Zwaan
27. Anser albifrons flavirostris	Blisgås (grønlandsk underart)	Bläßgans (Grönland-Unterart)	Ασπρομετωπόχηνα (Φηληης Γριλανδιας)	White-fronted Goose (Greenland subspecies)	Oie rieuse (sous-espèce du Groenland)	Oca lombardella (sottospecie di Groenlandia)	Groenlandse Kolgans
28. Anser erythropus	Dværggås	Zwerggans	Νανόχηνα	Lesser White-fronted Goose	Oie naine	Oca lombardella minore	Dwerggans
29. Branta leucopsis	Bramgås	Nonnengans	Ασπρομαγουλόχηνα	Barnacle Goose	Bernache nonnette	Oca facciabianca	Brandgans
30. Branta ruficollis	Rødhalset Gås	Rothalsgans	Κοκκινολαιμόχηνα	Red-breasted Goose	Bernache à cou roux	Oca collorosso	Roodhalsgans
31. Tadorna ferruginea	Rustand	Rostgans	Καστανόχηνα	Ruddy Shelduck	Tadorne casarca	Casarca	Casarca
32. Aythya nyroca	Hvidøjet And	Moorente	Βαλτόπαπια	White-eyed Pochard	Fuligule nyroca	Moretta tabaccata	Witoogeend
33. Oxyura leucocephala	Hvidhovedet And	Weißkopf-Ruderente	Κεφαλούδι	White-headed Duck	Erismature à tête blanche	Gobbo rugginoso	Witkopeend
34. Pernis apivorus	Hvepsevåge	Wespenbussard	Σφηκοβαρβακίνο	Honey Buzzard	Bondrée apivore	Falco pecchiaiolo	Wespendief
35. Milvus migrans	Sort Glente	Schwarzmilan	Τσίφτης	Black Kite	Milan noir	Nibbio bruno	Zwarte Wouw
36. Milvus milvus	Rød Glente	Rotmilan	Ψαλιδάρης	Red Kite	Milan royal	Nibbio reale	Rode Wouw
37. Haliaeetus albicilla	Havørn	Seeadler	Θαλασσαετός	White-tailed Eagle	Pygargue à queue blanche	Aquila di mare	Zeearend
38. Gypaetus barbatus	Lammegrib	Bartgeier	Γυπαετός	Bearded Vulture	Gypaète barbu	Avvoltoio degli agnelli	Lammergier
39. Neophron percnopterus	Ådselgrip	Schmutzgeier	Ασπροπάπης	Egyptian Vulture	Percnoptère d'Égypte	Capovaccaio	Aasgier

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40. Gyps fulvus	Gåsegrip	Gänsegeier	Όρνιο	Griffon Vulture	Vautour fauve	Grifone	Vale Gier
41. Aegypius monachus	Munkegrip	Mönchsgeier	Μαυρόγυπας	Black Vulture	Vautour moine	Avvoltoio	Monniksgier
42. Circaetus gallicus	Slangeørn	Schlangenadler	Φιδαετός	Short-toed Eagle	Circaète jean-le-blanc	Biancone	Slangenarend
43. Circus aeruginosus	Rørhøg	Rohrweihe	Καλαμόκιρκος	Marsh Harrier	Busard des roseaux	Falco di palude	Bruine Kiekendief
44. Circus cyaneus	Blå Kærhøg	Kornweihe	Βαλτόκιρκος	Hen Harrier	Busard saint-martin	Albanella reale	Blauwe Kiekendief
45. Circus macrourus	Steppehøg	Steppenweihe	Στεπόκιρκος	Pallid Harrier	Busard pâle	Albanella pallida	Steppenkiekendief
46. Circus pygargus	Hedehøg	Wiesenweihe	Λιβαδόκιρκος	Montagu's Harrier	Busard cendré	Albanella minore	Grauwe Kiekendief
47. Accipiter brevipes	Kortløbet Spurvehøg	Kurzfangsperber	Σαΐνη	Levant Sparrowhawk	Épervier à pieds courts	Sparviere levantino	Balkansperwer
48. Accipiter gentilis arrigonii	Duehøg (Korsikansk-sardinsk underart)	Habicht (Korsika-Sardinien-Unterart)	Διπλοσάλνο (Φυλή της Κορσικής Σαρδυνία)	Goshawk (Corsican-Sardinian subspecies)	Autour des palombes (sous-espèce de Corse-Sardaigne)	Astore (sottospecie di Corsica-Sardegna)	Havik (ondersoort van Corsica-Sardinië)
49. Buteo rufinus	Ørnevåge	Adlerbussard	Αετοβαρβακίνα	Long-legged Buzzard	Buse féroce	Poiana codabianca	Arendbuizerd
50. Aquila pomarina	Lille Skrigeørn	Schreiadler	Κραυγαετός	Lesser Spotted Eagle	Aigle pomarin	Aquila anatraia minore	Schreeuwarend
51. Aquila clanga	Stor Skrigeørn	Schelladler	Στικταετός	Spotted Eagle	Aigle criard	Aquila anatraia maggiore	Bastaardarend
52. Aquila chrysaetos	Kongeørn	Steinadler	Χρυσαετός	Golden Eagle	Aigle royal	Aquila reale	Steenarend
53. Aquila heliaca	Kejserørn	Kaiseradler	Βασιλαετός	Imperial Eagle	Aigle impérial	Aquila imperiale	Keizerarend
54. Hieraaetus pennatus	Dværgørn	Zwergadler	Σταυραετός	Booted Eagle	Aigle botté	Aquila minore	Dwergarend
55. Hieraaetus fasciatus	Høgeørn	Habichtsadler	Σπιζαετός	Bonelli's Eagle	Aigle de Bonelli	Aquila del Bonelli	Havikarend
56. Pandion haliaetus	Fiskeørn	Fischadler	Ψαραετός	Osprey	Balbuzard pêcheur	Falco pescatore	Visarend
57. Falco naumanni	Lille Tårnfalk	Rötelfalke	Κιρκινέζι	Lesser Kestrel	Faucon crécerellette	Grillaio	Kleine Torenvalk
58. Falco eleonorae	Eleonorafalk	Eleonorenfalke	Μαυροπετρίτης	Eleonora's Falcon	Faucon d'Éléonore	Falco della regina	Eleonora's Valk
59. Falco biarmicus	Lannerfalk	Lanner	Χρυσογέρακας	Lanner Falcon	Faucon lanier	Lanario	Lannervalk
60. Falco peregrinus	Vandrefalk	Wanderfalke	Πετρίτης	Peregrine	Faucon pèlerin	Pellegrino	Slechtvalk

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61. Falco columbarius	Dværgfalk	Merlin	Νανογέρακας	Merlin	Faucon émerillon	Smeriglio	Smelleken
62. Bonasa bonasia	Hjerpe	Haselhuhn	Αγριόκοτα	Hazel Grouse	Gélinotte des bois	Francolino di monte	Hazelhoen
63. Tetrao urogallus	Tjur	Auerhuhn	Αγριόκουρκος	Capercaillie	Grand Tétras	Gallo cedrone	Auerhoen
64. Tetrao tetrix tetrix	Urfugl (kontinental underart)	Birkhuhn (kontinentale Unterart)	Λυροπετεινός (Ηπειρωτική φυλή)	Black Grouse (continental subspecies)	Tétras lyre (sous-espèce continentale)	Fagiano di monte (sottospecie continentale)	Korhoen (continentale ondersoort)
65. Lagopus mutus pyrenaicus	Fjeldrype (Pyrenæern underart)	Alpenschneehuhn (Pyrenäen-Unterart)	Βουνοχιονόκοτα (φυλή των Πυρηναίων)	Ptarmigan (Pyrenean subspecies)	Lagopède alpin (sous-espèce des Pyrénées)	Pernice bianca (sottospecie di Pyrenei)	Alpensneeuwhoen (Pyreneeën ondersoort)
66. Lagopus mutus helveticus	Fjeldrype (Alperne underart)	Alpenschneehuhn (Alpen-Unterart)	Βουνοχιονόκοτα (φυλή των Άλπεων)	Ptarmigan (Alpine subspecies)	Lagopède alpin (sous-espèce des Alpes)	Pernice bianca (sottospecie di Alpi)	Alpensneeuwhoen (alpijnse ondersoort)
67. Alectoris barbara	Berberhøne	Felsenhuhn	Βραχοπέρδικα	Barbary Partridge	Perdrix gambra	Pernice sarda	Barbarijse Patrijs
68. Alectoris graeca saxatilis	Stenhøne (Alperne underart)	Steinhuhn (Alpen-Unterart)	Πετροπέρδικα (φυλή των Άλπεων)	Rock Partridge (Alpine subspecies)	Perdrix bartavelle (sous-espèce des Alpes)	Coturnice (sottospecie di Alpi)	Europese Steenpatrijs (alpijnse ondersoort)
69. Alectoris graeca whitakeri	Stenhøne (Sicilien underart)	Steinhuhn (Sizilien-Unterart)	Πετροπέρδικα (φυλή της Σικελίας)	Rock Partridge (Sicilian subspecies)	Perdrix bartavelle (sous-espèce de Sicile)	Coturnice (sottospecie di Sicilia)	Europese Steenpartijs (Siciliaanse ondersoort)
70. Perdix perdix italica	Agerhøne (italiensk underart)	Rebhuhn (italienische Unterart)	Λιβαδοπέρδικα (φυλή της Ιταλίας)	Partridge (Italian subspecies)	Perdrix grise (sous-espèce d'Italie)	Starna (sottospecie d'Italia)	Patrijs (Italiaanse ondersoort)
71. Crex crex	Engsnarre	Wachtelkönig	Ορτυγομάνα	Corn Crake	Râle des genêts	Re di quaglie	Kwartelkoning
72. Porzana porzana	Plettet Rørvagtel	Tüpfelsumpfhuhn	Στικτοπουλάδα	Spotted Crake	Marouette ponctuée	Voltolino	Porseleinhoen
73. Porzana parva	Lille Rørvagtel	Kleines Sumpfhuhn	Μικροπουλάδα	Little Crake	Marouette poussin	Schiribilla	Klein Waterhoen
74. Porzana pusilla	Dværgrørvagtel	Zwergsumpfhuhn	Νανοπουλάδα	Baillon's Crake	Marouette de Baillon	Schiribilla grigiata	Kleinst Waterhoen
75. Porphyrio porphyrio	Sultanhøne	Purpurhuhn	Σουλτανοπουλάδα	Purple Gallinule	Poule sultane	Pollo sultano	Purperkoet
76. Grus grus	Trane	Kranich	Γερανός	Crane	Grue cendrée	Gru	Kraanvogel
77. Tetrax tetrax (Otis tetrax)	Dværgtrappe	Zwergtrappe	Χαμωτίδα	Little Bustard	Outarde canepetière	Gallina prataiola	Kleine Trap
78. Otis tarda	Stortrappe	Großtrappe	Αγριόγαλος	Great Bustard	Outarde barbue	Otarda	Grote Trap

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79. Himantopus himantopus	Styltetøber	Stelzenläufer	Καλαμοκανάς	Black-winged Stilt	Échasse blanche	Cavaliere d'Italia	Steltkluut
80. Recurvirostra avosetta	Klyde	Säbelschnäbler	Αβοκέτα	Avocet	Avocette élégante	Avocetta	Kluut
81. Burhinus oedicnemus	Triel	Triel	Πετροτριλίδα	Stone Curlew	Oedicnème criard	Occhione	Griel
82. Glareola pratincola	Braksvale	Brachschwalbe	Νεροχελίδονο	Collared Pratincole	Glaréole à collier	Pernice di mare	Vorkstaartplevier
83. Charadrius morinellus (Eudromias morinellus)	Pomeransfugl	Mornellregenpfeifer	Βουνοσφυριχτής	Dotterel	Pluvier guignard	Piviere tortolino	Morinelplevier
84. Pluvialis apricaria	Hjejle	Goldregenpfeifer	Βροχοπούλι	Golden Plover	Pluvier doré	Piviere dorato	Goudplevier
85. Hoplopterus spinosus	Sporevibe	Spornkiebitz	Αγκαθοκαλημάνα	Spur-winged Plover	Vanneau éperonné	Pavoncella armata	Sporenkievit
86. Gallinago media	Tredækker	Doppelschnepfe	Διπλομπεκατσίνι	Great Snipe	Bécassine double	Croccolone	Poelsnip
87. Philomachus pugnax	Brushane	Kampfläufer	Ψενιομαχητής	Ruff	Chevalier combattant	Combattente	Kemphaan
88. Namenius tenuirostris	Tyndnæbbet Spove	Dünnschnabelbrach-vogel	Λεπτομύτα	Slender-billed Curlew	Courlis à bec grâle	Chiurlottello	Dunbekwulp
89. Tringa glareola	Tinksmed	Bruchwasserläufer	Λασπότρυγγας	Wood Sandpiper	Chevalier sylvain	Piro piro boschereccio	Bosruiter
90. Phalaropus lobatus	Odinshane	Odinshühnchen	Ραβδοκολυμπό-τρυγγας	Red-necked Phalarope	Phalarope à bec étroit	Falaropo becco sottile	Grauwe Franjepoot
91. Larus genei	Tyndnæbbet Måge	Dünnschnabelmöwe	Λεπτοραμφόγλαρος	Slender-billed Gull	Goéland railleur	Gabbiano roseo	Dunbekmeeuw
92. Larus melanocephalus	Sorthovedet Måge	Schwarzkopfmöwe	Εκυλοκούταβος	Mediterranean Gull	Mouette mélanocáphale	Gabbiano corallino	Zwartkopmeeuw
93. Larus audouinii	Audouinsmåge	Korallenmöwe	Αιγαιόγλαρος	Audouin's Gull	Goéland d'Audouin	Gabbiano corso	Audouins Meeuw
94. Gelochelidon nilotica	Sandterne	Lachseeschwalbe	Γελογλάρονο	Gull-billed Tern	Sterne hansel	Rondine di mare zampenere	Lachstern
95. Sterna caspia	Rovterne	Raubseeschwalbe	Καρατζάς	Caspian Tern	Sterne caspienne	Rondine di mare maggiore	Reuzenstern
96. Sterna sandvicensis	Splitterne	Brandseeschwalbe	Χειμωνογλάρονο	Sandwich Tern	Sterne caugek	Beccapesci	Grote Stern
97. Sterna dougallii	Dougallsterne	Rosenseeschwalbe	Ροδογλάρονο	Roseate Tern	Sterne de Dougall	Sterna del Dougall	Dougalls Stern
98. Sterna hirundo	Fjordterne	Flußseeschwalbe	Ποταμογλάρονο	Common Tern	Sterne pierregarin	Sterna comune	Visdief
99. Sterna paradisaea	Havterne	Küstenseeschwalbe	Αρκτικογλάρονο	Arctic Tern	Sterne arctique	Sterna codalunga	Noordse Stern

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100. Sterna albifrons	Dværgterne	Zwergseeschwalbe	Νανογλάρονο	Little Tern	Sterne naine	Fraticello	Dwergstern
101. Chlidonias hybridus	Hvidskægget Terne	Weißbart-seeschwalbe	Μουστακογλάρονο	Whiskered Tern	Guifette moustac	Mignattino piombato	Witwangstern
102. Chlidonias niger	Sortterne	Trauerseeschwalbe	Μαυρογλάρονο	Black Tern	Guifette noire	Mignattino	Zwarte Stern
103. Pterocles alchata	Spidshalet Sandhøne	Spießflughuhn	Στυβλοπεριστερόκοτα	Pin-tailed Sandgrouse	Ganga cata	Grandule	Witbuikzandhoen
104. Bubo bubo	Stor Hornugle	Uhu	Μπούφος	Eagle Owl	Grand-duc d'Europe	Gufo reale	Oehoe
105. Nyctea scandiaca	Sneugle	Schnee-Eule	Χιονογλαύκα	Snowy Owl	Harfang des neiges	Gufo delle nevi	Sneeuwuil
106. Glaucidium passerinum	Spurveugle	Sperlingskauz	Επουργιτόγλανκα	Pygmy Owl	Chouette chevêchette (Chevêchette d'Europe)	Civetta nana	Dwerguil
107. Asio flammeus	Mosehornugle	Sumpfohreule	Βαλτόμπουφος	Short-eared Owl	Hibou des marais	Gufo di palude	Velduil
108. Aegolius funereus	Perleugle	Rauhfußkauz	Χαροπούλι (Αιγωλιός)	Tengmalm's Owl	Chouette de Tengmalm (Nyctale de Tengmalm)	Civetta capogrosso	Ruigpootuil
109. Caprimulgus europaeus	Natravn	Ziegenmelker	Γιδοβυζάστρα	Nightjar	Engoulevent d'Europe	Succiacapre	Nachtzwaluw
110. Alcedo atthis	Isfugl	Eisvogel	Αλκυόνα	Kingfisher	Martin pêcheur d'Europe	Martin pescatore	IJsvogel
111. Coracias garrulus	Ellekrage	Blauracke	Χαλκοκουρούνα	Roller	Rollier d'Europe	Ghiandaia marina	Scharrelaar
112. Picus canus	Gråspætte	Grauspecht	Σταχτοτσικλιτάρα	Grey-headed Woodpecker	Pic cendré	Picchio cenerino	Grijskopspecht
113. Dryocopus martius	Sortspætte	Schwarzspecht	Μουροτσικλιτάρα	Black Woodpecker	Pic noir	Picchio nero	Zwarte Specht
114. Dendrocopos medius	Mellemflagspætte	Mittelspecht	Μεσοτσικλιτάρα	Middle Spotted Woodpecker	Pic mar	Picchio rosso mezzano	Middelste Bonte Specht
115. Dendrocopos leucotos	Hvidrygget Flagspætte	Weißrückenspecht	Λευκονωτοτσικλιτάρα	White-backed Woodpecker	Pic à dos blanc	Picchio dorsobianco	Witrugspecht
116. Dendrocopos syriacus	Syrisk Flagspætte	Blutspecht	Βαλκανοτσικλιτάρα	Syrian Woodpecker	Pic syriaque	Picchio siriaco	Syrische Bonte Specht
117. Picoides tridactylus	Tretået Spætte	Dreizehenspecht	Τριδακτυλοτσικλιτάπα	Three-toed Woodpecker	Pic tridactyle	Picchio tridattilo	Drieteenspecht

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118. Galerida theklae	Kortnæbbet Toplærke	Theklalerche	Κατσοιλιέρης της δέκλας	Thekla Lark	Cochevis de Thékla	Capellaccia spagnola	Thekla Leeuwerik
119. Melanocorypha calandra	Kalanderlærke	Kalanderlerche	Βουνογαλιάταρα	Calandra Lark	Alouette calandre	Calandra	Kalanderleeuwerik
120. Lollula arborea	Hedelærke	Heidelerche	Δεντροσταρήθων	Woodlark	Alouette lulu	Tottavilla	Boomleeuwerik
121. Calandrella brachydactyla	Korttået Lærke	Kurzzehenlerche	Μικρογαλιάντρα	Short-toed Lark	Alouette calandrelle	Calandrella	Kortteenleeuwerik
122. Anthus campestris	Markpiber	Brachpieper	Ναμοκελάδα	Tawny Pipit	Pipit rousseliae	Calandro	Duinpieper
123. Troglodytes troglodytes fridariensis	Gærdesmutte (Fair Isle underart)	Zaunkönig (Fair Isle-Unterart)	Τουποφράχτης (υποείδος της ν. Φαίρ)	Wren (Fair Isle subspecies)	Troglodyte mignon (sous-espèce de Fair Isle)	Scricciolo (sottospecie delle isole Fair Isle)	Winterkoning (ondersoort van Fair Isle)
124. Luscinia svecica	Blåhals	Blaukehlchen	Γαλαζολαίμης	Bluethroat	Gorgebleue à miroir	Pettazzurro	Blauwborst
125. Oenanthe leucura	Sørgestenpikker	Trauerstein-schmätzer	Μαυροπετρόκλης	Black Wheatear	Traquet rieur	Monachella nera	Zwarte Tapuit
126. Acrocephalus paludicola	Vandsanger	Seggenrohrsänger	Καρηκοποταμίδα	Aquatic Warbler	Phragmite aquatique	Pagliarolo	Waterrietzanger
127. Acrocephalus melanopogon	Tamarisksanger	Mariskensänger	Μουστακοποτα-μίδα	Moustached Warbler	Lusciniole à moustaches	Forapaglie castagnolo	Zwartkoprietzanger
128. Hippolais olivetorum	Olivensanger	Olivenspötter	Λιοστριτοίδα	Olive-tree Warbler	Hypolais des oliviers	Canapino levantino	Griekse Spotvogel
129. Sylvia sarda	Sardinsk Sanger	Sardengrasmücke	Σαρδοτσιροβάκος	Marmora's Warbler	Fauvette sarde	Magnanina sarda	Sardijnse Grasmus
130. Sylvia rueppelli	Sortsrubet Sanger	Maskengrasmücke	Μουστακοτσιροβά-κος	Rüppell's Warbler	Fauvette de Rüppell	Silvia del Rüppell	Rüppells Grasmus
131. Sylvia undata	Provencesanger	Provencegrasmücke	Προβηγκοτσιροβά-κος	Dartford Warbler	Fauvette pitchou	Magnanina	Provençaalse Grasmus
132. Sylvia nisoria	Høgesanger	Sperbergrasmücke	Ψαλτοτσιροβάκος	Barred Warbler	Fauvette épervière	Bigia padovana	Sperwergrasmus
133. Sitta whiteheadi	Korsikansk Spætmejse	Korsenkleiber	Κορσικοτσομπανά-κος	Corsican Nuthatch	Sittelle corse	Picchio muratore corso	Zwartkopboom-klever
134. Sitta krueperi	Krüper Spætmejse	Krüpers Kleiber	Τουρκοτσομπανά-κος	Krüper's Nuthatch	Sittelle de Krüper	Picchio muratore del Krüper	Krüpers Boomklever
135. Ficedula parva	Lille Fluesnapper	Zwergschnäpper	Νανομυγοχάφτης	Red-breasted Flycatcher	Gobemouche nain	Pigliamosche pettirosso	Kleine Vliegenvanger
136. Ficedula albicollis	Hvidhalset Fluesnapper	Halsbandschnäpper	Κρικομυγοχάφτης	Collared Flycatcher	Gobemouche à collier	Balia dal collare	Withalsvliegen-vanger

	Dansk	Deutsch	Ἑλληνικά	English	Francais	Italiano	Nederlands
137. Ficedula semitorquata	Halvkrave Fluesnapper	Halbringschnäpper	Δρυομυγοχάφτης	Semi-collared Flycatcher	Gobemouche à semi-collier	Balia del mezzo collare	Balkanvliegen-vanger
138. Lanius minor	Rosenbrystet Tornskade	Schwarzstirnwürger	Γαιδουροκεφαλάς	Lesser Grey Shrike	Pie-grièche à poitrine rose	Averla cenerina	Kleine Klapekster
139. Lanius collurio	Rødrygget Tornskade	Neuntöter	Αετομάχος	Red-backed Shrike	Pie-grièche écorcheur	Averla piccola	Grauwe Klauwier
140. Emberiza cineracea	Gulgrå Værling	Kleinasiatische Ammer	Σμυρνοτσίχλονο	Cinereous Bunting	Bruant centré	Zigolo cinereo	Smyrna Cors
141. Emberiza hortulana	Hortulan	Ortolan	Βλάχος	Ortolan Bunting	Bruant ortolan	Ortolano	Ortolaan
142. Emberiza caesia	Rustværling	Grauer Ortolan	Σκουροβλάχος	Cretzschmar's Bunting	Bruant cendrillard	Ortolano grigio	Bruinkeelortolaan
143. Loxia scotica	Skotsk Korsnæb	Schottischer Kreuzschnabel	Σταυρομύτης της Σκωτιάς	Scottish Crossbill	Beccroisé d'Écosse	Scozzese Crociere	Schotse Kruisbek
144. Pyrrhocorax pyrrhocorax	Alpekrage	Alpenkrähe	Κοκκινοκαλιακού-δα	Chough	Crave à bec rouge	Gracchio corallino	Alpenkraai