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(1) Text with EEA relevance
II

(Preparatory Acts)

COMMISSION

Proposal for a Directive of the European Parliament and of the Council amending Directives 78/660/EEC and 83/349/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies

(2000/C 311 E/01)

COM(2000) 80 final — 2000/0043(COD)

(Submitted by the Commission on 24 February 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44,

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) Article 32 of the Directive 78/660/EEC based on Article 54(3)(g) (now 44(2)(g)) (1) of the Treaty requires the items shown in the annual accounts to be valued on the basis of the principle of purchase price or production cost.

(2) Article 33 of Directive 78/660/EEC authorises Member States to permit or require companies to re-value certain assets, to value certain assets at replacement cost or to apply other methods that take into account the effects of inflation on the items shown in the annual accounts.

(3) Article 29 of Directive 83/349/EEC based on Article 54(3)(g) (now 44(2)(g)) (2) of the Treaty requires assets and liabilities to be included in consolidated accounts to be valued in accordance with Articles 31 to 42 and 60 of Directive 78/660/EEC.

(4) The annual and consolidated accounts of banks and other financial institutions are prepared in accordance to Council Directive 86/635/EEC, and the annual and consolidated accounts of insurance undertakings are prepared in accordance with Council Directive 91/674/EEC. The amendments in this Directive do not amend the provisions of Directives 86/635/EEC and 91/674/EEC, but the Commission may bring forward similar proposals to amend these Directives after having consulted the relevant advisory committees.

(5) The dynamic nature of international financial markets has resulted in the widespread use of not only traditional primary financial instruments such as shares and bonds, but also various forms of derivative financial instruments as futures, options, forward contracts and swaps.

(6) Leading accounting standard setters in the world are moving away from the historical cost model for the valuation of these financial instruments towards a model of fair value accounting.

(7) The Communication of the Commission on ‘Accounting Harmonisation: A New Strategy vis à vis International Harmonisation’ (3), called for the EU to work to maintain consistency between Directives 78/660/EEC and 83/349/EEC and developments in international accounting standard setting.

(8) In order to maintain consistency between internationally recognised accounting standards and Directives 78/660/EEC and Directive 83/349/EEC, it is necessary to amend these Directives in order to allow for certain financial assets and liabilities to be valued at fair value. This will enable European companies to report in line with current international developments.

(9) Comparability of financial information throughout the Community makes it necessary to require Member States to introduce a system of fair value accounting. Member States may permit or require the adoption of that system to all or certain categories of companies and to both the annual and consolidated accounts or to consolidated accounts only.

(10) Fair value accounting should only be possible for those items where there is a sufficiently developed international consensus that fair value accounting is appropriate. Fair value accounting should therefore not be applied to all financial assets and liabilities.

(11) The notes on the accounts should include certain information concerning the items in the balance sheet which have been measured at fair value. The annual report should give an indication of the company’s risk management objectives and strategies in relation to its use of financial instruments.

(12) Accounting for financial instruments is a fast evolving area of financial reporting which necessitates a periodic review. This review should be carried out through the Contact Committee on the Accounting Directives in order to give Member States the opportunity to report on their experiences with fair value accounting in practice,


(3) COM(95) 508.
HAVE ADOPTED THIS DIRECTIVE:

Article 1
Directive 78/660/EEC is hereby amended as follows:

1. The following Section 7a is inserted:

'SECTION 7a
Valuation at fair value

Article 42a
1. By way of derogation from Article 32, Member States shall permit or require in respect of all companies or any classes of companies, valuation at fair value of all balance sheet items, including derivative financial instruments, except for the items listed in paragraph 3.

2. Member States may restrict the permission or requirement set out in paragraph 1 to consolidated accounts as defined in Directive 83/349/EEC.

3. The following items shall not be valued at fair value:

(a) balance sheet items that are not financial instruments;

(b) liabilities, with the exception of liabilities which are:

(i) held as part of a trading portfolio;

(ii) accounted for as hedged items; or

(iii) derivative financial instruments.

4. Notwithstanding paragraph 1, Member States may:

(a) exclude items held-to-maturity, other than derivative financial instruments, from valuation at fair value;

(b) exclude originated loans and advances not held for trading purposes from valuation at fair value;

(c) restrict the valuation at fair value to items held for trading purposes. Where this restriction is applied, all derivative financial instruments are deemed to be held for trading purposes;

(d) exclude commodity-based contracts that were originally designated for the purposes of meeting a company’s expected purchase, sale or usage requirements in that commodity and which are expected to be settled by delivery of the commodity.

Article 42b
1. The fair value referred to in Article 42a is determined by reference to:

(a) a market value, for those items for which a reliable market can readily be identified. Where a market value is not readily identifiable for an item but can be identified for its components, the market value of that item may be derived from that of its components; or

(b) the value resulting from established valuation models and techniques, for those items for which a reliable market cannot be readily identified. Such valuation models and techniques should ensure a reasonable approximation of the market value.

2. Those items that cannot be measured reliably in a way that is free from material error and bias by the methods as described under either (a) or (b) of paragraph 1, may not be measured at fair value and should instead be measured in accordance with Articles 34 to 42.

Article 42c
1. Notwithstanding Article 31(1)(c)(aa), where a balance sheet item has been valued at fair value in accordance with Article 42a (1) a change in the fair value of that item should be included in the profit and loss account in arriving at the profit or loss for the financial year.

2. Member States may permit or require the gain or loss on a financial asset that is not held for trading purposes to be recognised directly in equity, in a fair value reserve. To the extent that gains and losses on such items that have been recognised in equity are actually realised, they must be removed from the fair value reserve. The Member States may lay down rules governing the use of the fair value reserve.

3. Notwithstanding paragraph 1, the change in the fair value of an item measured in accordance with Article 42b should not be included in the profit and loss account in arriving at the profit or loss for the financial year, but must be included directly in the fair value reserve where:

(a) that item is accounted for as a hedging instrument under a system of hedge accounting that allows such changes in value not to be shown in the profit and loss account, or

(b) such change in value relates to an exchange difference arising on a monetary item that forms part of a company’s net investment in an affiliated foreign undertaking.
4. The fair value reserve referred to in paragraph 3 should be reduced to the extent that the amounts shown therein are no longer necessary for the implementation of the valuation methods under the circumstances referred to in sub-paragraphs (a) and (b) of paragraph 3. The Member States may lay down rules governing the use of the fair value reserve.'

2. The following Articles 43a, 43b and 43c are inserted:

'Article 43a

Where valuation at fair value has been applied under Article 42a, the notes on the accounts must indicate at least the following information:

(a) the items in the balance sheet that have been measured at fair value;

(b) where fair values have been determined in accordance with Article 42b(1)(b), the significant assumptions underlying the valuation models and techniques;

(c) per category of items measured at fair value, the fair value, and the profits or losses recognised directly in the profit and loss account and in the fair value reserve referred to in Article 42c(3);

(d) for the fair value reserve referred to in Article 42c(2) and Article 42c(3) a table showing separately:

(i) the amount of the reserve at the beginning of the financial year;

(ii) the differences included in the reserve during the financial year;

(iii) the amounts transferred from the reserve during the financial year and the nature of any such transfers;

(iv) the amount of the reserve at the end of the financial year;

(e) for each class of derivative financial instruments, information about the extent and nature of the derivative financial instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows

'Article 43b

When a company is permitted to use valuation at fair value in accordance with Article 42a(1), but decides not to do so, the following disclosures should be given for each class of derivative financial instruments:

(a) information about the extent and nature of the derivative financial instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows;

(b) the fair value of the derivative financial instruments.

Article 43c

Where valuation at fair value has not been applied under Article 42a(1), and where a company has not made use of the option to make a value adjustment in respect of a financial fixed asset in accordance with Article 35(1)(c)(aa) and therefore carries that financial fixed asset at an amount in excess of its fair value, it should disclose:

(a) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets; and

(b) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered.'

3. The following Article 46a is inserted:

'Article 46a

Whether or not use has been made of valuation at fair value referred to in Section 7a, the annual report shall give an indication of:

(a) the company's financial risk management objectives and strategies in relation to its use of financial instruments, and how these objectives are implemented; and

(b) the company's exposure to price risk, credit risk, liquidity risk, counter-party risk, cash flow risk and risk of future developments in relation to its use of financial instruments.'

4. The following Article 52a is inserted:

'Article 52a

The Parliament and the Council shall, acting in accordance with the procedure laid down in Article 251 of the Treaty, acting on a proposal from the Commission and within three years of the adoption of this Directive, examine and, where necessary, amend Articles 42a, 42b, 42c, 43a, 43b, 43c and 46a of Directive 78/660/EEC in the light of the experience acquired in applying these Articles and taking account of international developments in the field of accounting.'

Article 2

Directive 83/349/EEC is hereby amended as follows:

1. The following Articles 34a, 34b and 34c are inserted:

'Article 34a

Where valuation at fair value has been applied in accordance with Article 42a(1) of Directive 78/660/EEC, the notes on the consolidated accounts must indicate at least the following information:

(a) the items in the consolidated balance sheet that have been measured at fair value;
(b) where fair values have been determined in accordance with Article 42b(1)(b) of Directive 78/660/EEC, the significant assumptions underlying the valuation models and techniques;

c) per category of items measured at fair value, the fair value, and the profits or losses recognised directly in the consolidated profit and loss account and in the fair value reserve referred to in Article 42c(3) of Directive 78/660/EEC;

d) for the fair value reserve referred to in Article 42c(2) and Article 42c(3) of Directive 78/660/EEC a table showing separately:

(i) the amount of the reserve at the beginning of the financial year;

(ii) the differences included in the reserve during the financial year;

(iii) the amounts transferred from the reserve during the financial year and the nature of any such transfers;

(iv) the amount of the reserve at the end of the financial year;

(e) for each class of derivative financial instruments, information about the extent and nature of the derivative financial instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows.

Article 34b

When a company is permitted to use valuation at fair value in accordance with Article 42a(1) of Directive 78/660/EEC, but decides not to do so, the following disclosures should be given for each class of derivative financial instruments:

(a) information about the extent and nature of the derivative financial instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows;

(b) the fair value of the derivative financial instruments.

Article 34c

Where an undertaking included in the consolidation has not applied valuation at fair value under Article 42a(1) of Directive 78/660/EEC and has not made a value adjustment in respect of a financial fixed asset in accordance with Article 35(1)(c)(aa) of Directive 78/660/EEC, and therefore carries that financial fixed asset at an amount in excess of its fair value the notes on the consolidated accounts must disclose:

(a) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets; and

(b) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered.'

2. The following Article 36a is inserted:

‘Article 36a

Whether or not use has been made of valuation at fair value referred to in Section 7a of Directive 78/660/EEC, the consolidated annual report shall give an indication of:

(a) the undertaking’s financial risk management objectives, and how these objectives are met through its use of financial instruments; and

(b) information on the undertaking’s exposure to price risk, credit risk, liquidity risk, counter-party risk, cash flow risk and risk of future developments in relation to its use of financial instruments.’

3. The following Article 48 is inserted:

‘Article 48

The Parliament and the Council shall, acting in accordance with the procedure laid down in Article 251 of the Treaty on a proposal from the Commission and within three years of the adoption of this Directive, examine and, where necessary, amend Articles 34a, 34b, 34c and 36a of Directive 83/349/EEC in the light of the experience acquired in applying these Articles and taking account of international developments in the field of accounting.’

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before ... They shall forthwith inform the Commission thereof.

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

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

Article 4

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

Article 5

This Directive is addressed to the Member States.
Amended proposal for a Council Regulation regarding the implementation of measures to intensify the EC-Turkey customs union

(2000/C 311 E/02)


(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 16 March 2000)

INITIAL PROPOSAL

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal by the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The Luxembourg European Council on 12 and 13 December 1997 confirmed that Turkey was eligible to accede to the European Union.

(2) On 4 March 1998 the Commission presented to the Council a communication entitled the European strategy for Turkey: the Commission’s initial operational proposals to prepare Turkey for accession.

(3) The Cardiff European Council on 15 and 16 June 1998 welcomed the Commission’s communication as a platform for developing relations between the European Union and Turkey on a sound and evolutionary basis.

(4) The Commission was requested by the Cardiff European Council to table any proposals which would be required to implement the European strategy.

(5) The Cardiff European Council pointed out that the European strategy would require financial support.

(6) The conclusions of the Council meeting of 13 September 1999 referred to financial assistance for Turkey.

AMENDED PROPOSAL

Unchanged
(7) Since the EC-Turkey customs union came into force on 31 December 1995, Turkey has been pushing ahead with economic reform.

(8) The Helsinki European Council of 10/11 December 1999 stated that Turkey was an applicant country which could join the EU on the basis of the same criteria as those applicable to the other applicant countries.

(9) The provisions of this Regulation are based on respect for democratic principles, the rule of law, human rights and fundamental freedoms and respect for international law, which underpin the policies of the European Community and its Member States.

(10) The Community attaches great importance to the need for Turkey to improve and promote its democratic practices and respect for fundamental human rights, and more closely involve civil society in that process.

(11) The European Parliament has adopted a number of resolutions on the importance of respect for human rights in Turkey to the development of close ties between that country and the European Union, in particular those of 13 December 1995 on the human rights situation in Turkey, 17 September 1998 on the Commission reports on developments in relations with Turkey since the entry into force of the customs union, 3 December 1998 on the communication from the Commission to the Council and the European Parliament on the further development of relations with Turkey and on the communication from the Commission to the Council entitled ‘European strategy for Turkey: the Commission’s initial operational proposals’ and 6 October 1999 on the state of relations between Turkey and the European Union (1).

(12) The European Parliament, the Council and the Commission adopted a declaration on 6 March 1995 on the incorporation of financial provisions into legislative acts (2).

(13) On 6 May 1999 the European Parliament, the Council and the Commission approved an interinstitutional agreement on budgetary discipline and improvement of the budgetary procedure (3).

INITIAL PROPOSAL

AMENDED PROPOSAL

(14) Without prejudice to the powers of the budgetary authority, a multiannual indicative amount for the period 2000-2002 is proposed as the financial reference which illustrates the will of the legislative authority. Such a reference shall be part of the multiannual financial framework of the Mediterranean allocations.

(15) The measures needed to implement this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1); whereas these measures should be adopted in accordance with the management procedure laid down in Article 4 of that Decision.

(16) The Treaty does not provide any powers other than those pursuant to Article 308 for the adoption of this Regulation.

HAS ADOPTED THIS REGULATION:

**Article 1**

The Community shall assist Turkey in preparing for accession by establishing closer links with the European Union in all fields connected with the intensification of the customs union.

**Article 2**

The financial reference illustrating the will of the legislative authority is EUR 15 million for the period 2000-2002. This reference shall not affect the powers of the budgetary authority as defined in the Treaty. The budgetary authority shall set the annual funding in relation to the appropriations available for each financial year, taking into account the principles of sound management referred to in Article 2 of the Financial Regulation.

**Article 3**

1. The beneficiaries of cooperation projects and operations may include not only the Turkish state and regions but also local authorities, regional organisations, public agencies, local or traditional communities, business support organisations, cooperatives and civil society, in particular associations, foundations and non-governmental organisations.

2. Where an essential element for the continuation of assistance to Turkey is lacking, in particular in the case of violation of democratic principles, the rule of law, human rights and fundamental freedoms and international law, the Council, acting by qualified majority on a proposal from the Commission, may decide upon appropriate measures.

The Commission shall pass information on its indicative programme to the committee referred to in Article 7 of this Regulation and the EU-Turkey joint economic and social committee.

*Article 4*

Cooperation projects and operations may be financed in the following indicative areas:

— support for the alignment of Turkish legislation on that of the Community and assistance with the institutional development connected with that adjustment;

— access to the single market, including development of the requisite certification and quality instruments;

— assistance for the liberalisation of capital movements between the Community and Turkey;

— cooperation to develop the customs union between the European Community and Turkey, in particular integrating Turkey into the pan-European rules of origin system and supporting its participation in the Transit and Single Administrative Document Conventions;

— helping Turkey to adapt its agricultural policy to incorporate the CAP measures needed to establish the free movement of agricultural goods;

— cooperation in veterinary and plant-health matters;

— Turkish participation in a number of Community programmes and agencies dealing with matters including the environment, research, education, training and youth;

— cooperation on competition policy and consumer policy, new technologies and the information society;

— cooperation on justice and home affairs;

— any form of cooperation seeking to defend and promote democracy, the rule of law, human rights and the protection of minorities.
Article 5

1. Financial support under this Regulation shall take the form of grants.

2. The instruments to be employed in the course of the operations covered by this Regulation shall include technical assistance, training or other services, supplies and works, along with audits and evaluation and monitoring missions.

3. Community financing may cover investment, with the exception of the purchase of buildings, and recurring costs (including administrative, maintenance and operational costs), taking account of the fact that the project must aim to have the recurring costs taken over by the beneficiaries.

4. A financial contribution from the partners defined in Article 3 shall be sought for each cooperation operation. The contribution requested shall be within the means of the partners concerned and shall depend on the nature of the operation. In specific cases where the partner is an NGO or a community-based organisation, a contribution in kind may be made.

5. Opportunities may be sought for cofinancing with other providers of funds, especially with Member States.

6. The necessary measures shall be taken to emphasise the Community character of the aid provided under this Regulation.

7. The Commission, in conjunction with the Member States, may take any initiatives necessary for ensuring good coordination with the other providers of funds involved.

Article 6

1. The Commission shall appraise, approve and administer operations covered by this Regulation according to the budgetary and other procedures in force, and in particular those laid down in the Financial Regulation applicable to the general budget of the European Union.
2. Project and programme appraisal shall take into account the following factors:

— effectiveness and viability of operations,

— cultural, social, gender and environmental aspects,

— conservation and protection of the environment on the basis of the principles of sustainable development,

— institutional development necessary to achieve project goals,

— experience gained from operations of the same kind.

3. Decisions relating to grants of more than EUR 2 million for individual operations financed under this Regulation shall be taken under the procedure laid down in Article 7. The Commission shall inform the Committee referred to in Article 7 succinctly of any financing decisions it intends to take with regard to projects and programmes of less than EUR 2 million in value. The information shall be made available at least one week before the decision is taken.

The Commission shall take all necessary steps to facilitate take-up of grants by small, non-profit-making NGOs.

4. The Commission is authorised to approve, without seeking the opinion of the Committee referred to in Article 7, any extra commitments needed for covering expected or real cost overruns in connection with the operations, provided that the overrun or additional requirement is not more than 20 % of the initial commitment fixed by the financing decision.

Where the additional commitment referred to in the previous subparagraph is less than EUR 4 million, the Committee referred to in Article 7 is informed of the decision taken by the Commission. Where the additional commitment is more than EUR 4 million but less than 20 %, the Committee's opinion shall be sought.

5. All financing agreements or contracts concluded under this Regulation shall provide for the Commission and the Court of Auditors to conduct on-the-spot checks according to the usual procedures laid down by the Commission under the rules in force, and in particular those of the Financial Regulation applicable to the general budget of the European Union.

The Commission shall take all necessary steps to facilitate take-up of grants by small, non-profit-making NGOs.
6. Where operations are the subject of financing agreements between the Community and Turkey, such agreements shall stipulate that the payment of taxes, duties or any other charges is not to be covered by the Community.

7. Participation in invitations to tender and the award of contracts shall be open on equal terms to natural and legal persons of the Member States and Turkey.

8. Supplies shall originate in the Member States or Turkey.

Article 7

1. The Commission shall be assisted by the committee set up by Regulation (EC) No 1488/96 of 23 July 1996 (1), known as the MED Committee, made up of representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this Article, the management procedure provided for in Article 4 of Decision 1999/468/EC shall apply, in accordance with Article 7(3) thereof.

3. The period referred to in Article 4(3) of Decision 1999/468/EC shall be three months.

Article 8

An exchange of views shall take place, once a year, on the basis of a presentation by the Commission's representative of the indicative for the operations to be carried out in the year ahead, in a meeting of the Committee referred to in Article 7.

Artikel 8

An exchange of views shall take place, once a year, on the basis of a presentation by the Commission's representative of the indicative programme for the operations to be carried out in the year ahead, in a meeting of the Committee referred to in Article 7. The European Parliament shall be informed of the proposals and of the outcome of the discussions.

Article 9

The Commission shall submit an annual report to the European Parliament and to the Council during the first quarter of each year. This report shall contain at least the following:

(a) a detailed summary of the operations financed during the previous financial year;

(b) the planned indicative programme for the current financial year and a statement of the progress made with regard to the operations included therein;

(c) the forecasts for the programme and the operations to be undertaken during the following financial year;

(d) a summary of the conclusions of any evaluations, including those relating to specific operations;

INITIAL PROPOSAL

Article 10
The Commission shall regularly evaluate operations financed by the Community in order to establish whether the objectives of the operations have been achieved and to provide guidelines for improving the effectiveness of future operations. The Commission shall submit to the Committee referred to in Article 7 a summary of the evaluations made, which the latter may, if necessary, examine. Evaluation reports shall be made available to any Member States requesting them.

Article 11

the Commission shall submit to the European Parliament and the Council an overall assessment of the operations financed by the Community under this Regulation, together with suggestions regarding the future of this Regulation and, where necessary, proposals for amending it

Article 12

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities.

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

AMENDED PROPOSAL

Article 10
(e) information on the bodies with which the agreements or contracts have been concluded.

Unchanged

Article 11

Six months before the end of the three-year financial framework, the Commission shall submit to the European Parliament and the Council an overall assessment of the operations financed by the Community under this Regulation, together with suggestions regarding the future of this Regulation and, where necessary, proposals for amending it.

Unchanged

Article 12

Unchanged
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions,

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

Whereas:

(1) Council Regulation (EEC) No 3922/91 (1) provides for common safety standards listed in Annex II to that Regulation with respect to the design, manufacturing, operation and maintenance of aircraft, as well as persons and organisations involved in those tasks. Those harmonised safety standards apply to all aircraft operated by Community operators whether registered in a Member State or in a third country. Article 4(1) of that Regulation requires the Council to adopt common technical requirements and administrative procedures on the basis of Article 80(2) of the Treaty for the fields not listed in Annex II to the Regulation.

(2) Article 9 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (2) provides that the granting and validity at any time of an operating licence is to be dependent upon the possession of a valid Air Operator Certificate specifying the activities covered by the operating licence and complying with the criteria established in the relevant Council Regulation. It is now appropriate to establish such criteria.

(3) The Joint Aviation Authority (JAA) has adopted a set of harmonised rules for commercial air transportation by aeroplane, called JAR-OPS 1. JAR-OPS 1 (Change 1 of 1 March 1998) provides for the level of safety required for this type of operation and therefore constitutes a good basis for Community law, covering the operation of aeroplanes. Changes had to be made to this text in order to bring it into conformity with Community legislation and policies, account being taken of its numerous implications in the economic and social field. The revised text differs from JAR-OPS 1 and cannot therefore be introduced into Community law by a simple reference to its title in Annex II to Regulation (EEC) No 3922/91. A new Annex III containing the necessary requirements should therefore be added to that Regulation.

(4) Air operators should be given sufficient flexibility to address unforeseen urgent operational circumstances, or operational needs of a limited duration, or to demonstrate that they can achieve an equivalent level of safety by means other than the application of the common rules in Annex III. The same kind of flexibility is also necessary in the application of other JARs listed in Annex II to Regulation (EEC) No 3922/91. Member States should therefore be empowered to grant exemptions to the common technical requirements and administrative procedures. Such exemptions could, in certain cases, undermine the common safety requirements or create distortions in the market, and their scope should therefore be strictly limited and their granting subject to the appropriate Community control.


(6) Council Regulation (EEC) No 3922/91 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3922/91 is amended as follows:

1. Article 1(1) is replaced by the following:

1. This Regulation shall apply to the harmonisation of technical requirements and administrative procedures in the field of civil aviation safety as listed in Annex II and Annex III, and in particular with respect to:

(a) the design, manufacture, operation and maintenance of aircraft,
(b) persons and organisations involved in these tasks.'

2. Article 3 is replaced by the following:

'Article 3

1. Without prejudice to Article 11, the common technical requirements and administrative procedures applicable in the Community with regard to the fields listed in Annex II shall be the relevant codes referred to in that Annex and in force on 1 January 1992.

2. Without prejudice to Article 11, the common technical requirements and administrative procedures applicable in the Community with regard to commercial transportation by aeroplane shall be those specified in Annex III.'

3. Article 4(1) is replaced by the following:

'1. With regard to the fields not covered by Annexes II or III, the Council shall adopt common technical requirements and administrative procedures on the basis of Article 80(2) of the Treaty. The Commission shall, where appropriate and as soon as possible, submit suitable proposals in these fields.'

4. Article 8 is replaced by the following:

'Article 8

1. The provisions in Articles 3 to 7 shall not prevent a Member State from reacting immediately to a safety problem which involves a product, a person or an organisation subject to the provisions of this Regulation. In such a case the Member States shall notify to the Commission and to the other Member States the measures taken and the reasons therefor.

2. The Commission shall decide, in accordance with the procedure referred to in Article 12(2), whether an inadequate level of safety or a shortcoming in the common technical requirements and administrative procedures justifies the continuing application of the measures adopted pursuant to paragraph 1 of this Article. In such case, it shall also take the necessary steps to amend the related common technical requirements and administrative procedures in accordance with Article 4 or Article 11. If the Member State's measures are found not to be justified, the Member State shall revoke the measures in question.

3. Member States may grant exemptions from the technical requirements and administrative procedures specified by this Regulation in the case of unforeseen urgent operational circumstances or operational needs of a limited duration. In these cases the Commission and the other Member States shall be informed as soon as possible of the exemptions granted.

4. The Commission, following the procedure referred to in Article 12(2), may decide that exemptions granted in accordance with paragraph 3 of this Article do not comply with the general safety objectives of this Regulation, or any other rule of Community law. In such case the Member State shall revoke the exemption.

5. In circumstances where a safety level equivalent to that attained by the application of the common technical requirements and administrative procedures included in Annexes I, II and III to this Regulation can be achieved by other means, Member States may, without discrimination on grounds of nationality of the applicants and having regard to the need not to distort competition, grant approval derogating from these provisions. In such cases, the Member State concerned shall notify the Commission before granting such approval and give reasons demonstrating the need to derogate from the common technical requirements and administrative procedures, as well as the conditions foreseen to ensure an equivalent level of safety is achieved.

6. The Commission, following the procedure referred to in Article 12(2), shall decide whether an approval proposed in accordance with paragraph 5 of this Article presents an equivalent level of safety and can be granted. In such a case, it will notify its decision to all Member States which shall also be entitled to apply that measure. The relevant provisions of Annexes II and III may also be amended to reflect such a measure.

The provisions of Articles 6(1) and 7 shall apply to the measure in question.'

5. Article 11(1) is replaced by the following:

'1. The Commission, following the procedure referred to in Article 12(2), shall make the amendments necessitated by scientific and technical progress to the common technical requirements and administrative procedures listed in the Annexes.'

6. In Article 12, paragraphs 2 and 3 are replaced by the following:

'2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Council Decision 1999/468/EC (*) shall apply, in compliance with Article 7(3) and Article 8 thereof.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

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

7. The text in the Annex to this Regulation is added as Annex III.

Article 2

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

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

ANNEX III

COMMON TECHNICAL REQUIREMENTS AND ADMINISTRATIVE PROCEDURES APPLICABLE TO COMMERCIAL TRANSPORTATION BY AIRCRAFT

OPS 1: Commercial Air Transportation (Aeroplanes)

Contents (General layout)

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SUBPART K — Instruments and Equipment
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SUBPART R — Transport of Dangerous Goods by Air
SUBPART S — Security

APPlicability

OPS 1.001

Applicability

(See Appendix 1 to OPS 1.001)

(a) OPS Part 1 prescribes requirements applicable to the operation of any civil aeroplane for the purpose of commercial air transportation by any operator whose principal place of business and, if any, its registered office is in a Member State, thereafter called operator. OPS 1 does not apply to aeroplanes when used in military, customs and police services.

(b) The requirements in OPS Part 1 are applicable:

1. For operators of aeroplanes over 10 tonnes Maximum Take-Off Mass or a maximum approved passenger seating configuration of 20 or more, or with mixed fleets of aeroplanes above and below this discriminant, no later than . . . unless otherwise indicated.

2. For operators of all other aeroplanes, no later than . . . unless otherwise indicated.

Late compliance dates contained in OPS 1

Some of the provisions included in OPS 1 have dates of compliance which are later than the applicability date of OPS 1. The provisions where this is the case, and the associated later dates of compliance, are as follows:

— OPS 1.470 (f) . . .
— OPS 1.652 “Notes” . . .
— OPS 1.652 (m) . . .
— OPS 1.665 (a) 2 . . .
— OPS 1.668 (a) 1 . . .
— OPS 1.668 (a) 2 . . .
— OPS 1.670 (a) 3 . . .
— OPS 1.685 . . .
— OPS 1.705 (a) . . .
— OPS 1.725 (a) . . .
— OPS 1.780 (a) . . .
— OPS 1.805 (a) 2 . . .
— OPS 1.805 (c) 2 . . .
SUBPART B

GENERAL

OPS 1.005

General

(a) An operator shall not operate an aeroplane for the purpose of commercial air transportation other than in accordance with OPS Part 1.

(b) An operator shall comply with any airworthiness requirements applicable to aeroplanes operated for the purpose of commercial air transportation.

(c) Each aeroplane shall be operated in compliance with the terms of its Certificate of Airworthiness and within the approved limitations contained in its Aeroplane Flight Manual.

OPS 1.010

Exemptions

Subject to the applicable common review procedures the Authority may exceptionally and temporarily grant an exemption from the provisions of OPS Part 1 when satisfied that there is a need and subject to compliance with any supplementary condition the Authority considers necessary in order to ensure an acceptable level of safety in the particular case.

OPS 1.015

Operational Directives

(a) Subject to the applicable common review procedures the Authority may direct by means of an Operational Directive that an operation shall be prohibited, limited or subject to certain conditions, in the interests of safe operations.

(b) Operational Directives state:

1. The reason for issue;

2. Applicability and duration; and

3. Action required by the operator(s).

(c) Operational Directives are supplementary to the provisions of OPS Part 1.

OPS 1.020

Laws, Regulations and Procedures Operator’s Responsibilities

An operator must ensure that:

1. All employees are made aware that they shall comply with the laws, regulations and procedures of those States in which operations are conducted and which are pertinent to the performance of their duties; and

2. All crew members are familiar with the laws, regulations and procedures pertinent to the performance of their duties.

OPS 1.025

Common Language

(a) An operator must ensure that all crew members can communicate in a common language.

(b) An operator must ensure that all operations personnel are able to understand the language in which those parts of the Operations Manual which pertain to their duties and responsibilities are written.

OPS 1.030

Minimum Equipment Lists — Operator’s Responsibilities

(a) An operator shall establish, for each aeroplane, a Minimum Equipment List (MEL) approved by the Authority. This shall be based upon, but no less restrictive than, the relevant Master Minimum Equipment List (MMEL) (if this exists) accepted by the Authority.

(b) An operator shall not operate an aeroplane other than in accordance with the MEL unless permitted by the Authority. Any such permission will in no circumstances permit operation outside the constraints of the MMEL.

OPS 1.035

Quality System

(a) An operator shall establish one Quality System and designate one Quality Manager to monitor compliance with, and adequacy of, procedures required to ensure safe operational practices and airworthy aeroplanes. Compliance monitoring must include a feedback system to the Accountable Manager (See also OPS 1.175 (h)) to ensure corrective action as necessary.

(b) The Quality System must include a Quality Assurance Programme that contains procedures designed to verify that all operations are being conducted in accordance with all applicable requirements, standards and procedures.

(c) The Quality System, and the Quality Manager, must be acceptable to the Authority.

(d) The Quality System must be described in relevant documentation.

(e) Notwithstanding sub-paragraph (a) above, the Authority may accept the nomination of two Quality Managers, one for operations and one for maintenance provided that the operator has designated one Quality Management Unit to ensure that the Quality System is applied uniformly throughout the entire operation.

OPS 1.037

Accident prevention and flight safety programme

An operator shall establish an accident prevention and flight safety programme, which may be integrated with the Quality System, including:

1. A programme to achieve and maintain risk awareness by all persons involved in operations; and

2. Evaluation of relevant information relating to accidents and incidents and the promulgation of related information.
OPS 1.040

Additional crew members

An operator shall ensure that crew members who are not required flight or cabin crew members, have also been trained in, and are proficient to perform, their assigned duties.

OPS 1.050

Search and rescue information

An operator shall ensure that essential information pertinent to the intended flight concerning search and rescue services is easily accessible on the flight deck.

OPS 1.055

Information on emergency and survival equipment carried

An operator shall ensure that there are available for immediate communication to rescue coordination centres, lists containing information on the emergency and survival equipment carried on board all of his aeroplanes. The information shall include, as applicable, the number, colour and type of life-rafts and pyrotechnics, details of emergency medical supplies, water supplies and the type and frequencies of emergency portable radio equipment.

OPS 1.060

Ditching

An operator shall not operate an aeroplane with an approved passenger seating configuration of more than 30 passengers on overwater flights at a distance from land suitable for making an emergency landing, greater than 120 minutes at cruising speed, or 400 nautical miles, whichever is the lesser, unless the aeroplane complies with the ditching requirements prescribed in the applicable airworthiness code.

OPS 1.065

Carriage of weapons of war and munitions of war

(a) An operator shall not transport weapons of war and munitions of war by air unless an approval to do so has been granted by all States concerned.

(b) An operator shall ensure that weapons of war and munitions of war are:

1. Stowed in the aeroplane in a place which is inaccessible to passengers during flight; and

2. In the case of firearms, unloaded,

unless, before the commencement of the flight, approval has been granted by all States concerned that such weapons of war and munitions of war may be carried in circumstances that differ in part or in total from those indicated in this sub-paragraph.

(c) An operator shall ensure that the commander is notified before a flight begins of the details and location on board the aeroplane of any weapons of war and munitions of war intended to be carried.

OPS 1.070

Carriage of sporting weapons and ammunition

(a) An operator shall take all reasonable measures to ensure that any sporting weapons intended to be carried by air are reported to him.

(b) An operator accepting the carriage of sporting weapons shall ensure that they are:

1. Stowed in the aeroplane in a place which is inaccessible to passengers during flight unless the Authority has determined that compliance is impracticable and has accepted that other procedures might apply; and

2. In the case of firearms or other weapons that can contain ammunition, unloaded.

(c) Ammunition for sporting weapons may be carried in passengers' checked baggage, subject to certain limitations, in accordance with the Technical Instructions (see OPS 1.1160 (b) 5) as defined in OPS 1.1150 (a) 14.

OPS 1.075

Method of carriage of persons

An operator shall take all reasonable measures to ensure that no person is in any part of an aeroplane in flight which is not a part designed for the accommodation of persons unless temporary access has been granted by the commander to any part of the aeroplane:

1. For the purpose of taking action necessary for the safety of the aeroplane or of any person, animal or goods therein; or

2. In which cargo or stores are carried, being a part which is designed to enable a person to have access thereto while the aeroplane is in flight.

OPS 1.085

Crew responsibilities

(a) A crew member shall be responsible for the proper execution of his duties that:

1. Are related to the safety of the aeroplane and its occupants; and


(b) A crew member shall:

1. Report to the commander any incident that has endangered, or may have endangered, safety; and

2. Make use of the operator's incident reporting schemes in accordance with OPS 1.420. In all such cases, a copy of the report(s) shall be communicated to the commander concerned.

(c) A crew member shall not perform duties on an aeroplane:

1. While under the influence of any drug that may affect his faculties in a manner contrary to safety;
2. Following deep sea diving except when a reasonable time period has elapsed;

3. Following blood donation except when a reasonable time period has elapsed;

4. If he is in any doubt of being able to accomplish his assigned duties; or

5. If he knows or suspects that he is suffering from fatigue, or feels unfit to the extent that the flight may be endangered.

(d) A crew member shall not:

1. Consume alcohol less than 8 hours prior to the specified reporting time for flight duty or the commencement of standby;

2. Commence a flight duty period with a blood alcohol level in excess of 0,2 promille;

3. Consume alcohol during the flight duty period or whilst on standby.

(e) The commander shall:

1. Be responsible for the safe operation of the aeroplane and safety of its occupants during flight time;

2. Have authority to give all commands he deems necessary for the purpose of securing the safety of the aeroplane and of persons or property carried therein;

3. Have authority to disembark any person, or any part of the cargo, which, in his opinion, may represent a potential hazard to the safety of the aeroplane or its occupants;

4. Not allow a person to be carried in the aeroplane who appears to be under the influence of alcohol or drugs to the extent that the safety of the aeroplane or its occupants is likely to be endangered;

5. Have the right to refuse transportation of inadmissible passengers, deportees or persons in custody if their carriage poses any risk to the safety of the aeroplane or its occupants;

6. Ensure that all passengers are briefed on the location of emergency exits and the location and use of relevant safety and emergency equipment;

7. Ensure that all operational procedures and check lists are complied with in accordance with the Operations Manual;

8. Not permit any crew member to perform any activity during take-off, initial climb, final approach and landing except those duties required for the safe operation of the aeroplane;

9. Not permit:

   (i) A flight data recorder to be disabled, switched off or erased during flight nor permit recorded data to be erased after flight in the event of an accident or an incident subject to mandatory reporting;

   (ii) A cockpit voice recorder to be disabled or switched off during flight unless he believes that the recorded data, which otherwise would be erased automatically, should be preserved for incident or accident investigation nor permit recorded data to be manually erased during or after flight in the event of an accident or an incident subject to mandatory reporting;

10. Decide whether or not to accept an aeroplane with unserviceabilities allowed by the CDL or MEL, and

11. Ensure that the pre-flight inspection has been carried out.

(f) The pilot-in-command shall, in an emergency situation that requires immediate decision and action, take any action he considers necessary under the circumstances. In such cases he may deviate from rules, operational procedures and methods in the interest of safety.

OPS 1.090

Authority of the commander

An operator shall take all reasonable measures to ensure that all persons carried in the aeroplane obey all lawful commands given by the commander for the purpose of securing the safety of the aeroplane and of persons or property carried therein.

OPS 1.100

Admission to flight deck

(a) An operator must ensure that no person, other than a flight crew member assigned to a flight, is admitted to, or carried in, the flight deck unless that person is:

1. An operating crew member;

2. A representative of the Authority responsible for certification, licensing or inspection if this is required for the performance of his official duties; or

3. Permitted by, and carried in accordance with instructions contained in the Operations Manual.

(b) The commander shall ensure that:

1. In the interests of safety, admission to the flight deck does not cause distraction and/or interfere with the flight's operation; and

2. All persons carried on the flight deck are made familiar with the relevant safety procedures.

(c) The final decision regarding the admission to the flight deck shall be the responsibility of the commander.

OPS 1.105

Unauthorised carriage

An operator shall take all reasonable measures to ensure that no person secretes himself or secretes cargo on board an aeroplane.
OPS 1.110

Portable electronic devices

An operator shall not permit any person to use, and take all reasonable measures to ensure that no person does use, on board an aeroplane a portable electronic device that can adversely affect the performance of the aeroplane's systems and equipment.

OPS 1.115

Alcohol and drugs

An operator shall not permit any person to enter or be in, and take all reasonable measures to ensure that no person enters or is in, an aeroplane when under the influence of alcohol or drugs to the extent that the safety of the aeroplane or its occupants is likely to be endangered.

OPS 1.120

Endangering safety

An operator shall take all reasonable measures to ensure that no person recklessly or negligently acts or omits to act

1. so as to endanger an aeroplane or person therein;
2. so as to cause or permit an aeroplane to endanger any person or property.

OPS 1.125

Documents to be carried

(a) An operator shall ensure that the following documents or copies thereof are carried on each flight:

1. Certificate of Registration;
2. Certificate of Airworthiness;
3. Noise Certificate (if applicable);
4. Air Operator Certificate;
5. Aircraft Radio Licence; and
6. Third party liability Insurance Certificate(s).

(b) Each flight crew member shall, on each flight, carry a valid flight crew licence with appropriate rating(s) for the purpose of the flight.

OPS 1.130

Manuals to be carried

An operator shall ensure that:

1. The current parts of the Operations Manual relevant to the duties of the crew are carried on each flight;
2. Those parts of the Operations Manual which are required for the conduct of a flight are easily accessible to the crew on board the aeroplane; and
3. The current Aeroplane Flight Manual is carried in the aeroplane unless the Authority has accepted that the Operations Manual prescribed in OPS 1.1045, Appendix 1, Part B contains relevant information for that aeroplane.

OPS 1.135

Additional information and forms to be carried

(a) An operator shall ensure that, in addition to the documents and manuals prescribed in OPS 1.125 and OPS 1.130, the following information and forms, relevant to the type and area of operation, are carried on each flight:

1. Operational Flight Plan containing at least the information required in OPS 1.1060;
2. Aeroplane Technical Log containing at least the information required in OPS 1.915 (a);
3. Details of the filed ATS flight plan;
4. Appropriate NOTAM/AIS briefing documentation;
5. Appropriate meteorological information;
6. Mass and balance documentation as specified in Subpart J;
7. Notification of special categories of passenger such as security personnel, if not considered as crew, handicapped persons, inadmissible passengers, deportees and persons in custody;
8. Notification of special loads including dangerous goods including written information to the commander as prescribed in OPS 1.1215 (d);
9. Current maps and charts and associated documents as prescribed in OPS 1.290 (b) 7;
10. Any other documentation which may be required by the States concerned with this flight, such as cargo manifest, passenger manifest etc; and
11. Forms to comply with the reporting requirements of the Authority and the operator.

(b) The Authority may permit the information detailed in sub-paragraph (a) above, or parts thereof, to be presented in a form other than on printed paper. An acceptable standard of accessibility, usability and reliability must be assured.

OPS 1.140

Information retained on the ground

(a) An operator shall ensure that:

(i) Information relevant to the flight and appropriate for the type of operation is preserved on the ground; and

(ii) The information is retained until it has been duplicated at the place at which it will be stored in accordance with OPS 1.1065; or, if this is impracticable,

(iii) The same information is carried in a fireproof container in the aeroplane.
(b) The information referred to in subparagraph (a) above includes:

1. A copy of the operational flight plan where appropriate;
2. Copies of the relevant part(s) of the aeroplane technical log;
3. Route specific NOTAM documentation if specifically edited by the operator;
4. Mass and balance documentation if required (OPS 1.625 refers); and
5. Special loads notification.

OPS 1.145

Power to inspect

An operator shall ensure that any person authorised by the Authority is permitted at any time to board and fly in any aeroplane operated in accordance with an AOC issued by that Authority and to enter and remain on the flight deck provided that the commander may refuse access to the flight deck if, in his opinion, the safety of the aeroplane would thereby be endangered.

OPS 1.150

Production of documentation and records

(a) An operator shall:

1. Give any person authorised by the Authority access to any documents and records which are related to flight operations or maintenance; and
2. Produce all such documents and records, when requested to do so by the Authority, within a reasonable period of time.

(b) The commander shall, within a reasonable time of being requested to do so by a person authorised by an Authority, produce to that person the documentation required to be carried on board.

OPS 1.155

Preservation of documentation

An operator shall ensure that:

1. Any original documentation, or copies thereof, that he is required to preserve is preserved for the required retention period even if he ceases to be the operator of the aeroplane; and
2. Where a crew member, in respect of whom an operator has kept flight duty, duty and rest period records, becomes a crew member for another operator, that record is made available to the new operator.

OPS 1.160

Preservation, production and use of flight recorder recordings

(a) Preservation of recordings

1. Following an accident, the operator of an aeroplane on which a flight recorder is carried shall, to the extent possible, preserve the original recorded data pertaining to that accident, as retained by the recorder for a period of 60 days unless otherwise directed by the investigating authority.

2. Unless prior permission has been granted by the Authority, following an incident that is subject to mandatory reporting, the operator of an aeroplane on which a flight recorder is carried shall, to the extent possible, preserve the original recorded data pertaining to that incident, as retained by the recorder for a period of 60 days unless otherwise directed by the investigating authority.

3. Additionally, when the Authority so directs, the operator of an aeroplane on which a flight recorder is carried shall preserve the original recorded data for a period of 60 days unless otherwise directed by the investigating authority.

4. When a flight data recorder is required to be carried aboard an aeroplane, the operator of that aeroplane shall:

(i) Save the recordings for the period of operating time as required by OPS 1.715, 1.720 and 1.725 except that, for the purpose of testing and maintaining flight data recorders, up to one hour of the oldest recorded material at the time of testing may be erased; and

(ii) Keep a document which presents the information necessary to retrieve and convert the stored data into engineering units.

(b) Production of recordings

The operator of an aeroplane on which a flight recorder is carried shall, within a reasonable time after being requested to do so by the Authority, produce any recording made by a flight recorder which is available or has been preserved.

(c) Use of recordings

1. The cockpit voice recorder recordings may not be used for purposes other than for the investigation of an accident or incident subject to mandatory reporting except with the consent of all crew members concerned.

2. The flight data recorder recordings may not be used for purposes other than for the investigation of an accident or incident subject to mandatory reporting except when such records are:

(i) Used by the operator for airworthiness or maintenance purposes only; or

(ii) De-identified; or

(iii) Disclosed under secure procedures.

OPS 1.165

Leasing

(a) Terminology

Terms used in this paragraph have the following meaning:

1. Dry lease — Is when the aeroplane is operated under the AOC of the lessee.

2. Wet lease — Is when the aeroplane is operated under the AOC of the lessor.
(b) Leasing of aeroplanes between operators

1. Wet lease-out

An operator providing an aeroplane and complete crew to another operator, and retaining all the functions and responsibilities prescribed in Subpart C, shall remain the operator of the aeroplane.

2. All leases except wet lease-out

(i) Except as provided by subparagraph (b) 1 above, an operator utilising an aeroplane from, or providing it to, another operator, must obtain prior approval for the operation from his respective Authority. Any conditions which are part of this approval must be included in the lease agreement.

(ii) Those elements of lease agreements which are approved by the Authority, other than lease agreements in which an aeroplane and complete crew are involved and no transfer of functions and responsibilities is intended, are all to be regarded, with respect to the leased aeroplane, as variations of the AOC under which the flights will be operated.

(c) Leasing of aeroplanes between an operator and any entity other than another operator

1. Dry lease-in

(i) An operator shall not dry lease-in an aeroplane from an entity other than another operator, unless approved by the Authority. Any conditions which are part of this approval must be included in the lease agreement.

(ii) An operator shall ensure that, with regard to aeroplanes that are dry leased-in, any differences from the requirements prescribed in Subparts K, L, and/or from any applicable airworthiness requirements, are notified to and are acceptable to the Authority.

2. Wet lease-in

(i) An operator shall not wet lease-in an aeroplane from an entity other than another operator without the approval of the Authority.

(ii) An operator shall ensure that, with regard to aeroplanes that are wet leased-in:

(A) The safety standards of the lessor with respect to maintenance and operation are equivalent to JARs;

(B) The lessor is an operator holding an AOC issued by a State which is a signatory to the Chicago Convention;

(C) The aeroplane has a standard Certificate of Airworthiness issued in accordance with ICAO Annex 8; and

(D) Any requirement made applicable by the lessee’s Authority is complied with.

3. Dry lease-out

An operator may dry lease-out an aeroplane for the purpose of commercial air transportation to any operator of a State which is signatory to the Chicago Convention provided that the following conditions are met:

(A) The Authority has exempted the operator from the relevant provisions of OPS Part 1 and, after the foreign regulatory authority has accepted responsibility in writing for surveillance of the maintenance and operation of the aeroplane(s), has removed the aeroplane from its AOC; and

(B) The aeroplane is maintained according to an approved maintenance programme.

4. Wet lease-out

An operator providing an aeroplane and complete crew to another entity and retaining all the functions and responsibilities prescribed in Subpart C, shall remain the operator of the aeroplane.

SUBPART C

OPERATOR CERTIFICATION AND SUPERVISION

OPS 1.175

General rules for Air Operator Certification

Note 1: Appendix 1 to this paragraph specifies the contents and conditions of the AOC.

Note 2: Appendix 2 to this paragraph specifies the management and organisation requirements.

(a) An operator shall not operate an aeroplane for the purpose of commercial air transportation otherwise than under, and in accordance with, the terms and conditions of an Air Operator Certificate (AOC).

(b) An applicant for an AOC, or variation of an AOC, shall allow the Authority to examine all safety aspects of the proposed operation.

(c) An applicant for an AOC must:

1. Not hold an AOC issued by another Authority unless specifically approved by the Authorities concerned;

2. Have his principal place of business and, if any, his registered office located in the State responsible for issuing the AOC;

3. Satisfy the Authority that he is able to conduct safe operations.

(d) If an operator has aeroplanes registered in different Member States, appropriate arrangements shall be made to ensure that safety oversight is conducted centrally by the Authority issuing the AOC.
An operator shall grant the Authority access to his organisation and aeroplanes and shall ensure that, with respect to maintenance, access is granted to any associated JAR-145 maintenance organisation, to determine continued compliance with OPS.

An AOC will be varied, suspended or revoked if the Authority is no longer satisfied that the operator can maintain safe operations.

The operator must have a management organisation capable of exercising operational control and supervision over any flight operated under the terms of its AOC.

The operator must have nominated an accountable manager acceptable to the Authority who has corporate authority for ensuring that all operations and maintenance activities can be financed and carried out to the standard required by the Authority.

The operator must have nominated post holders, acceptable to the Authority, who are responsible for,

1. Flight operations;
2. The maintenance system;
3. Crew training; and
4. Ground operations.

The operator must ensure that every flight is conducted in accordance with the provisions of the Operations Manual.

The operator must arrange appropriate ground handling facilities to ensure the safe handling of its flights.

The operator must ensure that its aeroplanes are equipped and its crews are qualified, as required for the area and type of operation.

The operator must comply with the maintenance requirements, in accordance with Subpart M, for all aeroplanes operated under the terms of its AOC.

The operator must provide the Authority with a copy of the Operations Manual, as specified in Subpart P and all amendments or revisions to it.

The operator must maintain operational support facilities at the main operating base, appropriate for the area and type of operation.

OPS 1.180

Issue, variation and continued validity of an AOC

An operator will not be granted an AOC, or a variation to an AOC, and that AOC will not remain valid unless:

1. Aeroplanes operated have a standard Certificate of Airworthiness issued in accordance with ICAO Annex 8 by a Member State.
2. The maintenance system has been approved by the Authority in accordance with Subpart M; and
3. He has satisfied the Authority that he has the ability to:
   i. Establish and maintain an adequate organisation;
   ii. Establish and maintain a quality system in accordance with OPS 1.035;
   iii. Comply with required training programmes;
   iv. Comply with maintenance requirements, consistent with the nature and extent of the operations specified, including the relevant items prescribed in OPS 1.175 (g) to (o); and
   v. Comply with OPS 1.175.

Notwithstanding the provisions of OPS 1.185 (f), the operator must notify the Authority as soon as practicable of any changes to the information submitted in accordance with sub-paragraph (a) above.

If the Authority is not satisfied that the requirements of subparagraph (a) above have been met, the Authority may require the conduct of one or more demonstration flights, operated as if they were commercial air transport flights.

OPS 1.185

Administrative requirements

An operator shall ensure that the following information is included in the initial application for an AOC and, when applicable, any variation or renewal applied for:

1. The official name and business name, address and mailing address of the applicant;
2. A description of the proposed operation;
3. A description of the management organisation;
4. The name of the accountable manager;
5. The names of major post holders, including those responsible for flight operations, the maintenance system, crew training and ground operations together with their qualifications and experience; and

In respect of the operator’s maintenance system only, the following information must be included in the initial application for an AOC and, when applicable, any variation or renewal applied for, and for each aeroplane type to be operated:

1. The maintenance management exposition;
2. The operator’s aeroplane maintenance programme(s);
3. The aeroplane technical log;
4. Where appropriate, the technical specification(s) of the maintenance contract(s) between the operator and any JAR-145 approved maintenance organisation;
5. The number of aeroplanes.
(c) The application for an initial issue of an AOC must be submitted at least 90 days before the date of intended operation except that the Operations Manual may be submitted later but not less than 60 days before the date of intended operation.

(d) The application for the variation of an AOC must be submitted at least 30 days, or as otherwise agreed, before the date of intended operation.

(e) The application for the renewal of an AOC must be submitted at least 30 days, or as otherwise agreed, before the end of the existing period of validity.

(f) Other than in exceptional circumstances, the Authority must be given at least 10 days prior notice of a proposed change of a nominated post holder.

Appendix 1 to OPS 1.175

Contents and conditions of the Air Operator Certificate

An AOC specifies the:

(a) Name and location (main place of business) of the operator;

(b) Date of issue and period of validity;

(c) Description of the type of operations authorised;

(d) Type(s) of aeroplane(s) authorised for use;

(e) Registration markings of the authorised aeroplane(s) except that operators may obtain approval for a system to inform the Authority about the registration markings for aeroplanes operated under its AOC;

(f) Authorised areas of operation;

(g) Special limitations; and

(h) Special authorisations/approvals e.g.:

— CAT II/CAT III (including approved minima)
— (MNPS) Minimum Navigation Performance Specifications
— (ETOPS) Extended Range Operation Twin Engined Aeroplanes
— (RNAV) Area Navigation
— (RVSM) Reduced Vertical Separation Minima
— Transportation of Dangerous Goods.

Appendix 2 to OPS 1.175

The management and organisation of an AOC holder

(a) General

1. An operator must have a sound and effective management structure in order to ensure the safe conduct of air operations. Nominated post holders must have proven competency in civil aviation.

2. In the context of this Appendix, "competency" means that an individual has a technical qualification and managerial experience acceptable to the Authority, as appropriate.

(b) Nominated post holders

1. A description of the functions and the responsibilities of the nominated post holders, including their names, must be contained in the Operations Manual and the Authority must be given notice in writing of any intended or actual change in appointments or functions.

2. The operator must make arrangements to ensure continuity of supervision in the absence of nominated post holders.

3. The operator must satisfy the Authority that the management organisation is suitable and properly matched to the operating network and scale of operation.

4. A person nominated as a post holder by the holder of an AOC must not be nominated as a post holder by the holder of any other AOC, unless acceptable to the Authority. Nominated post holders must be contracted to work sufficient hours such that the individual can fulfill the management functions associated with the size and scope of the operator's business.

5. More than one of the nominated posts may be filled by one person if acceptable to the Authority.

Note: The requirements relating to the appointment of the nominated post holder responsible for the maintenance system in accordance with OPS 1.175 (i) 2 are prescribed in OPS 1.895.

(c) Adequacy and supervision of staff

1. Crew members

The operator must employ sufficient flight and cabin crew for the planned operation, trained and checked in accordance with Subpart N and Subpart O as appropriate.

2. Ground Staff

(i) The number of ground staff is dependent upon the nature and the scale of operations. Operations and ground handling departments, in particular, must be staffed by trained personnel who have a thorough understanding of their responsibilities within the organisation.

(ii) An operator contracting other organisations to provide certain services, retains responsibility for the maintenance of proper standards. In such circumstances, a nominated post holder must be given the task of ensuring that any contractor employed meets the required standards.

3. Supervision

(i) The number of supervisors to be appointed is dependent upon the structure of the operator and the number of staff employed. The duties and responsibilities of these supervisors must be defined, and any flying commitments arranged so that they can discharge their supervisory responsibilities.
(ii) The supervision of all crew members must be exercised by individuals possessing experience and personal qualities sufficient to ensure the attainment of the standards specified in the operations manual.

(d) Accommodation facilities

1. An operator must ensure that working space available at each operating base is sufficient for personnel pertaining to the safety of flight operations. Consideration must be given to the needs of ground staff, those concerned with operational control, the storage and display of essential records, and flight planning by crews.

2. Office services must be capable, without delay, of distributing operational instructions and other information to all concerned.

(e) Documentation

The operator must make arrangements for the production of manuals, amendments and other documentation.

SUBPART D
OPERATIONAL PROCEDURES

OPS 1.195
Operational Control and Supervision

An operator shall exercise operational control and establish and maintain a method of supervision of flight operations approved by the Authority.

OPS 1.200
Operations manual

An operator shall provide an Operations Manual in accordance with Subpart P for the use and guidance of operations personnel.

OPS 1.205
Competence of operations personnel

An operator shall ensure that all personnel assigned to, or directly involved in, ground and flight operations are properly instructed, have demonstrated their abilities in their particular duties and are aware of their responsibilities and the relationship of such duties to the operation as a whole.

OPS 1.210
Establishment of procedures

(a) An operator shall establish procedures and instructions, for each aeroplane type, containing ground staff and crew members' duties for all types of operation on the ground and in flight.

(b) An operator shall establish a check-list system to be used by crew members for all phases of operation of the aeroplane under normal, abnormal and emergency conditions as applicable, to ensure that the operating procedures in the Operations Manual are followed.

(c) An operator shall not require a crew member to perform any activities during critical phases of the flight other than those required for the safe operation of the aeroplane.

OPS 1.215
Use of Air Traffic Services

An operator shall ensure that Air Traffic Services are used for all flights whenever available.

OPS 1.220
Authorisation of Aerodromes by the Operator

An operator shall only authorise use of aerodromes that are adequate for the type(s) of aeroplane and operation(s) concerned.

OPS 1.225
Aerodrome Operating Minima

(a) An operator shall specify aerodrome operating minima, established in accordance with OPS 1.430 for each departure, destination or alternate aerodrome authorised to be used in accordance with OPS 1.220.

(b) These minima must take into account any increment to the specified values imposed by the Authority.

(c) The minima for a specific type of approach and landing procedure are considered applicable if:

1. The ground equipment shown on the respective chart required for the intended procedure is operative;

2. The aeroplane systems required for the type of approach are operative;

3. The required aeroplane performance criteria are met; and

4. The crew is qualified accordingly.

OPS 1.230
Instrument departure and approach procedures

(a) An operator shall ensure that instrument departure and approach procedures established by the State in which the aerodrome is located are used.

(b) Notwithstanding sub-paragraph (a) above, a commander may accept an ATC clearance to deviate from a published departure or arrival route, provided obstacle clearance criteria are observed and full account is taken of the operating conditions. The final approach must be flown visually or in accordance with the established instrument approach procedure.

(c) Different procedures to those required to be used in accordance with sub-paragraph (a) above may only be implemented by an operator provided they have been approved by the State in which the aerodrome is located, if required, and accepted by the Authority.
OPS 1.235

Noise abatement procedures

(a) An operator shall establish operating procedures for noise abatement during instrument flight operations in compliance with ICAO PANS OPS Volume 1 (Doc 8168-OPS/611).

(b) Take-off climb procedures for noise abatement specified by an operator for any one aeroplane type should be the same for all aerodromes.

OPS 1.240

Routes and areas of operation

(a) An operator shall ensure that operations are only conducted along such routes or within such areas, for which:

1. Ground facilities and services, including meteorological services, are provided which are adequate for the planned operation;

2. The performance of the aeroplane intended to be used is adequate to comply with minimum flight altitude requirements;

3. The equipment of the aeroplane intended to be used meets the minimum requirements for the planned operation;

4. Appropriate maps and charts are available (OPS 1.135 (a) 9 refers);

5. If two-engined aeroplanes are used, adequate aerodromes are available within the time/distance limitations of OPS 1.245.

6. If single-engine aeroplanes are used, surfaces are available which permit a safe forced landing to be executed.

(b) An operator shall ensure that operations are conducted in accordance with any restriction on the routes or the areas of operation, imposed by the Authority.

OPS 1.241

Operation in defined airspace with Reduced Vertical Separation Minima (RVSM)

An operator shall not operate an aeroplane in defined portions of airspace where, based on Regional Air Navigation Agreement, a vertical separation minimum of 300 m (1 000 ft) is applied unless approved to do so by the Authority (RVSM Approval). (See also OPS 1.872).

OPS 1.243

Operation in areas with specific navigation performance requirements

An operator shall not operate an aeroplane in defined areas, or a defined portion of specified airspace, based on Regional Air Navigation Agreements where minimum navigation performance specifications are prescribed unless approved to do so by the Authority (MNPS/RNP/RNAV Approval). See also OPS 1.865 (c) 2 and OPS 1.870).

OPS 1.245

Maximum distance from an adequate aerodrome for two-engined aeroplanes without an ETOPS Approval

(a) Unless specifically approved by the Authority in accordance with OPS 1.246 (a) (ETOPS Approval), an operator shall not operate a two-engined aeroplane over a route which contains a point further from an adequate aerodrome than, in the case of:

1. Performance Class A aeroplanes with either:

   (i) A maximum approved passenger seating configuration of 20 or more; or

   (ii) A maximum take-off mass of 45,360 kg or more,

   the distance flown in 60 minutes at the one-engine-inoperative cruise speed determined in accordance with subparagraph (b) below;

2. Performance Class B or C aeroplanes:

   (i) The distance flown in 120 minutes at the one-engine-inoperative cruise speed determined in accordance with subparagraph (b) below; or

   (ii) 300 nautical miles,

   whichever is less.

(b) An operator shall determine a speed for the calculation of the maximum distance to an adequate aerodrome for each two-engined aeroplane type or variant operated, not exceeding VMO, based upon the true airspeed that the aeroplane can maintain with one-engine-inoperative under the following conditions:

1. International Standard Atmosphere (ISA);

2. Level flight

   (i) For turbojet aeroplanes at:

      (A) FL 170; or

      (B) At the maximum flight level to which the aeroplane, with one engine inoperative, can climb, and maintain, using the gross rate of climb specified in the AFM, whichever is less.

   (ii) For propeller driven aeroplanes at:

      (A) FL 80; or

      (B) At the maximum flight level to which the aeroplane, with one engine inoperative, can climb, and maintain, using the gross rate of climb specified in the AFM, whichever is less.

3. Maximum continuous thrust or power on the remaining operating engine;

4. An aeroplane mass not less than that resulting from:

   (i) Take-off at sea-level at maximum take-off mass; and

   (ii) All engines climb to the optimum long range cruise altitude; and

   (iii) All engines cruise at the long range cruise speed at this altitude,

   until the time elapsed since take-off is equal to the applicable threshold prescribed in subparagraph (a) above.
(c) An operator must ensure that the following data, specific to each type or variant, is included in the Operations Manual:

1. The one-engine-inoperative cruise speed determined in accordance with subparagraph (b) above; and
2. The maximum distance from an adequate aerodrome determined in accordance with subparagraphs (a) and (b) above.

Note: The speed and altitudes (flight levels) specified above are only intended to be used for establishing the maximum distance from an adequate aerodrome.

OPS 1.246
Extended range operations with two-engined aeroplanes (ETOPS)

(a) An operator shall not conduct operations beyond the threshold distance determined in accordance with OPS 1.245 unless approved to do so by the Authority (ETOPS approval).

(b) Prior to conducting an ETOPS flight, an operator shall ensure that a suitable ETOPS en-route alternate is available, within either the approved diversion time, or a diversion time based on the MEL generated serviceability status of the aeroplane, whichever is shorter. (See also OPS 1.297 (d)).

OPS 1.250
Establishment of minimum flight altitudes

(a) An operator shall establish minimum flight altitudes and the methods to determine those altitudes for all route segments to be flown which provide the required terrain clearance taking into account the requirements of Subparts F to I.

(b) The method for establishing minimum flight altitudes must be approved by the Authority.

(c) Where minimum flight altitudes established by States overflown are higher than those established by the operator, the higher values shall apply.

(d) An operator shall take into account the following factors when establishing minimum flight altitudes:

1. The accuracy with which the position of the aeroplane can be determined;
2. The probable inaccuracies in the indications of the altimeters used;
3. The characteristics of the terrain (e.g. sudden changes in the elevation) along the routes or in the areas where operations are to be conducted.
4. The probability of encountering unfavourable meteorological conditions (e.g. severe turbulence and descending air currents); and
5. Possible inaccuracies in aeronautical charts.

(e) In fulfilling the requirements prescribed in sub-paragraph (d) above due consideration shall be given to:

1. Corrections for temperature and pressure variations from standard values;
2. The ATC requirements; and
3. Any contingencies along the planned route.

OPS 1.255
Fuel policy

(a) An operator must establish a fuel policy for the purpose of flight planning and in-flight replanning to ensure that every flight carries sufficient fuel for the planned operation and reserves to cover deviations from the planned operation.

(b) An operator shall ensure that the planning of flights is only based upon:

1. Procedures and data contained in or derived from the Operations Manual or current aeroplane specific data; and
2. The operating conditions under which the flight is to be conducted including:
   (i) Realistic aeroplane fuel consumption data;
   (ii) Anticipated masses;
   (iii) Expected meteorological conditions; and
   (iv) Air Traffic Services procedures and restrictions.

(c) An operator shall ensure that the pre-flight calculation of usable fuel required for a flight includes:

1. Taxy fuel;
2. Trip fuel;
3. Reserve fuel consisting of:
   (i) Contingency fuel;
   (ii) Alternate fuel, if a destination alternate is required. (This does not preclude selection of the departure aerodrome as the destination alternate);
   (iii) Final reserve fuel; and
   (iv) Additional fuel, if required by the type of operation (e.g. ETOPS); and
4. Extra fuel if required by the commander.

(d) An operator shall ensure that in-flight replanning procedures for calculating usable fuel required when a flight has to proceed along a route or to a destination other than originally planned includes:

1. Trip fuel for the remainder of the flight;
2. Reserve fuel consisting of:
   (i) Contingency fuel;
   (ii) Alternate fuel, if a destination alternate is required (This does not preclude selection of the departure aerodrome as the destination alternate);
(iii) Final reserve fuel; and

(iv) Additional fuel, if required by the type of operation (e.g. ETOPS); and

3. Extra fuel if required by the commander.

OPS 1.260

Carriage of Persons with Reduced Mobility

(a) An operator shall establish procedures for the carriage of Persons with Reduced Mobility (PRMs).

(b) An operator shall ensure that PRMs are not allocated, nor occupy, seats where their presence could:

1. Impede the crew in their duties;

2. Obstruct access to emergency equipment; or

3. Impede the emergency evacuation of the aeroplane.

(c) The commander must be notified when PRMs are to be carried on board.

OPS 1.265

Carriage of inadmissible passengers, deportees or persons in custody

An operator shall establish procedures for the transportation of inadmissible passengers, deportees or persons in custody to ensure the safety of the aeroplane and its occupants. The commander must be notified when the above-mentioned persons are to be carried on board.

OPS 1.270

Stowage of baggage and cargo

(See Appendix 1 to OPS 1.270)

(a) An operator shall establish procedures to ensure that only such hand baggage is carried into an aeroplane and taken into the passenger cabin as can be adequately and securely stowed.

(b) An operator shall establish procedures to ensure that all baggage and cargo on board, which might cause injury or damage, or obstruct aisles and exits if displaced, is placed in stowages designed to prevent movement.

OPS 1.280

Passenger Seating

An operator shall establish procedures to ensure that passengers are seated where, in the event that an emergency evacuation is required, they may best assist and not hinder evacuation from the aeroplane.

An operator shall ensure that:

(a) General

1. Passengers are verbally briefed about safety matters, parts or all of which may be given by an audio-visual presentation.

2. Passengers are provided with a safety briefing card on which picture type instructions indicate the operation of emergency equipment and exits likely to be used by passengers.

(b) Before take-off

1. Passengers are briefed on the following items if applicable:

   (i) Smoking regulations;

   (ii) Back of the seat to be in the upright position and tray table stowed;

   (iii) Location of emergency exits;

   (iv) Location and use of floor proximity escape path markings;

   (v) Stowage of hand baggage;

   (vi) Restrictions on the use of portable electronic devices; and

   (vii) The location and the contents of the safety briefing card, and

2. Passengers receive a demonstration of the following:

   (i) The use of safety belts and/or safety harnesses, including how to fasten and unfasten the safety belts and/or safety harnesses;

   (ii) The location and use of oxygen equipment if required (OPS 1.770 and OPS 1.775 refer). Passengers must also be briefed to extinguish all smoking materials when oxygen is being used; and

   (iii) The location and use of life jackets if required (OPS 1.825 refers).

(c) After take-off

Passengers are reminded of the following if applicable:

(i) Smoking regulations; and

(ii) Use of safety belts and/or safety harnesses.

(d) Before landing

Passengers are reminded of the following if applicable:

(i) Smoking regulations;

(ii) Use of safety belts and/or safety harnesses;

(iii) Back of the seat to be in the upright position and tray table stowed;

(iv) Re-stowage of hand baggage; and

(v) Restrictions on the use of portable electronic devices.
(c) After landing

Passengers are reminded of the following:

(i) Smoking regulations; and

(ii) Use of safety belts and/or safety harnesses.

(f) In an emergency during flight, passengers are instructed in such emergency action as may be appropriate to the circumstances.

OPS 1.290

Flight preparation

(a) An operator shall ensure that an operational flight plan is completed for each intended flight.

(b) The commander shall not commence a flight unless he is satisfied that:

1. The aeroplane is airworthy;

2. The aeroplane configuration is in accordance with the Configuration Deviation List (CDL);

3. The instruments and equipment required for the flight to be conducted, in accordance with Subparts K and L, are available;

4. The instruments and equipment are in operable condition except as provided in the MEL;

5. Those parts of the operations manual which are required for the conduct of the flight are available;

6. The documents, additional information and forms required to be available by OPS 1.125 and OPS 1.135 are on board;

7. Current maps, charts and associated documents or equivalent data are available to cover the intended operation of the aeroplane including any diversion which may reasonably be expected;

8. Ground facilities and services required for the planned flight are available and adequate;

9. The provisions specified in the operations manual in respect of fuel, oil and oxygen requirements, minimum safe altitudes, aerodrome operating minima and availability of alternate aerodromes, where required, can be complied with for the planned flight;

10. The load is properly distributed and safely secured;

11. The mass of the aeroplane, at the commencement of take-off roll, will be such that the flight can be conducted in compliance with Subparts F to I as applicable; and

12. Any operational limitation in addition to those covered by sub-paragraphs (9) and (11) above can be complied with.

OPS 1.295

Selection of aerodromes

(a) An operator shall establish procedures for the selection of destination and/or alternate aerodromes in accordance with OPS 1.220 when planning a flight.

(b) An operator must select and specify in the operational flight plan a take-off alternate if it would not be possible to return to the aerodrome of departure for meteorological or performance reasons. The take-off alternate shall be located within:

1. For two-engined aeroplanes, either:

   (i) One hour flight time at a one-engine-inoperative cruising speed according to the AFM in still air standard conditions based on the actual take-off mass; or

   (ii) Two hours or the approved ETOPS diversion time, whichever is less, at the one-engine-inoperative cruising speed according to the AFM in still air standard conditions for aeroplanes and crews authorised for ETOPS; or

2. Two hours flight time at a one-engine-inoperative cruising speed according to the AFM in still air standard conditions based on the actual take-off mass for three and four-engined aeroplanes; and

3. If the AFM does not contain a one-engine-inoperative cruising speed, the speed to be used for calculation must be that which is achieved with the remaining engine(s) set at maximum continuous power.

(c) An operator must select at least one destination alternate for each IFR flight unless:

1. 1. Both:

   (i) The duration of the planned flight from take-off to landing does not exceed 6 hours; and

   (ii) Two separate runways are available at the destination and the meteorological conditions prevailing are such that, for the period from one hour before until one hour after the expected time of arrival at destination, the approach from the relevant minimum sector altitude and the landing can be made in VMC or

2. The destination is isolated and no adequate destination alternate exists.

(d) An operator must select two destination alternates when the appropriate weather reports or forecasts for the destination, or any combination thereof, indicate that:

1. During a period commencing 1 hour before and ending 1 hour after the estimated time of arrival the weather conditions will be below the applicable planning minima; or

2. When no meteorological information is available.

(e) An operator shall specify any required alternate(s) in the operational flight plan.
OPS 1.297

Planning minima for IFR flights

(a) Planning minima for take-off alternates

An operator shall not select an aerodrome as a take-off alternate aerodrome unless the appropriate weather reports or forecasts or any combination thereof indicate that, during a period commencing 1 hour before and ending 1 hour after the estimated time of arrival at the aerodrome, the weather conditions will be at or above the applicable landing minima specified in accordance with OPS 1.225. The ceiling must be taken into account when the only approaches available are non-precision and/or circling approaches. Any limitation related to one engine inoperative operations must be taken into account.

(b) Planning minima for destination and destination alternate aerodromes

An operator shall only select the destination aerodrome and/or destination alternate aerodrome(s) when the appropriate weather reports or forecasts, or any combination thereof, indicate that, during a period commencing 1 hour before and ending 1 hour after the estimated time of arrival at the aerodrome, the weather conditions will be at or above the applicable planning minima as follows:

1. Planning minima for a destination aerodrome:
   
   (i) RVR/visibility specified in accordance with OPS 1.225; and
   
   (ii) For a non-precision approach or a circling approach, the ceiling at or above MDH; and

2. Planning minima for destination alternate aerodrome(s):

   
   Table 1

   Planning minima En-route and destination alternates

<table>
<thead>
<tr>
<th>Type of approach</th>
<th>Planning Minima</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cat II and III</td>
<td>Cat I (Note 1)</td>
</tr>
<tr>
<td>Cat I</td>
<td>Non-precision (Note 1 &amp; 2)</td>
</tr>
<tr>
<td>Non precision</td>
<td>Non precision (Notes 1 &amp; 2) plus 200 ft/1 000 m</td>
</tr>
<tr>
<td>Circling</td>
<td>Circling</td>
</tr>
</tbody>
</table>

   Note 1: RVR.
   Note 2: The ceiling must be at or above the MDH.

(c) Planning minima for an en-route alternate aerodrome

An operator shall not select an aerodrome as an en-route alternate aerodrome unless the appropriate weather reports or forecasts, or any combination thereof, indicate that, during a period commencing 1 hour before and ending 1 hour after the expected time of arrival at the aerodrome, the weather conditions will be at or above the planning minima in accordance with Table 1 above.

(d) Planning minima for an ETOPS en-route alternate

An operator shall not select an aerodrome as an ETOPS en-route alternate aerodrome unless the appropriate weather reports or forecasts, or any combination thereof, indicate that, during a period commencing 1 hour before and ending 1 hour after the expected time of arrival at the aerodrome, the weather conditions will be at or above the planning minima prescribed in Table 2 below, and in accordance with the operator’s ETOPS approval.

<table>
<thead>
<tr>
<th>Type of Approach</th>
<th>Planning Minima</th>
</tr>
</thead>
<tbody>
<tr>
<td>Precision approach Cat II, III (ILS, MLS)</td>
<td>Non-Precision approach Minima</td>
</tr>
<tr>
<td>Precision approach Cat I (ILS, MLS)</td>
<td>Circling Minima or if not available, non-precision approach minima plus 200 ft/1 000 m</td>
</tr>
</tbody>
</table>

Table 2

Planning minima — ETOPS

<table>
<thead>
<tr>
<th>Type of Approach</th>
<th>Planning Minima</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aerodrome with at least 2 separate approach procedures based on 2 separate aids serving 2 separate runways (see IEM OPS 1.295 cc) (i) (ii)</td>
<td>at least 2 separate approach procedures based on 2 separate aids serving 1 runway or, at least 1 approach procedure based on 1 aid serving 1 runway</td>
</tr>
<tr>
<td>Precision approach Cat I Minima</td>
<td>Non-Precision approach Minima</td>
</tr>
<tr>
<td>Non-Precision approach Minima</td>
<td>Circling Minima or if not available, non-precision approach minima plus 200 ft/1 000 m</td>
</tr>
</tbody>
</table>

Note 1: RVR.
Note 2: The ceiling must be at or above the MDH.
OPS 1.300

Submission of ATS Flight Plan

An operator shall ensure that a flight is not commenced unless an ATS flight plan has been submitted, or adequate information has been deposited in order to permit alerting services to be activated if required.

OPS 1.305

Re/defuelling with passengers embarking, on board or disembarking

(See Appendix 1 to OPS 1.305)

An operator shall ensure that no aeroplane is re/defuelled with Avgas or wide cut type fuel (eg. Jet-B or equivalent) or when a mixture of these types of fuel might occur, when passengers are embarking, on board or disembarking. In all other cases necessary precautions must be taken and the aeroplane must be properly manned by qualified personnel ready to initiate and direct an evacuation of the aeroplane by the most practical and expeditious means available.

OPS 1.307

Refuelling/Defuelling with wide-cut fuel

An operator shall establish procedures for refuelling/defuelling with wide-cut fuel (eg. Jet-B or equivalent) if this is required.

OPS 1.310

Crew Members at stations

(a) Flight crew members

1. During take-off and landing each flight crew member required to be on flight deck duty shall be at his station.

2. During all other phases of flight each flight crew member required to be on flight deck duty shall remain at his station unless his absence is necessary for the performance of his duties in connection with the operation, or for physiological needs provided at least one suitably qualified pilot remains at the controls of the aeroplane at all times.

(b) Cabin crew members

On all the decks of the aeroplane that are occupied by passengers, required cabin crew members shall be seated at their assigned stations during take-off and landing, and whenever deemed necessary by the commander in the interest of safety.

OPS 1.315

Assisting means for emergency evacuation

An operator shall establish procedures to ensure that before taxiing, take-off and landing, and when safe and practicable to do so, an assisting means for emergency evacuation that deploys automatically, is armed.

OPS 1.320

Seats, safety belts and harnesses

(a) Crew members

1. During take-off and landing, and whenever deemed necessary by the commander in the interest of safety, each crew member shall be properly secured by all safety belts and harnesses provided.

2. During other phases of the flight each flight crew member on the flight deck shall keep his safety belt fastened while at his station.

(b) Passengers

1. Before take-off and landing, and during taxiing, and whenever deemed necessary in the interest of safety, the commander shall ensure that each passenger on board occupies a seat or berth with his safety belt, or harness where provided, properly secured.

2. An operator shall make provision for, and the commander shall ensure that multiple occupancy of aeroplane seats may only be allowed on specified seats and does not occur other than by one adult and one infant who is properly secured by a supplementary loop belt or other restraint device.

OPS 1.325

Securing of passenger cabin and galley(s)

(a) An operator shall establish procedures to ensure that before taxiing, take-off and landing all exits and escape paths are unobstructed.

(b) The commander shall ensure that before take-off and landing, and whenever deemed necessary in the interest of safety, all equipment and baggage is properly secured.

OPS 1.330

Accessibility of emergency equipment

The commander shall ensure that relevant emergency equipment remains easily accessible for immediate use.

OPS 1.335

Smoking on board

The commander shall ensure that no person on board is allowed to smoke:

1. Whenever deemed necessary in the interest of safety;

2. While the aeroplane is on the ground unless specifically permitted in accordance with procedures defined in the Operations Manual;

3. Outside designated smoking areas, in the aisle(s) and in the toilet(s);

4. In cargo compartments and/or other areas where cargo is carried which is not stored in flame resistant containers or covered by flame resistant canvas; and

5. In those areas of the cabin where oxygen is being supplied.
OPS 1.340

Meteorological Conditions

(a) On an IFR flight a commander shall not:

1. Commence take-off; nor
2. Continue beyond the point from which a revised flight plan applies in the event of in-flight replanning.

unless information is available indicating that the expected weather conditions at the destination and/or required alternate aerodrome(s) prescribed in OPS 1.295 are at or above the planning minima, prescribed in OPS 1.297.

(b) On an IFR flight a commander shall not continue beyond:

1. The decision point when using the decision point procedure; or
2. The pre-determined point when using the pre-determined point procedure,

unless information is available indicating that the expected weather conditions at the destination and/or required alternate aerodrome(s) prescribed in OPS 1.295 are at or above the applicable aerodrome operating minima prescribed in OPS 1.225.

(c) On an IFR flight, a commander shall not continue towards the planned destination aerodrome unless the latest information available indicates that, at the expected time of arrival, the weather conditions at the destination, or at least one destination alternate aerodrome, are at or above the planning applicable aerodrome operating minima.

(d) On a VFR flight a commander shall not commence take-off unless current meteorological reports or a combination of current reports and forecasts indicate that the meteorological conditions along the route or that part of the route to be flown under VFR will, at the appropriate time, be such as to render compliance with these rules possible.

OPS 1.345

Ice and other contaminants

(a) An operator shall establish procedures to be followed when ground de-icing and anti-icing and related inspections of the aeroplane(s) are necessary.

(b) A commander shall not commence take-off unless the external surfaces are clear of any deposit which might adversely affect the performance and/or controllability of the aeroplane except as permitted in the Aeroplane Flight Manual.

(c) A commander shall not commence a flight under known or expected icing conditions unless the aeroplane is certificated and equipped to cope with such conditions.

OPS 1.350

Fuel and oil supply

A commander shall not commence a flight unless he is satisfied that the aeroplane carries at least the planned amount of fuel and oil to complete the flight safely, taking into account the expected operating conditions.

OPS 1.355

Take-off conditions

Before commencing take-off, a commander must satisfy himself that, according to the information available to him, the weather at the aerodrome and the condition of the runway intended to be used should not prevent a safe take-off and departure.

OPS 1.360

Application of take-off minima

Before commencing take-off, a commander must satisfy himself that the RVR or visibility in the take-off direction of the aeroplane is equal to or better than the applicable minimum.

OPS 1.365

Minimum flight altitudes

The commander or the pilot to whom conduct of the flight has been delegated shall not fly below specified minimum altitudes except when necessary for take-off or landing.

OPS 1.370

Simulated abnormal situations in flight

An operator shall establish procedures to ensure that abnormal or emergency situations requiring the application of part or all of abnormal or emergency procedures and simulation of IMC by artificial means, are not simulated during commercial air transportation flights.

OPS 1.375

In-flight fuel management

(See Appendix 1 to OPS 1.375)

(a) An operator shall establish a procedure to ensure that in-flight fuel checks and fuel management are carried out.

(b) A commander shall ensure that the amount of usable fuel remaining in flight is not less than the fuel required to proceed to an aerodrome where a safe landing can be made, with final reserve fuel remaining.

(c) The commander shall declare an emergency when the actual usable fuel on board is less than final reserve fuel.
OPS 1.385

Use of supplemental oxygen

A commander shall ensure that flight crew members engaged in performing duties essential to the safe operation of an aeroplane in flight use supplemental oxygen continuously whenever cabin altitude exceeds 10,000 ft for a period in excess of 30 minutes and whenever the cabin altitude exceeds 13,000 ft.

OPS 1.390

Cosmic radiation

(a) Active monitoring

1. An operator shall not operate an aeroplane above 15,000 m (49,000 ft) unless the equipment specified in OPS 1.680 is serviceable.

2. The commander or the pilot to whom conduct of the flight has been delegated shall initiate a descent as soon as practicable when the limit values specified in the Operations Manual are exceeded.

(b) Passive monitoring

An operator shall take account of the in-flight exposure to cosmic radiation of their flight crew and cabin crew and shall take the following measures for those crew liable to be subject to exposure of more than 1 mSv per year:

1. assess their exposure;

2. arrange their working schedules, where practicable, to keep exposure below 6 mSv per year;

3. inform them of the health risk associated with the likely exposure;

4. ensure that the working schedules for female crew, once they have notified the operator that they are pregnant, keep the equivalent dose to the foetus as low as can reasonably be achieved and in any case ensure that the dose does not exceed 1 mSv for the remainder of the pregnancy;

5. ensure that where exposure is considered likely to exceed 6 mSv per year, records are kept for each flight or cabin crew member affected, and that appropriate medical surveillance is applied.

OPS 1.395

Ground proximity detection

When undue proximity to the ground is detected by any flight crew member or by a ground proximity warning system, the commander or the pilot to whom conduct of the flight has been delegated shall ensure that corrective action is initiated immediately to establish safe flight conditions.

OPS 1.400

Approach and landing conditions

Before commencing an approach to land, the commander must satisfy himself that, according to the information available to him, the weather at the aerodrome and the condition of the runway intended to be used should not prevent a safe approach, landing or missed approach, having regard to the performance information contained in the Operations Manual.

OPS 1.405

Commencement and continuation of approach

(a) The commander or the pilot to whom conduct of the flight has been delegated may commence an instrument approach regardless of the reported RVR/visibility but the approach shall not be continued beyond the outer marker, or equivalent position, if the reported RVR/visibility is less than the applicable minimum.

(b) Where RVR is not available, the pilot-in-command may derive an RVR value by converting the reported visibility in accordance with Appendix 1 to OPS 1.430, sub-paragraph (h).

(c) If, after passing the outer marker or equivalent position in accordance with (a) above, the reported RVR/visibility falls below the applicable minimum, the pilot-in-command may continue the approach to DA/H or MDA/H.

(d) Where no outer marker or equivalent position exists, the pilot-in-command shall make the decision to continue or abandon the approach before descending below 1,000 ft above the aerodrome on the final approach segment.

(e) A pilot may continue the approach below DA/H or MDA/H and the landing may be completed provided that the required visual reference is established at the DA/H or MDA/H and is maintained.

OPS 1.410

Operating procedures Threshold crossing height

An operator must establish operational procedures designed to ensure that an aeroplane being used to conduct precision approaches crosses the threshold by a safe margin, with the aeroplane in the landing configuration and attitude.

OPS 1.415

Journey log

A commander shall ensure that the Journey log is completed.

OPS 1.420

Occurrence reporting

(a) Flight Incidents

1. The operator or commander of an aeroplane shall submit a report to the Authority of any incident that has endangered or may have endangered safe operation of a flight.

2. Reports shall be despatched within 72 hours of the event, unless exceptional circumstances prevent this.

(b) Technical defects and exceedance of technical limitations.

A commander shall ensure that all technical defects and exceedances of technical limitations occurring while he was responsible for the flight are recorded in the aeroplane's Technical Log.
(c) Air Traffic Incidents.

A commander shall submit an air traffic incident report in accordance with ICAO PANS RAC whenever an aeroplane in flight has been endangered by:

1. A near collision with any other flying device; or
2. Faulty air traffic procedures or lack of compliance with applicable procedures by Air Traffic Services or by the flight crew; or
3. A failure of ATS facilities.

(d) Bird Hazards and Strikes

1. A commander shall immediately inform the appropriate ground station whenever a potential bird hazard is observed.
2. A commander shall submit a written bird strike report after landing whenever an aeroplane for which he is responsible suffers a bird strike.

(e) In-flight emergencies with Dangerous Goods on board.

If an in-flight emergency occurs and the situation permits, a commander shall inform the appropriate Air Traffic Services unit of any Dangerous Goods on board.

(f) Unlawful interference

Following an act of unlawful interference on board an aeroplane, a commander shall submit a report, as soon as practicable, to the local Authority and/or the Authority.

(g) Irregularities of ground and navigational facilities and hazardous conditions.

A commander shall notify the appropriate ground station as soon as practicable whenever a potentially hazardous condition such as:

1. An irregularity in a ground or navigational facility; or
2. A meteorological phenomenon; or
3. A volcanic ash cloud; or
4. A high radiation level, is encountered during flight.

OPS 1.425

Accident reporting

(a) An operator shall establish procedures to ensure that the nearest appropriate authority is notified by the quickest available means of any accident, involving the aeroplane, resulting in serious injury (as defined in ICAO Annex 13) or death of any person or substantial damage to the aeroplane or property.

(b) A commander shall submit a report to the Authority of any accident on board, resulting in serious injury to, or death of, any person on board while he was responsible for the flight.

Appendix 1 to OPS 1.270

Stowage of baggage and cargo

Procedures established by an operator to ensure that hand baggage and cargo is adequately and securely stowed must take account of the following:

1. Each item carried in a cabin must be stowed only in a location that is capable of restraining it;
2. Mass limitations placarded on or adjacent to stowages must not be exceeded;
3. Underseat stowages must not be used unless the seat is equipped with a restraint bar and the baggage is of such size that it may adequately be restrained by this equipment;
4. Items must not be stowed in toilets or against bulkheads that are incapable of restraining articles against movement forwards, sideways or upwards and unless the bulkheads carry a placard specifying the greatest mass that may be placed there;
5. Baggage and cargo placed in lockers must not be of such size that they prevent latched doors from being closed securely;
6. Baggage and cargo must not be placed where it can impede access to emergency equipment; and
7. Checks must be made before take-off, before landing, and whenever the pilot-in-command illuminates the fasten seat belts signs (or otherwise so orders) to ensure that baggage is stowed where it cannot impede evacuation from the aircraft or cause injury by falling (or other movement) as may be appropriate to the phase of flight.

Appendix 1 to OPS 1.305

Re/defuelling with passengers embarking, on board or disembarking

An operator must establish operational procedures for re/defuelling with passengers embarking, on board or disembarking to ensure the following precautions are taken:

1. One qualified person must remain at a specified location during fuelling operations with passengers on board. This qualified person must be capable of handling emergency procedures concerning fire protection and fire-fighting, handling communications and initiating and directing an evacuation;
2. Crew, staff and passengers must be warned that re/defuelling will take place;
3. “Fasten Seat Belts” signs must be off;
4. “No smoking” signs must be on, together with interior lighting to enable emergency exits to be identified;
5. Passengers must be instructed to unfasten their seat belts and refrain from smoking;
6. Sufficient qualified personnel must be on board and be prepared for an immediate emergency evacuation;

7. If the presence of fuel vapour is detected inside the aeroplane, or any other hazard arises during re/defuelling, fuelling must be stopped immediately;

8. The ground area beneath the exits intended for emergency evacuation and slide deployment areas must be kept clear; and

9. Provision is made for a safe and rapid evacuation.

**Appendix 1 to OPS 1.375**

**In-flight fuel management**

(a) **In-flight fuel checks**

1. A commander must ensure that fuel checks are carried out in flight at regular intervals. The remaining fuel must be recorded and evaluated to:

   (i) Compare actual consumption with planned consumption;

   (ii) Check that the remaining fuel is sufficient to complete the flight; and

   (iii) Determine the expected fuel remaining on arrival at the destination.

2. The relevant fuel data must be recorded.

(b) **In-flight fuel management.**

If, as a result of an in-flight fuel check, the expected fuel remaining on arrival at the destination is less than the required alternate fuel plus final reserve fuel, the commander must take into account the traffic and the operational conditions prevailing at the destination aerodrome, along the diversion route to an alternate aerodrome and at the destination alternate aerodrome, when deciding to proceed to the destination aerodrome or to divert, so as to land with not less than final reserve fuel.

(c) If, as a result of an in-flight fuel check on a flight to an isolated destination aerodrome, the expected fuel remaining at the point of last possible diversion is less than the sum of:

1. Fuel to divert to an en-route alternate aerodrome selected in accordance with OPS 1.297 (c);

2. Contingency fuel; and

3. Final reserve fuel,

the commander must either:

(i) Divert; or

(ii) Proceed to the destination, provided that two separate runways are available at the destination and the expected weather conditions at the destination comply with those specified for planning in OPS 1.297 (b)(1).

**SUBPART E**

**ALL WEATHER OPERATIONS**

**OPS 1.430**

**Aerodrome Operating Minima General**

(See Appendix 1 to OPS 1.430)

(a) An operator shall establish, for each aerodrome planned to be used, aerodrome operating minima that are not lower than the values given in Appendix 1. The method of determination of such minima must be acceptable to the Authority. Such minima shall not be lower than any that may be established for such aerodromes by the State in which the aerodrome is located, except when specifically approved by that State.

Note: The above paragraph does not prohibit in-flight calculation of minima for a non planned alternate aerodrome if carried out in accordance with an accepted method.

(b) In establishing the aerodrome operating minima which will apply to any particular operation, an operator must take full account of:

1. The type, performance and handling characteristics of the aeroplane;

2. The composition of the flight crew, their competence and experience;

3. The dimensions and characteristics of the runways which may be selected for use;

4. The adequacy and performance of the available visual and non-visual ground aids

5. The equipment available on the aeroplane for the purpose of navigation and/or control of the flight path, as appropriate, during the take-off, the approach, the flare, the landing, roll-out and the missed approach;

6. The obstacles in the approach, missed approach and the climb-out areas required for the execution of contingency procedures and necessary clearance;

7. The obstacle clearance altitude/height for the instrument approach procedures; and

8. The means to determine and report meteorological conditions.

(c) The aeroplane categories referred to in this Subpart must be derived in accordance with the method given in Appendix 2 to OPS 1.430 (c).

**OPS 1.435**

**Terminology**

Terms used in this Subpart and not defined in JAR1 have the following meaning:

1. Circling: The visual phase of an instrument approach to bring an aircraft into position for landing on a runway which is not suitably located for a straight-in approach.

2. Low Visibility Procedures (LVP): Procedures applied at an aerodrome for the purpose of ensuring safe operations during Category II and III approaches and Low Visibility Take-offs.
3. Low Visibility Take-Off (LVTO): A take-off where the Runway Visual Range (RVR) is less than 400 m.

4. Flight control system: A system which includes an automatic landing system and/or a hybrid landing system.

5. Fail-Passive flight control system: A flight control system is fail-passive if, in the event of a failure, there is no significant out-of-trim condition or deviation of flight path or attitude but the landing is not completed automatically. For a fail-passive automatic flight control system the pilot assumes control of the aeroplane after a failure.

6. Fail-Operational flight control system: A flight control system is fail-operational if, in the event of a failure below alert height, the approach, flare and landing, can be completed automatically. In the event of a failure, the automatic landing system will operate as a fail-passive system.

7. Fail-operational hybrid landing system: A system which consists of a primary fail-passive automatic landing system and a secondary independent guidance system enabling the pilot to complete a landing manually after failure of the primary system.

Note: A typical secondary independent guidance system consists of a monitored head-up display providing guidance which normally takes the form of command information but it may alternatively be situation (or deviation) information.

8. Visual approach: An approach when either part or all of an instrument approach procedure is not completed and the approach is executed with visual reference to the terrain.

OPS 1.440

Low visibility operations General operating rules

(See Appendix 1 to OPS 1.440)

(a) An operator shall not conduct Category II or III operations unless:

1. Each aeroplane concerned is certificated for operations with decision heights below 200 ft, or no decision height, and equipped in accordance with JAR-AWO or an equivalent accepted by the Authority;

2. A suitable system for recording approach and/or automatic landing success and failure is established and maintained to monitor the overall safety of the operation;

3. The operations are approved by the Authority;

4. The flight crew consists of at least 2 pilots; and

5. Decision Height is determined by means of a radio altimeter.

(b) An operator shall not conduct low visibility take-offs in less than 150 m RVR (Category A, B and C aeroplanes) or 200 m RVR (Category D aeroplanes) unless approved by the Authority.

OPS 1.445

Low visibility operations Aerodrome considerations

(a) An operator shall not use an aerodrome for Category II or III operations unless the aerodrome is approved for such operations by the State in which the aerodrome is located.

(b) An operator shall verify that Low Visibility Procedures (LVP) have been established, and will be enforced, at those aerodromes where low visibility operations are to be conducted.

OPS 1.450

Low visibility operations Training and Qualifications

(See Appendix 1 to OPS 1.450)

An operator shall ensure that, prior to conducting Low Visibility Take-Off, Category II and III operations:

1. Each flight crew member:

   (i) Completes the training and checking requirements prescribed in Appendix 1 including simulator training in operating to the limiting values of RVR and Decision Height appropriate to the operator’s Category II/III approval; and

   (ii) Is qualified in accordance with Appendix 1;

2. The training and checking is conducted in accordance with a detailed syllabus approved by the Authority and included in the Operations Manual. This training is in addition to that prescribed in Subpart N; and

3. The flight crew qualification is specific to the operation and the aeroplane type.

OPS 1.455

Low visibility operations Operating Procedures

(See Appendix 1 to OPS 1.455)

(a) An operator must establish procedures and instructions to be used for Low Visibility Take-Off and Category II and III operations. These procedures must be included in the Operations Manual and contain the duties of flight crew members during taxiing, take-off, approach, flare, landing, roll-out and missed approach as appropriate.

(b) The commander shall satisfy himself that:

1. The status of the visual and non-visual facilities is sufficient prior to commencing a Low Visibility Take-Off or a Category II or III approach;

2. Appropriate LVPs are in force according to information received from Air Traffic Services, before commencing a Low Visibility Take-off or a Category II or III approach; and

3. The flight crew members are properly qualified prior to commencing a Low Visibility Take-off in an RVR of less than 150 m (Category A, B and C aeroplanes) or 200 m (Cat D aeroplanes) or a Category II or III approach.
OPS 1.460

Low visibility operations — Minimum equipment

(a) An operator must include in the Operations Manual the minimum equipment that has to be serviceable at the commencement of a Low Visibility Take-off or a Category II or III approach in accordance with the AFM or other approved document.

(b) The commander shall satisfy himself that the status of the aeroplane and of the relevant airborne systems is appropriate for the specific operation to be conducted.

OPS 1.465

VFR Operating minima

(See Appendix 1 to OPS 1.465)

An operator shall ensure that:

1. VFR flights are conducted in accordance with the Visual Flight Rules and in accordance with the Table in Appendix 1 to OPS 1.465.

2. Special VFR flights are not commenced when the visibility is less than 3 km and not otherwise conducted when the visibility is less than 1.5 km.

Appendix 1 to OPS 1.430

Aerodrome Operating Minima

(a) Take-off Minima

1. General

(i) Take-off minima established by the operator must be expressed as visibility or RVR limits, taking into account all relevant factors for each aerodrome planned to be used and the aeroplane characteristics. Where there is a specific need to see and avoid obstacles on departure and/or for a forced landing, additional conditions (e.g. ceiling) must be specified.

(ii) The commander shall not commence take-off unless the weather conditions at the aerodrome of departure are equal to or better than applicable minima for landing at that aerodrome unless a suitable take-off alternate aerodrome is available.

(iii) When the reported meteorological visibility is below that required for take-off and RVR is not reported, a take-off may only be commenced if the commander can determine that the RVR/visibility along the take-off runway is equal to or better than the required minimum.

(iv) When no reported meteorological visibility or RVR is available, a take-off may only be commenced if the commander can determine that the RVR/visibility along the take-off runway is equal to or better than the required minimum.

2. Visual reference:

The take-off minima must be selected to ensure sufficient guidance to control the aeroplane in the event of both a discontinued take-off in adverse circumstances and a continued take-off after failure of the critical power unit.

3. Required RVR/Visibility

(i) For multi-engined aeroplanes, whose performance is such that, in the event of a critical power unit failure at any point during take-off, the aeroplane can either stop or continue the take-off to a height of 1 500 ft above the aerodrome while clearing obstacles by the required margins, the take-off minima established by an operator must be expressed as RVR/Visibility values not lower than those given in Table 1 below except as provided in paragraph (4) below:

<table>
<thead>
<tr>
<th>Take-off RVR/Visibility</th>
<th>RVR/Visibility (Note 3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facilities</td>
<td></td>
</tr>
<tr>
<td>Nil (Day only)</td>
<td>500 m</td>
</tr>
<tr>
<td>Runway edge lighting and/or centreline marking</td>
<td>250/300 m (Notes 1 &amp; 2)</td>
</tr>
<tr>
<td>Runway edge and centerline lighting</td>
<td>200/250 m (Note 1)</td>
</tr>
<tr>
<td>Runway edge and centerline lighting and multiple RVR information</td>
<td>150/200 m (Notes 1 &amp; 4)</td>
</tr>
</tbody>
</table>

Note 1: The higher values apply to Category D aeroplanes.

Note 2: For night operations at least runway edge and runway end lights are required.

Note 3: The reported RVR/Visibility value representative of the initial part of the take-off run can be replaced by pilot assessment.

Note 4: The required RVR value must be achieved for all of the relevant RVR reporting points with the exception given in Note 3 above.

(ii) For multi-engined aeroplanes whose performance is such that they cannot comply with the performance conditions in sub-paragraph (a) 3 (i) above in the event of a critical power unit failure, there may be a need to re-land immediately and to see and avoid obstacles in the take-off area. Such aeroplanes may be operated to the following take-off minima provided they are able to comply with the applicable obstacle clearance criteria, assuming engine failure at the height specified. The take-off minima established by an operator must be based upon the height from which the one engine inoperative net take-off flight path can be constructed. The RVR minima used may not be lower than either of the values given in Table 1 above or Table 2 below.

Assumed engine failure height above the runway versus RVR/Visibility

<table>
<thead>
<tr>
<th>Take-off RVR/Visibility — flight path</th>
<th>RVR/Visibility (Note 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assumed engine failure height above the take-off runway</td>
<td></td>
</tr>
<tr>
<td>&lt; 50 ft</td>
<td>200 m</td>
</tr>
<tr>
<td>51-100 ft</td>
<td>300 m</td>
</tr>
<tr>
<td>101-150 ft</td>
<td>400 m</td>
</tr>
<tr>
<td>151-200 ft</td>
<td>500 m</td>
</tr>
<tr>
<td>201-300 ft</td>
<td>1 000 m</td>
</tr>
<tr>
<td>&gt; 300 ft</td>
<td>1 500 m (Note 1)</td>
</tr>
</tbody>
</table>
Note 1: 1500 m is also applicable if no positive take-off flight path can be constructed.

Note 2: For night operations at least runway edge and runway end lights are required.

(iii) When reported RVR, or meteorological visibility is not available, the commander shall not commence take-off unless he can determine that the actual conditions satisfy the applicable take-off minima.

4. Exceptions to paragraph (a) 3 (i) above:

(i) Subject to the approval of the Authority, and provided the requirements in paragraphs (A) to (E) below have been satisfied, an operator may reduce the take-off minima to 125 m RVR (Category A, B and C aeroplanes) or 150 m RVR (Category D aeroplanes) when:

(A) Low Visibility Procedures are in force;

(B) High intensity runway centreline lights spaced 15 m or less and high intensity edge lights spaced 60 m or less are in operation;

(C) Flight crew members have satisfactorily completed training in a simulator approved for this procedure;

(D) A 90 m visual segment is available from the cockpit at the start of the take-off run; and

(E) The required RVR value has been achieved for all of the relevant RVR reporting points.

(ii) Subject to the approval of the Authority, an operator of an aeroplane using an approved lateral guidance system for take-off may reduce the take-off minima to an RVR less than 125 m (Category A, B and C aeroplanes) or 150 m (Category D aeroplanes) but not lower than 75 m provided runway protection and facilities equivalent to Category III landing operations are available.

(b) Non-Precision approach

1. System minima

An operator must ensure that system minima for non-precision approach procedures, which are based upon the use of ILS without glidespath (LLZ only), VOR, NDB, SRA and VDF are not lower than the MDH values given in Table 3 below.

### Table 3

<table>
<thead>
<tr>
<th>Facility</th>
<th>Lowest MDH</th>
</tr>
</thead>
<tbody>
<tr>
<td>ILS (no glide path — LLZ)</td>
<td>250 ft</td>
</tr>
<tr>
<td>SRA (terminating at ½ NM)</td>
<td>250 ft</td>
</tr>
<tr>
<td>SRA (terminating at 1 NM)</td>
<td>300 ft</td>
</tr>
<tr>
<td>SRA (terminating at 2 NM)</td>
<td>350 ft</td>
</tr>
<tr>
<td>VOR</td>
<td>300 ft</td>
</tr>
<tr>
<td>VOR/DME</td>
<td>250 ft</td>
</tr>
<tr>
<td>NDB</td>
<td>300 ft</td>
</tr>
<tr>
<td>VDF (QDM &amp; QGH)</td>
<td>300 ft</td>
</tr>
</tbody>
</table>

2. Minimum Descent Height

An operator must ensure that the minimum descent height for a non-precision approach is not lower than either:

(i) The OCH/OCL for the category of aeroplane; or

(ii) The system minimum.

3. Visual Reference

A pilot may not continue an approach below MDA/MDH unless at least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot:

(i) Elements of the approach light system;

(ii) The threshold;

(iii) The threshold markings;

(iv) The threshold lights;

(v) The threshold identification lights;

(vi) The visual glide slope indicator;

(vii) The touchdown zone or touchdown zone markings;

(viii) The touchdown zone lights;

(ix) Runway edge lights; or

(x) Other visual references accepted by the Authority.
4. Required RVR

The lowest minima to be used by an operator for non-precision approaches are:

Table 4a

RVR for non-precision approach — full facilities

<table>
<thead>
<tr>
<th>Non-precision approach minima</th>
<th>Full facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>MDH</td>
<td>RVR/Aeroplane Category</td>
</tr>
<tr>
<td>250-299 ft</td>
<td>A 800 m</td>
</tr>
<tr>
<td>300-449 ft</td>
<td>A 900 m</td>
</tr>
<tr>
<td>450-649 ft</td>
<td>A 1 000 m</td>
</tr>
<tr>
<td>650 ft and above</td>
<td>A 1 200 m</td>
</tr>
</tbody>
</table>

Table 4b

RVR for non-precision approach — intermediate facilities

<table>
<thead>
<tr>
<th>Non-precision approach minima</th>
<th>Intermediate facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>MDH</td>
<td>RVR/Aeroplane Category</td>
</tr>
<tr>
<td>250-299 ft</td>
<td>A 1 000 m</td>
</tr>
<tr>
<td>300-449 ft</td>
<td>A 1 200 m</td>
</tr>
<tr>
<td>450-649 ft</td>
<td>A 1 400 m</td>
</tr>
<tr>
<td>650 ft and above</td>
<td>A 1 500 m</td>
</tr>
</tbody>
</table>

Table 4c

RVR for non-precision approach — basic facilities

<table>
<thead>
<tr>
<th>Non-precision approach minima</th>
<th>Basic facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>MDH</td>
<td>RVR/Aeroplane Category</td>
</tr>
<tr>
<td>250-299 ft</td>
<td>A 1 200 m</td>
</tr>
<tr>
<td>300-449 ft</td>
<td>A 1 300 m</td>
</tr>
<tr>
<td>450-649 ft</td>
<td>A 1 500 m</td>
</tr>
<tr>
<td>650 ft and above</td>
<td>A 1 500 m</td>
</tr>
</tbody>
</table>

Table 4d

RVR for non-precision approach — Nil approach light facilities

<table>
<thead>
<tr>
<th>Non-precision approach minima</th>
<th>Nil approach light facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>MDH</td>
<td>RVR/Aeroplane Category</td>
</tr>
<tr>
<td>250-299 ft</td>
<td>A 1 000 m</td>
</tr>
<tr>
<td>300-449 ft</td>
<td>A 1 500 m</td>
</tr>
<tr>
<td>450-649 ft</td>
<td>A 1 500 m</td>
</tr>
<tr>
<td>650 ft and above</td>
<td>A 1 500 m</td>
</tr>
</tbody>
</table>

Note 1: Full facilities comprise runway markings, 720 m or more of HI/MI approach lights, runway edge lights, threshold lights and runway end lights. Lights must be on.

Note 2: Intermediate facilities comprise runway markings, 420-719 m of HI/MI approach lights, runway edge lights, threshold lights and runway end lights. Lights must be on.

Note 3: Basic facilities comprise runway markings, < 420 m of HI/MI approach lights, any length of LI approach lights, runway edge lights, threshold lights and runway end lights. Lights must be on.

Note 4: Nil approach light facilities comprise runway markings, runway edge lights, threshold lights, runway end lights or no lights at all.

Note 5: The tables are only applicable to conventional approaches with a nominal descent slope of not greater than 4°. Greater descent slopes will usually require that visual glide slope guidance (e.g. PAPI) is also visible at the Minimum Descent Height.

Note 6: The above figures are either reported RVR or meteorological visibility converted to RVR as in sub-paragraph (h) below.

Note 7: The MDH mentioned in Table 4a, 4b, 4c and 4d refers to the initial calculation of MDH. When selecting the associated RVR, there is no need to take account of a rounding up to the nearest ten feet, which may be done for operational purposes, e.g. conversion to MDA.

5. Night operations

For night operations at least runway edge, threshold and runway end lights must be on.
(c) Precision approach Category I operations

1. General

A Category I operation is a precision instrument approach and landing using ILS, MLS or PAR with a decision height not lower than 200 ft and with a runway visual range not less than 550 m.

2. Decision Height

An operator must ensure that the decision height to be used for a Category I precision approach is not lower than:

(i) The minimum decision height specified in the Aeroplane Flight Manual (AFM) if stated;
(ii) The minimum height to which the precision approach aid can be used without the required visual reference;
(iii) The OCH/OCL for the category of aeroplane; or
(iv) 200 ft.

3. Visual Reference

A pilot may not continue an approach below the Category I decision height, determined in accordance with sub-paragraph (c) 2 above, unless at least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot:

(i) Elements of the approach light system;
(ii) The threshold;
(iii) The threshold markings;
(iv) The threshold lights;
(v) The threshold identification lights;
(vi) The visual glide slope indicator;
(vii) The touchdown zone or touchdown zone markings;
(viii) The touchdown zone lights; or
(ix) Runway edge lights.

4. Required RVR

The lowest minima to be used by an operator for Category I operations are:

<table>
<thead>
<tr>
<th>Decision height (Note 7)</th>
<th>Facilities/RVR (Note 5)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Full (Notes 1 &amp; 6)</td>
</tr>
<tr>
<td></td>
<td>Interm. (Notes 2 &amp; 6)</td>
</tr>
<tr>
<td></td>
<td>Basic (Notes 3 &amp; 6)</td>
</tr>
<tr>
<td></td>
<td>Nil (Notes 4 &amp; 6)</td>
</tr>
<tr>
<td>200 ft</td>
<td>550 m</td>
</tr>
<tr>
<td>201-250 ft</td>
<td>600 m</td>
</tr>
<tr>
<td>251-300 ft</td>
<td>650 m</td>
</tr>
<tr>
<td>300 ft and above</td>
<td>800 m</td>
</tr>
</tbody>
</table>

Note 1: Full facilities comprise runway markings, 720 m or more of HI/MI approach lights, runway edge lights, threshold lights and runway end lights. Lights must be on.

Note 2: Intermediate facilities comprise runway markings, 420-719 m of HI/MI approach lights, runway edge lights, threshold lights and runway end lights. Lights must be on.

Note 3: Basic facilities comprise runway markings, < 420 m of HI/MI approach lights, any length of LI approach lights, runway edge lights, threshold lights and runway end lights. Lights must be on.

Note 4: Nil approach light facilities comprise runway markings, runway edge lights, threshold lights, runway end lights or no lights at all.

Note 5: The above figures are either the reported RVR or meteorological visibility converted to RVR in accordance with paragraph (h).

Note 6: The Table is applicable to conventional approaches with a glide slope angle up to and including 4° (degree).

Note 7: The DH mentioned in the Table 5 refers to the initial calculation of DH. When selecting the associated RVR, there is no need to take account of a rounding up to the nearest ten feet, which may be done for operational purposes, (e.g. conversion to DA).

5. Single pilot operations

For single pilot operations, an operator must calculate the minimum RVR for all approaches in accordance with OPS 1.430 and this Appendix. An RVR of less than 800 m is not permitted except when using a suitable autopilot coupled to an ILS or MLS, in which case normal minima apply. The Decision Height applied must not be less than 1.25 x the minimum use height for the autopilot.

6. Night operations

For night operations at least runway edge, threshold and runway end lights must be on.

(d) Precision approach Category II operations

1. General

A Category II operation is a precision instrument approach and landing using ILS or MLS with:

(i) A decision height below 200 ft but not lower than 100 ft; and
(ii) A runway visual range of not less than 300 m.

2. Decision Height

An operator must ensure that the decision height for a Category II operation is not lower than:

(i) The minimum decision height specified in the AFM, if stated;
(ii) The minimum height to which the precision approach aid can be used without the required visual reference;

(iii) The OCH/OCL for the category of aeroplane;

(iv) The decision height to which the flight crew is authorised to operate; or

(v) 100 ft.

3. Visual reference

A pilot may not continue an approach below the Category II decision height determined in accordance with sub-paragraph (d) 2 above unless visual reference containing a segment of at least 3 consecutive lights being the centre line of the approach lights, or touchdown zone lights, or runway centre line lights, or runway edge lights, or a combination of these is attained and can be maintained. This visual reference must include a lateral element of the ground pattern, i.e. an approach lighting crossbar or the landing threshold or a barette of the touchdown zone lighting.

4. Required RVR

The lowest minima to be used by an operator for Category II operations are:

Table 6

RVR for Cat II approach vs DH

<table>
<thead>
<tr>
<th>Decision height</th>
<th>Category II minima</th>
</tr>
</thead>
<tbody>
<tr>
<td>RVR/Aeroplane</td>
<td>Auto-coupled to below DH (see Note 1)</td>
</tr>
<tr>
<td>Category A, B &amp; C</td>
<td>300 m</td>
</tr>
<tr>
<td>Category D</td>
<td>300 m (Note 2)/350 m</td>
</tr>
</tbody>
</table>

Note 1: The reference to “auto-coupled to below DH” in this table means continued use of the automatic flight control system down to a height which is not greater than 80 % of the applicable DH. Thus airworthiness requirements may, through minimum engagement height for the automatic flight control system, affect the DH to be applied.

Note 2: 300 m may be used for a Category D aeroplane conducting an autoland.

(e) Precision approach Category III operations

1. General

Category III operations are subdivided as follows:

(i) Category III A operations

A precision instrument approach and landing using ILS or MLS with:

(A) A decision height lower than 100 ft and

(B) A runway visual range not less than 200 m.

(ii) Category III B operations

A precision instrument approach and landing using ILS or MLS with:

(A) A decision height lower than 50 ft, or no decision height; and

(B) A runway visual range lower than 200 m but not less than 75 m.

2. Decision Height

For operations in which a decision height is used, an operator must ensure that the decision height is not lower than:

(i) The minimum decision height specified in the AFM, if stated;

(ii) The minimum height to which the precision approach aid can be used without the required visual reference; or

(iii) The decision height to which the flight crew is authorised to operate.

3. No Decision Height Operations

Operations with no decision height may only be conducted if:

(i) The operation with no decision height is authorised in the AFM;

(ii) The approach aid and the aerodrome facilities can support operations with no decision height;

and

(iii) The operator has an approval for CAT III operations with no decision height.

Note: In the case of a CAT III runway it may be assumed that operations with no decision height can be supported unless specifically restricted as published in the AIP or NOTAM.

4. Visual reference

(i) For Category III A operations, a pilot may not continue an approach below the decision height determined in accordance with sub-paragraph (e) 2 above unless a visual reference containing a segment of at least 3 consecutive lights being the centreline of the approach lights, or touchdown zone lights, or runway centre line lights, or runway edge lights, or a combination of these is attained and can be maintained.

(ii) For Category III B operations with a decision height a pilot may not continue an approach below the Decision Height, determined in accordance with sub-paragraph (e) 2 above, unless a visual reference containing at least one centreline light is attained and can be maintained.

(iii) For Category III operations with no decision height there is no requirement for visual contact with the runway prior to touchdown.

5. Required RVR

The lowest minima to be used by an operator for Category III operations are:
Table 7
RVR for Cat III approach vs. flight control systems and DH

<table>
<thead>
<tr>
<th>Approach Category</th>
<th>Decision Height (ft)</th>
<th>Fail Passive</th>
<th>Fail Operational</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Without roll-out system</td>
<td>With roll-out guidance or control system</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fail Passive</td>
<td>Fail Operational</td>
</tr>
<tr>
<td>III A</td>
<td>Less than 100 ft</td>
<td>200 m (Note 1)</td>
<td>200 m</td>
</tr>
<tr>
<td>III B</td>
<td>less than 50 ft</td>
<td>Not authorised</td>
<td>Not authorised</td>
</tr>
<tr>
<td>III B</td>
<td>No DH</td>
<td>Not authorised</td>
<td>Not authorised</td>
</tr>
</tbody>
</table>

Note 1: For operations to actual RVR values less than 300 m, a go-around is assumed in the event of an autopilot failure at or below DH.

(f) Circling

1. The lowest minima to be used by an operator for circling are:

<table>
<thead>
<tr>
<th>Aeroplane Category</th>
<th>MDH (ft)</th>
<th>Minimum meteorological visibility (m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>400</td>
<td>1 500</td>
</tr>
<tr>
<td>B</td>
<td>500</td>
<td>1 600</td>
</tr>
<tr>
<td>C</td>
<td>600</td>
<td>2 400</td>
</tr>
<tr>
<td>D</td>
<td>700</td>
<td>3 600</td>
</tr>
</tbody>
</table>

2. Circling with prescribed tracks is an accepted procedure within the meaning of this paragraph.

(g) Visual Approach

An operator shall not use an RVR of less than 800 m for a visual approach.

(h) Conversion of Reported Meteorological Visibility to RVR

1. An operator must ensure that a meteorological visibility to RVR conversion is not used for calculating take-off minima, Category II or III minima or when a reported RVR is available.

2. When converting meteorological visibility to RVR in all other circumstances than those in sub-paragraph (h)(1) above, an operator must ensure that the following Table is used:

<table>
<thead>
<tr>
<th>Aeroplane Category</th>
<th>VA(T)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Less than 91 kt</td>
</tr>
<tr>
<td>B</td>
<td>From 91 to 120 kt</td>
</tr>
<tr>
<td>C</td>
<td>From 121 to 140 kt</td>
</tr>
<tr>
<td>D</td>
<td>From 141 to 165 kt</td>
</tr>
<tr>
<td>E</td>
<td>From 166 to 210 kt</td>
</tr>
</tbody>
</table>

Table 8
Visibility and MDH for circling vs. aeroplane category

<table>
<thead>
<tr>
<th>Aeroplane Category</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>MDH</td>
<td>400</td>
<td>500</td>
<td>600</td>
<td>700</td>
</tr>
<tr>
<td>Minimum meteorological visibility</td>
<td>1 500 m</td>
<td>1 600 m</td>
<td>2 400 m</td>
<td>3 600 m</td>
</tr>
</tbody>
</table>

Table 9
Conversion of visibility to RVR

<table>
<thead>
<tr>
<th>Lighting elements in operation</th>
<th>RVR = Reported Met. Visibility ×</th>
</tr>
</thead>
<tbody>
<tr>
<td>HI approach and runway lighting</td>
<td>Day 1.5, Night 2.0</td>
</tr>
<tr>
<td>Any type of lighting installation other than above</td>
<td>Day 1.0, Night 1.5</td>
</tr>
<tr>
<td>No lighting</td>
<td>Day 1.0, Night Not applicable</td>
</tr>
</tbody>
</table>

Appendix 2 to OPS 1.430 (c)

Aeroplane categories — All Weather Operations

(a) Classification of aeroplanes

The criteria taken into consideration for the classification of aeroplanes by categories is the indicated airspeed at threshold (VA(T)) which is equal to the stalling speed (VS0) multiplied by 1.3 or (VS1G) multiplied by 1.23 in the landing configuration at the maximum certificated landing mass. If both VS0 and VS1G are available, the higher resulting VA(T) shall be used. The aeroplane categories corresponding to VA(T) values are in the Table below:
The landing configuration which is to be taken into consideration shall be defined by the operator or by the aeroplane manufacturer.

(b) Permanent change of category (maximum landing mass)

1. An operator may impose a permanent, lower, landing mass, and use this mass for determining the \( V_{AT} \) if approved by the Authority.

2. The category defined for a given aeroplane shall be a permanent value and thus independent of the changing conditions of day-to-day operations.

Appendix 1 to OPS 1.440
Low Visibility Operations — General Operating Rules

(a) General
The following procedures apply to the introduction and approval of low visibility operations.

(b) Airborne Systems Operational Demonstration
An operator must comply with the requirements prescribed in paragraph (c) below when introducing an aeroplane type which is new to the Member States into Category II or III service.

Note: For aeroplane types already used for Category II or III operations in another Member State, the in-service proving programme in paragraph (f) applies instead.

1. Operational reliability
The Category II and III success rate must not be less than that required by JAR-AWO.

2. Criteria for a successful approach
An approach is regarded as successful if:

(i) The criteria are as specified in JAR-AWO or its equivalent;

(ii) No relevant aeroplane system failure occurs.

(c) Data Collection during Airborne System Demonstration

1. An operator must establish a reporting system to enable checks and periodic reviews to be made during the operational evaluation period before the operator is authorised to conduct Category II or III operations. The reporting system must cover all successful and unsuccessful approaches, with reasons for the latter, and include a record of system component failures. This reporting system must be based upon flight crew reports and automatic recordings as prescribed in paragraphs (d) and (e) below.

2. The recordings of approaches may be made during normal line flights or during other flights performed by the operator.

(d) Data Collection during Airborne System Demonstration Operations with \( DH \) not less than 50 ft

1. For operations with \( DH \) not less than 50 ft, data must be recorded and evaluated by the operator and evaluated by the Authority when necessary.

2. It is sufficient for the following data to be recorded by the flight crew:

(i) Aerodrome and runway used;

(ii) Weather conditions;

(iii) Time;

(iv) Reason for failure leading to an aborted approach;

(v) Adequacy of speed control;

(vi) Trim at time of automatic flight control system disengagement;

(vii) Compatibility of automatic flight control system, flight director and raw data;

(viii) An indication of the position of the aeroplane relative to the ILS centreline when descending through 30 m (100 ft); and

(ix) Touchdown position.

3. The number of approaches, as approved by the Authority, made during the initial evaluation must be sufficient to demonstrate that the performance of the system in actual airline service is such that a 90 % confidence and a 95 % approach success will result.

(e) Data Collection during Airborne System Demonstration Operations with \( DH \) less than 50 ft or no \( DH \)

1. For operations with \( DH \) less than 50 ft or no \( DH \), a flight data recorder, or other equipment giving the appropriate information, must be used in addition to the flight crew reports to confirm that the system performs as designed in actual airline service. The following data is required:

(i) Distribution of ILS deviations at 30 m (100 ft), at touchdown and, if appropriate, at disconnection of the roll-out control system and the maximum values of the deviations between those points; and

(ii) Sink rate at touchdown.

2. Any landing irregularity must be fully investigated using all available data to determine its cause.

(f) In-service proving
Note: An operator fulfilling the requirements of sub-paragraph (b) above will be deemed to have satisfied the in-service proving requirements contained in this paragraph.
1. The system must demonstrate reliability and performance in line operations consistent with the operational concepts. A sufficient number of successful landings, as determined by the Authority, must be accomplished in line operations, including training flights, using the autoland and roll-out system installed in each aeroplane type.

2. The demonstration must be accomplished using a Category II or Category III ILS. However, if the operator chooses to do so, demonstrations may be made on other ILS facilities if sufficient data is recorded to determine the cause of unsatisfactory performance.

3. If an operator has different variants of the same type of aeroplane utilising the same basic flight control and display systems, or different basic flight control and display systems on the same type of aeroplane, the operator shall show that the variants comply with the basic system performance criteria, but the operator need not conduct a full operational demonstration for each variant.

4. Where an operator introduces an aeroplane type which has already been approved by the Authority of any Member State for Category II and/or III operations a reduced proving programme may be approved.

(g) Continuous Monitoring

1. After obtaining the initial authorisation, the operations must be continuously monitored by the operator to detect any undesirable trends before they become hazardous. Flight crew reports may be used to achieve this.

2. The following information must be retained for a period of 12 months:

(i) The total number of approaches, by aeroplane type, where the airborne Category II or III equipment was utilised to make satisfactory, actual or practice, approaches to the applicable Category II or III minima; and

(ii) Reports of unsatisfactory approaches and/or automatic landings, by aerodrome and aeroplane registration, in the following categories:

(A) Airborne equipment faults;

(B) Ground facility difficulties;

(C) Missed approaches because of ATC instructions; or

(D) Other reasons.

3. An operator must establish a procedure to monitor the performance of the automatic landing system of each aeroplane.

(h) Transitional periods

1. Operators with no previous Category II or III experience

(i) An operator without previous Category II or III operational experience may be approved for Category II or IIIA operations, having gained a minimum experience of 6 months of Category I operations on the aeroplane type.

(ii) On completing 6 months of Category II or IIIA operations on the aeroplane type the operator may be approved for Category III operations. When granting such an approval, the Authority may impose higher minima than the lowest applicable for an additional period. The increase in minima will normally only refer to RVR and/or a restriction against operations with no decision height and must be selected such that they will not require any change of the operational procedures.

2. Operators with previous Category II or III experience

An operator with previous Category II or III experience may obtain authorisation for a reduced transition period by application to the Authority.

(i) Maintenance of Category II, Category III and LVTO equipment

Maintenance instructions for the on-board guidance systems must be established by the operator, in liaison with the manufacturer, and included in the operator's aeroplane maintenance programme prescribed in OPS 1.910 which must be approved by the Authority.

Appendix 1 to OPS 1.450

Low Visibility Operations Training & Qualifications

(a) General

An operator must ensure that flight crew member training programmes for Low Visibility Operations include structured courses of ground, simulator and/or flight training. The operator may abbreviate the course content as prescribed by sub-paragraphs 2 and 3 below provided the content of the abbreviated course is acceptable to the authority.

1. Flight crew members with no Category II or Category III experience must complete the full training programme prescribed in sub-paragraphs (b), (c) and (d) below.

2. Flight crew members with Category II or Category III experience with another operator may undertake an abbreviated ground training course.

3. Flight crew members with Category II or Category III experience with the operator may undertake an abbreviated ground, simulator and/or flight training course. The abbreviated course is to include at least the requirements of sub-paragraphs (d) 1, (d) 2 (i) or (d) 2 (ii) as appropriate and (d) 3 (i).
(b) Ground Training

An operator must ensure that the initial ground training course for Low Visibility Operations covers at least:

1. The characteristics and limitations of the ILS and/or MLS;
2. The characteristics of the visual aids;
3. The characteristics of fog;
4. The operational capabilities and limitations of the particular airborne system;
5. The effects of precipitation, ice accretion, low level wind shear and turbulence;
6. The effect of specific aeroplane malfunctions;
7. The use and limitations of RVR assessment systems;
8. The principles of obstacle clearance requirements;
9. Recognition of and action to be taken in the event of failure of ground equipment;
10. The procedures and precautions to be followed with regard to surface movement during operations when the RVR is 400 m or less and any additional procedures required for take-off in conditions below 150 m (200 m for Category D aeroplanes);
11. The significance of decision heights based upon radio altimeters and the effect of terrain profile in the approach area on radio altimeter readings and on the automatic approach/landing systems;
12. The importance and significance of Alert Height if applicable and the action in the event of any failure above and below the Alert Height;
13. The qualification requirements for pilots to obtain and retain approval to conduct Low Visibility Take-offs and Category II or III operations; and
14. The importance of correct seating and eye position.

(c) Simulator training and/or flight training

1. An operator must ensure that simulator and/or flight training for Low Visibility Operations includes:

   (i) Checks of satisfactory functioning of equipment, both on the ground and in flight;
   (ii) Effect on minima caused by changes in the status of ground installations;
   (iii) Monitoring of automatic flight control systems and autoland status annunciators with emphasis on the action to be taken in the event of failures of such systems;
   (iv) Actions to be taken in the event of failures such as engines, electrical systems, hydraulics or flight control systems;
   (v) The effect of known unserviceabilities and use of minimum equipment lists;
   (vi) Operating limitations resulting from airworthiness certification;
   (vii) Guidance on the visual cues required at decision height together with information on maximum deviation allowed from glidepath or localiser; and
   (viii) The importance and significance of Alert Height if applicable and the action in the event of any failure above and below the Alert Height.

2. An operator must ensure that each flight crew member is trained to carry out his duties and instructed on the coodination required with other crew members. Maximum use should be made of suitably equipped flight simulators for this purpose.

3. Training must be divided into phases covering normal operation with no aeroplane or equipment failures but including all weather conditions which may be encountered and detailed scenarios of aeroplane and equipment failure which could affect Category II or III operations. If the aeroplane system involves the use of hybrid or other special systems(such as head up displays or enhanced vision equipment) then flight crew members must practise the use of these systems in normal and abnormal modes during the simulator phase of training.

4. Incapacitation procedures appropriate to Low Visibility Take-offs and Category II and III operations shall be practised.

5. For aeroplanes with no type specific simulator, operators must ensure that the flight training phase specific to the visual scenarios of Category II operations is conducted in a simulator approved for that purpose by the Authority. Such training must include a minimum of 4 approaches. The training and procedures that are type specific shall be practised in the aeroplane.

6. Initial Category II and III training shall include at least the following exercises:

   (i) Approach using the appropriate flight guidance, autopilots and control systems installed in the aeroplane, to the appropriate decision height and to include transition to visual flight and landing;
   (ii) Approach with all engines operating using the appropriate flight guidance systems, autopilots and control systems installed in the aeroplane down to the appropriate decision height followed by missed approach; all without external visual reference;
   (iii) Where appropriate, approaches utilising automatic flight systems to provide automatic flare, landing and roll-out; and
Normal operation of the applicable system both with and without acquisition of visual cues at decision height.

7. Subsequent phases of training must include at least:

(i) Approaches with engine failure at various stages on the approach;

(ii) Approaches with critical equipment failures (e.g. electrical systems, auto flight systems, ground and/or airborne ILS/MLS systems and status monitors);

(iii) Approaches where failures of autoflight equipment at low level require either;

(A) Reversion to manual flight to control flare, landing and roll out or missed approach; or

(B) Reversion to manual flight or a downgraded automatic mode to control missed approaches from, at or below decision height including those which may result in a touchdown on the runway;

(iv) Failures of the systems which will result in excessive localiser and/or glideslope deviation, both above and below decision height, in the minimum visual conditions authorised for the operation. In addition, a continuation to a manual landing must be practised if a head-up display forms a downgraded mode of the automatic system or the head-up display forms the only flare mode; and

(v) Failures and procedures specific to aeroplane type or variant.

8. The training programme must provide practice in handling faults which require a reversion to higher minima.

9. The training programme must include the handling of the aeroplane when, during a fail passive Category III approach, the fault causes the autopilot to disconnect at or below decision height when the last reported RVR is 300 m or less.

10. Where take-offs are conducted in RVRs of 400 m and below, training must be established to cover system failures and engine failure resulting in continued as well as rejected take-offs.

(d) Conversion Training Requirements to conduct Low Visibility Take-off and Category II and III Operations

An operator shall ensure that each flight crew member completes the following Low Visibility Procedures training if converting to a new type or variant of aeroplane in which Low Visibility Take-off and Category II and III Operations will be conducted. The flight crew member experience requirements to undertake an abbreviated course are prescribed in sub-paragraphs (a) 2 and (a) 3, above:

1. Ground Training

The appropriate requirements prescribed in sub-paragraph (b) above, taking into account the flight crew member’s Category II and Category III training and experience.

2. Simulator Training and/or Flight training

(i) A minimum of 8 approaches and/or landings in a simulator approved for the purpose.

(ii) Where no type-specific simulator is available, a minimum of 3 approaches including at least 1 go-around is required on the aeroplane.

(iii) Appropriate additional training if any special equipment is required such as head-up displays or enhanced vision equipment.

3. Flight Crew Qualification

The flight crew qualification requirements are specific to the operator and the type of aeroplane operated.

(i) The operator must ensure that each flight crew member completes a check before conducting Category II or III operations.

(ii) The check prescribed in sub-paragraph (i) above may be replaced by successful completion of the simulator and/or flight training prescribed in sub-paragraph (d) 2 above.

4. Line Flying under Supervision

An operator must ensure that each flight crew member undergoes the following line flying under supervision:

(i) For Category II when a manual landing is required, a minimum of 3 landings from autopilot disconnect;

For Category III, a minimum of 3 autolands except that only 1 autoland is required when the training required in sub-paragraph (d) 2 above has been carried out in a full flight simulator usable for zero flight time training.

(e) Type and command experience

Before commencing Category II/III operations, the following additional requirements are applicable to commanders, or pilots to whom conduct of the flight has been delegated, who are new to the aeroplane type:

1. 50 hours or 20 sectors on the type, including line flying under supervision; and
2. 100 m must be added to the applicable Category II or Category III RVR minima unless previously qualified for Category II or III operations with an operator, until a total of 100 hours or 40 sectors, including line flying under supervision, has been achieved on the type.

3. The Authority may authorise a reduction in the above command experience requirements for flight crew members who have Category II or Category III command experience.

(f) Low Visibility Take-Off with RVR less than 150/200 m

1. An operator must ensure that prior to authorisation to conduct take-offs in RVRs below 150 m (below 200 m for Category D aeroplanes) the following training is carried out:

   (i) Normal take-off in minimum authorised RVR conditions;

   (ii) Take-off in minimum authorised RVR conditions with an engine failure between \( V_1 \) and \( V_2 \), or as soon as safety considerations permit; and

   (iii) Take-off in minimum authorised RVR conditions with an engine failure before \( V_1 \) resulting in a rejected take-off.

2. An operator must ensure that the training required by sub-paragraph 1 above is carried out in an approved simulator. This training must include the use of any special procedures and equipment. Where no approved simulator exists, the Authority may approve such training in an aeroplane without the requirement for minimum RVR conditions. (See Appendix 1 to OPS 1.965.)

3. An operator must ensure that a flight crew member has completed a check before conducting low visibility take-offs in RVRs of less than 150 m (less than 200 m for Category D aeroplanes) if applicable. The check may only be replaced by successful completion of the simulator and/or flight training prescribed in sub-paragraph (f) 1 on initial conversion to an aeroplane type.

2. For Category III operations an operator must use a flight simulator approved for Category III training.

3. An operator must ensure that, for Category III operations on aeroplanes with a fail passive flight control system, a missed approach is completed at least once over the period of three consecutive operator proficiency checks the result of an autopilot failure at or below decision height when the last reported RVR was 300 m or less.

4. The Authority may authorise recurrent training and checking for Category II and LVTO operations in an aeroplane type where no approved simulator is available.

Note: Recency for LTVO and Category II/III based upon automatic approaches and/or auto-lands is maintained by the recurrent training and checking as prescribed in this paragraph.

Appendix 1 to OPS 1.455

Low Visibility Operations — Operating procedures

(a) General

Low Visibility Operations include:

1. Manual take-off (with or without electronic guidance systems);

2. Auto-coupled approach to below DH, with manual flare, landing and roll-out;

3. Auto-coupled approach followed by auto-flare, autolanding and manual roll-out; and

4. Auto-coupled approach followed by auto-flare, autolanding and auto-roll-out,

when the applicable RVR is less than 400 m.

Note 1: A hybrid system may be used with any of these modes of operations.

Note 2: Other forms of guidance systems or displays may be certificated and approved.

(b) Procedures and Operating Instructions

1. The precise nature and scope of procedures and instructions given depend upon the airborne equipment used and the flight deck procedures followed. An operator must clearly define flight crew member duties during take-off, approach, flare, roll-out and missed approach in the Operations Manual. Particular emphasis must be placed on flight crew responsibilities during transition from non-visual conditions to visual conditions, and on the procedures to be used in deteriorating visibility or when failures occur. Special attention must be paid to the distribution of flight deck duties so as to ensure that the workload of the pilot making the decision to land or execute a missed approach enables him to devote himself to supervision and the decision making process.
2. An operator must specify the detailed operating procedures and instructions in the Operations Manual. The instructions must be compatible with the limitations and mandatory procedures contained in the Aeroplane Flight Manual and cover the following items in particular:

(i) Checks for the satisfactory functioning of the aeroplane equipment, both before departure and in flight;

(ii) Effect on minima caused by changes in the status of the ground installations and airborne equipment;

(iii) Procedures for the take-off, approach, flare, landing, roll-out and missed approach;

(iv) Procedures to be followed in the event of failures, warnings and other non-normal situations;

(v) The minimum visual reference required;

(vi) The importance of correct seating and eye position;

(vii) Action which may be necessary arising from a deterioration of the visual reference;

(viii) Allocation of crew duties in the carrying out of the procedures according to sub-paragraphs (i) to (iv) and (vi) above, to allow the Commander to devote himself mainly to supervision and decision making;

(ix) The requirement for all height calls below 200 ft to be based on the radio altimeter and for one pilot to continue to monitor the aeroplane instruments until the landing is completed;

(x) The requirement for the Localiser Sensitive Area to be protected;

(xi) The use of information relating to wind velocity, windshear, turbulence, runway contamination and use of multiple RVR assessments;

(xii) Procedures to be used for practice approaches and landing on runways at which the full Category II or Category III aerodrome procedures are not in force;

(xiii) Operating limitations resulting from airworthiness certification; and

(xiv) Information on the maximum deviation allowed from the ILS glide path and/or localiser.

### Appendix 1 to OPS 1.465

**Minimum Visibilities for VFR Operations**

<table>
<thead>
<tr>
<th>Airspace class</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>Above 900 m (3 000 ft) AMSL or above 300 m (1 000 ft) above terrain, whichever is the higher</strong></td>
<td><strong>At and below 900 m (3 000 ft) AMSL or 300 m (1 000 ft) above terrain, whichever is the higher</strong></td>
</tr>
<tr>
<td>Distance from cloud</td>
<td>Clear of cloud</td>
<td>1 500 m vertically</td>
<td>300 m (1 000 ft)</td>
<td>Clear of cloud and in sight of the surface</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fight visibility</td>
<td>8 km at and above 3 050 m (10 000 ft) AMSL (Note 1)</td>
<td>5 km (Note 2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>5 km below 3 050 m (10 000 ft) AMSL</td>
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</tbody>
</table>

**Note 1:** When the height of the transition altitude is lower than 3 050 m (10 000 ft) AMSL, FL 100 should be used in lieu of 10 000 ft.

**Note 2:** Cat A and B aeroplanes may be operated in flight visibilities down to 3 000 m, provided the appropriate ATS authority permits use of a flight visibility less than 5 km, and the circumstances are such, that the probability of encounters with other traffic is low, and the IAS is 140 kt or less.
SUBPART F

PERFORMANCE GENERAL

OPS 1.470

Applicability

(a) An operator shall ensure that multi-engine aeroplanes powered by turbopropeller engines with a maximum approved passenger seating configuration of more than 9 or a maximum take-off mass exceeding 5 700 kg, and all multi-engine turbojet powered aeroplanes are operated in accordance with Subpart G (Performance Class A).

(b) An operator shall ensure that propeller driven aeroplanes with a maximum approved passenger seating configuration of 9 or less, and a maximum take-off mass of 5 700 kg or less are operated in accordance with Subpart H (Performance Class B).

(c) An operator shall ensure that aeroplanes powered by reciprocating engines with a maximum approved passenger seating configuration of more than 9 or a maximum take-off mass exceeding 5 700 kg are operated in accordance with Subpart I (Performance Class C).

(d) Where full compliance with the requirements of the appropriate Subpart cannot be shown due to specific design characteristics (eg supersonic aeroplanes or seaplanes), the operator shall apply approved performance standards that ensure a level of safety equivalent to that of the appropriate Subpart.

(e) Multi-engine aeroplanes powered by turbopropeller engines with a maximum approved passenger seating configuration of more than 9 and with a maximum take-off mass of 5 700 kg or less may be permitted by the Authority to operate under alternative operating limitations to those of Performance Class A which shall not be less restrictive than those of the relevant requirements of Subpart H;

(f) The provisions of subparagraph (e) above will expire on 1 April 2000.

OPS 1.475

General

(a) An operator shall ensure that the mass of the aeroplane:

1. At the start of the take-off;

   or, in the event of in-flight replanning

2. At the point from which the revised operational flight plan applies,

is not greater than the mass at which the requirements of the appropriate Subpart can be complied with for the flight to be undertaken, allowing for expected reductions in mass as the flight proceeds, and for such fuel jettisoning as is provided for in the particular requirement.

(b) An operator shall ensure that the approved performance Data contained in the Aeroplane Flight Manual is used to determine compliance with the requirements of the appropriate Subpart, supplemented as necessary with other data acceptable to the Authority as prescribed in the relevant Subpart. When applying the factors prescribed in the appropriate Subpart, account may be taken of any operational factors already incorporated in the Aeroplane Flight Manual performance data to avoid double application of factors.

(c) When showing compliance with the requirements of the appropriate Subpart, due account shall be taken of aeroplane configuration, environmental conditions and the operation of systems which have an adverse effect on performance.

(d) For performance purposes, a damp runway, other than a grass runway, may be considered to be dry.

OPS 1.480

Terminology

(a) Terms used in Subparts F, G, H, I and J, and not defined in JAR-1, have the following meaning:

1. Accelerate-stop distance available (ASDA): The length of the take-off run available plus the length of stopway, if such stopway is declared available by the appropriate Authority and is capable of bearing the mass of the aeroplane under the prevailing operating conditions.

2. Contaminated runway: A runway is considered to be contaminated when more than 25 % of the runway surface area (whether in isolated areas or not) within the required length and width being used is covered by the following:

   (i) Surface water more than 3 mm (0,125 in) deep, or by slush, or loose snow, equivalent to more than 3 mm (0,125 in) of water;

   (ii) Snow which has been compressed into a solid mass which resists further compression and will hold together or break into lumps if picked up (compacted snow); or

   (iii) Ice, including wet ice.

3. Damp runway: A runway is considered damp when the surface is not dry, but when the moisture on it does not give it a shiny appearance.

4. Dry runway: A dry runway is one which is neither wet nor contaminated, and includes those paved runways which have been specially prepared with grooves or porous pavement and maintained to retain "effectively dry" braking action even when moisture is present.

5. Landing distance available (LDA): The length of the runway which is declared available by the appropriate Authority and suitable for the ground run of an aeroplane landing.

6. Maximum approved passenger seating configuration: The maximum passenger seating capacity of an individual aeroplane, excluding pilot seats or flight deck seats and cabin crew seats as applicable, used by the operator, approved by the Authority and specified in the Operations Manual.
7. Take-off distance available (TODA): The length of the take-off run available plus the length of the clearway available.

8. Take-off mass: The take-off mass of the aeroplane shall be taken to be its mass, including everything and everyone carried at the commencement of the take-off run.

9. Take-off run available (TORA): The length of runway which is declared available by the appropriate Authority and suitable for the ground run of an aeroplane taking off.

10. Wet runway: A runway is considered wet when the runway surface is covered with water, or equivalent, less than specified in sub-paragraph (a) 2 above or when there is sufficient moisture on the runway surface to cause it to appear reflective, but without significant areas of standing water.

(b) The terms "accelerate-stop distance", "take-off distance", "take-off run", "net take-off flight path", "one engine inoperative en-route net flight path" and "two engines inoperative en-route net flight path" as relating to the aeroplane have their meanings defined in the airworthiness requirements under which the aeroplane was certificated, or as specified by the Authority if it finds that definition inadequate for showing compliance with the performance operating limitations.

SUBPART G

PERFORMANCE CLASS A

OPS 1.485

General

(a) An operator shall ensure that, for determining compliance with the requirements of this Subpart, the approved performance data in the Aeroplane Flight Manual is supplemented as necessary with other data acceptable to the Authority if the approved performance Data in the Aeroplane Flight Manual is insufficient in respect of items such as:

1. Accounting for reasonably expected adverse operating conditions such as take-off and landing on contaminated runways; and

2. Consideration of engine failure in all flight phases.

(b) An operator shall ensure that, for the wet and contaminated runway case, performance data determined in accordance with JAR 25 X 1591 or equivalent acceptable to the Authority is used.

OPS 1.490

Take-off

(a) An operator shall ensure that the take-off mass does not exceed the maximum take-off mass specified in the Aeroplane Flight Manual for the pressure altitude and the ambient temperature at the aerodrome at which the take-off is to be made.

(b) An operator must meet the following requirements when determining the maximum permitted take-off mass:

1. The accelerate-stop distance must not exceed the accelerate-stop distance available;

2. The take-off distance must not exceed the take-off distance available, with a clearway distance not exceeding half of the take-off run available;

3. The take-off run must not exceed the take-off run available;

4. Compliance with this paragraph must be shown using a single value of V\(_1\) for the rejected and continued take-off; and

5. On a wet or contaminated runway, the take-off mass must not exceed that permitted for a take-off on a dry runway under the same conditions.

(c) When showing compliance with sub-paragraph (b) above, an operator must take account of the following:

1. The pressure altitude at the aerodrome;

2. The ambient temperature at the aerodrome;

3. The runway surface condition and the type of runway surface;

4. The runway slope in the direction of take-off;

5. Not more than 50 % of the reported head-wind component or not less than 150 % of the reported tailwind component; and

6. The loss, if any, of runway length due to alignment of the aeroplane prior to take-off.

OPS 1.495

Take-off obstacle clearance

(a) An operator shall ensure that the net take-off flight path clears all obstacles by a vertical distance of at least 35 ft or by a horizontal distance of at least 90 m plus 0,125 x D, where D is the horizontal distance the aeroplane has travelled from the end of the take-off distance available or the end of the take-off distance if a turn is scheduled before the end of the take-off distance available. For aeroplanes with a wingspan of less than 60 m a horizontal obstacle clearance of half the aeroplane wingspan plus 60 m, plus 0,125 x D may be used.

(b) When showing compliance with sub-paragraph (a) above, an operator must take account of the following:

1. The mass of the aeroplane at the commencement of the take-off run;

2. The pressure altitude at the aerodrome;

3. The ambient temperature at the aerodrome; and
4. Not more than 50% of the reported head-wind component or not less than 150% of the reported tailwind component.

(c) When showing compliance with sub-paragraph (a) above:

1. Track changes shall not be allowed up to the point at which the net take-off flight path has achieved a height equal to one half the wingspan but not less than 50 ft above the elevation of the end of the take-off run available. Thereafter, up to a height of 400 ft it is assumed that the aeroplane is banked by no more than 15°. Above 400 ft height bank angles greater than 15° but not more than 25° may be scheduled;

2. Any part of the net take-off flight path in which the aeroplane is banked by more than than 15° must clear all obstacles within the horizontal distances specified in sub-paragraphs (a), (d) and (e) of this paragraph by a vertical distance of at least 50 ft;

3. An operator must use special procedures, subject to the approval of the Authority, to apply increased bank angles of not more than 20° between 200 ft and 400 ft, or not more than 30° above 400 ft (See Appendix 1 to OPS 1.495 (c) 3), and

4. Adequate allowance must be made for the effect of bank angle on operating speeds and flight path including the distance increments resulting from increased operating speeds.

(d) When showing compliance with sub-paragraph (a) above for those cases where the intended flight path does not require track changes of more than 15°, an operator need not consider those obstacles which have a lateral distance greater than:

1. 300 m, if the pilot is able to maintain the required navigational accuracy through the obstacle accountability area; or

2. 600 m, for flights under all other conditions.

(e) When showing compliance with sub-paragraph (a) above for those cases where the intended flight path does require track changes of more than 15°, an operator need not consider those obstacles which have a lateral distance greater than:

1. 600 m, if the pilot is able to maintain the required navigational accuracy through the obstacle accountability area; or

2. 900 m for flights under all other conditions.

(f) An operator shall establish contingency procedures to satisfy the requirements of OPS 1.495 and to provide a safe route, avoiding obstacles, to enable the aeroplane to either comply with the en-route requirements of OPS 1.500, or land at either the aerodrome of departure or at a take-off alternate aerodrome.

OPS 1.500

En-route — One Engine Inoperative

(a) An operator shall ensure that the one engine inoperative en-route net flight path data shown in the Aeroplane Flight Manual, appropriate to the meteorological conditions expected for the flight, complies with either sub-paragraph (b) or (c) at all points along the route. The net flight path must have a positive gradient at 1 500 ft above the aerodrome where the landing is assumed to be made after engine failure. In meteorological conditions requiring the operation of ice protection systems, the effect of their use on the net flight path must be taken into account.

(b) The gradient of the net flight path must be positive at at least 1 000 ft above all terrain and obstructions along the route within 9.3 km (5 nm) on either side of the intended track.

(c) The net flight path must permit the aeroplane to continue flight from the cruising altitude to an aerodrome where a landing can be made in accordance with OPS 1.515 or 1.520 as appropriate, the net flight path clearing vertically, by at least 2 000 ft, all terrain and obstructions along the route within 9.3 km (5 nm) on either side of the intended track in accordance with sub-paragraphs (1) to (4) below:

1. The engine is assumed to fail at the most critical point along the route;

2. Account is taken of the effects of winds on the flight path;

3. Fuel jettisoning is permitted to an extent consistent with reaching the aerodrome with the required fuel reserves, if a safe procedure is used; and

4. The aerodrome where the aeroplane is assumed to land after engine failure must meet the following criteria:

   (i) The performance requirements at the expected landing mass are met; and

   (ii) Weather reports or forecasts, or any combination thereof, and field condition reports indicate that a safe landing can be accomplished at the estimated time of landing.

OPS 1.505

En-route — Aeroplanes With Three Or More Engines, Two Engines Inoperative

An operator shall ensure that at no point along the intended track will an aeroplane having three or more engines be more than 90 minutes, at all-engine long range cruising speed at standard temperature in still air, away from an aerodrome at which the performance requirements applicable at the expected landing mass are met unless it complies with sub-paragraphs (b) to (f) below.
An operator shall ensure that the landing mass of the aeroplane continues to be used for the landing of the aeroplane, in the event of the expected meteorological conditions, from the point where two engines are assumed to fail simultaneously, to an aerodrome at which it is possible to land and come to a complete stop when using the prescribed procedure for a landing with two engines inoperative. The net flight path must clear vertically, by at least 2 000 ft all terrain and obstructions along the route within 9,3 km (5 nm) on either side of the intended track. At altitudes and in meteorological conditions requiring ice protection systems to be operable, the effect of their use on the net flight path data must be taken into account. If the navigational accuracy does not meet the 95 % containment level, an operator must increase the width margin given above to 18,5 km (10 nm).

(c) The two engines are assumed to fail at the most critical point of that portion of the route where the aeroplane is more than 90 minutes, at the all engines long range cruising speed at standard temperature in still air, away from an aerodrome at which the performance requirements applicable at the expected landing mass are met.

(d) The net flight path must have a positive gradient at 1 500 ft above the aerodrome where the landing is assumed to be made after the failure of two engines.

(e) Fuel jettisoning is permitted to an extent consistent with reaching the aerodrome with the required fuel reserves, if a safe procedure is used.

(f) The expected mass of the aeroplane at the point where the two engines are assumed to fail must not be less than that which would include sufficient fuel to proceed to an aerodrome where the landing is assumed to be made, and to arrive there at least 1 500 ft directly over the landing area and thereafter to fly level for 15 minutes.

OPS 1.510

Landing — Destination And Alternate Aerodromes

(a) An operator shall ensure that the landing mass of the aeroplane determined in accordance with OPS 1.475 (a) does not exceed the maximum landing mass specified for the altitude and the ambient temperature expected for the estimated time of landing at the destination and alternate aerodrome.

(b) For instrument approaches with decision heights below 200 ft, an operator must verify that the approach mass of the aeroplane, taking into account the take-off mass and the fuel expected to be consumed in flight, allows a missed approach gradient of climb, with the critical engine failed and with the speed and configuration used for go-around of at least 2.5 %, or the published gradient, whichever is the greater. The use of an alternative method must be approved by the Authority.

OPS 1.515

Landing — Dry Runways

(a) An operator shall ensure that the landing mass of the aeroplane determined in accordance with OPS 1.475 (a) for the estimated time of landing at the destination aerodrome and at any alternate aerodrome allows a full stop landing from 50 ft above the threshold:

1. For turbo-jet powered aeroplanes, within 60 % of the landing distance available; or

2. For turbo-propeller powered aeroplanes, within 70 % of the landing distance available;

3. For Steep Approach procedures the Authority may approve the use of landing distance Data factored in accordance with sub-paragraphs (a) 1 and (a) 2 above as appropriate, based on a screen height of less than 50 ft, but not less than 35 ft. (See Appendix 1 to OPS 1.515(a) 3.)

4. When showing compliance with sub-paragraphs (a) 1 and (a) 2 above, the Authority may exceptionally approve, when satisfied that there is a need (see Appendix 1), the use of Short Landing Operations, in accordance with Appendices 1 and 2 together with any other supplementary conditions that the Authority considers necessary in order to ensure an acceptable level of safety in the particular case.

(b) When showing compliance with sub-paragraph (a) above, an operator must take account of the following:

1. The altitude at the aerodrome;

2. Not more than 50 % of the head-wind component or not less than 150 % of the tailwind component; and

3. The runway slope in the direction of landing if greater than ±/ 2 %.

(c) When showing compliance with sub-paragraph (a) above, it must be assumed that:

1. The aeroplane will land on the most favourable runway, in still air; and

2. The aeroplane will land on the runway most likely to be assigned considering the probable wind speed and direction and the ground handling characteristics of the aeroplane, and considering other conditions such as landing aids and terrain.

(d) If an operator is unable to comply with sub-paragraph (c) 1 above for a destination aerodrome having a single runway where a landing depends upon a specified wind component, an aeroplane may be despatched if 2 alternate aerodromes are designated which permit full compliance with sub-paragraphs (a), (b) and (c). Before commencing an approach to land at the destination aerodrome the commander must satisfy himself that a landing can be made in full compliance with OPS 1.510 and sub-paragraphs (a) and (b) above.

(e) If an operator is unable to comply with sub-paragraph (c) 2 above for the destination aerodrome, the aeroplane may be despatched if an alternate aerodrome is designated which permits full compliance with sub-paragraphs (a), (b) and (c).

OPS 1.520

Landing — Wet and contaminated runways

(a) An operator shall ensure that when the appropriate weather reports or forecasts, or a combination thereof, indicate that the runway at the estimated time of arrival may be wet, the landing distance available is at least 115 % of the required landing distance, determined in accordance with OPS 1.515.
(b) An operator shall ensure that when the appropriate weather reports or forecasts, or a combination thereof, indicate that the runway at the estimated time of arrival may be contaminated, the landing distance available must be at least the landing distance determined in accordance with sub-paragraph (a) above, or at least 115% of the landing distance determined in accordance with approved contaminated landing distance data or equivalent, accepted by the Authority, whichever is greater.

(c) A landing distance on a wet runway shorter than that required by sub-paragraph (a) above, but not less than that required by OPS 1.515 (a), may be used if the Aeroplane Flight Manual includes specific additional information about landing distances on wet runways.

(d) A landing distance on a specially prepared contaminated runway shorter than that required by sub-paragraph (b) above, but not less than that required by OPS 1.515 (a), may be used if the Aeroplane Flight Manual includes specific additional information about landing distances on contaminated runways.

(e) When showing compliance with sub-paragraphs (b), (c) and (d) above, the criteria of OPS 1.515 (a) 1 and 2 shall not be applied to sub-paragraph (b) above.

Appendix 1 to OPS 1.495 (c) 3

Approval of increased bank angles

For the use of the increased bank angles requiring special approval, the following criteria shall be met:

1. The Aeroplane Flight Manual must contain approved data for the required increase of operating speed and data to allow the construction of the flight path considering the increased bank angles and speeds.

2. Visual guidance must be available for navigation accuracy. Weather minima and wind limitations must be specified for each runway and approved by the Authority.

3. Training in accordance with OPS 1.975.

Appendix 1 to OPS 1.515 (a) 3

Steep Approach Procedures

The Authority may approve the application of Steep Approach procedures using glideslope angles of 4-5° or more and with screen heights of less than 50 ft but not less than 35 ft, provided that the following criteria are met:

1. The Aeroplane Flight Manual must state the maximum approved glideslope angle, any other limitations, normal, abnormal or emergency procedures for the steep approach as well as amendments to the field length data when using steep approach criteria;

2. A suitable glideslope reference system comprising at least a visual glideslope indicating system must be available at each aerodrome at which steep approach procedures are to be conducted; and

3. Weather minima must be specified and approved for each runway to be used with a steep approach. Consideration must be given to the following:

   (i) The obstacle situation;

   (ii) The type of glideslope reference and runway guidance such as visual aids, MLS, 3D-NAV, ILS, LLZ, VOR, NDB;

   (iii) The minimum visual reference to be required at DH and MDA;

   (iv) Available airborne equipment;

   (v) Pilot qualification and special aerodrome familiarisation;

   (vi) Aeroplane Flight Manual limitations and procedures; and

   (vii) Missed approach criteria.

Appendix 1 to OPS 1.515 (a) 4

Short Landing Operations

For the purpose of OPS 1. 515 (a) 4, the distance used for the calculation of the permitted landing mass may consist of the usable length of the declared safe area plus the declared landing distance available. The Authority may approve such operations in accordance with the following criteria:

1. Demonstration of the need for Short Landing Operations. There must be a clear public interest and operational necessity for the operation, either due to the remoteness of the airport or to physical limitations relating to extending the runway.


   (i) Short landing operations will only be approved for aeroplanes where the vertical distance between the path of the pilot’s eye and the path of the lowest part of the wheels with the aeroplane, established on the normal glide path does not exceed 3 metres.

   (ii) When establishing aerodrome operating minima the visibility/RVR must not be less than 1.5 km. In addition, wind limitations must be specified in the Operations Manual.

   (iii) Minimum pilot experience, training requirements and special aerodrome familiarisation must be specified for such operations in the Operations Manual.

3. It is assumed that the crossing height over the beginning of the usable length of the declared safe area is 50 ft.

4. Additional criteria. The Authority may impose such additional conditions as are deemed necessary for a safe operation taking into account the aeroplane type characteristics, orographic characteristics in the approach area, available approach aids and missed approach/baulked landing considerations. Such additional conditions may be, for instance, the requirement for VASI/PAPI-type visual slope indicator system.
Appendix 2 to OPS 1.515 (a) 4

Airfield Criteria for Short Landing Operations

Airfield Criteria

1. The use of the safe area must be approved by the airport authority.

2. The useable length of the declared safe area under the provisions of 1.515 (a) 4, and this Appendix, must not exceed 90 metres.

3. The width of the declared safe area shall not be less than twice the runway width or twice the wing span, whichever is the greater, centred on the extended runway centre line.

4. The declared safe area must be clear of obstructions or depressions which would endanger an aeroplane undershooting the runway and no mobile object shall be permitted on the declared safety area while the runway is being used for short landing operations.

5. The slope of the declared safety area must not exceed 5 % upward nor 2 % downward in the direction of landing.

6. For the purpose of this operation, the bearing strength requirement of OPS 1.480 (a) 5 need not apply to the declared safe area.

SUBPART H

PERFORMANCE CLASS B

OPS 1.525

General

(a) An operator shall not operate a single-engine aeroplane:

1. At night; or


Note: Limitations on the operation of single-engine aeroplanes are covered by OPS 1.240 (a) 6.

(b) An operator shall treat two-engine aeroplanes which do not meet the climb requirements of Appendix 1 to OPS 1.525 (b) as single-engine aeroplanes.

OPS 1.530

Take-off

(a) An operator shall ensure that the take-off mass does not exceed the maximum take-off mass specified in the Aeroplane Flight Manual for the pressure altitude and the ambient temperature at the aerodrome at which the take-off is to be made.

(b) An operator shall ensure that the unfactored take-off distance, as specified in the Aeroplane Flight Manual does not exceed:

1. When multiplied by a factor of 1.25, the take-off run available; or

2. When stopway and/or clearway is available, the following:

   (i) The take-off run available;

   (ii) When multiplied by a factor of 1.15, the take-off distance available; and

   (iii) When multiplied by a factor of 1.3, the accelerate-stop distance available.

(c) When showing compliance with sub-paragraph (b) above, an operator shall take account of the following:

1. The mass of the aeroplane at the commencement of the take-off run;

2. The pressure altitude at the aerodrome;

3. The ambient temperature at the aerodrome;

4. The runway surface condition and the type of runway surface

5. The runway slope in the direction of take-off and

6. Not more than 50 % of the reported head-wind component or not less than 150 % of the reported tail-wind component.

OPS 1.535

Take-off Obstacle Clearance — Multi-Engined Aeroplanes

(a) An operator shall ensure that the take-off flight path of aeroplanes with two or more engines, determined in accordance with this sub-paragraph, clears all obstacles by a vertical margin of at least 50 ft, or by a horizontal distance of at least 90 m plus 0.125 × D, where D is the horizontal distance travelled by the aeroplane from the end of the take-off distance available or the end of the take-off distance if a turn is scheduled before the end of the take-off distance available except as provided in sub-paragraphs (b) and (c) below. When showing compliance with this sub-paragraph it must be assumed that:

1. The take-off flight path begins at a height of 50 ft above the surface at the end of the take-off distance required by OPS 1.530 (b) and ends at a height of 1 500 ft above the surface;

2. The aeroplane is not banked before the aeroplane has reached a height of 50 ft above the surface, and that thereafter the angle of bank does not exceed 15°;

3. Failure of the critical engine occurs at the point on the all engine take-off flight path where visual reference for the purpose of avoiding obstacles is expected to be lost;

4. The gradient of the take-off flight path from 50 ft to the assumed engine failure height is equal to the average all-engine gradient during climb and transition to the en-route configuration, multiplied by a factor of 0.77; and
5. The gradient of the take-off flight path from the height reached in accordance with sub-paragraph (4) above to the end of the take-off flight path is equal to the one engine inoperative en-route climb gradient shown in the Aeroplane Flight Manual.

(b) When showing compliance with sub-paragraph (a) above for those cases where the intended flight path does not require track changes of more than 15°, an operator need not consider those obstacles which have a lateral distance greater than:

1. 300 m, if the flight is conducted under conditions allowing visual course guidance navigation, or if navigational aids are available enabling the pilot to maintain the intended flight path with the same accuracy (see Appendix 1 to OPS 1.535 (b) 1 & (c) 1); or

2. 600 m, for flights under all other conditions.

(c) When showing compliance with sub-paragraph (a) above for those cases where the intended flight path requires track changes of more than 15°, an operator need not consider those obstacles which have a lateral distance greater than:

1. 600 m for flights under conditions allowing visual course guidance navigation (see Appendix 1 to OPS 1.535 (b) 1 & (c) 1);

2. 900 m for flights under all other conditions.

(d) When showing compliance with sub-paragraphs (a), (b) and (c) above, an operator must take account of the following:

1. The mass of the aeroplane at the commencement of the take-off run;

2. The pressure altitude at the aerodrome; and

3. The ambient temperature at the aerodrome; and

4. Not more than 50 % of the head-wind component or not less than 150 % of the tail-wind component.

OPS 1.540

En-Route — Multi-engined aeroplanes

(a) An operator shall ensure that the aeroplane, in the meteorological conditions expected for the flight, and in the event of the failure of one engine, with the remaining engines operating within the maximum continuous power conditions specified, is capable of continuing flight at or above the relevant minimum altitudes for safe flight stated in the Operations Manual to a point 1 000 ft above an aerodrome at which the performance requirements can be met.

(b) When showing compliance with sub-paragraph (a) above:

1. The aeroplane must not be assumed to be flying at an altitude exceeding that at which the rate of climb equals 300 ft per minute with all engines operating within the maximum continuous power conditions specified; and

2. The assumed en-route gradient with one engine inoperative shall be the gross gradient of descent or climb, as appropriate, respectively increased by a gradient of 0.5 %, or decreased by a gradient of 0.5 %.

OPS 1.542

En-Route — Single-engine aeroplanes

(a) An operator shall ensure that the aeroplane, in the meteorological conditions expected for the flight, and in the event of engine failure, is capable of reaching a place at which a safe forced landing can be made. For landplanes, a place on land is required, unless otherwise approved by the Authority.

(b) When showing compliance with sub-paragraph (a) above:

1. The aeroplane must not be assumed to be flying, with the engine operating within the maximum continuous power conditions specified, at an altitude exceeding that at which the rate of climb equals 300 ft per minute; and

2. The assumed en-route gradient shall be the gross gradient of descent increased by a gradient of 0.5%.

OPS 1.545

Landing — Destination and Alternate Aerodromes

An operator shall ensure that the landing mass of the aeroplane determined in accordance with OPS 1.475 (a) does not exceed the maximum landing mass specified for the altitude and the ambient temperature expected for the estimated time of landing at the destination and alternate aerodrome.

OPS 1.550

Landing — Dry runway

(a) An operator shall ensure that the landing mass of the aeroplane determined in accordance with OPS 1.475 (a) for the estimated time of landing allows a full stop landing from 50 ft above the threshold within 70 % of the landing distance available at the destination aerodrome and at any alternate aerodrome.

1. The Authority may approve the use of landing distance data factored in accordance with this paragraph based on Steep Approach Procedures using a screen height of less than 50 ft, but not less than 35 ft (See Appendix 1 to OPS 1.550 (a));

2. The Authority may approve Short Landing Operations, in accordance with the criteria in Appendix 2 to OPS 1.550 (a).

(b) When showing compliance with sub-paragraph (a) above, an operator shall take account of the following:

1. The altitude at the aerodrome;

2. Not more than 50 % of the head-wind component or not less than 150 % of the tail-wind component.

3. The runway surface condition and the type of runway surface; and

4. The runway slope in the direction of landing;
(c) For despatching an aeroplane in accordance with sub-paragraph (a) above, it must be assumed that:

1. The aeroplane will land on the most favourable runway, in still air; and
2. The aeroplane will land on the runway most likely to be assigned considering the probable wind speed and direction and the ground handling characteristics of the aeroplane, and considering other conditions such as landing aids and terrain.

(d) If an operator is unable to comply with sub-paragraph (c) 2 above for the destination aerodrome, the aeroplane may be despatched if an alternate aerodrome is designated which permits full compliance with sub-paragraphs (a), (b) and (c) above.

OPS 1.555

Landing — Wet and Contaminated Runways

(a) An operator shall ensure that when the appropriate weather reports or forecasts, or a combination thereof, indicate that the runway at the estimated time of arrival may be wet, the landing distance available is equal to or exceeds the required landing distance, determined in accordance with OPS 1.550, multiplied by a factor of 1.15.

(b) An operator shall ensure that when the appropriate weather reports or forecasts, or a combination thereof, indicate that the runway at the estimated time of arrival may be contaminated, the landing distance, determined by using data acceptable to the Authority for these conditions, does not exceed the landing distance available.

(c) A landing distance on a wet runway shorter than that required by sub-paragraph (a) above, but not less than that required by OPS 1.550 (a), may be used if the Aeroplane Flight Manual includes specific additional information about landing distances on wet runways.

Appendix 1 to OPS 1.525 (b)

General — Take-off and Landing Climb

The requirements of this Appendix are based on JAR-23.63 (c) 1 and JAR-23.63 (c) 2, effective 11 March 1994.

(a) Take-off Climb

1. All Engines Operating

   The steady gradient of climb after take-off must be at least 4% with:

   (A) Take-off power on each engine;

   (B) The landing gear extended except that if the landing gear can be retracted in not more than 7 seconds, it may be assumed to be retracted;

   (C) The wing flaps in the take-off position(s); and

   (D) A climb speed not less than the greater of 1.1 \( V_{MC} \) and 1.2 \( V_{S1} \).

2. One Engine Inoperative

   (i) The steady gradient of climb at an altitude of 400 ft above the take-off surface must be measurably positive with:

   (A) The critical engine inoperative and its propeller in the minimum drag position;

   (B) The remaining engine at take-off power;

   (C) The landing gear retracted;

   (D) The wing flaps in the take-off position(s); and

   (E) A climb speed equal to that achieved at 50 ft.

   (ii) The steady gradient of climb must be not less than 0.75 % at an altitude of 1,500 ft above the take-off surface with:

   (A) The critical engine inoperative and its propeller in the minimum drag position;

   (B) The remaining engine at not more than maximum continuous power;

   (C) The landing gear retracted;

   (D) The wing flaps retracted; and

   (E) A climb speed not less than 1.2 \( V_{S1} \).

(b) Landing Climb

1. All Engines Operating

   The steady gradient of climb must be at least 2.5 % with:

   (A) Not more than the power or thrust that is available 8 seconds after initiation of movement of the power controls from the minimum flight idle position;

   (B) The landing gear extended;

   (C) The wing flaps in the landing position; and

   (D) A climb speed equal to \( V_{REF} \).

2. One engine Inoperative

   The steady gradient of climb must be not less than 0.75 % at an altitude of 1,500 ft above the landing surface with:

   (A) The critical engine inoperative and its propeller in the minimum drag position;

   (B) The remaining engine at not more than maximum continuous power;

   (C) The landing gear retracted;

   (D) The wing flaps retracted; and

   (E) A climb speed not less than 1.2 \( V_{S1} \).
Appendix 1 to OPS 1.535 (b) 1 & (c) 1

Take-off Flight Path — Visual Course Guidance Navigation

In order to allow visual course guidance navigation, an operator must ensure that the weather conditions prevailing at the time of operation including ceiling and visibility, are such that the obstacle and/or ground reference points can be seen and identified. The Operations Manual must specify, for the aerodrome(s) concerned, the minimum weather conditions which enable the flight crew to continuously determine and maintain the correct flight path with respect to ground reference points, so as to provide a safe clearance with respect to obstructions and terrain as follows:

(a) The procedure must be well defined with respect to ground reference points so that the track to be flown can be analysed for obstacle clearance requirements;

(b) The procedure must be within the capabilities of the aeroplane with respect to forward speed, bank angle and wind effects;

(c) A written and/or pictorial description of the procedure must be provided for crew use; and

(d) The limiting environmental conditions must be specified (e.g. wind, cloud, visibility, day/night, ambient lighting, obstruction lighting).

Appendix 1 to OPS 1.550 (a)

Steep Approach Procedures

The Authority may approve the application of Steep Approach procedures using glideslope angles of 4.5° or more, and with screen heights of less than 50 ft but not less than 35 ft, provided that the following criteria are met:

1. The Aeroplane Flight Manual must state the maximum approved glideslope angle, any other limitations, normal, abnormal or emergency procedures for the steep approach as well as amendments to the field length data when using steep approach criteria;

2. A suitable glidepath reference system, comprising at least a visual glidepath indicating system, must be available at each aerodrome at which steep approach procedures are to be conducted; and

3. Weather minima must be specified and approved for each runway to be used with a steep approach. Consideration must be given to the following:

   (i) The obstacle situation;

   (ii) The type of glidepath reference and runway guidance such as visual aids, MLS, 3D-NAV, ILS, LLZ, VOR, NDB;

   (iii) The minimum visual reference to be required at DH and MDA;

   (iv) Available airborne equipment;

   (v) Pilot qualification and special aerodrome familiarisation;

   (vi) Aeroplane Flight Manual limitations and procedures; and

   (vii) Missed approach criteria.

Appendix 2 to OPS 1.550 (a)

Short Landing Operations

For the purpose of OPS 1.550 (a) 2, the distance used for the calculation of the permitted landing mass may consist of the usable length of the declared safe area plus the declared landing distance available. The Authority may approve such operations in accordance with the following criteria:

1. The use of the declared safe area must be approved by the aerodrome Authority;

2. The declared safe area must be clear of obstructions or depressions which would endanger an aeroplane undershooting the runway, and no mobile object shall be permitted on the declared safe area while the runway is being used for short landing operations;

3. The slope of the declared safe area must not exceed 5 % upward slope nor 2 % downward slope in the direction of landing;

4. The useable length of the declared safe area under the provisions of this Appendix shall not exceed 90 metres;

5. The width of the declared safe area shall not be less than twice the runway width, centred on the extended runway centreline;

6. It is assumed that the crossing height over the beginning of the usable length of the declared safe area shall not be less than 50 ft.

7. For the purpose of this operation, the bearing strength requirement of OPS 1.480 (a) 5 need not apply to the declared safe area.

8. Weather minima must be specified and approved for each runway to be used and shall not be less than the greater of VFR or non-precision approach minima;

9. Pilot requirements must be specified (OPS 1.975 (a) refers);

10. The Authority may impose such additional conditions as are necessary for safe operation taking into account the aeroplane type characteristics, approach aids and missed approach/baulked landing considerations.
SUBPART I

PERFORMANCE CLASS C

OPS 1.560

General

An operator shall ensure that, for determining compliance with the requirements of this Subpart, the approved performance Data in the Aeroplane Flight Manual is supplemented, as necessary, with other Data acceptable to the Authority if the approved performance Data in the Aeroplane Flight Manual is insufficient.

OPS 1.565

Take-off

(a) An operator shall ensure that the take-off mass does not exceed the maximum take-off mass specified in the Aeroplane Flight Manual for the pressure altitude and the ambient temperature at the aerodrome at which the take-off is to be made.

(b) An operator shall ensure that, for aeroplanes which have take-off field length data contained in their Aeroplane Flight Manuals that do not include engine failure accountability, the distance from the start of the take-off roll required by the aeroplane to reach a height of 50 ft above the surface with all engines operating within the maximum take-off power conditions specified, when multiplied by a factor of either:

1. 1.33 for aeroplanes having two engines; or
2. 1.25 for aeroplanes having three engines; or
3. 1.18 for aeroplanes having four engines,

does not exceed the take-off run available at the aerodrome at which the take-off is to be made.

(c) An operator shall ensure that, for aeroplanes which have take-off field length data contained in their Aeroplane Flight Manuals which accounts for engine failure, the following requirements are met in accordance with the specifications in the Aeroplane Flight Manual:

1. The accelerate-stop distance must not exceed the accelerate-stop distance available;
2. The take-off distance must not exceed the take-off distance available, with a clearway distance not exceeding half of the take-off run available;
3. The take-off run must not exceed the take-off run available;
4. Compliance with this paragraph must be shown using a single value of $V_1$ for the rejected and continued take-off; and
5. On a wet or contaminated runway the take-off mass must not exceed that permitted for a take-off on a dry runway under the same conditions.

(d) When showing compliance with sub-paragraphs (b) and (c) above, an operator must take account of the following:

1. The pressure altitude at the aerodrome;
2. The ambient temperature at the aerodrome;
3. The runway surface condition and the type of runway surface;
4. The runway slope in the direction of take-off;
5. Not more than 50 % of the reported head-wind component or not less than 150 % of the reported tail-wind component; and
6. The loss, if any, of runway length due to alignment of the aeroplane prior to take-off.

OPS 1.570

Take-off Obstacle Clearance

(a) An operator shall ensure that the take-off flight path with one engine inoperative clears all obstacles by a vertical distance of at least 50 ft plus $0,01 \times D$, or by a horizontal distance of at least $90 \text{ m} + 0,125 \times D$, where $D$ is the horizontal distance the aeroplane has travelled from the end of the take-off distance available. For aeroplanes with a wingspan of less than 60 m a horizontal obstacle clearance of half the aeroplane wingspan plus $60 \text{ m} + 0,125 \times D$ may be used.

(b) The take-off flight path must begin at a height of 50 ft above the surface at the end of the take-off distance required by OPS 1.565 (b) or (c) as applicable, and end at a height of 1 500 ft above the surface.

(c) When showing compliance with sub-paragraph (a), an operator must take account of the following:

1. The mass of the aeroplane at the commencement of the take-off run;
2. The pressure altitude at the aerodrome;
3. The ambient temperature at the aerodrome; and
4. Not more than 50 % of the reported head-wind component or not less than 150 % of the reported tail-wind component.

(d) When showing compliance with sub-paragraph (a) above, track changes shall not be allowed up to that point of the take-off flight path where a height of 50 ft above the surface has been achieved. Thereafter, up to a height of 400 ft it is assumed that the aeroplane is banked by no more than 15°. Above 400 ft height bank angles greater than 15°, but not more than 25° may be scheduled. Adequate allowance must be made for the effect of bank angle on operating speeds and flight path including the distance increments resulting from increased operating speeds.

(e) When showing compliance with sub-paragraph (a) above for those cases which do not require track changes of more than 15°, an operator need not consider those obstacles which have a lateral distance greater than:

1. 300 m, if the pilot is able to maintain the required navigational accuracy through the obstacle accountability area; or
2. 600 m for flights under all other conditions.
(f) When showing compliance with sub-paragraph (a) above for those cases which do require track changes of more than 15°, an operator need not consider those obstacles which have a lateral distance greater than:

1. 600 m, if the pilot is able to maintain the required navigational accuracy through the obstacle accountability area; or

2. 900 m for flights under all other conditions.

(g) An operator shall establish contingency procedures to satisfy the requirements of OPS 1.570 and to provide a safe route, avoiding obstacles, to enable the aeroplane to either comply with the en-route requirements of OPS 1.580, or land at either the aerodrome of departure or at a take-off alternate aerodrome.

OPS 1.575

En-Route — All Engines Operating

An operator shall ensure that the aeroplane will, in the meteorological conditions expected for the flight, at any point on its route or on any planned diversion therefrom, be capable of a rate of climb of at least 300 ft per minute with all engines operating within the maximum continuous power conditions specified at:

1. The minimum altitudes for safe flight on each stage of the route to be flown or of any planned diversion therefrom specified in, or calculated from the information contained in, the Operations Manual relating to the aeroplane; and

2. The minimum altitudes necessary for compliance with the conditions prescribed in OPS 1.580 and 1.585, as appropriate.

OPS 1.580

En-Route — One Engine Inoperative

(a) An operator shall ensure that the aeroplane will, in the meteorological conditions expected for the flight, in the event of any one engine becoming inoperative at any point on its route or on any planned diversion therefrom and with the other engine or engines operating within the maximum continuous power conditions specified, be capable of continuing the flight from the cruising altitude to an aerodrome where a landing can be made in accordance with OPS 1.595 or OPS 1.600 as appropriate, clearing obstacles within 9.3 km (5 nm) either side of the intended track by a vertical interval of at least:

1. 1 000 ft when the rate of climb is zero or greater; or

2. 2 000 ft when the rate of climb is less than zero.

(b) The flight path shall have a positive slope at an altitude of 450 m (1 500 ft) above the aerodrome where the landing is assumed to be made after the failure of one engine.

(c) For the purpose of this sub-paragraph the available rate of climb of the aeroplane shall be taken to be 150 ft per minute less than the gross rate of climb specified.

(d) When showing compliance with this paragraph, an operator must increase the width margins of sub-paragraph (a) above to 18.5 km (10 nm) if the navigational accuracy does not meet the 95% containment level.

(e) Fuel jettisoning is permitted to an extent consistent with reaching the aerodrome with the required fuel reserves, if a safe procedure is used.

OPS 1.585

En-Route — Aeroplanes With Three Or More Engines, Two Engines Inoperative

(a) An operator shall ensure that, at no point along the intended track, will an aeroplane having three or more engines be more than 90 minutes at the all-engine long range cruising speed at standard temperature in still air, away from an aerodrome at which the performance requirements applicable at the expected landing mass are met unless it complies with sub-paragraphs (b) to (e) below.

(b) The two-engines inoperative flight path shown must permit the aeroplane to continue the flight, in the expected meteorological conditions, clearing all obstacles within 9.3 km (5 nm) either side of the intended track by a vertical interval of at least 2 000 ft, to an aerodrome at which the performance requirements applicable at the expected landing mass are met.

(c) The two engines are assumed to fail at the most critical point of that portion of the route where the aeroplane is more than 90 minutes, at the all engines long range cruising speed at standard temperature in still air, away from an aerodrome at which the performance requirements applicable at the expected landing mass are met.

(d) The expected mass of the aeroplane at the point where the two engines are assumed to fail must not be less than that which would include sufficient fuel to proceed to an aerodrome where the landing is assumed to be made, and to arrive there at an altitude of a least 450 m (1 500 ft) directly over the landing area and thereafter to fly level for 15 minutes.

(e) For the purpose of this sub-paragraph the available rate of climb of the aeroplane shall be taken to be 150 ft per minute less than that specified.

(f) When showing compliance with this paragraph, an operator must increase the width margins of sub-paragraph (a) above to 18.5 km (10 nm) if the navigational accuracy does not meet the 95% containment level.

(g) Fuel jettisoning is permitted to an extent consistent with reaching the aerodrome with the required fuel reserves, if a safe procedure is used.
An operator shall ensure that the landing mass of the aeroplane determined in accordance with OPS 1.475 (a) does not exceed the maximum landing mass specified in the Aeroplane Flight Manual for the altitude and, if accounted for in the Aeroplane Flight Manual, the ambient temperature expected for the estimated time of landing at the destination and alternate aerodrome.

An operator shall ensure that the landing mass of the aeroplane determined in accordance with OPS 1.475 (a) for the estimated time of landing allows a full stop landing from 50 ft above the threshold within 70% of the landing distance available at the destination and any alternate aerodrome.

When showing compliance with sub-paragraph (a) above, an operator must take account of the following:

1. The altitude at the aerodrome;
2. Not more than 50% of the head-wind component or not less than 150% of the tail-wind component;
3. The type of runway surface; and
4. The slope of the runway in the direction of landing.

For despatching an aeroplane in accordance with sub-paragraph (a) above it must be assumed that:

1. The aeroplane will land on the most favourable runway in still air; and
2. The aeroplane will land on the runway most likely to be assigned considering the probable wind speed and direction and the ground handling characteristics of the aeroplane, and considering other conditions such as landing aids and terrain.

If an operator is unable to comply with sub-paragraph (b) 2 above for the destination aerodrome, the aeroplane may be despatched if an alternate aerodrome is designated which permits full compliance with sub-paragraphs (a), (b) and (c).

An operator shall ensure that when the appropriate weather reports or forecasts, or a combination thereof, indicate that the runway at the estimated time of arrival may be wet, the landing distance determined by using data acceptable to the Authority for these conditions, does not exceed the landing distance available.

(a) An operator shall ensure that during any phase of operation, the loading, mass and centre of gravity of the aeroplane complies with the limitations specified in the approved Aeroplane Flight Manual, or the Operations Manual if more restrictive.

(b) An operator must establish the mass and the centre of gravity of any aeroplane by actual weighing prior to initial entry into service and thereafter at intervals of 4 years if individual aeroplane masses are used and 9 years if fleet masses are used. The accumulated effects of modifications and repairs on the mass and balance must be accounted for and properly documented. Furthermore, aeroplanes must be reweighed if the effect of modifications on the mass and balance is not accurately known.

(c) An operator must determine the mass of all operating items and crew members included in the aeroplane dry operating mass by weighing or by using standard masses. The influence of their position on the aeroplane centre of gravity must be determined.

(d) An operator must establish the mass of the traffic load, including any ballast, by actual weighing or determine the mass of the traffic load in accordance with standard passenger and baggage masses as specified in OPS 1.620.

(e) An operator must determine the mass of the fuel load by using the actual density or, if not known, the density calculated in accordance with a method specified in the Operations Manual.

(a) **Dry Operating Mass**

The total mass of the aeroplane ready for a specific type of operation excluding all usable fuel and traffic load. This mass includes items such as:

1. Crew and crew baggage;
2. Catering and removable passenger service equipment; and
3. Potable water and lavatory chemicals.

(b) **Maximum Zero Fuel Mass**

The maximum permissible mass of an aeroplane with no usable fuel. The mass of the fuel contained in particular tanks must be included in the zero fuel mass when it is explicitly mentioned in the Aeroplane Flight Manual limitations.
(c) Maximum Structural Landing Mass

The maximum permissible total aeroplane mass upon landing under normal circumstances.

(d) Maximum Structural Take Off Mass

The maximum permissible total aeroplane mass at the start of the take-off run.

(e) Passenger classification

1. Adults, male and female, are defined as persons of an age of 12 years and above.

2. Children are defined as persons who are of an age of two years and above but who are less than 12 years of age.

3. Infants are defined as persons who are less than 2 years of age.

(f) Traffic Load

The total mass of passengers, baggage and cargo, including any non-revenue load.

OPS 1.610

Loading, mass and balance

An operator shall specify, in the Operations Manual, the principles and methods involved in the loading and in the mass and balance system that meet the requirements of OPS 1.605. This system must cover all types of intended operations.

OPS 1.615

Mass values for crew

(a) An operator shall use the following mass values to determine the dry operating mass:

1. Actual masses including any crew baggage; or

2. Standard masses, including hand baggage, of 85 kg for flight crew members and 75 kg for cabin crew members; or

3. Other standard masses acceptable to the Authority.

(b) An operator must correct the dry operating mass to account for any additional baggage. The position of this additional baggage must be accounted for when establishing the centre of gravity of the aeroplane.

OPS 1.620

Mass values for passengers and baggage

(a) An operator shall compute the mass of passengers and checked baggage using either the actual weighed mass of each person and the actual weighed mass of baggage or the standard mass values specified in Tables 1 to 3 below except where the number of passenger seats available is less than 10. In such cases passenger mass may be established by use of a verbal statement by, or on behalf of, each passenger and adding to it a predetermined constant to account for hand baggage and clothing. (The procedure specifying when to select actual or standard masses and the procedure to be followed when using verbal statements must be included in the Operations Manual.

(b) If determining the actual mass by weighing, an operator must ensure that passengers’ personal belongings and hand baggage are included. Such weighing must be conducted immediately prior to boarding and at an adjacent location.

(c) If determining the mass of passengers using standard mass values, the standard mass values in Tables 1 and 2 below must be used. The standard masses include hand baggage and the mass of any infant below 2 years of age carried by an adult on one passenger seat. Infants occupying separate passenger seats must be considered as children for the purpose of this sub-paragraph.

(d) Mass values for passengers — 20 seats or more

1. Where the total number of passenger seats available on an aeroplane is 20 or more, the standard masses of male and female in Table 1 are applicable. As an alternative, in cases where the total number of passenger seats available is 30 or more, the “All Adult” mass values in Table 1 are applicable.

2. For the purpose of Table 1, holiday charter means a charter flight solely intended as an element of a holiday travel package. The holiday charter mass values apply provided that not more than 5% of passenger seats installed in the aeroplane are used for the non-revenue carriage of certain categories of passengers.

Table 1

<table>
<thead>
<tr>
<th>Passenger seats</th>
<th>20 and more</th>
<th>30 and more</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>All flights except holiday</td>
<td>88 kg</td>
<td>70 kg</td>
</tr>
<tr>
<td>Holiday charters</td>
<td>83 kg</td>
<td>69 kg</td>
</tr>
<tr>
<td>Children</td>
<td>35 kg</td>
<td>35 kg</td>
</tr>
</tbody>
</table>

(e) Mass values for passengers — 19 seats or less.

1. Where the total number of passenger seats available on an aeroplane is 19 or less, the standard masses in Table 2 are applicable.

2. On flights where no hand baggage is carried in the cabin or where hand baggage is accounted for separately, 6 kg may be deducted from the above male and female masses. Articles such as an overcoat, an umbrella, a small handbag or purse, reading material or a small camera are not considered as hand baggage for the purpose of this sub-paragraph.
Table 2

<table>
<thead>
<tr>
<th>Passenger seats</th>
<th>1—5</th>
<th>6—9</th>
<th>10—19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>104 kg</td>
<td>96 kg</td>
<td>92 kg</td>
</tr>
<tr>
<td>Female</td>
<td>86 kg</td>
<td>78 kg</td>
<td>74 kg</td>
</tr>
<tr>
<td>Children</td>
<td>35 kg</td>
<td>35 kg</td>
<td>35 kg</td>
</tr>
</tbody>
</table>

(f) Mass values for baggage

1. Where the total number of passenger seats available on the aeroplane is 20 or more the standard mass values given in Table 3 are applicable for each piece of checked baggage. For aeroplanes with 19 passenger seats or less, the actual mass of checked baggage, determined by weighing, must be used.

2. For the purpose of Table 3

(i) Domestic flight means a flight with origin and destination within the borders of one State;

(ii) Flights within the European region means flights, other than Domestic flights, whose origin and destination are within the area specified in Appendix 1 to OPS 1.620 (f); and

(iii) Intercontinental flight, other than flights within the European region, means a flight with origin and destination in different continents.

Table 3

<table>
<thead>
<tr>
<th>Type of flight</th>
<th>Baggage standard mass</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic</td>
<td>11 kg</td>
</tr>
<tr>
<td>Within the European region</td>
<td>13 kg</td>
</tr>
<tr>
<td>Intercontinental</td>
<td>15 kg</td>
</tr>
<tr>
<td>All other</td>
<td>13 kg</td>
</tr>
</tbody>
</table>

(g) If an operator wishes to use standard mass values other than those contained in Tables 1 to 3 above, he must advise the Authority of his reasons and gain its approval in advance. He must also submit for approval a detailed weighing survey plan and apply the statistical analysis method given in Appendix 1 to OPS 1.620 (g). After verification and approval by the Authority of the results of the weighing survey, the revised standard mass values are only applicable to that operator. The revised standard mass values can only be used in circumstances consistent with those under which the survey was conducted. Where revised standard masses exceed those in Tables 1–3, then such higher values must be used.

(h) On any flight identified as carrying a significant number of passengers whose masses, including hand baggage, are expected to exceed the standard passenger mass, an operator must determine the actual mass of such passengers by weighing or by adding an adequate mass increment.

(i) If standard mass values for checked baggage are used and a significant number of passengers check in baggage that is expected to exceed the standard baggage mass, an operator must determine the actual mass of such baggage by weighing or by adding an adequate mass increment.

(j) An operator shall ensure that a commander is advised when a non-standard method has been used for determining the mass of the load and that this method is stated in the mass and balance documentation.

OPS 1.625

Mass and balance documentation

(See Appendix 1 to OPS 1.625)

(a) An operator shall establish mass and balance documentation prior to each flight specifying the load and its distribution. The mass and balance documentation must enable the commander to determine that the load and its distribution is such that the mass and balance limits of the aeroplane are not exceeded. The person preparing the mass and balance documentation must be named on the document. The person supervising the loading of the aeroplane must confirm by signature that the load and its distribution are in accordance with the mass and balance documentation. This document must be acceptable to the commander, his acceptance being indicated by countersignature or equivalent. (See also OPS 1.1055 (a) 12).

(b) An operator must specify procedures for Last Minute Changes to the load.

(c) Subject to the approval of the Authority, an operator may use an alternative to the procedures required by paragraphs (a) and (b) above.

Appendix 1 to OPS 1.605

Mass and Balance General

(a) Determination of the dry operating mass of an aeroplane

1. Weighing of an aeroplane

(i) New aeroplanes are normally weighed at the factory and are eligible to be placed into operation without reweighing if the mass and balance records have been adjusted for alterations or modifications to the aeroplane. Aeroplanes transferred from one operator with an approved mass control programme to another operator with an approved programme need not be weighed prior to use by the receiving operator unless more than 4 years have elapsed since the last weighing.
(ii) The individual mass and centre of gravity (CG) position of each aeroplane shall be re-established periodically. The maximum interval between two weighings must be defined by the operator and must meet the requirements of OPS 1.605 (b). In addition, the mass and the CG of each aeroplane shall be re-established either by:

(A) Weighing; or

(B) Calculation, if the operator is able to provide the necessary justification to prove the validity of the method of calculation chosen,

whenever the cumulative changes to the dry operating mass exceed ± 0.5 % of the maximum landing mass or the cumulative change in CG position exceeds 0.5 % of the mean aerodynamic chord.

2. Fleet mass and CG position

(i) For a fleet or group of aeroplanes of the same model and configuration, an average dry operating mass and CG position may be used as the fleet mass and CG position, provided that the dry operating masses and CG positions of the individual aeroplanes meet the tolerances specified in sub-paragraph (ii) below. Furthermore, the criteria specified in sub-paragraphs (iii), (iv) and (a) 3 below are applicable.

(ii) Tolerances

(A) If the dry operating mass of any aeroplane weighed, or the calculated dry operating mass of any aeroplane of a fleet, varies by more than ± 0.5% of the maximum structural landing mass from the established dry operating fleet mass or the CG position varies by more than ± 0.5 % of the mean aero-dynamic chord from the fleet CG, that aeroplane shall be omitted from that fleet. Separate fleets may be established, each with differing fleet mean masses.

(B) In cases where the aeroplane mass is within the dry operating fleet mass tolerance but its CG position falls outside the permitted fleet tolerance, the aeroplane may still be operated under the applicable dry operating fleet mass but with an individual CG position.

(C) If an individual aeroplane has, when compared with other aeroplanes of the fleet, a physical, accurately accountable difference (e.g. galley or seat configuration), that causes exceedance of the fleet tolerances, this aeroplane may be maintained in the fleet provided that appropriate corrections are applied to the mass and/or CG position for that aeroplane.

(D) Aeroplanes for which no mean aerodynamic chord has been published must be operated with their individual mass and CG position values or must be subjected to a special study and approval.

(iii) Use of fleet values

(A) After the weighing of an aeroplane, or if any change occurs in the aeroplane equipment or configuration, the operator must verify that this aeroplane falls within the tolerances specified in sub-paragraph 2 (ii) above.

(B) Aeroplanes which have not been weighed since the last fleet mass evaluation can still be kept in a fleet operated with fleet values, provided that the individual values are revised by computation and stay within the tolerances defined in sub-paragraph 2 (ii) above. If these individual values no longer fall within the permitted tolerances, the operator must either determine new fleet values fulfilling the conditions of sub-paragraphs 2 (i) and 2 (ii) above, or operate the aeroplanes not falling within the limits with their individual values.

(C) To add an aeroplane to a fleet operated with fleet values, the operator must verify by weighing or computation that its actual values fall within the tolerances specified in sub-paragraph 2 (ii) above.

(iv) To comply with sub-paragraph 2 (i) above, the fleet values must be updated at least at the end of each fleet mass evaluation.

3. Number of aeroplanes to be weighed to obtain fleet values

(i) If “n” is the number of aeroplanes in the fleet using fleet values, the operator must at least weigh, in the period between two fleet mass evaluations, a certain number of aeroplanes defined in the Table below:

<table>
<thead>
<tr>
<th>Number of aeroplanes in the fleet</th>
<th>Minimum number of weighings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 or 3</td>
<td>n</td>
</tr>
<tr>
<td>4 to 9</td>
<td>(n + 3)/2</td>
</tr>
<tr>
<td>10 or more</td>
<td>(n + 51)/10</td>
</tr>
</tbody>
</table>

(ii) In choosing the aeroplanes to be weighed, aeroplanes in the fleet which have not been weighed for the longest time should be selected.

(iii) The interval between 2 fleet mass evaluations must not exceed 48 months.

4. Weighing procedure

(i) The weighing must be accomplished either by the manufacturer or by an approved maintenance organisation.

(ii) Normal precautions must be taken consistent with good practices such as:

(A) Checking for completeness of the aeroplane and equipment;

(B) Determining that fluids are properly accounted for;

(C) Ensuring that the aeroplane is clean; and

(D) Ensuring that weighing is accomplished in an enclosed building.
(iii) Any equipment used for weighing must be properly calibrated, zeroed, and used in accordance with the manufacturer's instructions. Each scale must be calibrated either by the manufacturer, by a civil department of weights and measures or by an appropriately authorised organisation within 2 years or within a time period defined by the manufacturer of the weighing equipment, whichever is less. The equipment must enable the mass of the aeroplane to be established accurately (see Appendix 1 to OPS 1.605, paragraph (a) 4 (iii)).

(b) Special standard masses for the traffic load

In addition to standard masses for passengers and checked baggage, an operator can submit for approval to the Authority standard masses for other load items.

(c) Aeroplane loading

1. An operator must ensure that the loading of its aeroplanes is performed under the supervision of qualified personnel.

2. An operator must ensure that the loading of the freight is consistent with the data used for the calculation of the aeroplane mass and balance.

3. An operator must comply with additional structural limits such as the floor strength limitations, the maximum load per running metre, the maximum mass per cargo compartment, and/or the maximum seating limits.

(d) Centre of gravity limits

1. Operational CG envelope

Unless seat allocation is applied and the effects of the number of passengers per seat row, of cargo in individual cargo compartments and of fuel in individual tanks is accounted for accurately in the balance calculation, operational margins must be applied to the certificated centre of gravity envelope. In determining the CG margins, possible deviations from the assumed load distribution must be considered. If free seating is applied, the operator must introduce procedures to ensure corrective action by flight or cabin crew if extreme longitudinal seat selection occurs. The CG margins and associated operational procedures, including assumptions with regard to passenger seating, must be acceptable to the Authority.

2. In-flight centre of gravity

Further to sub-paragraph (d) 1 above, the operator must show that the procedures fully account for the extreme variation in CG travel during flight caused by passenger/crew movement and fuel consumption/transfer.

Appendix 1 to OPS 1.620 (g)

Definition of the area for flights within the European region

For the purposes of OPS 1.620 (g), flights within the European region, other than domestic flights, are flights conducted within the area bounded by rhumb lines between the following points:

- N7200 E04500
- N4000 E04500
- N3500 E03700
- N3000 E03700
- N3000 W00600
- N2700 W00900
- N2700 W03000
- N6700 W03000
- N7200 W01000
- N7200 E04500

as depicted in Figure 1 below:

Figure 1

European region

Appendix 1 to OPS 1.620 (g)

Procedure for establishing revised standard mass values for passengers and baggage

(a) Passengers

1. Weight sampling method

The average mass of passengers and their hand baggage must be determined by weighing, taking random samples. The selection of random samples must by nature and extent be representative of the passenger volume, considering the type of operation, the frequency of flights on various routes, in/outbound flights, applicable season and seat capacity of the aeroplane.
2. Sample size

The survey plan must cover the weighing of at least the greatest of:

(i) A number of passengers calculated from a pilot sample, using normal statistical procedures and based on a relative confidence range (accuracy) of 1 % for all adult and 2 % for separate male and female average masses; and

(ii) For aeroplanes:

(A) With a passenger seating capacity of 40 or more, a total of 2 000 passengers; or

(B) With a passenger seating capacity of less than 40, a total number of 50 x (the passenger seating capacity).

3. Passenger masses

Passenger masses must include the mass of the passengers' belongings which are carried when entering the aeroplane. When taking random samples of passenger masses, infants shall be weighted together with the accompanying adult (See also OPS 1620 (c) (d) and (e).

4. Weighing location

The location for the weighing of passengers shall be selected as close as possible to the aeroplane, at a point where a change in the passenger mass by disposing of or by acquiring more personal belongings is unlikely to occur before the passengers board the aeroplane.

5. Weighing machine

The weighing machine to be used for passenger weighing shall have a capacity of at least 150 kg. The mass shall be displayed at minimum graduations of 500 g. The weighing machine must be accurate to within 0.5 % or 200 g whichever is the greater.

6. Recording of mass values

For each flight the mass of the passengers, the corresponding passenger category (i.e. male/female/children) and the flight number must be recorded.

(b) Checked baggage

The statistical procedure for determining revised standard baggage mass values based on average baggage masses of the minimum required sample size is basically the same as for passengers and as specified in sub-paragraph (a) 1. For baggage, the relative confidence range (accuracy) amounts to 1 %. A minimum of 2 000 pieces of checked baggage must be weighed.

(c) Determination of revised standard mass values for passengers and checked baggage

1. To ensure that, in preference to the use of actual masses determined by weighing, the use of revised standard mass values for passengers and checked baggage does not adversely affect operational safety, a statistical analysis must be carried out. Such an analysis will generate average mass values for passengers and baggage as well as other data.

2. On aeroplanes with 20 or more passenger seats, these averages apply as revised standard male and female mass values.

3. On smaller aeroplanes, the following increments must be added to the average passenger mass to obtain the revised standard mass values:

<table>
<thead>
<tr>
<th>Number of passenger seats</th>
<th>Required mass increment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1—5 incl.</td>
<td>16 kg</td>
</tr>
<tr>
<td>6—9 incl.</td>
<td>8 kg</td>
</tr>
<tr>
<td>10—19 incl.</td>
<td>4 kg</td>
</tr>
</tbody>
</table>

Alternatively, all adult revised standard (average) mass values may be applied on aeroplanes with 30 or more passenger seats. Revised standard (average) checked baggage mass values are applicable to aeroplanes with 20 or more passenger seats.

4. Operators have the option to submit a detailed survey plan to the Authority for approval and subsequently a deviation from the revised standard mass value provided this deviating value is determined by use of the procedure explained in this Appendix. Such deviations must be reviewed at intervals not exceeding 5 years.

5. All adult revised standard mass values must be based on a male/female ratio of 80/20 in respect of all flights except holiday charters which are 50/50. If an operator wishes to obtain approval for use of a different ratio on specific routes or flights then data must be submitted to the Authority showing that the alternative male/female ratio is conservative and covers at least 84% of the actual male/female ratios on a sample of at least 100 representative flights.

6. The average mass values found are rounded to the nearest whole number in kg. Checked baggage mass values are rounded to the nearest 0.5 kg figure, as appropriate.

Appendix 1 to OPS 1.625

Mass and Balance Documentation

(a) Mass and balance documentation

1. Contents

(i) The mass and balance documentation must contain the following information:

(A) The aeroplane registration and type;

(B) The flight identification number and date;

(C) The identity of the Commander;
(D) The identity of the person who prepared the document;

(E) The dry operating mass and the corresponding CG of the aeroplane;

(F) The mass of the fuel at take-off and the mass of trip fuel;

(G) The mass of consumables other than fuel;

(H) The components of the load including passengers, baggage, freight and ballast;


(J) The load distribution;

(K) The applicable aeroplane CG positions; and

(L) The limiting mass and CG values.

(ii) Subject to the approval of the Authority, an operator may omit some of this Data from the mass and balance documentation.

2. Last Minute Change

If any last minute change occurs after the completion of the mass and balance documentation, this must be brought to the attention of the commander and the last minute change must be entered on the mass and balance documentation. The maximum allowed change in the number of passengers or hold load acceptable as a last minute change must be specified in the Operations Manual. If this number is exceeded, new mass and balance documentation must be prepared.

(b) Computerised systems

Where mass and balance documentation is generated by a computerised mass and balance system, the operator must verify the integrity of the output data. He must establish a system to check that amendments of his input data are incorporated properly in the system and that the system is operating correctly on a continuous basis by verifying the output data at intervals not exceeding 6 months.

(c) Onboard mass and balance systems

An operator must obtain the approval of the Authority if he wishes to use an onboard mass and balance computer system as a primary source for despatch.

(d) Datalink

When mass and balance documentation is sent to aeroplanes via datalink, a copy of the final mass and balance documentation as accepted by the commander must be available on the ground.
Those instruments that are used by any one flight crew member shall be so arranged as to permit the flight crew member to see the indications readily from his station, with the minimum practicable deviation from the position and line of vision which he normally assumes when looking forward along the flight path. Whenever a single instrument is required in an aeroplane operated by more than 1 flight crew member it must be installed so that the instrument is visible from each applicable flight crew station.

OPS 1.635

Circuit protection devices

An operator shall not operate an aeroplane in which fuses are used unless there are spare fuses available for use in flight equal to at least 10% of the number of fuses of each rating or three of each rating whichever is the greater.

OPS 1.640

Aeroplane operating lights

An operator shall not operate an aeroplane unless it is equipped with:

(a) For flight by day:

1. Anti-collision light system;

2. Lighting supplied from the aeroplane's electrical system to provide adequate illumination for all instruments and equipment essential to the safe operation of the aeroplane;

3. Lighting supplied from the aeroplane's electrical system to provide illumination in all passenger compartments; and

4. An electric torch for each required crew member readily accessible to crew members when seated at their designated station.

(b) For flight by night, in addition to equipment specified in paragraph (a) above:

1. Navigation/position lights; and

2. Two landing lights or a single light having two separately energised filaments; and

3. Lights to conform with the International regulations for preventing collisions at sea if the aeroplane is a Seaplane or an Amphibian.

OPS 1.645

Windshield wipers

An operator shall not operate an aeroplane with a maximum certificated take-off mass of more than 5 700 kg unless it is equipped at each pilot station with a windshield wiper or equivalent means to maintain a clear portion of the windshield during precipitation.

OPS 1.650

Day VFR operations Flight and navigational instruments and associated equipment

An operator shall not operate an aeroplane by day in accordance with Visual Flight Rules (VFR) unless it is equipped with the flight and navigational instruments and associated equipment and, where applicable, under the conditions stated in the following sub-paragraphs:

(a) A magnetic compass;

(b) An accurate timepiece showing the time in hours, minutes, and seconds;

(c) A sensitive pressure altimeter calibrated in feet with a sub-scale setting, calibrated in hectopascals/millibars, adjustable for any barometric pressure likely to be set during flight;

(d) An airspeed indicator calibrated in knots;

(e) A vertical speed indicator;

(f) A turn and slip indicator, or a turn coordinator incorporating a slip indicator;

(g) An attitude indicator;

(h) A stabilised direction indicator; and

(i) A means of indicating in the flight crew compartment the outside air temperature calibrated in degrees Celsius.

(j) For flights which do not exceed 60 minutes duration, which take off and land at the same aerodrome, and which remain within 50 nm of that aerodrome, the instruments prescribed in sub-paragraphs (f), (g) and (h) above, and sub-paragraphs (k) 4, (k) 5 and (k) 6 below, may all be replaced by either a turn and slip indicator, or a turn coordinator incorporating a slip indicator, or both an attitude indicator and a slip indicator.

(k) Whenever two pilots are required the second pilot's station shall have separate instruments as follows:

1. A sensitive pressure altimeter calibrated in feet with a sub-scale setting calibrated in hectopascals/millibars, adjustable for any barometric pressure likely to be set during flight;

2. An airspeed indicator calibrated in knots;

3. A vertical speed indicator;

4. A turn and slip indicator, or a turn coordinator incorporating a slip indicator;

5. An attitude indicator; and

6. A stabilised direction indicator.

(l) Each airspeed indicating system must be equipped with a heated pitot tube or equivalent means for preventing malfunction due to either condensation or icing for:

1. aeroplanes with a maximum certificated take-off mass in excess of 5 700 kg or having a maximum approved passenger seating configuration of more than 9 seats;
I FR or night operations — Flight and navigational instruments and associated equipment

An operator shall not operate an aeroplane in accordance with Instrument Flight Rules (IFR) or by night in accordance with Visual Flight Rules (VFR) unless it is equipped with the flight and navigational instruments and associated equipment and, where applicable, under the conditions stated in the following sub-paragraphs:

(a) A magnetic compass;

(b) An accurate time-piece showing the time in hours, minutes and seconds;

(c) Two sensitive pressure altimeters calibrated in feet with sub-scale settings, calibrated in hectopascals/millibars, adjustable for any barometric pressure likely to be set during flight;

(d) An airspeed indicating system with heated pitot tube or equivalent means for preventing malfunctioning due to either condensation or icing including a warning indication of pitot heater failure. The pitot heater failure warning indication requirement does not apply to those aeroplanes with a maximum approved passenger seating configuration of 9 or less or a maximum certificated take-off mass of 5,700 kg or less and issued with an individual Certificate of Airworthiness prior to 1 April 1998;

(e) A vertical speed indicator;

(f) A turn and slip indicator;

(g) An attitude indicator;

(h) A stabilised direction indicator;

(i) A means of indicating in the flight crew compartment the outside air temperature calibrated in degrees celsius; and

(j) Two independent static pressure systems, except that for propeller driven aeroplanes with maximum certificated take-off mass of 5,700 kg or less, one static pressure system and one alternate source of static pressure is allowed.

(k) Whenever two pilots are required the second pilot’s station shall have separate instruments as follows:

1. A sensitive pressure altimeter calibrated in feet with a sub-scale setting, calibrated in hectopascals/millibars, adjustable for any barometric pressure likely to be set during flight and which may be one of the 2 altimeters required by sub-paragraph (c) above;

2. An airspeed indicating system with heated pitot tube or equivalent means for preventing malfunctioning due to either condensation or icing including a warning indication of pitot heater failure. The pitot heater failure warning indication requirement does not apply to those aeroplanes with a maximum approved passenger seating configuration of 9 or less or a maximum certificated take-off mass of 5,700 kg or less and issued with an individual Certificate of Airworthiness prior to 1 April 1998;

3. A vertical speed indicator;

4. A turn and slip indicator;

5. An attitude indicator; and

6. A stabilised direction indicator.

(l) Those aeroplanes with a maximum certificated take-off mass in excess of 5,700 kg or having a maximum approved passenger seating configuration of more than 9 seats must additionally be equipped with a single standby attitude indicator (artificial horizon), capable of being used from either pilot’s station, that:

1. Is powered continuously during normal operation and, after a total failure of the normal electrical generating system is powered from a source independent of the normal electrical generating system;

2. Provides reliable operation for a minimum of 30 minutes after total failure of the normal electrical generating system, taking into account other loads on the emergency power supply and operational procedures;

3. Operates independently of any other attitude indicating system;

4. Is operative automatically after total failure of the normal electrical generating system; and

5. Is appropriately illuminated during all phases of operation, except for aeroplanes with a maximum certificated take-off mass of 5,700 kg or less, already registered in a Member State on 1 April 1995, equipped with a standby attitude indicator in the pilot-in-command’s instrument panel.

(m) In complying with sub-paragraph (l) above, it must be clearly evident to the flight crew when the standby attitude indicator, required by that sub-paragraph, is being operated by emergency power. Where the standby attitude indicator has its own dedicated power supply there shall be an associated indication, either on the instrument or on the instrument panel, when this supply is in use. This requirement must be complied with no later than 1 April 2000.

(n) A chart holder in an easily readable position which can be illuminated for night operations.
(o) If the standby attitude instrument system is installed and usable through flight attitudes of 360° of pitch and roll, the turn and slip indicators may be replaced by slip indicators. Usable means that the system will operate through 360° in pitch and roll and will not tumble.

(p) Whenever duplicate instruments are required, the requirement embraces separate displays for each pilot and separate selectors or other associated equipment where appropriate;

(q) All aeroplanes must be equipped with means for indicating when power is not adequately supplied to the required flight instruments; and

(r) All aeroplanes with compressibility limitations not otherwise indicated by the required airspeed indicators shall be equipped with a Mach number indicator at each pilot's station.

OPS 1.655

Additional equipment for single pilot operation under IFR or at night

An operator shall not conduct single pilot IFR operations unless the aeroplane is equipped with an autopilot with at least altitude hold and heading mode.

OPS 1.660

Altitude alerting system

An operator shall not operate a turbine powered aeroplane with a maximum certificated take-off mass in excess of 5 700 kg or having a maximum approved passenger seating configuration of more than 9 seats or a turbojet powered aeroplane unless it is equipped with an altitude alerting system capable of:

1. Alerting the flight crew upon approaching preselected altitude in either ascent or descent; and

2. Alerting the flight crew by at least an aural signal, when deviating above or below a preselected altitude,

except for aeroplanes with a maximum certificated take-off mass of 5 700 kg or less having a maximum approved passenger seating configuration of more than 9 and first issued with an individual certificate of airworthiness before 1 April 1972 and already registered in a Member State on 1 April 1995.

OPS 1.665

Ground proximity warning system

(a) An operator shall not operate a turbine powered aeroplane:

1. Having a maximum certificated take-off mass in excess of 5 700 kg or having a maximum approved passenger seating configuration of more than 9 after 1 January 1999

unless it is equipped with a ground proximity warning system

(b) The ground proximity warning system required by this paragraph must automatically provide, by means of aural signals, which may be supplemented by visual signals, timely and distinctive warning to the flight crew of sink rate, ground proximity, altitude loss after take-off or go-around, incorrect landing configuration and downward glideslope deviation.

OPS 1.668

Airborne Collision Avoidance System

An operator shall not operate a turbine powered aeroplane:

1. Having a maximum certificated take-off mass in excess of 15 000 kg or a maximum approved passenger seating configuration of more than 30 after 1 January 2000; or

2. Having a maximum certificated take-off mass in excess of 5 700 kg, but not more than 15 000 kg, or a maximum approved passenger seating configuration of more than 19, but not more than 30, after 1 January 2005.

unless it is equipped with an airborne collision avoidance system with a minimum performance level of at least ACAS II.

OPS 1.670

Airborne weather radar equipment

(a) An operator shall not operate:

1. A pressurised aeroplane; or

2. An unpressurised aeroplane which has a maximum certificated take-off mass of more than 5 700 kg; or

3. An unpressurised aeroplane having a maximum approved passenger seating configuration of more than 9 seats after 1 April 1999,

unless it is equipped with airborne weather radar equipment whenever such an aeroplane is being operated at night or in instrument meteorological conditions in areas where thunderstorms or other potentially hazardous weather conditions, regarded as detectable with airborne weather radar, may be expected to exist along the route.

(b) For propeller driven pressurised aeroplanes having a maximum certificated take-off mass not exceeding 5 700 kg with a maximum approved passenger seating configuration not exceeding 9 seats the airborne weather radar equipment may be replaced by other equipment capable of detecting thunderstorms and other potentially hazardous weather conditions, regarded as detectable with airborne weather radar equipment, subject to approval by the Authority.
OPS 1.675

Equipment for operations in icing conditions

(a) An operator shall not operate an aeroplane in expected or actual icing conditions unless it is certificated and equipped to operate in icing conditions.

(b) An operator shall not operate an aeroplane in expected or actual icing conditions at night unless it is equipped with a means to illuminate or detect the formation of ice. Any illumination that is used must be of a type that will not cause glare or reflection that would handicap crew members in the performance of their duties.

OPS 1.680

Cosmic radiation detection equipment

An operator shall ensure that aeroplanes intended to be operated above 15 000 m (49 000 ft) are equipped with an instrument to measure and indicate continuously the dose rate of total cosmic radiation being received (i.e. the total of ionizing and neutron radiation of galactic and solar origin) and the cumulative dose on each flight.

OPS 1.685

Flight crew interphone system

An operator shall not operate an aeroplane on which a flight crew of more than one is required unless it is equipped with a flight crew interphone system, including headsets and microphones, not of a handheld type, for use by all members of the flight crew, except that for aeroplanes registered in a Member State on 1 April 1995 and first issued with an individual certificate of airworthiness before 1 April 1975 a flight crew interphone system is required by 1 April 2002.

OPS 1.690

Crew member interphone system

(a) An operator shall not operate an aeroplane with a maximum certificated take-off mass exceeding 15 000 kg or having a maximum approved passenger seating configuration of more than 19 unless it is equipped with a crew member interphone system except for aeroplanes first issued with an individual certificate of airworthiness before 1 April 1965 and already registered in a Member State on 1 April 1995.

(b) The crew member interphone system required by this paragraph must:

1. Operate independently of the interphone systems except for handsets, headsets, microphones, selector switches and signalling devices;

2. Provide a means of two-way communication between the flight crew compartment and:

   (i) Each passenger compartment;

   (ii) Each galley located other than on a passenger deck level; and

3. Be readily accessible for use from each of the required flight crew stations in the flight crew compartment;

4. Be readily accessible for use at required cabin crew member stations close to each separate or pair of floor level emergency exits;

5. Have an alerting system incorporating aural or visual signals for use by flight crew members to alert the cabin crew and for use by cabin crew members to alert the flight crew;

6. Have a means for the recipient of a call to determine whether it is a normal call or an emergency call; and

7. Provide on the ground a means of two-way communication between ground personnel and at least two flight crew members.

OPS 1.695

Public address system

(a) An operator shall not operate an aeroplane with a maximum approved passenger seating configuration of more than 19 unless a public address system is installed.

(b) The public address system required by this paragraph must:

1. Operate independently of the interphone systems except for handsets, headsets, microphones, selector switches and signalling devices;

2. Be readily accessible for immediate use from each required flight crew member station;

3. For each required floor level passenger emergency exit which has an adjacent cabin crew seat, have a microphone which is readily accessible to the seated cabin crew member, except that one microphone may serve more than one exit, provided the proximity of the exits allows unassisted verbal communication between seated cabin crew members;

4. Be capable of operation within 10 seconds by a cabin crew member at each of those stations in the compartment from which its use is accessible; and

5. Be audible and intelligible at all passenger seats, toilets and cabin crew seats and work stations.

OPS 1.700

Cockpit voice recorders — 1

(a) An operator shall not operate an aeroplane first issued with an individual Certificate of Airworthiness, on or after 1 April 1998, which:

1. Is multi-engine turbine powered and has a maximum approved passenger seating configuration of more than 9; or
2. Has a maximum certificated take-off mass over 5 700 kg, unless it is equipped with a cockpit voice recorder which, with reference to a time scale, records:

(i) Voice communications transmitted from or received on the flight deck by radio;

(ii) The aural environment of the flight deck, including without interruption, the audio signals received from each boom and mask microphone in use;

(iii) Voice communications of flight crew members on the flight deck using the aeroplane's interphone system;

(iv) Voice or audio signals identifying navigation or approach aids introduced into a headset or speaker; and

(v) Voice communications of flight crew members on the flight deck using the public address system, if installed.

(b) The cockpit voice recorder shall be capable of retaining information recorded during at least the last 2 hours of its operation except that, for those aeroplanes with a maximum certificated take-off mass of 5 700 kg or less, this period may be reduced to 30 minutes.

(c) The cockpit voice recorder must start automatically to record prior to the aeroplane moving under its own power and continue to record until the termination of the flight when the aeroplane is no longer capable of moving under its own power. In addition, depending on the availability of electrical power, the cockpit voice recorder must start to record as early as possible during the cockpit checks prior to engine start at the beginning of the flight until the cockpit checks immediately following engine shutdown at the end of the flight.

(d) The cockpit voice recorder must have a device to assist in locating that recorder in water.

(e) In complying with this section, aeroplanes with a maximum certificated take-off mass of 5 700 kg or less may have the cockpit voice recorder combined with the flight data recorder.

(f) Any aeroplane may be despatched with the cockpit voice recorder required by this section inoperative provided that:

1. It is not reasonably practicable to repair or replace the cockpit voice recorder before the commencement of the flight;

2. The aeroplane does not exceed 8 further consecutive flights with the cockpit voice recorder unserviceable;

3. Not more than 72 hours have elapsed since the cockpit voice recorder was found to be unserviceable; and

4. Any flight data recorder required to be carried is operative, unless it is combined with a cockpit voice recorder.

OPS 1.705

Cockpit voice recorders — 2

(a) After 1 April 2000 an operator shall not operate any multi-engined turbine aeroplane first issued with an individual certificate of airworthiness, on or after 1 January 1990 up to and including 31 March 1998 which has a maximum certificated take-off mass of 5 700 kg or less and a maximum approved passenger seating configuration of more than 9, unless it is equipped with a cockpit voice recorder which records:

1. Voice communications transmitted from or received on the flight deck by radio;

2. The aural environment of the flight deck, including where practicable, without interruption, the audio signals received from each boom and mask microphone in use;

3. Voice communications of flight crew members on the flight deck using the aeroplane's interphone system;

4. Voice or audio signals identifying navigation or approach aids introduced into a headset or speaker; and

5. Voice communications of flight crew members on the flight deck using the public address system, if installed.

(b) The cockpit voice recorder shall be capable of retaining information recorded during at least the last 30 minutes of its operation.

(c) The cockpit voice recorder must start to record prior to the aeroplane moving under its own power and continue to record until the termination of the flight when the aeroplane is no longer capable of moving under its own power. In addition, depending on the availability of electrical power, the cockpit voice recorder must start to record as early as possible during the cockpit checks prior to engine start at the beginning of the flight until the cockpit checks immediately following engine shutdown at the end of the flight.

(d) The cockpit voice recorder must have a device to assist in locating that recorder in water.

(e) An aeroplane may be despatched with the cockpit voice recorder required by this section inoperative provided that:

1. It is not reasonably practicable to repair or replace the cockpit voice recorder before the commencement of the flight;
2. The aeroplane does not exceed 8 further consecutive flights with the cockpit voice recorder unserviceable;

3. Not more than 72 hours have elapsed since the cockpit voice recorder was found to be unserviceable; and

4. Any flight data recorder required to be carried is operative unless it is combined with a cockpit voice recorder.

OPS 1.710

Cockpit voice recorders — 3

(a) An operator shall not operate any aeroplane with a maximum certificated take-off mass over 5 700 kg, first issued with an individual certificate of airworthiness, before 1 April 1998 unless it is equipped with a cockpit voice recorder which records:

1. Voice communications transmitted from or received on the flight deck by radio;

2. The aural environment of the flight deck;

3. Voice communications of flight crew members on the flight deck using the aeroplane's interphone system;

4. Voice or audio signals identifying navigation or approach aids introduced into a headset or speaker; and

5. Voice communications of flight crew members on the flight deck using the public address system, if installed.

(b) The cockpit voice recorder shall be capable of retaining information recorded during at least the last 30 minutes of its operation.

(c) The cockpit voice recorder must start to record prior to the aeroplane moving under its own power and continue to record until the termination of the flight when the aeroplane is no longer capable of moving under its own power.

(d) The cockpit voice recorder must have a device to assist in locating that recorder in water.

(e) An aeroplane may be despatched with the cockpit voice recorder required by this section inoperative provided that:

1. It is not reasonably practicable to repair or replace the cockpit voice recorder before the commencement of the flight;

2. The aeroplane does not exceed 8 further consecutive flights with the cockpit voice recorder unserviceable;

3. Not more than 72 hours have elapsed since the cockpit voice recorder was found to be unserviceable; and

4. Any flight data recorder required to be carried is operative.

OPS 1.715

Flight data recorders — 1

(a) An operator shall not operate any aeroplane first issued with an individual Certificate of Airworthiness on or after 1 April 1998 which:

1. Is multi-engine turbine powered and has a maximum approved passenger seating configuration of more than nine (9); or

2. Has a maximum certificated take-off mass over 5 700 kg, unless it is equipped with a flight data recorder that uses a digital method of recording and storing data and a method of readily retrieving that data from the storage medium is available.

(b) The flight data recorder shall be capable of retaining the data recorded during at least the last 25 hours of its operation except that, for those aeroplanes with a maximum certificated take-off mass of 5 700 kg or less, this period may be reduced to 10 hours.

(c) The flight data recorder must, with reference to a timescale, record:

1. The parameters necessary to determine altitude, airspeed, heading, acceleration, pitch and roll attitude, radio transmission keying, thrust or power on each engine, configuration of lift and drag devices, air temperature, use of automatic flight control systems and angle of attack;

2. For those aeroplanes with a maximum certificated take-off mass over 27 000 kg, the additional parameters necessary to determine positions of primary flight controls and pitch trim, radio altitude and primary navigation information displayed to the flight crew, cockpit warnings and landing gear position; and

3. For aeroplanes specified in (a) above, the flight data recorder must record any dedicated parameters relating to novel or unique design or operational characteristics of the aeroplane.

(d) Data must be obtained from aircraft sources which enable accurate correlation with information displayed to the flight crew.

(e) The flight data recorder must start automatically to record the data prior to the aeroplane being capable of moving under its own power and must stop automatically after the aeroplane is incapable of moving under its own power.

(f) The flight data recorder must have a device to assist in locating that recorder in water.

(g) Aeroplanes with a maximum certificated take-off mass of 5 700 kg or less may have the flight data recorder combined with the cockpit voice recorder.
An aeroplane may be despatched with the flight data recorder required by this section inoperative provided that:

1. It is not reasonably practicable to repair or replace the flight data recorder before the commencement of the flight;
2. The aeroplane does not exceed 8 further consecutive flights with the flight data recorder unserviceable;
3. Not more than 72 hours have elapsed since the flight data recorder was found to be unserviceable; and
4. Any cockpit voice recorder required to be carried is operative, unless it is combined with the flight data recorder.

OPS 1.720
Flight data recorders — 2

(a) An operator shall not operate any aeroplane first issued with an individual certificate of airworthiness, on or after 1 January 1989 up to and including 31 March 1998 which has a maximum certificated take-off mass over 5 700 kg unless it is equipped with a flight data recorder that uses a digital method of recording and storing data and a method of readily retrieving that data from the storage medium is available.

(b) The flight data recorder shall be capable of retaining the data recorded during at least the last 25 hours of its operation.

(c) The flight data recorder must, with reference to a timescale, record:

1. The parameters necessary to determine altitude, airspeed, heading, acceleration, pitch and roll attitude, radio transmission keying unless an alternative means is provided to enable the recordings of the flight data recorder and the cockpit voice recorder to be synchronised, thrust or power on each engine, configuration of lift and drag devices, air temperature, use of automatic flight control systems and angle of attack; and
2. For those aeroplanes with a maximum certificated take-off mass over 27 000 kg, the additional parameters necessary to determine positions of primary flight controls and pitch trim, radio altitude and primary navigation information displayed to the flight crew, cockpit warnings and landing gear position.

(d) Data must be obtained from aeroplane sources which enable accurate correlation with information displayed to the flight crew.

(e) The flight data recorder must start to record the data prior to the aeroplane being capable of moving under its own power and must stop after the aeroplane is incapable of moving under its own power.

(f) The flight data recorder must have a device to assist in locating that recorder in water.

OPS 1.725
Flight data recorders — 3

(a) An operator shall not operate any turbine-engined aeroplane to which OPS 1.715 or OPS 1.720 is not applicable and which has a maximum certificated take-off mass over 5 700 kg unless it is equipped with a flight data recorder that uses a digital method of recording and storing data and a method of readily retrieving that data from the storage medium is available, except that for aeroplanes registered in a Member State on 1 April 1995 and first issued with an individual certificate of airworthiness before 1 April 1975, the continued use of non-digital recorders is acceptable until 1 April 2000.

(b) The flight data recorder shall be capable of retaining the data recorded during at least the last 25 hours of its operation.

(c) The flight data recorder must, with reference to a timescale, record:

1. For aeroplanes first issued with an individual Certificate of Airworthiness, before 1 January 1987:
   (i) The parameters necessary to determine altitude, airspeed, heading and normal acceleration; and
   (ii) For those aeroplanes with a maximum certificated take-off mass over 27 000 kg that are of a type first type after 30 September 1969, the additional parameters necessary to determine:

   (A) Radio transmission keying unless an alternative means is provided to enable the recordings of the flight data recorder and the cockpit voice recorder to be synchronised;
   (B) The attitude of the aeroplane in achieving its flight path;
   (C) The basic forces acting upon the aeroplane resulting in the achieved flight path and the origin of such forces.
2. For aeroplanes first issued with an individual certificate of airworthiness on or after 1 January 1987 but before 1 January 1989:

(i) The parameters necessary to determine altitude, airspeed, heading and normal acceleration; and

(ii) For those aeroplanes with a maximum certificated take-off mass over 27 000 kg that are of a type first type certificated after 30 September 1969, the additional parameters necessary to determine:

(A) Radio transmission keying unless an alternative means is provided to enable the recordings of the flight data recorder and the cockpit voice recorder to be synchronised; and

(B) Pitch and roll attitude, thrust or power on each engine, configuration of lift and drag devices, air temperature, use of automatic flight control systems, position of primary flight controls and pitch trim, radio altitude and primary navigation information displayed to the flight crew, cockpit warnings and landing gear position.

(d) Data must be obtained from aircraft sources which enable accurate correlation with information displayed to the flight crew.

(e) The flight data recorder must start to record the data prior to the aeroplane being capable of moving under its own power and must stop after the aeroplane is incapable of moving under its own power.

(f) The flight data recorder must have a device to assist in locating that recorder in water.

(g) Any aeroplane may be despatched with the flight data recorder required by this section inoperative provided that:

1. It is not reasonably practicable to repair or replace the flight data recorder before the commencement of the flight;

2. The aeroplane does not exceed 8 further consecutive flights with the flight data recorder unserviceable;

3. Not more than 72 hours have elapsed since the flight data recorder was found to be unserviceable; and

4. Any cockpit voice recorder required to be carried is operative, unless it is combined with the flight data recorder.

OPS 1.730

Seats, seat safety belts, harnesses and child restraint devices

(a) An operator shall not operate an aeroplane unless it is equipped with:

1. A seat or berth for each person who is aged two years or more;

2. A safety belt, with or without a diagonal shoulder strap, or a safety harness for use in each passenger seat for each passenger aged 2 years or more;

3. A supplementary loop belt or other restraint device for each infant;

4. Except as provided in sub-paragraph (b) below, a safety belt with shoulder harness for each flight crew seat and for any seat alongside a pilot's seat incorporating a device which will automatically restrain the occupant's torso in the event of rapid deceleration;

5. Except as provided in sub-paragraph (b) below, a safety belt with shoulder harness for each cabin crew seat and observer's seats. However, this requirement does not preclude use of passenger seats by cabin crew members carried in excess of the required cabin crew complement; and

6. Seats for cabin crew members located near required floor level emergency exits except that, if the emergency evacuation of passengers would be enhanced by seating cabin crew members elsewhere, other locations are acceptable. Such seats shall be forward or rearward facing within 15° of the longitudinal axis of the aeroplane.

(b) All safety belts with shoulder harness must have a single point release.

(c) A safety belt with a diagonal shoulder strap for aeroplanes with a maximum certificated take-off mass not exceeding 5 700 kg or a safety belt for aeroplanes with a maximum certificated take-off mass not exceeding 2 730 kg may be permitted in place of a safety belt with shoulder harness if it is not reasonably practicable to fit the latter.

OPS 1.731

Fasten Seat belt and No Smoking signs

An operator shall not operate an aeroplane in which all passenger seats are not visible from the flight deck, unless it is equipped with a means of indicating to all passengers and cabin crew when seat belts shall be fastened and when smoking is not allowed.

OPS 1.735

Internal doors and curtains

An operator shall not operate an aeroplane unless the following equipment is installed:

(a) In an aeroplane with a maximum approved passenger seating configuration of more than 19 passengers, a door between the passenger compartment and the flight deck compartment with a placard “crew only” and a locking means to prevent passengers from opening it without the permission of a member of the flight crew;

(b) A means for opening each door that separates a passenger compartment from another compartment that has emergency exit provisions. The means for opening must be readily accessible;
(c) If it is necessary to pass through a doorway or curtain separating the passenger cabin from other areas to reach any required emergency exit from any passenger seat, the door or curtain must have a means to secure it in the open position;

(d) A placard on each internal door or adjacent to a curtain that is the means of access to a passenger emergency exit, to indicate that it must be secured open during take off and landing; and

(e) A means for any member of the crew to unlock any door that is normally accessible to passengers and that can be locked by passengers.

OPS 1.745
First-Aid Kits

(a) An operator shall not operate an aeroplane unless it is equipped with first-aid kits, readily accessible for use, to the following scale:

<table>
<thead>
<tr>
<th>Number of passenger seats installed</th>
<th>Number of First-Aid Kits required</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 99</td>
<td>1</td>
</tr>
<tr>
<td>100 to 199</td>
<td>2</td>
</tr>
<tr>
<td>200 to 299</td>
<td>3</td>
</tr>
<tr>
<td>300 and more</td>
<td>4</td>
</tr>
</tbody>
</table>

(b) An operator shall ensure that first-aid kits are:

1. Inspected periodically to confirm, to the extent possible, that contents are maintained in the condition necessary for their intended use; and

2. Replenished at regular intervals, in accordance with instructions contained on their labels, or as circumstances warrant.

OPS 1.755
Emergency Medical Kit

(a) An operator shall not operate an aeroplane with a maximum approved passenger seating configuration of more than 30 seats unless it is equipped with an emergency medical kit if any point on the planned route is more than 60 minutes flying time (at normal cruising speed) from an aerodrome at which qualified medical assistance could be expected to be available.

(b) The commander shall ensure that drugs are not administered except by qualified doctors, nurses or similarly qualified personnel.

(c) Conditions for carriage

1. The emergency medical kit must be dust and moisture proof and shall be carried under security conditions, where practicable, on the flight deck; and

2. An operator shall ensure that emergency medical kits are:

   (i) Inspected periodically to confirm, to the extent possible, that the contents are maintained in the condition necessary for their intended use; and

   (ii) Replenished at regular intervals, in accordance with instructions contained on their labels, or as circumstances warrant.

OPS 1.760
First-aid oxygen

(a) An operator shall not operate a pressurised aeroplane, at altitudes above 25 000 ft, when a cabin crew member is required to be carried, unless it is equipped with a supply of undiluted oxygen for passengers who, for physiological reasons, might require oxygen following a cabin depressurisation. The amount of oxygen shall be calculated using an average flow rate of at least 3 litres Standard Temperature Pressure Dry (STPD)/minute/person and provided for the entire flight after cabin depressurisation at cabin altitudes of more than 8 000 ft for at least 2 % of the passengers carried, but in no case for less than one person. There shall be a sufficient number of dispensing units, but in no case less than two, with a means for cabin crew to use the supply.

(b) The amount of first-aid oxygen required for a particular operation shall be determined on the basis of cabin pressure altitudes and flight duration, consistent with the operating procedures established for each operation and route.

(c) The oxygen equipment provided shall be capable of generating a mass flow to each user of at least four litres per minute, STPD. Means may be provided to decrease the flow to not less than two litres per minute, STPD, at any altitude.

OPS 1.770
Supplemental oxygen pressurised aeroplanes

(See Appendix 1 to OPS 1.770)

(a) General

1. An operator shall not operate a pressurised aeroplane at pressure altitudes above 10 000 ft unless supplemental oxygen equipment, capable of storing and dispensing the oxygen supplies required by this paragraph, is provided.

2. The amount of supplemental oxygen required shall be determined on the basis of cabin pressure altitude, flight duration and the assumption that a cabin pressurisation failure will occur at the altitude or point of flight that is most critical from the standpoint of oxygen need, and that, after the failure, the aeroplane will descend in accordance with emergency procedures specified in the Aeroplane Flight Manual to a safe altitude for the route to be flown that will allow continued safe flight and landing.
3. Following a cabin pressurisation failure, the cabin pressure altitude shall be considered the same as the aeroplane pressure altitude, unless it is demonstrated to the Authority that no probable failure of the cabin or pressurisation system will result in a cabin pressure altitude equal to the aeroplane altitude. Under these circumstances, the demonstrated maximum cabin pressure altitude may be used as a basis for determination of oxygen supply.

(b) Oxygen equipment and supply requirements

1. Flight crew members
   (i) Each member of the flight crew on flight deck duty shall be supplied with supplemental oxygen in accordance with Appendix 1. If all occupants of flight deck seats are supplied from the flight crew source of oxygen supply then they shall be considered as flight crew members on flight deck duty for the purpose of oxygen supply. Flight deck seat occupants, not supplied by the flight crew source, are to be considered as passengers for the purpose of oxygen supply.

   (ii) Flight crew members, not covered by sub-paragraph (b) 1 (i) above, are to be considered as passengers for the purpose of oxygen supply.

   (iii) Oxygen masks shall be located so as to be within the immediate reach of flight crew members whilst at their assigned duty station.

   (iv) Oxygen masks for use by flight crew members in pressurised aeroplanes operating above 25 000 ft shall be a quick donning type of mask.

2. Cabin crew members, additional crew members and passengers
   (i) Cabin crew members and passengers shall be supplied with supplemental oxygen in accordance with Appendix 1, except when subparagraph (v) below applies. Cabin crew members carried in addition to the minimum number of cabin crew members required, and additional crew members, shall be considered as passengers for the purpose of oxygen supply.

   (ii) Aeroplanes intended to be operated at pressure altitudes above 25 000 ft shall be provided with sufficient spare outlets and masks and/or sufficient portable oxygen units with masks for use by all required cabin crew members. The spare outlets and/or portable oxygen units are to be distributed evenly throughout the cabin to ensure immediate availability of oxygen to each required cabin crew member regardless of his location at the time of cabin pressurisation failure.

   (iii) Aeroplanes intended to be operated at pressure altitudes above 25 000 ft shall be provided with an oxygen dispensing unit connected to oxygen supply terminals immediately available to each occupant, wherever seated. The total number of dispensing units and outlets shall exceed the number of seats by at least 10%. The extra units are to be evenly distributed throughout the cabin.

   (iv) Aeroplanes intended to be operated at pressure altitudes above 25 000 ft or which, if operated at or below 25 000 ft, cannot descend safely within 4 minutes to 13 000 ft, and for which the individual certificate of airworthiness was first issued on or after 9 November 1998, shall be provided with automatically deployable oxygen equipment immediately available to each occupant, wherever seated. The total number of dispensing units and outlets shall exceed the number of seats by at least 10%. The extra units are to be evenly distributed throughout the cabin.

   (v) The oxygen supply requirements, as specified in Appendix 1, for aeroplanes not certificated to fly at altitudes above 25 000 ft, may be reduced to the entire flight time between 10 000 ft and 13 000 ft cabin pressure altitudes for all required cabin crew members and for at least 10% of the passengers if, at all points along the route to be flown, the aeroplane is able to descend safely within 4 minutes to a cabin pressure altitude of 13 000 ft.

OPS 1.775
Supplemental oxygen — Non-pressurised aeroplanes

(See Appendix 1 to OPS 1.775)

(a) General

1. An operator shall not operate a non-pressurised aeroplane at altitudes above 10 000 ft unless supplemental oxygen equipment, capable of storing and dispensing the oxygen supplies required, is provided.

2. The amount of supplemental oxygen for sustenance required for a particular operation shall be determined on the basis of flight altitudes and flight duration, consistent with the operating procedures established for each operation in the Operations Manual and with the routes to be flown, and with the emergency procedures specified in the Operations Manual.

3. An aeroplane intended to be operated at pressure altitudes above 10 000 ft shall be provided with equipment capable of storing and dispensing the oxygen supplies required.

(b) Oxygen supply requirements

1. Flight crew members

   Each member of the flight crew on flight deck duty shall be supplied with supplemental oxygen in accordance with Appendix 1. If all occupants of flight deck seats are supplied from the flight crew source of oxygen supply then they shall be considered as flight crew members on flight deck duty for the purpose of oxygen supply.
2. Cabin crew members, additional crew members and passengers

Cabin crew members and passengers shall be supplied with oxygen in accordance with Appendix 1. Cabin crew members carried in addition to the minimum number of cabin crew members required, and additional crew members, shall be considered as passengers for the purpose of oxygen supply.

OPS 1.780

Crew Protective Breathing Equipment

(a) An operator shall not operate a pressurised aeroplane or, after 1 April 2000, an unpressurised aeroplane with a maximum certificated take-off mass exceeding 5700 kg or having a maximum approved seating configuration of more than 19 seats unless:

1. It has equipment to protect the eyes, nose and mouth of each flight crew member while on flight deck duty and to provide oxygen for a period of not less than 15 minutes. The supply for Protective Breathing Equipment (PBE) may be provided by the supplemental oxygen required by OPS 1.770 (b) 1 or OPS 1.775 (b) 1. In addition, when the flight crew is more than one and a cabin crew member is not carried, portable PBE must be carried to protect the eyes, nose and mouth of one member of the flight crew and to provide breathing gas for a period of not less than 15 minutes; and

2. It has sufficient portable PBE to protect the eyes, nose and mouth of all required cabin crew members and to provide breathing gas for a period of not less than 15 minutes.

(b) PBE intended for flight crew use must be conveniently located on the flight deck and be easily accessible for immediate use by each required flight crew member at their assigned duty station.

(c) PBE intended for cabin crew use must be installed adjacent to each required cabin crew member duty station.

(d) An additional, easily accessible portable PBE must be provided and located at or adjacent to the hand fire extinguishers required by OPS 1.790 (c) and (d) except that, where the fire extinguisher is located inside a cargo compartment, the PBE must be stowed outside but adjacent to the entrance to that compartment.

(e) PBE while in use must not prevent communication where required by OPS 1.685, OPS 1.690, OPS 1.810 and OPS 1.850.

OPS 1.790

Hand fire extinguishers

An operator shall not operate an aeroplane unless hand fire extinguishers are provided for use in crew, passenger and, as applicable, cargo compartments and galleys in accordance with the following:

(a) The type and quantity of extinguishing agent must be suitable for the kinds of fires likely to occur in the compartment where the extinguisher is intended to be used and, for personnel compartments, must minimise the hazard of toxic gas concentration;

(b) At least one hand fire extinguisher, containing Halon 1211 (bromochlorodifluoro-methane, CBrClF\(_2\), or equivalent as the extinguishing agent, must be conveniently located on the flight deck for use by the flight crew;

(c) At least one hand fire extinguisher must be located in, or readily accessible for use in, each galley not located on the main passenger deck;

(d) At least one readily accessible hand fire extinguisher must be available for use in each Class A or Class B cargo or baggage compartment and in each Class E cargo compartment that is accessible to crew members in flight; and

(e) At least the following number of hand fire extinguishers must be conveniently located in the passenger compartment(s):

<table>
<thead>
<tr>
<th>Maximum approved passenger seating configuration</th>
<th>Number of Extinguishers</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 to 30</td>
<td>1</td>
</tr>
<tr>
<td>31 to 60</td>
<td>2</td>
</tr>
<tr>
<td>61 to 200</td>
<td>3</td>
</tr>
<tr>
<td>201 to 300</td>
<td>4</td>
</tr>
<tr>
<td>301 to 400</td>
<td>5</td>
</tr>
<tr>
<td>401 to 500</td>
<td>6</td>
</tr>
<tr>
<td>501 to 600</td>
<td>7</td>
</tr>
<tr>
<td>601 or more</td>
<td>8</td>
</tr>
</tbody>
</table>

When two or more extinguishers are required, they must be evenly distributed in the passenger compartment.

(f) At least one of the required fire extinguishers located in the passenger compartment of an aeroplane with a maximum approved passenger seating configuration of at least 31, and not more than 60, and at least two of the fire extinguishers located in the passenger compartment of an aeroplane with a maximum approved passenger seating configuration of 61 or more must contain Halon 1211 (bromochlorodifluoromethane, CBrClF\(_2\)), or equivalent as the extinguishing agent.

OPS 1.795

Crash axes and crowbars

(a) An operator shall not operate an aeroplane with a maximum certificated take-off mass exceeding 5700 kg or having a maximum approved passenger seating configuration of more than 9 seats unless it is equipped with at least one crash axe or crowbar located on the flight deck. If the maximum approved passenger seating configuration is more than 200 an additional crash axe or crowbar must be carried and located in or near the most rearward galley area.
(b) Crash axes and crowbars located in the passenger compartment must not be visible to passengers.

OPS 1.800

Marking of break-in points

An operator shall ensure that, if designated areas of the fuselage suitable for break-in by rescue crews in emergency are available on an aeroplane, such areas shall be marked as shown below. The colour of the markings shall be red or yellow, and if necessary they shall be outlined in white to contrast with the background. If the corner markings are more than 2 metres apart, intermediate lines 9 cm × 3 cm shall be inserted so that there is no more than 2 metres between adjacent marks.

OPS 1.805

Means for emergency evacuation

(a) An operator shall not operate an aeroplane with passenger emergency exit sill heights:

1. Which are more than 1.83 metres (6 feet) above the ground with the aeroplane on the ground and the landing gear extended; or

2. Which would be more than 1.83 metres (6 feet) above the ground after the collapse of, or failure to extend of, one or more legs of the landing gear and for which a Type Certificate was first applied for on or after 1 April 2000, unless it has equipment or devices available at each exit, where sub-paragraphs 1 or 2 apply, to enable passengers and crew to reach the ground safely in an emergency.

(b) Such equipment or devices need not be provided at overwing exits if the designated place on the aeroplane structure at which the escape route terminates is less than 1.83 metres (6 feet) from the ground with the aeroplane on the ground, the landing gear extended, and the flaps in the take off or landing position, whichever flap position is higher from the ground.

(c) In aeroplanes required to have a separate emergency exit for the flight crew and:

1. For which the lowest point of the emergency exit is more than 1.83 metres (6 feet) above the ground with the landing gear extended; or,

2. For which a Type Certificate was first applied for on or after 1 April 2000, would be more than 1.83 metres (6 ft) above the ground after the collapse of, or failure to extend of, one or more legs of the landing gear,

there must be a device to assist all members of the flight crew in descending to reach the ground safely in an emergency.

OPS 1.810

Megaphones

An operator shall not operate an aeroplane with a maximum approved passenger seating configuration of more than 60 and carrying one or more passengers unless it is equipped with portable battery-powered megaphones readily accessible for use by crew members during an emergency evacuation, to the following scales:

1. For each passenger deck:

<table>
<thead>
<tr>
<th>Passenger seating configuration</th>
<th>Number of Megaphones Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>61 to 99</td>
<td>1</td>
</tr>
<tr>
<td>100 or more</td>
<td>2</td>
</tr>
</tbody>
</table>

2. For aeroplanes with more than one passenger deck, in all cases when the total passenger seating configuration is more than 60, at least 1 megaphone is required.

OPS 1.815

Emergency lighting

(a) An operator shall not operate a passenger carrying aeroplane which has a maximum approved passenger seating configuration of more than 9 unless it is provided with an emergency lighting system having an independent power supply to facilitate the evacuation of the aeroplane. The emergency lighting system must include:

1. For aeroplanes which have a maximum approved passenger seating configuration of more than 19:

   (i) Sources of general cabin illumination;

   (ii) Internal lighting in floor level emergency exit areas; and

   (iii) Illuminated emergency exit marking and locating signs.

   (iv) For aeroplanes for which the application for the type certificate or equivalent was filed before 1 May 1972, and when flying by night, exterior emergency lighting at all overwing exits, and at exits where descent assist means are required.
(v) For aeroplanes for which the application for the type certificate or equivalent was filed on or after 1 May 1972, and when flying by night, exterior emergency lighting at all passenger emergency exits.

(vi) For aeroplanes for which the type certificate was first issued on or after 1 January 1958, floor proximity emergency escape path marking system in the passenger compartment(s).

2. For aeroplanes which have a maximum approved passenger seating configuration of 19 or less and are certificated according to JAR-25 or the applicable requirements for normal, utility, aerobatic and commuter category aeroplanes:

(i) Sources of general cabin illumination;

(ii) Internal lighting in emergency exit areas; and

(iii) Illuminated emergency exit marking and locating signs.

3. For aeroplanes which have a maximum approved passenger seating configuration of 19 or less and are not certificated according to JAR-25 or the applicable requirements for normal, utility, aerobatic and commuter category aeroplanes, sources of general cabin illumination.

(b) After 1 April 1998 an operator shall not, by night, operate a passenger carrying aeroplane which has a maximum approved passenger seating configuration of 9 or less unless it is provided with a source of general cabin illumination to facilitate the evacuation of the aeroplane. The system may use dome lights or other sources of illumination already fitted on the aeroplane and which are capable of remaining operative after the aeroplane’s battery has been switched off.

OPS 1.820

Automatic Emergency Locator Transmitter

(a) An operator shall not operate an aeroplane unless it is equipped with an Automatic Emergency Locator Transmitter (ELT) attached to the aeroplane in such a manner that, in the event of a crash, the probability of the ELT transmitting a detectable signal is maximised and the possibility of the ELT transmitting at any other time is minimised.

(b) An operator must ensure that the ELT is capable of transmitting on the distress frequencies prescribed in ICAO Annex 10.

OPS 1.825

Life Jackets

(a) Land aeroplanes

An operator shall not operate a land aeroplane:

1. When flying over water and at a distance of more than 50 nautical miles from the shore; or

2. When taking off or landing at an aerodrome where the take-off or approach path is so disposed over water that in the event of a mishap there would be a likelihood of a ditching, unless it is equipped with life jackets equipped with a survivor locator light, for each person on board. Each life jacket must be stowed in a position easily accessible from the seat or berth of the person for whose use it is provided. Life jackets for infants may be substituted by other approved flotation devices equipped with a survivor locator light.

(b) Seaplanes and amphibians

An operator shall not operate a seaplane or an amphibian on water unless it is equipped with life jackets equipped with a survivor locator light, for each person on board. Each life jacket must be stowed in a position easily accessible from the seat or berth of the person for whose use it is provided. Life jackets for infants may be substituted by other approved flotation devices equipped with a survivor locator light.

OPS 1.830

Life-rafts and survival ELTs for extended overwater flights

(a) On overwater flights, an operator shall not operate an aeroplane at a distance away from land, which is suitable for making an emergency landing, greater than that corresponding to:

1. 120 minutes at cruising speed or 400 nautical miles, whichever is the lesser, for aeroplanes capable of continuing the flight to an aerodrome with the critical power unit(s) becoming inoperative at any point along the route or planned diversions; or

2. 30 minutes at cruising speed or 100 nautical miles, whichever is the lesser, for all other aeroplanes, unless the equipment specified in sub-paragraphs (b) and (c) below is carried.

(b) Sufficient life-rafts to carry all persons on board. Unless excess rafts of enough capacity are provided, the buoyancy and seating capacity beyond the rated capacity of the rafts must accommodate all occupants of the aeroplane in the event of a loss of one raft of the largest rated capacity. The life-rafts shall be equipped with:

1. A survivor locator light; and

2. Life saving equipment including means of sustaining life as appropriate to the flight to be undertaken; and

(c) At least two survival Emergency Locator Transmitters (ELT (S)) capable of transmitting on the distress frequencies prescribed in ICAO Annex 10, Volume V, Chapter 2.
OPS 1.835

Survival equipment

An operator shall not operate an aeroplane across areas in which search and rescue would be especially difficult unless it is equipped with the following:

(a) Signalling equipment to make the pyrotechnical distress signals described in ICAO Annex 2;

(b) At least one ELT (S) is capable of transmitting on the distress frequencies prescribed in ICAO Annex 10, Volume V, Chapter 2; and

(c) Additional survival equipment for the route to be flown taking account of the number of persons on board

except that the equipment specified in sub-paragraph (c) need not be carried when the aeroplane either:

1. Remains within a distance from an area where search and rescue is not especially difficult corresponding to:

   (i) 120 minutes at the one engine inoperative cruising speed for aeroplanes capable of continuing the flight to an aerodrome with the critical power unit(s) becoming inoperative at any point along the route or planned diversions; or

   (ii) 30 minutes at cruising speed for all other aeroplanes,

   or,

2. For aeroplanes certificated to JAR-25 or equivalent, no greater distance than that corresponding to 90 minutes at cruising speed from an area suitable for making an emergency landing.

OPS 1.840

Seaplanes and amphibians — Miscellaneous equipment

An operator shall not operate a seaplane or an amphibian on water unless it is equipped with:

1. A sea anchor and other equipment necessary to facilitate mooring, anchoring or manoeuvring the aircraft on water, appropriate to its size, weight and handling characteristics; and

2. Equipment for making the sound signals prescribed in the International Regulations for preventing collisions at sea, where applicable.

Appendix 1 to OPS 1.770

Oxygen — Minimum Requirements for Supplemental Oxygen for Pressurised Aeroplanes during and following Emergency Descent

(Note 1)

Table 1

<table>
<thead>
<tr>
<th>Supply for:</th>
<th>Duration and cabin pressure altitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. All occupants of flight deck seats on flight deck duty</td>
<td>Entire flight time when the cabin pressure altitude exceeds 13 000 ft and entire flight time when the cabin pressure altitude exceeds 10 000 ft but does not exceed 13 000 ft after the first 30 minutes at those altitudes, but in no case less than:</td>
</tr>
<tr>
<td>(i) 30 minutes for aeroplanes certificated to fly at altitudes not exceeding 25 000 ft (Note 2)</td>
<td></td>
</tr>
<tr>
<td>(ii) 2 hours for aeroplanes certificated to fly at altitudes more than 25 000 ft (Note 2)</td>
<td></td>
</tr>
<tr>
<td>2. All required cabin crew members</td>
<td>Entire flight time when cabin pressure altitude exceeds 13 000 ft but not less than 30 minutes (Note 2), and entire flight time when cabin pressure altitude is greater than 10 000 ft but does not exceed 13 000 ft after the first 30 minutes at these altitudes</td>
</tr>
<tr>
<td>3. 100 % of passengers (Note 5)</td>
<td>Entire flight time when the cabin pressure altitude exceeds 15 000 ft but in no case less than 10 minutes (Note 4)</td>
</tr>
<tr>
<td>4. 30 % of passengers (Note 5)</td>
<td>Entire flight time when the cabin pressure altitude exceeds 14 000 ft but does not exceed 15 000 ft</td>
</tr>
<tr>
<td>5. 10 % of passengers (Note 3).</td>
<td>Entire flight time when the cabin pressure altitude exceeds 10 000 ft but does not exceed 14 000 ft after the first 30 minutes at these altitudes</td>
</tr>
</tbody>
</table>

Note 1: The supply provided must take account of the cabin pressure altitude and descent profile for the routes concerned.

Note 2: The required minimum supply is that quantity of oxygen necessary for a constant rate of descent from the aeroplane’s maximum certificated operating altitude to 10 000 ft in 10 minutes and followed by 20 minutes at 10 000 ft.

Note 3: The required minimum supply is that quantity of oxygen necessary for a constant rate of descent from the aeroplane’s maximum certificated operating altitude to 10 000 ft in 10 minutes and followed by 110 minutes at 10 000 ft. The oxygen required in OPS 1.780 (a) 1 may be included in determining the supply required.

Note 4: The required minimum supply is that quantity of oxygen necessary for a constant rate of descent from the aeroplane’s maximum certificated operating altitude to 15 000 ft.

Note 5: For the purpose of this table “passengers” means passengers actually carried and includes infants.
Appendix 1 to OPS 1.775

Supplemental Oxygen for non-pressurised Aeroplanes

Table 1

<table>
<thead>
<tr>
<th>Supply for:</th>
<th>Duration and pressure altitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. All occupants of flight deck seats on flight deck duty</td>
<td>Entire flight time at pressure altitudes above 10,000 ft</td>
</tr>
<tr>
<td>2. All required cabin crew members</td>
<td>Entire flight time at pressure altitudes above 13,000 ft and for any period exceeding 30 minutes at pressure altitudes above 10,000 ft but not exceeding 13,000 ft</td>
</tr>
<tr>
<td>3. 100% of passengers (See Note)</td>
<td>Entire flight time at pressure altitudes above 13,000 ft</td>
</tr>
<tr>
<td>4. 10% of passengers (See Note)</td>
<td>Entire flight time after 30 minutes at pressure altitudes greater than 10,000 ft but not exceeding 13,000 ft</td>
</tr>
</tbody>
</table>

Note: For the purpose of this table “passengers” means passengers actually carried and includes infants under the age of 2.

SUBPART L

COMMUNICATION AND NAVIGATION EQUIPMENT

OPS 1.845

General introduction

(a) An operator shall ensure that a flight does not commence unless the communication and navigation equipment required under this Subpart is:

1. Approved and installed in accordance with the requirements applicable to them, including the minimum performance standard and the operational and airworthiness requirements;

2. Installed such that the failure of any single unit required for either communication or navigation purposes, or both, will not result in the failure of another unit required for communications or navigation purposes;

3. In operable condition for the kind of operation being conducted except as provided in the MEL (OPS 1.030 refers); and

4. So arranged that if equipment is to be used by one flight crew member at his station during flight it must be readily operable from his station. When a single item of equipment is required to be operated by more than one flight crew member it must be installed so that the equipment is readily operable from any station at which the equipment is required to be operated.

(b) Communication and navigation equipment minimum performance standards are those prescribed in the applicable Joint Technical Standard Orders (JTISO) as listed in JAR-TSO, unless different performance standards are prescribed in the operational or airworthiness codes. Communication and navigation equipment complying with design and performance specifications other than JTISO on the date of OPS implementation may remain in service, or be installed, unless additional requirements are prescribed in this Subpart. Communication and navigation equipment which has already been approved does not need to comply with a revised JTISO or a revised specification, other than JTISO, unless a retroactive requirement is prescribed.

OPS 1.850

Radio Equipment

(a) An operator shall not operate an aeroplane unless it is equipped with radio required for the kind of operation being conducted.

(b) Where two independent (separate and complete) radio systems are required under this Subpart, each system must have an independent antenna installation except that, where rigidly supported non-wire antennae or other antenna installations of equivalent reliability are used, only one antenna is required.

(c) The radio communication equipment required to comply with paragraph (a) above must also provide for communications on the aeronautical emergency frequency 121.5 MHz.

OPS 1.855

Audio Selector Panel

An operator shall not operate an aeroplane under IFR unless it is equipped with an audio selector panel accessible to each required flight crew member.

OPS 1.860

Radio equipment for operations under VFR over routes navigated by reference to visual landmarks

An operator shall not operate an aeroplane under VFR over routes that can be navigated by reference to visual landmarks, unless it is equipped with the radio equipment (communication and SSR transponder equipment) necessary under normal operating conditions to fulfil the following:

(a) Communicate with appropriate ground stations;

(b) Communicate with appropriate air traffic control facilities from any point in controlled airspace within which flights are intended;

(c) Receive meteorological information; and

(d) Reply to SSR interrogations as required for the route being flown.
Communication and Navigation equipment for operations under IFR, or under VFR over routes not navigated by reference to visual landmarks

(a) An operator shall not operate an aeroplane under IFR, or under VFR over routes that cannot be navigated by reference to visual landmarks, unless the aeroplane is equipped with communication and navigation equipment in accordance with the requirements of air traffic services in the area(s) of operation.

(b) Radio Equipment
An operator shall ensure that radio equipment comprises not less than:

1. Two independent radio communication systems necessary under normal operating conditions to communicate with an appropriate ground station from any point on the route including diversions;

2. SSR transponder equipment as required for the route being flown.

(c) Navigation equipment
An operator shall ensure that navigation equipment

1. Comprises not less than:

   (i) One VOR receiving system, one ADF system, one DME;

   (ii) One ILS or MLS where ILS or MLS is required for approach navigation purposes;

   (iii) One Marker Beacon receiving system where a Marker Beacon is required for approach navigation purposes;

   (iv) An Area Navigation System when area navigation is required for the route being flown;

   (v) An additional DME system on any route, or part thereof, where navigation is based only on DME signals;

   (vi) An additional VOR receiving system on any route, or part thereof, where navigation is based only on VOR signals;

   (vii) ADF system on any route, or part thereof, where navigation is based only on NDB signals; or

2. Complies with the Required Navigation Performance (RNP) Type for operation in the airspace concerned.

(d) An operator may operate an aeroplane that is not equipped with the navigation equipment specified in sub-paragraph(s) (a) 5 and/or (a) 6 above, provided that it is equipped with alternative equipment authorised, for the route being flown, by the Authority. The reliability and the accuracy of alternative equipment must allow safe navigation for the intended route.

Additional navigation equipment for operations in MNPS airspace

(a) An operator shall not operate an aeroplane in MNPS airspace unless it is equipped with navigation equipment that complies with minimum navigation performance specifications prescribed in ICAO Doc 7030 in the form of Regional Supplementary Procedures.

(b) The navigation equipment required by this paragraph must be visible and usable by either pilot seated at his duty station.

(c) For unrestricted operation in MNPS airspace an aeroplane must be equipped with two independent Long Range Navigation Systems (LRNS).

(d) For operation in MNPS airspace along notified special routes an aeroplane must be equipped with one Long Range Navigation System (LRNS), unless otherwise specified.

Equipment for operation in defined airspace with Reduced Vertical Separation Minima (RVSM)

(See also OPS 1.241)

An operator shall ensure that aeroplanes operated in RVSM airspace are equipped with:

1. Two independent altitude measuring systems

2. An altitude alerting system

3. An automatic altitude control system; and

4. A secondary surveillance radar (SSR) transponder with altitude reporting system that can be connected to the altitude measurement system in use for altitude keeping.

AEROPLANE MAINTENANCE

General

(a) An operator shall not operate an aeroplane unless it is maintained and released to service by an organisation appropriately approved/accepted in accordance with JAR-145 except that pre-flight inspections need not necessarily be carried out by the JAR-145 organisation.
This Subpart prescribes aeroplane maintenance requirements needed to comply with the operator certification requirements in OPS 1.180.

OPS 1.880

Terminology

The following definitions from JAR-145 shall apply to this Subpart:

(a) Preflight inspection — means the inspection carried out before flight to ensure that the aeroplane is fit for the intended flight. It does not include defect rectification.

(b) Approved standard — means a manufacturing/design/maintenance/quality standard approved by the Authority.

(c) Approved by the Authority — means approved by the Authority directly or in accordance with a procedure approved by the Authority.

OPS 1.885

Application for and approval of the operator's maintenance system

(a) For the approval of the maintenance system, an applicant for the initial issue, variation and renewal of an AOC shall submit the documents specified in OPS 1.185(b).

(b) An applicant for the initial issue, variation and renewal of an AOC who meets the requirements of this Subpart, in conjunction with an appropriate JAR-145 approved/accepted maintenance organisation's exposition, is entitled to approval of the maintenance system by the Authority.

Note: Detailed requirements are given in OPS 1.180 (a) 3 and 1.180 (b), and OPS 1.185.

OPS 1.890

Maintenance responsibility

(a) An operator shall ensure the airworthiness of the aeroplane and the serviceability of both operational and emergency equipment by:

1. The accomplishment of preflight inspections;

2. The rectification to an approved standard of any defect and damage affecting safe operation, taking into account the minimum equipment list and configuration deviation list if available for the aeroplane type;

3. The accomplishment of all maintenance in accordance with the approved operator's aeroplane maintenance programme specified in OPS 1.910;

4. The analysis of the effectiveness of the operator's approved aeroplane maintenance programme;

5. The accomplishment of any operational directive, airworthiness directive and any other continued airworthiness requirement made mandatory by the Authority; and

6. The accomplishment of modifications in accordance with an approved standard and, for non-mandatory modifications, the establishment of an embodiment policy.

(b) An operator shall ensure that the Certificate of Airworthiness for each aeroplane operated remains valid in respect of:

1. The requirements in sub-paragraph (a) above;

2. Any calendar expiry date specified in the Certificate; and

3. Any other maintenance condition specified in the Certificate.

(c) The requirements specified in sub-paragraph (a) above must be performed in accordance with procedures acceptable to the Authority.

OPS 1.895

Maintenance Management

(a) An operator must be appropriately approved in accordance with JAR-145 to carry out the requirements specified in OPS 1.890 (a) 2, 3, 5 and 6 except when the Authority is satisfied that the maintenance can be contracted to an appropriate JAR-145 approved/accepted organisation.

(b) An operator must employ a person or group of persons acceptable to the Authority to ensure that all maintenance is carried out on time to an approved standard such that the maintenance responsibility requirements prescribed in OPS 1.890 are satisfied, and to ensure the functioning of the quality system required by OPS 1.900. The person, or senior person as appropriate, is the nominated postholder referred to in OPS 1.175 (i) 2.

(c) When an operator is not appropriately approved in accordance with JAR-145, arrangements must be made with such an organisation to carry out the requirements specified in OPS 1.890 (a) 2, 3, 5 and 6. A written maintenance contract must be agreed between the operator and the JAR-145 approved/accepted maintenance organisation detailing the functions specified in OPS 1.890 (a) 2, 3, 5 and 6 and defining the support of the quality functions of OPS 1.900. This contract, together with all amendments, must be acceptable to the Authority. The Authority does not require the commercial elements of a maintenance contract.

(d) An operator must provide suitable office accommodation at appropriate locations for the personnel specified in sub-paragraph (b) above.
OPS 1.900

Quality System

(a) For maintenance purposes, the operator's quality system, as required by OPS 1.035, must additionally include at least the following functions:

1. Monitoring that the activities of OPS 1.890 are being performed in accordance with the accepted procedures;

2. Monitoring that all contracted maintenance is carried out in accordance with the contract; and

3. Monitoring the continued compliance with the requirements of this Subpart.

(b) Where the operator is approved in accordance with JAR-145, the quality system may be combined with that required by JAR-145.

OPS 1.905

Operator's Maintenance Management Exposition

(a) An operator must provide an operator's Maintenance Management exposition containing details of the organisation structure including:

1. The nominated postholder responsible for the maintenance system required by OPS 1.175 (i) 2 and the person, or group of persons, referred to in OPS 1.895 (b);

2. The procedures that must be followed to satisfy the maintenance responsibility of OPS 1.890 and the quality functions of OPS 1.900, except that where the operator is appropriately approved as a maintenance organisation in accordance with JAR145, such details may be included in the JAR145 exposition.

(b) An operator's maintenance management exposition and any subsequent amendment must be approved by the Authority.

OPS 1.910

Operator's aeroplane maintenance programme

(a) An operator must ensure that the aeroplane is maintained in accordance with the operator's aeroplane maintenance programme. The programme must contain details, including frequency, of all maintenance required to be carried out. The programme will be required to include a reliability programme when the Authority determines that such a reliability programme is necessary.

(b) An operator's aeroplane maintenance programme and any subsequent amendment must be approved by the Authority.

OPS 1.915

Operator's Aeroplane

(a) An operator must use an aeroplane technical log system containing the following information for each aeroplane:

1. Information about each flight necessary to ensure continued flight safety;

2. The current aeroplane certificate of release to service;

3. The current maintenance statement giving the aeroplane maintenance status of what scheduled and out of phase maintenance is next due except that the Authority may agree to the maintenance statement being kept elsewhere;

4. All outstanding deferred defects that affect the operation of the aeroplane; and

5. Any necessary guidance instructions on maintenance support arrangements.

(b) The aeroplane technical log and any subsequent amendment must be approved by the Authority.

OPS 1.920

Maintenance Records

(a) An operator shall ensure that the aeroplane technical log is retained for 24 months after the date of the last entry.

(b) An operator shall ensure that a system has been established to keep, in a form acceptable to the Authority, the following records for the periods specified:

1. All detailed maintenance records in respect of the aeroplane and any aeroplane component fitted thereto — 24 months after the aeroplane or aeroplane component was released to service;

2. The total time and flight cycles as appropriate, of the aeroplane and all life-limited aeroplane components 12 months after the aeroplane has been permanently withdrawn from service;

3. The time and flight cycles as appropriate, since last overhaul of the aeroplane or aeroplane component subjected to an overhaul life until the aeroplane or aeroplane component overhaul has been superseded by another overhaul of equivalent work scope and detail;

4. The current aeroplane inspection status such that compliance with the approved operator's aeroplane maintenance programme can be established until the aeroplane or aeroplane component inspection has been superseded by another inspection, of equivalent work scope and detail;
5. The current status of airworthiness directives applicable to the
aeroplane and aeroplane components — 12 months after the
aeroplane has been permanently withdrawn from service; and

6. Details of current modifications and repairs to the aeroplane,
engine(s), propeller(s) and any other aeroplane component vital
to flight safety — 12 months after the aeroplane has been
permanently withdrawn from service.

c) An operator shall ensure that when an aeroplane is permanently
transferred from one operator to another operator the records
specified in paragraphs (a) and (b) are also transferred and the
time periods prescribed will continue to apply to the new operator.

OPS 1.930

Continued Validity of the Air Operator Certificate in Respect of
the Maintenance System

An operator must comply with OPS 1.175 and 1.180 to ensure
continued validity of the air operator's certificate in respect of the
maintenance system.

OPS 1.935

Equivalent Safety Case

An operator shall not introduce alternative procedures to those
prescribed in this Subpart unless needed and an equivalent safety
case has first been approved subject to the applicable common
review procedures and has been approved to do so by the Authority.

SUBPART N

FLIGHT CREW

OPS 1.940

Composition of Flight Crew

(See Appendices 1 & 2 to OPS 1.940)

(a) An operator shall ensure that:

1. The composition of the flight crew and the number of flight
crew members at designated crew stations are both in
compliance with, and no less than the minimum specified in,
the Aeroplane Flight Manual (AFM);

2. The flight crew includes additional flight crew members when
required by the type of operation, and is not reduced below the
number specified in the Operations Manual;

3. All flight crew members hold an applicable and valid licence
acceptable to the Authority and are suitably qualified and
competent to conduct the duties assigned to them;

4. Procedures are established, acceptable to the Authority, to
prevent the crewing together of inexperienced flight crew
members;

5. One pilot amongst the flight crew, qualified as a pilot-
in-command in accordance with the applicable regulations in
the field of Flight Crew Licensing, is designated as the
commander who may delegate the conduct of the flight to
another suitably qualified pilot; and

6. When a dedicated System Panel Operator is required by the
AFM, the flight crew includes one crew member who holds a
Flight Engineer's licence or is a suitably qualified flight crew
member and acceptable to the Authority.

7. An operator shall ensure that when engaging the services of
flight crew members who are self-employed and/or working
on a freelance or part-time basis, the requirements of Subpart
N are complied with. In this respect, particular attention must
be paid to the total number of aircraft types or variants that a
flight crew member may fly for the purposes of commercial air
transportation, which must not exceed the requirements
prescribed in OPS 1.980 and OPS 1.981, including when his
services are engaged by another operator

(b) Minimum flight crew for operations under IFR or at night

For operations under IFR or at night, an operator shall ensure that:

1. For all turbo-propeller aeroplanes with a maximum approved
passenger seating configuration of more than 9 and for all
turbo-jet aeroplanes, the minimum flight crew is 2 pilots; or

2. Aeroplanes other than those covered by sub-paragraph (b) 1
above are operated by a single pilot provided that the
requirements of Appendix 2 to OPS 1.940 are satisfied. If the
requirements of Appendix 2 are not satisfied, the minimum
flight crew is 2 pilots.

OPS 1.945

Conversion Training and checking

(See Appendix 1 to OPS 1.945)

(a) An operator shall ensure that:

1. A flight crew member completes a Type Rating course which
satisfies the requirements governing flight crew licences when
changing from one type of aeroplane to another type or class
for which a new type or class rating is required;

2. A flight crew member completes an operator's conversion
course before commencing unsupervised line flying:

(i) When changing to an aeroplane for which a new type or
class rating is required; or

(ii) When changing operator;

3. Conversion training is conducted by suitably qualified persons in
accordance with a detailed course syllabus included in the
Operations Manual acceptable to the Authority;
4. The amount of training required by the operator's conversion course is determined after due note has been taken of the flight crew member's previous training as recorded in his training records prescribed in OPS 1.985;

5. The minimum standards of qualification and experience required of flight crew members before undertaking conversion training are specified in the Operations Manual;

6. Each flight crew member undergoes the checks required by OPS 1.965 (b) and the training and checks required by OPS 1.965 (d) before commencing line flying under supervision;

7. Upon completion of line flying under supervision, the check required by OPS 1.965 (c) is undertaken;

8. Once an operator's conversion course has been commenced, a flight crew member does not undertake flying duties on another type or class until the course is completed or terminated; and

9. Crew Resource Management training is incorporated in the conversion course.

(b) In the case of changing aeroplane type or class, the check required by OPS 1.965 (b) may be combined with the type or class rating skill test.

(c) The operator's conversion course and the Type or Class Rating course may be combined.

OPS 1.950
Differences Training and Familiarisation Training

(a) An operator shall ensure that a flight crew member completes:

1. Differences training
   (i) When operating another variant of an aeroplane of the same type or another type of the same class currently operated; or

   (ii) When a change of equipment and/or procedures on types or variants currently operated, requires additional knowledge and training on an appropriate training device.

2. Familiarisation training
   (i) When operating another aeroplane of the same type or variant; or

   (ii) When a change of equipment and/or procedures on types or variants currently operated, requires the acquisition of additional knowledge.

(b) The operator shall specify in the Operations Manual when such differences training or familiarisation training is required.

OPS 1.955
Nomination as commander

(a) An operator shall ensure that for upgrade to commander from co-pilot and for those joining as commanders:

1. A minimum level of experience, acceptable to the Authority, is specified in the Operations Manual; and

2. For multi-crew operations, the pilot completes an appropriate command course.

(b) The command course required by sub-paragraph (a) 2 above must be specified in the Operations Manual and include at least the following:

1. Training in a flight simulator (including Line Orientated Flying Training) and/or flying training;

2. An operator proficiency check operating as commander;

3. Commander's responsibilities;

4. Line training in command under supervision. A minimum of 10 sectors is required for pilots already qualified on the aeroplane type;

5. Completion of a commander's line check as prescribed in OPS 1.965(c) and route and aerodrome competence qualifications as prescribed in OPS 1.975; and


OPS 1.960
Commanders holding a Commercial Pilot Licence

An operator shall ensure that:

1. A Commercial Pilot Licence (CPL) holder does not operate as a commander of an aeroplane certificated in the Aeroplane Flight Manual for single pilot operations unless:

   (i) When conducting passenger carrying operations under Visual Flight Rules (VFR) outside a radius of 50 nm from an aerodrome of departure, the pilot has a minimum of 500 hours total flight time on aeroplanes or holds a valid Instrument Rating; or

   (ii) When operating on a multi-engine type under Instrument Flight Rules (IFR), the pilot has a minimum of 700 hours total flight time on aeroplanes which includes 400 hours as pilot-in-command of which 100 hours have been under IFR including 40 hours multi-engine operation. The 400 hours as pilot-in-command may be substituted by hours operating as co-pilot on the basis of two hours co-pilot is equivalent to one hour as pilot-in-command provided those hours were gained within an established multi-pilot crew system prescribed in the Operations Manual;
2. In addition to sub-paragraph 1 (ii) above, when operating under IFR as a single pilot, the requirements prescribed in Appendix 2 to OPS 1.940 are satisfied; and

3. In multi-pilot crew operations, in addition to sub-paragraph 1 above, and prior to the pilot operating as commander, the command course prescribed in OPS 1.955 (a) 2 is completed.

OPS 1.965
Recurrent Training and Checking

(See Appendices 1 & 2 to OPS 1.965)

(a) General
An operator shall ensure that:

1. Each flight crew member undergoes recurrent training and checking and that all such training and checking is relevant to the type or variant of aeroplane on which the crew member is certificated to operate;

2. A recurrent training and checking programme is established in the Operations Manual and approved by the Authority;

3. Recurrent training is conducted by the following personnel:
   (i) Ground and refresher training — by a suitably qualified person;
   (ii) Aeroplane/flight simulator training — by a Type Rating Instructor/Examiner or by a Type Rating Instructor (synthetic flight instruction);
   (iii) Emergency and safety equipment training and checking — by suitably qualified personnel; and
   (iv) Crew Resource Management (CRM) training — by suitably qualified personnel;

4. Recurrent checking is conducted by the following personnel:
   (i) Operator proficiency checks — by a Type Rating Examiner; and
   (ii) Line checks — by commanders nominated by the operator and acceptable to the Authority; and

5. Each flight crew member undergoes operator proficiency checks as part of a normal flight crew complement.

(b) Operator Proficiency Check
1. An operator shall ensure that:
   (i) Each flight crew member undergoes operator proficiency checks to demonstrate his competence in carrying out normal, abnormal and emergency procedures; and
   (ii) The check is conducted without external visual reference when the flight crew member will be required to operate under IFR.

2. The period of validity of an operator proficiency check shall be 6 calendar months in addition to the remainder of the month of issue. If issued within the final 3 calendar months of validity of a previous operator proficiency check, the period of validity shall extend from the date of issue until 6 calendar months from the expiry date of that previous operator proficiency check.

(c) Line Check
An operator shall ensure that each flight crew member undergoes a line check on the aeroplane to demonstrate his competence in carrying out normal line operations described in the Operations Manual. The period of validity of a line check shall be 12 calendar months, in addition to the remainder of the month of issue. If issued within the final 3 calendar months of validity of a previous line check the period of validity shall extend from the date of issue until 12 calendar months from the expiry date of that previous line check.

(d) Emergency and Safety Equipment training and checking
An operator shall ensure that each flight crew member undergoes training and checking on the location and use of all emergency and safety equipment carried. The period of validity of an emergency and safety equipment check shall be 12 calendar months in addition to the remainder of the month of issue. If issued within the final 3 calendar months of validity of a previous emergency and safety check, the period of validity shall extend from the date of issue until 12 calendar months from the expiry date of that previous emergency and safety equipment check.

(e) Crew Resource Management
An operator shall ensure that each flight crew member undergoes Crew Resource Management training as part of recurrent training.

(f) Ground and Refresher training
An operator shall ensure that each flight crew member undergoes ground and refresher training every 12 calendar months. If the training is conducted within 3 calendar months prior to the expiry of the 12 calendar months period, the next ground and refresher training must be completed within 12 calendar months of the original expiry date of the previous ground and refresher training.

(g) Aeroplane/flight simulator training
An operator shall ensure that each flight crew member undergoes aeroplane/flight simulator training at least every 12 calendar months. If the training is conducted within 3 calendar months prior to the expiry of the 12 calendar months period, the next aeroplane/flight simulator training must be completed within 12 calendar months of the original expiry date of the previous aeroplane/flight simulator training.
OPS 1.968

Pilot qualification to operate in either pilot’s seat

(See Appendix 1 to OPS 1.968)

An operator shall ensure that:

1. A pilot who may be assigned to operate in either pilot’s seat completes appropriate training and checking; and

2. The training and checking programme is specified in the Operations Manual and is acceptable to the Authority.

OPS 1.970

Recent experience

(a) An operator shall ensure that:

1. Commander: A pilot does not operate an aeroplane as commander unless he has carried out at least three take-offs and three landings as pilot flying in an aeroplane of the same type or a flight simulator, qualified and approved for the purpose in accordance with the applicable regulations in the field of Synthetic Training Devices, of the aeroplane type to be used, in the preceding 90 days; and

2. Co-pilot: A co-pilot does not serve at the flight controls during take-off and landing unless he has served as a pilot at the controls during take-off and landing in an aeroplane of the same type or a flight simulator qualified and approved for the purpose in accordance with the applicable regulations in the field of Synthetic Training Devices of the aeroplane type to be used, in the preceding 90 days.

(b) The 90 day period prescribed in sub-paragraphs (a) 1 and 2 above may be extended up to a maximum of 120 days by line flying under the supervision of a Type Rating Instructor or Examiner. For periods beyond 120 days, the recency requirement is satisfied by a training flight or use of an approved flight simulator.

OPS 1.975

Pilot-in-command — Route and Aerodrome Competence Qualification

(a) An operator shall ensure that, prior to being assigned as pilot-in-command, the pilot has obtained adequate knowledge of the route to be flown and of the aerodromes (including alternates), facilities and procedures to be used.

(b) The period of validity of the route and aerodrome competence qualification shall be 12 calendar months in addition to the remainder of:

1. The month of qualification; or

2. The month of the latest operation on the route or to the aerodrome.

(c) Route and aerodrome competence qualification shall be revalidated by operating on the route or to the aerodrome within the period of validity prescribed in sub-paragraph (b) above.

(d) If revalidated within the final 3 calendar months of the validity of the previous route and aerodrome competence qualification, the period of validity shall extend from the date of revalidation until 12 calendar months from the expiry date of that previous route and aerodrome competence qualification.

OPS 1.978

Advanced Qualification Programme

(a) The periods of validity of OPS 1.965 and 1.970 may be extended, where the Authority has approved an Advanced Qualification Programme established by the operator.

(b) The Advanced Qualification Programme must contain training and checking which establishes and maintains a proficiency that is not less than the provisions prescribed in OPS 1.945, 1.965 and 1.970.

OPS 1.980

Operation on more than one type or variant

(see Appendix 1 to OPS 1.980)

(a) An operator shall ensure that a flight crew member does not operate on more than one type or variant unless the flight crew member is competent to do so.

(b) When considering operations of more than one type or variant, an operator shall ensure that the differences and/or similarities of the aeroplanes concerned justify such operations, taking account of the following:

1. The level of technology;

2. Operational procedures;

3. Handling characteristics.

(c) An Operator shall ensure that a flight crew member operating more than one type or variant complies with all of the requirements prescribed in Subpart N for each type or variant unless the Authority has approved the use of credit(s) related to the training, checking and recent experience requirements.

(d) An operator shall specify appropriate procedures and/or operational restrictions, approved by the Authority, in the Operations Manual, for any operation on more than one type or variant covering:

1. The flight crew members’ minimum experience level;

2. The minimum experience level on one type or variant before beginning training for and operation of another type or variant;
3. The process whereby flight crew qualified on one type or
variant will be trained and qualified on another type or variant;

4. All applicable recent experience requirements for each type or
variant.

OPS 1.981
Operation of helicopter and aeroplane

When a flight crew member operates both helicopters and aeroplanes:

1. An operator shall ensure that operations of helicopter and aeroplane
are limited to one type of each.

2. The operator shall specify appropriate procedures and/or oper-
ational restrictions, approved by the Authority, in the Operations
Manual.

OPS 1.985
Training Records

An operator shall:

1. Maintain records of all training, checking and qualification
prescribed in OPS 1.945, 1.955, 1.965, 1.968 and 1.975 undertaken
by a flight crew member; and

2. Make the records of all conversion courses and recurrent training
and checking available, on request, to the flight crew member
concerned.

Appendix I to OPS 1.940
In-flight relief of flight crew members

(a) A flight crew member may be relieved in flight of his duties at the
controls by another suitably qualified flight crew member.

(b) Relief of the Commander
The commander may be relieved by:

(i) Another pilot qualified as commander; or

(ii) A pilot-in-command (PIC) qualified as detailed in sub-paragraph
(c) below.

(c) Minimum requirements for PIC relieving the commander:

1. Valid Airline Transport Pilot Licence;

2. Conversion training and checking (including Type Rating
training) as prescribed in OPS 1.945;

3. All recurrent training and checking as prescribed in OPS 1.965;

4. Recent experience as prescribed in OPS 1.970;

5. PIC route competence qualification as prescribed in OPS 1.975:
and

6. To operate in the role of PIC in the cruise only and not below FL
200.

(d) Relief of the co-pilot
The co-pilot may be relieved by:

(i) Another suitably qualified pilot; or

(ii) A cruise relief co-pilot qualified as detailed in sub-paragraph (e)
below.

(e) Minimum requirements for Cruise Relief Co-Pilot

1. Valid Commercial Pilot Licence with Instrument Rating;

2. Conversion training and checking, including Type Rating
training, as prescribed in OPS 1.945 except the requirement
for take-off and landing training;

3. All recurrent training and checking as prescribed in OPS 1.965
except the requirement for take-off and landing training; and

4. To operate in the role of co-pilot in the cruise only and not
below FL 200.

5. Recent experience as prescribed in OPS 1.970 is not required.
The pilot shall, however, carry out flight simulator recency and
refresher flying skill training at intervals not exceeding 90 days.
This refresher training may be combined with the training
prescribed in OPS 1.965.

(f) Relief of the system panel operator
A system panel operator may be relieved in flight by a crew
member who holds a Flight Engineer’s licence or by a suitably
qualified flight crew member and acceptable to the Authority.

Appendix 2 to OPS 1.940
Single pilot operations under IFR or at night

Aeroplanes referred to in OPS 1.940 (b) 2 may be operated by a single
pilot under IFR or at night when the following requirements are
satisfied:

1. The operator shall include in the Operations Manual a pilot’s
conversion and recurrent training programme which includes the
additional requirements for a single pilot operation;
2. In particular, the cockpit procedures must include:

   (i) Engine management and emergency handling;

   (ii) Use of normal, abnormal and emergency checklist;

   (iii) ATC communication;

   (iv) Departure and approach procedures;

   (v) Autopilot management; and

   (vi) Simplified in-flight documentation;

3. The recurrent checks required by OPS 1.965 shall be performed in the single-pilot role on the type or class of aeroplane in an environment representative of the operation;

4. The pilot shall have a minimum of 50 hours flight time on the specific type or class of aeroplane under IFR of which 10 hours is as pilot-in-command; and

5. The minimum required recent experience for a pilot engaged in a single-pilot operation under IFR or at night shall be 5 IFR flights, including 3 instrument approaches, carried out during the preceding 90 days on the type or class of aeroplane in the single-pilot role. This requirement may be replaced by an IFR instrument approach check on the type or class of aeroplane.

Appendix 1 to OPS 1.945

Operator's Conversion Course

(a) An operator's conversion course shall include:

1. Ground training and checking including aeroplane systems, normal, abnormal and emergency procedures;

2. Emergency and safety equipment training and checking which must be completed before aeroplane training commences;

3. Crew Resource Management training;

4. Aeroplane/flight simulator training and checking; and

5. Line flying under supervision and line check.

(b) The conversion course shall be conducted in the order set out in sub-paragraph (a) above.

(c) When a flight crew member has not previously completed an operator's conversion course, the operator shall ensure that in addition to sub-paragraph (a) above, the flight crew member undergoes general first aid training and, if applicable, ditching procedures training using the equipment in water.

Appendix 1 to OPS 1.965

Recurrent training and checking — Pilots

(a) Recurrent Training

Recurrent training shall comprise:

1. Ground and refresher training

   (i) The ground and refresher training programme shall include:

      (A) Aeroplane systems;

      (B) Operational procedures and requirements including ground de-/anti-icing and pilot incapacitation; and

      (C) Accident/Incident and occurrence review.

   (ii) Knowledge of the ground and refresher training shall be verified by a questionnaire or other suitable methods.

2. Aeroplane/Flight Simulator training

   (i) The aeroplane/flight simulator training programme shall be established such that all major failures of aeroplane systems and associated procedures will have been covered in the preceding 3 year period.

   (ii) When engine-out manoeuvres are carried out in an aeroplane, the engine failure shall be simulated.

   (iii) Aeroplane/flight simulator training may be combined with the operator proficiency check.

3. Emergency and Safety Equipment Training

   (i) The emergency and safety equipment training programme may be combined with emergency and safety equipment checking and shall be conducted in an aeroplane or a suitable alternative training device.

   (ii) Every year the emergency and safety equipment training programme must include the following:

      (A) Actual donning of a lifejacket where fitted;

      (B) Actual donning of protective breathing equipment;

      (C) Actual handling of fire extinguishers;

      (D) Instruction on the location and use of all emergency and safety equipment carried on the aeroplane;

      (E) Instruction on the location and use of all types of exits; and

      (F) Security procedures.
(iii) Every 3 years the programme of training must include the following:

(A) Actual operation of all types of exits;

(B) Demonstration of the method used to operate a slide where fitted;

(C) Actual fire-fighting using equipment representative of that carried in the aeroplane on an actual or simulated fire except that, with Halon extinguishers, an alternative method acceptable to the Authority may be used;

(D) The effects of smoke in an enclosed area and actual use of all relevant equipment in a simulated smoke-filled environment;

(E) Actual handling of pyrotechnics, real or simulated, where fitted; and

(F) Demonstration in the use of the life-raft(s) where fitted.

4. Crew Resource Management training

(b) Recurrent checking

Recurrent checking shall comprise:

1. Operator proficiency checks;

(i) Where applicable, operator proficiency checks shall include the following manoeuvres:

(A) Rejected take-off when a flight simulator is available, otherwise touch drills only;

(B) Take-off with engine failure between V1 and V2 or as soon as safety considerations permit;

(C) Precision instrument approach to minima with, in the case of multi-engined aeroplanes, one engine inoperative;

(D) Non-precision approach to minima;

(E) Missed approach on instruments from minima with, in the case of multi-engined aeroplanes, one engine inoperative; and

(F) Landing with one engine inoperative. For single-engined aeroplanes a practice forced landing is required.

(ii) When engine out manoeuvres are carried out in an aeroplane, the engine failure must be simulated.

(iii) In addition to the checks prescribed in sub-paragraphs (i) (A) to (F) above, the requirements governing the issue of flight crew licences must be completed every 12 months and may be combined with the operator proficiency check.

(iv) For a pilot operating VFR only, the checks prescribed in sub-paragraphs (i) (C) to (E) above may be omitted except for an approach and go-around in a multi-engine aeroplane with one engine inoperative.

(v) Operator proficiency checks must be conducted by a Type Rating Examiner.

2. Emergency and safety equipment checks

The items to be checked shall be those for which training has been carried out in accordance with sub-paragraph (a) 3 above.

3. Line checks

(i) Line checks must establish the ability to perform satisfactorily a complete line operation including pre-flight and post-flight procedures and use of the equipment provided, as specified in the Operations Manual.

(ii) The flight crew must be assessed on their Crew Resource Management skills.

(iii) When pilots are assigned duties as pilot flying and pilot non-flying they must be checked in both functions.

(iv) Line checks must be completed in an aeroplane.

(v) Line checks must be conducted by commanders nominated by the operator and acceptable to the Authority.

Appendix 2 to OPS 1.965

Recurrent training and checking — System Panel Operators

(a) The recurrent training and checking for System Panel Operators shall meet the requirements for pilots and any additional specific duties, omitting those items that do not apply to System Panel Operators.

(b) Recurrent training and checking for System Panel Operators shall, whenever possible, take place concurrently with a pilot undergoing recurrent training and checking.

(c) A line check shall be conducted by a commander nominated by the operator and acceptable to the Authority or by a System Panel Operator Type Rating Instructor or Examiner.
Appendix 1 to OPS 1.968

Pilot qualification to operate in either pilot's seat

(a) Commanders whose duties also require them to operate in the right-hand seat and carry out the duties of co-pilot, or commanders required to conduct training or examining duties from the right-hand seat, shall complete additional training and checking as specified in the Operations Manual, concurrent with the operator proficiency checks prescribed in OPS 1.965 (b). This additional training must include at least the following:

1. An engine failure during take-off;
2. A one engine inoperative approach and go-around; and
3. A one engine inoperative landing.

(b) When engine-out manoeuvres are carried out in an aeroplane, the engine failure must be simulated.

(c) When operating in the right-hand seat, the checks required by OPS for operating in the left-hand seat must, in addition, be valid and current.

(d) A pilot relieving the commander as pilot-in-command shall demonstrate practice of drills and procedures, concurrent with the operator proficiency checks prescribed in OPS 1.965 (b), which would otherwise have been the commander's responsibility as pilot-in-command. Where the differences between left and right seats are not significant (for example because of use of autopilot) then practice may be conducted in either seat.

(e) A pilot other than the commander occupying the left-hand seat shall demonstrate practice of drills and procedures, concurrent with the operator proficiency checks prescribed in OPS 1.965 (b), which would otherwise have been the commander's responsibility acting as pilot non-flying. Where the differences between left and right seats are not significant (for example because of use of autopilot) then practice may be conducted in either seat.

Appendix 1 to OPS 1.980

Operation on more than one type or variant

(a) When a flight crew member operates more than one aeroplane type or variant (type — multi-pilot), an operator shall ensure that:

1. The minimum flight crew complement specified in the Operations Manual is the same for each type or variant to be operated;
2. A flight crew member does not operate more than two aeroplane types or variants for which a separate licence endorsement is required; and
3. Only aeroplanes within one licence endorsement are flown in any one flight duty period unless the operator has established procedures to ensure adequate time for preparation.

(b) When a flight crew member operates more than one aeroplane class, type or variant (class- and/or type-single pilot), but not within a single licence endorsement, an operator must comply with the following:

1. A flight crew member shall not operate more than:
   (i) Three piston-engined aeroplane types or variants; or
   (ii) Three turbo-propeller aeroplane types or variants; or
   (iii) One turbo-propeller aeroplane type or variant and one piston engined aeroplane type or variant; or
   (iv) One turbo-propeller aeroplane type or variant and any aeroplane within a particular class.
2. OPS 1.965 for each type or variant operated unless the operator has demonstrated specific procedures and/or operational restrictions, which are acceptable to the Authority.

(c) When a flight crew member operates more than one aeroplane type or variant (type - single pilot and type - multi pilot), but not within a single licence endorsement, an operator must comply with the following:

1. Subparagraphs (a) 1, (a) 2 and (a) 3 above;
2. Subparagraph (d) below.

(d) When a flight crew member operates more than one aeroplane type or variant (type — multi pilot), but not within a single licence endorsement, an operator must comply with the following:

1. Subparagraphs (a) 1, (a) 2 and (a) 3 above;
2. Before exercising the privileges of 2 licence endorsements:
   (i) Flight crew members must have completed two consecutive operator proficiency checks and must have 500 hours in the relevant crew position in commercial air transport operations with the same operator.
   (ii) In the case of a pilot having experience with an operator and exercising the privileges of 2 licence endorsements, and then being promoted to command with the same operator on one of those types, the required minimum experience as commander is 6 months and 300 hours, and the pilot must have completed 2 consecutive operator proficiency checks before again being eligible to exercise 2 licence endorsements.
3. Before commencing training for and operation of another type or variant, flight crew members must have completed 3 months and 150 hours flying on the base aeroplane, and this must include at least one proficiency check.
4. After completion of the initial line check on the new type, 50 hours flying or 20 sectors must be achieved solely on aeroplanes of the new type rating.
5. OPS 1.970 for each type operated unless credits have been allowed by the Authority in accordance with sub-paragraph 7 below.

6. The period within which line flying experience is required on each type must be specified in the Operations Manual.

7. Where credits are sought to reduce the training and checking and recent experience requirements between aeroplane types, the operator must demonstrate to the Authority which items need not be repeated on each type or variant because of similarities:

   (i) OPS 1.965 (b) requires two operator proficiency checks every year. When credit is given in accordance with sub-paragraph 7 above for operator proficiency checks to alternate between the two types, each operator proficiency check revalidates the operator proficiency check for the other type. Provided that the period between Licence proficiency checks does not exceed that prescribed in the applicable regulation in the field of Flight Crew Licensing for each type, the relevant requirements on Flight Crew Licensing will be satisfied. In addition relevant and approved recurrent training must be specified in the Operations Manual.

   (ii) OPS 1.965 (c) requires one line check every year. When credit is given in accordance with sub-paragraph 7 above for line checks to alternate between types or variants, each line check revalidates the line check for the other type or variant.

   (iii) Annual emergency and safety equipment training and checking must cover all requirements for each type.

8. OPS 1.965 for each type or variant operated unless credits have been allowed by the Authority in accordance with sub-paragraph 7 above.

(e) When a flight crew member operates combinations of aeroplane types or variants (class- single pilot and type - multi pilot) an operator must demonstrate that specific procedures and/or operational restrictions are approved in accordance with OPS 1.980 (d).

SUBPART O

CABIN CREW

OPS 1.988

Applicability

An operator shall ensure that all crew members, other than flight crew members, assigned by the operator to duties in the passenger compartment of an aeroplane comply with the requirements of this Subpart and the applicable safety rules except for additional crew members solely assigned to non-safety related duties.

OPS 1.990

Number and composition of Cabin Crew

(a) An operator shall not operate an aeroplane with a maximum approved passenger seating configuration of more than 19, when carrying one or more passengers, unless at least one cabin crew member is included in the crew for the purpose of performing duties, specified in the Operations Manual, in the interests of the safety of passengers.

(b) When complying with sub-paragraph (a) above, an operator shall ensure that the minimum number of cabin crew is the greater of:

   1. One cabin crew member for every 50, or fraction of 50, passenger seats installed on the same deck of the aeroplane; or

   2. The number of cabin crew who actively participated in the aeroplane cabin during the relevant emergency evacuation demonstration, or who were assumed to have taken part in the relevant analysis, except that, if the maximum approved passenger seating configuration is less than the number evacuated during the demonstration by at least 50 seats, the number of cabin crew may be reduced by 1 for every whole multiple of 50 seats by which the maximum approved passenger seating configuration falls below the certificated maximum capacity.

(c) The Authority may under exceptional circumstances require an operator to include in the crew additional cabin crew members.

(d) In unforeseen circumstances the required minimum number of cabin crew may be reduced provided that:

   1. The number of passengers has been reduced in accordance with procedures specified in the Operations Manual; and

   2. A report is submitted to the Authority after completion of the flight.

(e) An operator shall ensure that when engaging the services of cabin crew members who are self-employed and/or working on a freelance or part-time basis, the requirements of subpart O are complied with. In this respect, particular attention must be paid to the total number of aircraft types or variants that a cabin crew member may fly for the purposes of commercial air transportation, which must not exceed the requirements prescribed in OPS 1.1030, including when his services are engaged by another operator.

OPS 1.995

Minimum requirements

(a) An operator shall ensure that each cabin crew member fulfils the applicable minimum age and medical requirements.

(b) An operator shall ensure that each cabin crew member is competent to perform his duties in accordance with procedures specified in the Operations Manual.
OPS 1.1000

Senior cabin crew members

(a) An operator shall nominate a senior cabin crew member whenever more than one cabin crew member is assigned.

(b) The senior cabin crew member shall have responsibility to the commander for the conduct and co-ordination of cabin safety and emergency procedure(s) specified in the Operations Manual.

(c) Where required by OPS 1.990 to carry more than one cabin crew member, an operator shall not appoint a person to the post of senior cabin crew member unless that person has at least one year's experience as an operating cabin crew member and has completed an appropriate course.

(d) An operator shall establish procedures to select the next most suitably qualified cabin crew member to operate as senior cabin crew member in the event of the nominated senior cabin crew member becoming unable to operate. Such procedures must be acceptable to the Authority and take account of a cabin crew member's operational experience.

OPS 1.1005

Initial training

An operator shall ensure that each cabin crew member successfully completes initial training, approved by the Authority, in accordance with the applicable requirements and holds an attestation of professional competence describing the training successfully undertaken by a cabin crew member.

OPS 1.1010

Conversion and differences training

An operator shall ensure that each cabin crew member has completed appropriate training, in accordance with the applicable rules and as specified in the Operations Manual, before undertaking assigned duties as follows:

1. Conversion training

A conversion course must be completed before being:

(i) First assigned by the operator to operate as a cabin crew member; or

(ii) Assigned to operate another aeroplane type; and

2. Differences training

Differences training must be completed before operating:

(i) On a variant of an aeroplane type currently operated; or

(ii) With different safety equipment, safety equipment location, or normal and emergency safety procedures on currently operated aeroplane types or variants.

OPS 1.1012

Familiarisation flights

An operator shall ensure that, following completion of conversion training, each cabin crew member completes familiarisation prior to operating as one of the minimum number of cabin crew required by OPS 1.990 (b).

OPS 1.1015

Recurrent training

(a) An operator shall ensure that each cabin crew member undergoes recurrent training, covering the actions assigned to each crew member in normal and emergency procedures and drills relevant to the type(s) and/or variant(s) of aeroplane on which they operate in accordance with the applicable requirements.

(b) An operator shall ensure that the recurrent training and checking programme approved by the Authority includes theoretical and practical instruction, together with individual practice.

(c) The period of validity of recurrent training and the associated checking required by OPS 1.1025 shall be 12 calendar months in addition to the remainder of the month of issue. If issued within the final 3 calendar months of validity of a previous check, the period of validity shall extend from the date of issue until 12 calendar months from the expiry date of that previous check.

OPS 1.1020

Refresher Training

(See Appendix 1 to OPS 1.1020)

(a) An operator shall ensure that each cabin crew member who has been absent from all flying duties for more than 6 months and still remains within the period of the previous check required by OPS 1.1025 (b) 3 completes refresher training specified in the Operations Manual as prescribed in Appendix 1 to OPS 1.1020.

(b) An operator shall ensure that when a cabin crew member has not been absent from all flying duties, but has not, during the preceding 6 months, undertaken duties on a type of aeroplane as a cabin crew member required by OPS 1.990 (b), before undertaking such duties on that type, the cabin crew member either:

1. Completes refresher training on the type; or

2. Operates two re-familiarisation sectors during commercial operations on the type.
OPS 1.1025

Checking

An operator shall ensure that during or following completion of the training required by OPS 1.1010 and 1.1015, each cabin crew member undergoes a check covering the training received in order to verify his proficiency in carrying out normal and emergency safety duties. These checks must be performed by personnel acceptable to the Authority.

OPS 1.1030

Operation on more than one type or variant

(a) An operator shall ensure that each cabin crew member does not operate on more than three aeroplane types except that, with the approval of the Authority, the cabin crew member may operate on four aeroplane types, provided that safety equipment and emergency procedures for at least two of the types are similar.

(b) For the purposes of sub-paragraph (a) above, variants of an aeroplane type are considered to be different types if they are not similar in all the following aspects:

1. Emergency exit operation;
2. Location and type of safety equipment; and
3. Emergency procedures.

OPS 1.1035

Training records

An operator shall:

1. Maintain records of all training and checking required by OPS 1.1005, 1.1010, 1.1015, 1.1020 and 1.1025; and

2. Make the records of all conversion and recurrent training and checking available, on request, to the cabin crew member concerned.

Appendix 1 to OPS 1.1020

Refresher training

An operator shall ensure that refresher training is conducted by suitable qualified persons and, for each cabin crew member, includes at least the following:

1. Emergency procedures including pilot incapacitation;
2. Evacuation procedures including crowd control techniques;
3. The operation and actual opening of all normal and emergency exits for passenger evacuation in an aeroplane or representative training device;
4. Demonstration of the operation of all other exits including flight deck windows; and
5. The location and handling of emergency equipment, including oxygen systems, and the donning of lifejackets, portable oxygen and protective breathing equipment.

SUBPART P

MANUALS, LOGS AND RECORDS

OPS 1.1040

General Rules for Operations Manuals

(a) An operator shall ensure that the Operations Manual contains all instructions and information necessary for operations personnel to perform their duties.

(b) An operator shall ensure that the contents of the Operations Manual, including all amendments or revisions, do not contravene the conditions contained in the Air Operator Certificate (AOC) or any applicable regulations and are acceptable to, or, where applicable, approved by, the Authority.

(c) Unless otherwise approved by the Authority, or prescribed by national law, an operator must prepare the Operations Manual in the English language. In addition, an operator may translate and use that manual, or parts thereof, into another language.

(d) Should it become necessary for an operator to produce new Operations Manuals or major parts/volumes thereof, he must comply with sub-paragraph (c) above. In all other cases, an operator must comply with sub-paragraph (c) above as soon as possible and in no case later than 1 December 2000.

(e) An operator may issue an Operations Manual in separate volumes.

(f) An operator shall ensure that all operations personnel have easy access to a copy of each part of the Operations Manual which is relevant to their duties. In addition, the operator shall supply crew members with a personal copy of, or sections from, Parts A and B of the Operations Manual as are relevant for personal study.

(g) An operator shall ensure that the Operations Manual is amended or revised so that the instructions and information contained therein are kept up to date. The operator shall ensure that all operations personnel are made aware of such changes that are relevant to their duties.

(h) Each holder of an Operations Manual, or appropriate parts of it, shall keep it up to date with the amendments or revisions supplied by the operator.

(i) An operator shall supply the Authority with intended amendments and revisions in advance of the effective date. When the amendment concerns any part of the Operations Manual which must be approved in accordance with OPS, this approval shall be obtained before the amendment becomes effective. When immediate amendments or revisions are required in the interest of safety, they may be published and applied immediately, provided that any approval required has been applied for.
(j) An operator shall incorporate all amendments and revisions required by the Authority.

(k) An operator must ensure that information taken from approved documents, and any amendment of such approved documentation, is correctly reflected in the Operations Manual and that the Operations Manual contains no information contrary to any approved documentation. However, this requirement does not prevent an operator from using more conservative data and procedures.

(l) An operator must ensure that the contents of the Operations Manual are presented in a form in which they can be used without difficulty.

(m) An operator may be permitted by the Authority to present the Operations Manual or parts thereof in a form other than on printed paper. In such cases, an acceptable level of accessibility, usability and reliability must be assured.

(n) The use of an abridged form of the Operations Manual does not exempt the operator from the requirements of OPS 1.130.

OPS 1.1045

Operations Manual structure and contents

(See Appendix 1 to OPS 1.1045)

(a) An operator shall ensure that the main structure of the Operations Manual is as follows:

Part A — General/Basic

This part shall comprise all non type-related operational policies, instructions and procedures needed for a safe operation.

Part B — Aeroplane Operating Matters

This part shall comprise all type-related instructions and procedures needed for a safe operation. It shall take account of any differences between types, variants or individual aeroplanes used by the operator.

Part C — Route and Aerodrome Instructions and Information

This part shall comprise all instructions and information needed for the area of operation.

Part D — Training

This part shall comprise all training instructions for personnel required for a safe operation.

OFS 1.1050

Aeroplane Flight Manual

An operator shall keep a current approved Aeroplane Flight Manual or equivalent document for each aeroplane that it operates.

OPS 1.1055

Journey log

(a) An operator shall retain the following information for each flight in the form of a Journey Log:

1. Aeroplane registration;
2. Date;
3. Name(s) of crew member(s);
4. Duty assignment of crew member(s);
5. Place of departure;
6. Place of arrival;
7. Time of departure (off-block time);
8. Time of arrival (on-block time);
9. Hours of flight;
10. Nature of flight;
11. Incidents, observations (if any); and
12. Commander's signature (or equivalent).

(b) An operator may be permitted not to keep an aeroplane journey log, or parts thereof, by the Authority if the relevant information is available in other documentation.

(c) An operator shall ensure that all entries are made concurrently and that they are permanent in nature.

OPS 1.1060

Operational flight plan

(a) An operator must ensure that the operational flight plan used and the entries made during flight contain the following items:

1. Aeroplane registration;
2. Aeroplane type and variant;
3. Date of flight;
4. Flight identification;

(b) An operator shall ensure that the contents of the Operations Manual are in accordance with Appendix 1 to OPS 1.1045 and relevant to the area and type of operation.

(c) An operator shall ensure that the detailed structure of the Operations Manual is acceptable to the Authority.
5. Names of flight crew members;
6. Duty assignment of flight crew members;
7. Place of departure;
8. Time of departure (actual off-block time, take-off time);
9. Place of arrival (planned and actual);
10. Time of arrival (actual landing and on-block time);
11. Type of operation (ETOPS, VFR, Ferry flight, etc.)
12. Route and route segments with checkpoints/waypoints, distances, time and tracks;
13. Planned cruising speed and flying times between check-points/waypoints. Estimated and actual times overhead;
14. Safe altitudes and minimum levels;
15. Planned altitudes and flight levels;
16. Fuel calculations (records of in-flight fuel checks);
17. Fuel on board when starting engines;
18. Alternate(s) for destination and, where applicable, take-off and en-route, including information required in sub-paragraphs 12, 13, 14, and 15 above;
19. Initial ATS Flight Plan clearance and subsequent re-clearance;
20. In-flight re-planning calculations; and
21. Relevant meteorological information.

(b) Items which are readily available in other documentation or from an acceptable source or are irrelevant to the type of operation may be omitted from the operational flight plan.

(c) An operator must ensure that the operational flight plan and its use is described in the Operations Manual.

(d) An operator shall ensure that all entries on the operational flight plan are made concurrently and that they are permanent in nature.

OPS 1.1065

Document storage periods

An operator shall ensure that all records and all relevant operational and technical information for each individual flight, are stored for the periods prescribed in Appendix 1 to OPS 1.1045.

OPS 1.1070

Operator’s maintenance management exposition

An operator shall keep a current approved maintenance management exposition as prescribed in OPS 1.903.

OPS 1.1071

Aeroplane Technical Log

An operator shall keep an aeroplane technical log as prescribed in OPS 1.915.

Appendix 1 to OPS 1.1045

Operations Manual Contents

An operator shall ensure that the Operations Manual contains the following:

A — GENERAL/BASIC

0. ADMINISTRATION AND CONTROL OF OPERATIONS MANUAL

0.1 Introduction

(a) A statement that the manual complies with all applicable regulations and with the terms and conditions of the applicable Air Operator Certificate.

(b) A statement that the manual contains operational instructions that are to be complied with by the relevant personnel.

(c) A list and brief description of the various parts, their contents, applicability and use.

(d) Explanations and definitions of terms and words needed for the use of the manual.

0.2 System of amendment and revision

(a) Who is responsible for the issuance and insertion of amendments and revisions.

(b) A record of amendments and revisions with insertion dates and effective dates.

(c) A statement that hand written amendments and revisions are not permitted except in situations requiring immediate amendment or revision in the interest of safety.

(d) A description of the system for the annotation of pages and their effective dates.

(e) A list of effective pages.

(f) Annotation of changes (on text pages and, as far as practicable, on charts and diagrams).
1. ORGANISATION AND RESPONSIBILITIES

1.1. Organisational structure

A description of the organisational structure including the general company organigram and operations department organigram. The organigram must depict the relationship between the Operations Department and the other Departments of the company. In particular, the subordination and reporting lines of all Divisions, Departments etc, which pertain to the safety of flight operations, must be shown.

1.2. Nominated postholders

The name of each nominated postholder responsible for flight operations, the maintenance system, crew training and ground operations, as prescribed in OPS 1.175 (i). A description of their function and responsibilities must be included.

1.3. Responsibilities and duties of operations management personnel

A description of the duties, responsibilities and authority of operations management personnel pertaining to the safety of flight operations and the compliance with the applicable regulations.

1.4. Authority, duties and responsibilities of the commander

A statement defining the authority, duties and responsibilities of the commander.

1.5. Duties and responsibilities of crew members other than the commander

2. OPERATIONAL CONTROL AND SUPERVISION

2.1. Supervision of the operation by the operator

A description of the system for supervision of the operation by the operator (see OPS 1.175 (g)). This must show how the safety of flight operations and the qualifications of personnel are supervised. In particular, the procedures related to the following items must be described:

(a) Licence and qualification validity;

(b) Competence of operations personnel; and

(c) Control, analysis and storage of records, flight documents, additional information and data.

2.2. System of promulgation of additional operational instructions and information

A description of any system for promulgating information which may be of an operational nature but is supplementary to that in the Operations Manual. The applicability of this information and the responsibilities for its promulgation must be included.

2.3. Accident prevention and flight safety programme

A description of the main aspects of the flight safety programme

2.4. Operational control

A description of the procedures and responsibilities necessary to exercise operational control with respect to flight safety.

2.5. Powers of the Authority

A description of the powers of the Authority.

3. QUALITY SYSTEM

A description of the quality system adopted including at least:

(a) Quality policy;

(b) A description of the Organisation of the Quality System; and

(c) Allocation of duties and responsibilities.

4. CREW COMPOSITION

4.1. Crew Composition

An explanation of the method for determining crew compositions taking account of the following:

(a) The type of aeroplane being used;

(b) The area and type of operation being undertaken;

(c) The phase of the flight;

(d) The minimum crew requirement and flight duty period planned;

(e) Experience (total and on type), recency and qualification of the crew members; and

(f) The designation of the commander and, if necessitated by the duration of the flight, the procedures for the relief of the commander or other members of the flight crew. (See Appendix 1 to OPS 1.940).

(g) The designation of the senior cabin crew member and, if necessitated by the duration of the flight, the procedures for the relief of the senior cabin crew member and any other member of the cabin crew.

4.2. Designation of the commander

The rules applicable to the designation of the commander.
4.3. **Flight crew incapacitation**

Instructions on the succession of command in the event of flight crew incapacitation.

4.4. **Operation of more than one type**

A statement indicating which aeroplanes are considered as one type for the purpose of:

(a) Flight crew scheduling; and

(b) Cabin crew scheduling.

5. **QUALIFICATION REQUIREMENTS**

5.1. A description of the required licence, rating(s), qualification/competency (e.g. for routes and aerodromes), experience, training, checking and recency for operations personnel to conduct their duties. Consideration must be given to the aeroplane type, kind of operation and composition of the crew.

5.2. **Flight crew**

(a) Commander.

(b) Pilot relieving the commander.

(c) Co-pilot.

(d) Pilot under supervision.

(e) System panel operator.

(f) Operation on more than one type or variant.

5.3. **Cabin crew**

(a) Senior cabin crew member.

(b) Cabin crew member.

(i) Required cabin crew member.

(ii) Additional cabin crew member and cabin crew member during familiarisation flights.

(c) Operation on more than one type or variant.

5.4. **Training, checking and supervision personnel**

(a) For flight crew.

(b) For cabin crew.

5.5. **Other operations personnel**

6. **CREW HEALTH PRECAUTIONS**

6.1. **Crew health precautions**

The relevant regulations and guidance to crew members concerning health including:

(a) Alcohol and other intoxicating liquor;

(b) Narcotics;

(c) Drugs;

(d) Sleeping tablets;

(e) Pharmaceutical preparations;

(f) Immunisation;

(g) Deep diving;

(h) Blood donation;

(i) Meal precautions prior to and during flight;

(j) Sleep and rest; and

(k) Surgical operations.

7. **FLIGHT TIME LIMITATIONS**

7.1. **Flight and Duty Time Limitations and Rest Requirements**

The scheme developed by the operator in accordance with existing national requirements.

7.2. **Exceedances of flight and duty time limitations and/or reductions of rest periods**

Conditions under which flight and duty time may be exceeded or rest periods may be reduced and the procedures used to report these modifications.

8. **OPERATING PROCEDURES**

8.1. **Flight Preparation Instructions**

As applicable to the operation:

8.1.1. **Minimum Flight Altitudes**

A description of the method of determination and application of minimum altitudes including:

(a) A procedure to establish the minimum altitudes/flight levels for VFR flights; and
(b) A procedure to establish the minimum altitudes/flight levels for IFR flights.

8.1.2. Criteria for determining the usability of aerodromes

8.1.3. Methods for the determination of aerodrome operating minima

The method for establishing aerodrome operating minima for IFR flights in accordance with OPS 1 Subpart E. Reference must be made to procedures for the determination of the visibility and/or runway visual range and for the applicability of the actual visibility observed by the pilots, the reported visibility and the reported runway visual range.

8.1.4. En-route Operating Minima for VFR Flights or VFR portions of a flight and, where single engined aeroplanes are used, instructions for route selection with respect to the availability of surfaces which permit a safe forced landing.

8.1.5. Presentation and Application of Aerodrome and En-route Operating Minima

8.1.6. Interpretation of meteorological information

Explanatory material on the decoding of MET forecasts and MET reports relevant to the area of operations, including the interpretation of conditional expressions.

8.1.7. Determination of the quantities of fuel, oil and water methanol carried

The methods by which the quantities of fuel, oil and water methanol to be carried are determined and monitored in flight. This section must also include instructions on the measurement and distribution of the fluid carried on board. Such instructions must take account of all circumstances likely to be encountered on the flight, including the possibility of in-flight re-planning and of failure of one or more of the aeroplane’s power plants. The system for maintaining fuel and oil records must also be described.

8.1.8. Mass and Centre of Gravity

The general principles of mass and centre of gravity including:

(a) Definitions;

(b) Methods, procedures and responsibilities for preparation and acceptance of mass and centre of gravity calculations;

(c) The policy for using either standard and/or actual masses;

(d) The method for determining the applicable passenger, baggage and cargo mass;

(e) The applicable passenger and baggage masses for various types of operations and aeroplane type;

(f) General instruction and information necessary for verification of the various types of mass and balance documentation in use;

(g) Last Minute Changes procedures;

(h) Specific gravity of fuel, oil and water methanol; and

(i) Seating policy/procedures.

8.1.9. ATS Flight Plan

Procedures and responsibilities for the preparation and submission of the air traffic services flight plan. Factors to be considered include the means of submission for both individual and repetitive flight plans.

8.1.10. Operational Flight Plan

Procedures and responsibilities for the preparation and acceptance of the operational flight plan. The use of the operational flight plan must be described including samples of the operational flight plan formats in use.

8.1.11. Operator’s Aeroplane Technical Log

The responsibilities and the use of the operator's Aeroplane Technical Log must be described, including samples of the format used.

8.1.12. List of documents, forms and additional information to be carried

8.2. Ground Handling Instructions

8.2.1. Fuelling procedures

A description of fuelling procedures, including:

(a) Safety precautions during refuelling and defuelling including when an APU is in operation or when a turbine engine is running and the prop-brakes are on;

(b) Refuelling and defuelling when passengers are embarking, on board or disembarking; and

(c) Precautions to be taken to avoid mixing fuels.

8.2.2. Aeroplane, passengers and cargo handling procedures related to safety

A description of the handling procedures to be used when allocating seats and embarking and disembarking passengers and when loading and unloading the aeroplane. Further procedures, aimed at achieving safety whilst the aeroplane is on the ramp, must also be given. Handling procedures must include:

(a) Children/infants, sick passengers and Persons with Reduced Mobility;

(b) Transportation of inadmissible passengers, deportees or persons in custody;

(c) Permissible size and weight of hand baggage;

(d) Loading and securing of items in the aeroplane;
(e) Special loads and classification of load compartments;

(f) Positioning of ground equipment;

(g) Operation of aeroplane doors;

(h) Safety on the ramp, including fire prevention, blast and suction areas;

(i) Start-up, ramp departure and arrival procedures;

(j) Servicing of aeroplanes; and

(k) Documents and forms for aeroplane handling;

(l) Multiple occupancy of aeroplane seats.

8.2.3. Procedures for the refusal of embarkation

Procedures to ensure that persons who appear to be intoxicated or who demonstrate by manner or physical indications that they are under the influence of drugs, except medical patients under proper care, are refused embarkation. This does not apply to medical patients under proper care.

8.2.4. De-icing and Anti-icing on the ground

A description of the de-icing and anti-icing policy and procedures for aeroplanes on the ground. These shall include descriptions of the types and effects of icing and other contaminants on aeroplanes whilst stationary, during ground movements and during take-off. In addition, a description of the fluid types used must be given including:

(a) Proprietary or commercial names;

(b) Characteristics;

(c) Effects on aeroplane performance;

(d) Hold-over times; and

(e) Precautions during usage.

8.3. Flight Procedures

8.3.1. VFR/IFR Policy

A description of the policy for allowing flights to be made under VFR, or of requiring flights to be made under IFR, or of changing from one to the other.

8.3.2. Navigation Procedures

A description of all navigation procedures relevant to the type(s) and area(s) of operation. Consideration must be given to:

(a) Standard navigational procedures including policy for carrying out independent cross-checks of keyboard entries where these affect the flight path to be followed by the aeroplane;

(b) MNPS and POLAR navigation and navigation in other designated areas;

(c) RNAV;

(d) In-flight replanning; and

(e) Procedures in the event of system degradation; and

(f) RVSM

8.3.3. Altimeter setting procedures

8.3.4. Altitude alerting system procedures

8.3.5. Ground Proximity Warning System procedures

8.3.6. Policy and procedures for the use of TCAS/ACAS

8.3.7. Policy and procedures for in-flight fuel management

8.3.8. Adverse and potentially hazardous atmospheric conditions

Procedures for operating in, and/or avoiding adverse and potentially hazardous atmospheric conditions including:

(a) Thunderstorms;

(b) Icing conditions;

(c) Turbulence;

(d) Windshear;

(e) Jetstream;

(f) Volcanic ash clouds;

(g) Heavy precipitation;

(h) Sand storms;

(i) Mountain waves; and

(j) Significant Temperature inversions.

8.3.9. Wake Turbulence

Wake turbulence separation criteria, taking into account aeroplane types, wind conditions and runway location.

8.3.10. Crew members at their stations

The requirements for crew members to occupy their assigned stations or seats during the different phases of flight or whenever deemed necessary in the interest of safety.
8.3.11. Use of safety belts for crew and passengers

The requirements for crew members and passengers to use safety belts and/or harnesses during the different phases of flight or whenever deemed necessary in the interest of safety.

8.3.12. Admission to Flight Deck

The conditions for the admission to the flight deck of persons other than the flight crew. The policy regarding the admission of Inspectors from the Authority must also be included.

8.3.13. Use of vacant crew seats

The conditions and procedures for the use of vacant crew seats.

8.3.14. Incapacitation of crew members

Procedures to be followed in the event of incapacitation of crew members in flight. Examples of the types of incapacitation and the means for recognising them must be included.

8.3.15. Cabin Safety Requirements

Procedures covering:

(a) Cabin preparation for flight, in-flight requirements and preparation for landing including procedures for securing cabin and galleys;

(b) Procedures to ensure that passengers are seated where, in the event that an emergency evacuation is required, they may best assist and not hinder evacuation from the aeroplane;

(c) Procedures to be followed during passenger embarkation and disembarkation; and

(d) Procedures in the event of fuelling with passengers on board or embarking and disembarking.

(e) Smoking on board.

8.3.16. Passenger briefing procedures

The contents, means and timing of passenger briefing in accordance with OPS 1.285.

8.3.17. Procedures for aeroplanes operated whenever required cosmic or solar radiation detection equipment is carried

Procedures for the use of cosmic or solar radiation detection equipment and for recording its readings including actions to be taken in the event that limit values specified in the Operations Manual are exceeded. In addition, the procedures, including ATS procedures, to be followed in the event that a decision to descend or re-route is taken.

8.4. All Weather Operations

A description of the operational procedures associated with All Weather operations (See also OPS Subpart D and E).

8.5. ETOPS

A description of the ETOPS operational procedures.

8.6. Use of the Minimum Equipment and Configuration Deviation List(s)

8.7. Non revenue flights

Procedures and limitations for:

(a) Training flights;

(b) Test flights;

(c) Delivery flights;

(d) Ferry flights;

(e) Demonstration flights; and

(f) Positioning flights,

including the kind of persons who may be carried on such flights.

8.8. Oxygen Requirements

8.8.1. An explanation of the conditions under which oxygen must be provided and used.

8.8.2. The oxygen requirements specified for:

(a) Flight crew;

(b) Cabin crew; and

(c) Passengers.

9. DANGEROUS GOODS AND WEAPONS

9.1. Information, instructions and general guidance on the transport of dangerous goods including:

(a) Operator's policy on the transport of dangerous goods;

(b) Guidance on the requirements for acceptance, labelling, handling, stowage and segregation of dangerous goods;

(c) Procedures for responding to emergency situations involving dangerous goods;

(d) Duties of all personnel involved as per OPS 1.1215; and
(e) Instructions on the carriage of the operator’s employees.

9.2. The conditions under which weapons, munitions of war and sporting weapons may be carried.

10. SECURITY

10.1. Security instructions and guidance of a non-confidential nature which must include the authority and responsibilities of operations personnel. Policies and procedures for handling and reporting crime on board such as unlawful interference, sabotage, bomb threats, and hijacking must also be included.

10.2. A description of preventative security measures and training.

Note: Parts of the security instructions and guidance may be kept confidential.

11. HANDLING OF ACCIDENTS AND OCCURRENCES

Procedures for the handling, notifying and reporting of accidents and occurrences

This section must include:

(a) Definitions of accidents and occurrences and the relevant responsibilities of all persons involved;

(b) The descriptions of which company departments, Authorities or other institutions have to be notified by which means and in which sequence in case of an accident;

(c) Special notification requirements in the event of an accident or occurrence when dangerous goods are being carried;

(d) A description of the requirements to report specific occurrences and accidents;

(e) The forms used for reporting and the procedure for submitting them to the Authority shall also be included; and

(f) If the operator develops additional safety related reporting procedures for its own internal use, a description of the applicability and related forms to be used.

12. RULES OF THE AIR

Rules of the Air including:

(a) Visual and instrument flight rules;

(b) Territorial application of the Rules of the Air;

(c) Communication procedures including COM-failure procedures;

(d) Information and instructions relating to the interception of civil aeroplanes;

(e) The circumstances in which a radio listening watch is to be maintained;

(f) Signals;

(g) Time system used in operation;

(h) ATC clearances, adherence to flight plan and position reports;

(i) Visual signals used to warn an unauthorised aeroplane flying in or about to enter a restricted, prohibited or danger area;

(j) Procedures for pilots observing an accident or receiving a distress transmission;

(k) The ground/air visual codes for use by survivors, description and use of signal aids; and

(l) Distress and urgency signals.

B — AEROPLANE OPERATING MATTERS — TYPE RELATED

Taking account of the differences between types, and variants of types, under the following headings:

0. GENERAL INFORMATION AND UNITS OF MEASUREMENT

0.1. General Information (e.g. aeroplane dimensions), including a description of the units of measurement used for the operation of the aeroplane type concerned and conversion tables.

1. LIMITATIONS

1.1. A description of the certified limitations and the applicable operational limitations including:

(a) Certification status (e.g. JAR-23, JAR-25, ICAO Annex 16 (JAR-36 and JAR-34) etc);

(b) Passenger seating configuration for each aeroplane type including a pictorial presentation;

(c) Types of operation that are approved (e.g. VFR/IFR, CAT II/III, RNP Type, flight in known icing conditions etc);

(d) Crew composition;

(e) Mass and centre of gravity;

(f) Speed limitations;

(g) Flight envelope(s);

(h) Wind limits including operations on contaminated runways;

(i) Performance limitations for applicable configurations;

(j) Runway slope;

(k) Limitations on wet or contaminated runways;
2. NORMAL PROCEDURES

2.1. The normal procedures and duties assigned to the crew, the appropriate check-lists, the system for use of the check-lists and a statement covering the necessary coordination procedures between flight and cabin crew. The following normal procedures and duties must be included:

(a) Pre-flight;
(b) Pre-departure;
(c) Altimeter setting and checking;
(d) Taxi, Take-Off and Climb;
(e) Noise abatement;
(f) Cruise and descent;
(g) Approach, Landing preparation and briefing;
(h) VFR Approach;
(i) Instrument approach;
(j) Visual Approach and circling;
(k) Missed Approach;
(l) Normal Landing;
(m) Post Landing; and
(n) Operation on wet and contaminated runways.

3. ABNORMAL AND EMERGENCY PROCEDURES

3.1. The abnormal and emergency procedures and duties assigned to the crew, the appropriate check-lists, the system for use of the check-lists and a statement covering the necessary coordination procedures between flight and cabin crew. The following abnormal and emergency procedures and duties must be included:

(a) Crew Incapacitation;
(b) Fire and Smoke Drills;
(c) Unpressurised and partially pressurised flight;
(d) Exceeding structural limits such as overweight landing;
(e) Exceeding cosmic radiation limits;
(f) Lightning Strikes;
(g) Distress Communications and alerting ATC to Emergencies;
(h) Engine failure;
(i) System failures;
(j) Guidance for Diversion in case of Serious Technical Failure;
(k) Ground Proximity Warning;
(l) TCAS Warning;
(m) Windshear; and
(n) Emergency Landing/Ditching.

4. PERFORMANCE

4.0. Performance data must be provided in a form in which it can be used without difficulty.

4.1. Performance data

Performance material which provides the necessary data for compliance with the performance requirements prescribed in OPS 1 Subparts F, G, H and I must be included to allow the determination of:

(a) Take-off climb limits Mass, Altitude, Temperature;
(b) Take-off field length (dry, wet, contaminated);
(c) Net flight path data for obstacle clearance calculation or, where applicable, take-off flight path;
(d) The gradient losses for banked climbouts;
(e) En-route climb limits;
(f) Approach climb limits;
(g) Landing climb limits;
(h) Landing field length (dry, wet, contaminated) including the effects of an in-flight failure of a system or device, if it affects the landing distance;
(i) Brake energy limits; and
(j) Speeds applicable for the various flight stages (also considering wet or contaminated runways).

4.1.1. Supplementary data covering flights in icing conditions

Any certificated performance related to an allowable configuration, or configuration deviation, such as anti-skid inoperative, must be included.

4.1.2. If performance Data, as required for the appropriate performance class, is not available in the approved AFM, then other data acceptable to the Authority must be included. Alternatively, the Operations Manual may contain cross-reference to the approved Data contained in the AFM where such Data is not likely to be used often or in an emergency.
4.2. Additional Performance Data.

Additional performance data where applicable including:

(a) All engine climb gradients;
(b) Drift-down data;
(c) Effect of de-icing/anti-icing fluids;
(d) Flight with landing gear down;
(e) For aeroplanes with 3 or more engines, one engine inoperative ferry flights; and
(f) Flights conducted under the provisions of the CDL.

5. FLIGHT PLANNING

5.1. Data and instructions necessary for pre-flight and in-flight planning including factors such as speed schedules and power settings. Where applicable, procedures for engine(s)-out operations, ETOPS (particularly the one-engine-inoperative cruise speed and maximum distance to an adequate aerodrome determined in accordance with OPS 1.245) and flights to isolated aerodromes must be included.

5.2. The method for calculating fuel needed for the various stages of flight, in accordance with OPS 1.255.

6. MASS AND BALANCE

Instructions and data for the calculation of the mass and balance including:

(a) Calculation system (e.g. Index system);
(b) Information and instructions for completion of mass and balance documentation, including manual and computer generated types;
(c) Limiting masses and centre of gravity for the types, variants or individual aeroplanes used by the operator; and
(d) Dry Operating mass and corresponding centre of gravity or index.

7. LOADING

Procedures and provisions for loading and securing the load in the aeroplane.

8. CONFIGURATION DEVIATION LIST

The Configuration Deviation List(s) (CDL), if provided by the manufacturer, taking account of the aeroplane types and variants operated including procedures to be followed when an aeroplane is being despatched under the terms of its CDL.

9. MINIMUM EQUIPMENT LIST

The Minimum Equipment List (MEL) taking account of the aeroplane types and variants operated and the type(s)/area(s) of operation. The MEL must include the navigational equipment and take into account the required performance for the route and area of operation.

10. SURVIVAL AND EMERGENCY EQUIPMENT INCLUDING OXYGEN

10.1. A list of the survival equipment to be carried for the routes to be flown and the procedures for checking the serviceability of this equipment prior to take-off. Instructions regarding the location, accessibility and use of survival and emergency equipment and its associated check list(s) must also be included.

10.2. The procedure for determining the amount of oxygen required and the quantity that is available. The flight profile, number of occupants and possible cabin decompression must be considered. The information provided must be in a form in which it can be used without difficulty.

11. EMERGENCY EVACUATION PROCEDURES

11.1. Instructions for preparation for emergency evacuation including crew coordination and emergency station assignment.

11.2. Emergency evacuation procedures

A description of the duties of all members of the crew for the rapid evacuation of an aeroplane and the handling of the passengers in the event of a forced landing, ditching or other emergency.

12. AEROPLANE SYSTEMS

A description of the aeroplane systems, related controls and indications and operating instructions.

C — ROUTE AND AERODROME INSTRUCTIONS AND INFORMATION

1. Instructions and information relating to communications, navigation and aerodromes including minimum flight levels and altitudes for each route to be flown and operating minima for each aerodrome planned to be used, including:

(a) Minimum flight level/altitude;
(b) Operating minima for departure, destination and alternate aerodromes;
(c) Communication facilities and navigation aids;
(d) Runway data and aerodrome facilities;
(e) Approach, missed approach and departure procedures including noise abatement procedures;
(f) COM-failure procedures;
(g) Search and rescue facilities in the area over which the aeroplane is to be flown;
D — TRAINING

1. Training syllabi and checking programmes for all operations personnel assigned to operational duties in connection with the preparation and/or conduct of a flight.

2. Training syllabi and checking programmes must include:

   2.1. For flight crew: All relevant items prescribed in Subpart E and N;

   2.2. For cabin crew: All relevant items prescribed in Subpart O;

   2.3. For operations personnel concerned, including crew members:

      (a) All relevant items prescribed in Subpart R (Transport of Dangerous Goods by Air); and

      (b) All relevant items prescribed in Subpart S (Security).

   2.4. For operations personnel other than crew members (e.g. dispatcher, handling personnel etc.). All other relevant items prescribed in OPS pertaining to their duties.

3. Procedures

   3.1. Procedures for training and checking.

   3.2. Procedures to be applied in the event that personnel do not achieve or maintain the required standards.

   3.3. Procedures to ensure that abnormal or emergency situations requiring the application of part or all of abnormal or emergency procedures and simulation of IMC by artificial means, are not simulated during commercial air transportation flights.

4. Description of documentation to be stored and storage periods. (See Appendix 1 to OPS 1.1065.)

Appendix 1 to OPS 1.1065

Document storage periods

An operator shall ensure that the following information/documentation is stored in an acceptable form, accessible to the Authority, for the periods shown in the Tables below.

Note:

Additional information relating to maintenance records is prescribed in Subpart M.

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Information used for the preparation and execution of a flight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operational flight plan</td>
<td>3 months</td>
</tr>
<tr>
<td>Aeroplane Technical log</td>
<td>24 months after the date of the last entry</td>
</tr>
<tr>
<td>Route specific NOTAM/AIS briefing documentation if edited by the operator</td>
<td>3 months</td>
</tr>
<tr>
<td>Mass and balance documentation</td>
<td>3 months</td>
</tr>
<tr>
<td>Notification of special loads including dangerous goods</td>
<td>3 months</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Table 2</th>
<th>Reports</th>
</tr>
</thead>
<tbody>
<tr>
<td>Journey log</td>
<td>3 months</td>
</tr>
<tr>
<td>Flight report(s) for recording details of any occurrence, as prescribed in OPS 1.420, or any event which the commander deems necessary to report/record</td>
<td>3 months</td>
</tr>
<tr>
<td>Reports on exceedances of duty and/or reducing rest periods</td>
<td>3 months</td>
</tr>
</tbody>
</table>
Table 3
Flight crew records

<table>
<thead>
<tr>
<th>Flight Crew Records</th>
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</thead>
<tbody>
<tr>
<td>Flight, Duty and Rest time</td>
</tr>
<tr>
<td>Licence</td>
</tr>
<tr>
<td>Conversion training and checking</td>
</tr>
<tr>
<td>Command course (including checking)</td>
</tr>
<tr>
<td>Recurrent training and checking</td>
</tr>
<tr>
<td>Training and checking to operate in either pilot's seat</td>
</tr>
<tr>
<td>Recent experience (OPS 1.970 refers)</td>
</tr>
<tr>
<td>Route and aerodrome competence (OPS 1.975 refers)</td>
</tr>
<tr>
<td>Training and qualification for specific operations when required by OPS (e.g. ETOPS CATII/III operations)</td>
</tr>
<tr>
<td>Dangerous Goods training as appropriate</td>
</tr>
</tbody>
</table>

Table 4
Cabin crew records

<table>
<thead>
<tr>
<th>Cabin Crew Records</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flight, Duty and Rest time</td>
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<tr>
<td>Initial training, conversion and differences training (including checking)</td>
</tr>
<tr>
<td>Recurrent training and refresher (including checking)</td>
</tr>
<tr>
<td>Dangerous Goods training as appropriate</td>
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</tbody>
</table>

Table 5
Records for other operations personnel

<table>
<thead>
<tr>
<th>Records for other operations personnel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Training/qualification records of other personnel for whom an approved training programme is required by OPS</td>
</tr>
</tbody>
</table>

Table 6
Other records

<table>
<thead>
<tr>
<th>Other Records</th>
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</thead>
<tbody>
<tr>
<td>Records on cosmic and solar radiation dosage</td>
</tr>
<tr>
<td>Quality System records</td>
</tr>
</tbody>
</table>

SUBPART R
TRANSPORT OF DANGEROUS GOODS BY AIR
OPS 1.1150

Terminology

Terms used in this Subpart have the following meanings:

1. Acceptance Check List: A document used to assist in carrying out a check on the external appearance of packages of dangerous goods and their associated documents to determine that all appropriate requirements have been met.

2. Cargo Aircraft: Any aircraft which is carrying goods or property but not passengers. In this context the following are not considered to be passengers:

   (i) A crew member;

   (ii) An operator's employee permitted by, and carried in accordance with, the instructions contained in the Operations Manual;

   (iii) An authorised representative of an Authority; or

   (iv) A person with duties in respect of a particular shipment on board.

3. Dangerous Goods Accident: An occurrence associated with and related to the transport of dangerous goods which results in fatal or serious injury to a person or major property damage.
4. Dangerous Goods Incident: An occurrence, other than a dangerous goods accident, associated with and related to the transport of dangerous goods, not necessarily occurring on board an aircraft, which results in injury to a person, property damage, fire, breakage, spillage, leakage of fluid or radiation or other evidence that the integrity of the packaging has not been maintained. Any occurrence relating to the transport of dangerous goods which seriously jeopardises the aircraft or its occupants is also deemed to constitute a dangerous goods incident.

5. Dangerous Goods Transport Document: A document which is specified by the Technical Instructions. It is completed by the person who offers dangerous goods for air transport and contains information about those dangerous goods. The document bears a signed declaration indicating that the dangerous goods are fully and accurately described by their proper shipping names and UN numbers (if assigned) and that they are correctly classified, packed, marked, labelled and in a proper condition for transport.

6. Freight Container: A freight container is an article of transport equipment for radioactive materials, designed to facilitate the transport of such materials, either packaged or unpackaged, by one or more modes of transport. (Note: see Unit Load Device where the dangerous goods are not radioactive materials.)

7. Handling Agent: An agency which performs on behalf of the operator some or all of the latter's functions including receiving, loading, unloading, transferring or other processing of passengers or cargo.

8. Overpack: An enclosure used by a single shipper to contain one or more packages and to form one handling unit for convenience of handling and stowage. (Note: a unit load device is not included in this definition.)


10. Packaging: Receptacles and any other components or materials necessary for the receptacle to perform its containment function and to ensure compliance with the packing requirements.

11. Proper Shipping Name: The name to be used to describe a particular article or substance in all shipping documents and notifications and, where appropriate, on packagings.

12. Serious Injury: An injury which is sustained by a person in an accident and which:
   (i) Requires hospitalisation for more than 48 hours, commencing within seven days from the date the injury was received; or
   (ii) Results in a fracture of any bone (except simple fractures of fingers, toes or nose); or
   (iii) Involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage; or
   (iv) Involves injury to any internal organ; or
   (v) Involves second or third degree burns, or any burns affecting more than 5 % of the body surface; or
   (vi) Involves verified exposure to infectious substances or injurious radiation.

13. State of Origin: The Authority in whose territory the dangerous goods were first loaded on an aircraft.


15. UN Number: The four-digit number assigned by the United Nations Committee of Experts on the Transport of Dangerous Goods to identify a substance or a particular group of substances.

16. Unit Load Device: Any type of aircraft container, aircraft pallet with a net, or aircraft pallet with a net over an igloo. (Note: an overpack is not included in this definition; for a container containing radioactive materials see the definition for freight container.)

OPS 1.1155

Approval to Transport Dangerous Goods

An operator shall not transport dangerous goods unless approved to do so by the Authority.

OPS 1.1160

Scope

(a) An operator shall comply with the provisions contained in the Technical Instructions on all occasions when dangerous goods are carried, irrespective of whether the flight is wholly or partly within or wholly outside the territory of a State.

(b) Articles and substances which would otherwise be classed as dangerous goods are excluded from the provisions of this Subpart, to the extent specified in the Technical Instructions, provided:

1. They are required to be aboard the aeroplane in accordance with the relevant applicable rules or for operating reasons;

2. They are carried as catering or cabin service supplies;

3. They are carried for use in flight as veterinary aid or as a humane killer for an animal;

4. They are carried for use in flight for medical aid for a patient, provided that:

   (i) Gas cylinders have been manufactured specifically for the purpose of containing and transporting that particular gas;
(ii) Drugs, medicines and other medical matter are under the control of trained personnel during the time when they are in use in the aeroplane;

(iii) Equipment containing wet cell batteries is kept and, when necessary secured, in an upright position to prevent spillage of the electrolyte; and

(iv) Proper provision is made to stow and secure all the equipment during take-off and landing and at all other times when deemed necessary by the commander in the interests of safety; or

5. They are carried by passengers or crew members.

(c) Articles and substances intended as replacements for those in (b) 1 above shall be transported on an aeroplane as specified in the Technical Instructions.

OPS 1.1165

Limitations on the Transport of Dangerous Goods

(a) An operator shall take all reasonable measures to ensure that articles and substances that are specifically identified by name or generic description in the Technical Instructions as being forbidden for transport under any circumstances are not carried on any aeroplane.

(b) An operator shall take all reasonable measures to ensure that articles and substances or other goods that are identified in the Technical Instructions as being forbidden for transport in normal circumstances are only transported when:

1. They are exempted by the States concerned under the provisions of the Technical Instructions; or

2. The Technical Instructions indicate they may be transported under an approval issued by the State of Origin.

OPS 1.1170

Classification

An operator shall take all reasonable measures to ensure that articles and substances are classified as dangerous goods as specified in the Technical Instructions.

OPS 1.1175

Packing

An operator shall take all reasonable measures to ensure that dangerous goods are packed as specified in the Technical Instructions.

OPS 1.1180

Labelling and Marking

(a) An operator shall take all reasonable measures to ensure that packages, overpacks and freight containers are labelled and marked as specified in the Technical Instructions.

(b) Where dangerous goods are carried on a flight which takes place wholly or partly outside the territory of a State, labelling and marking must be in the English language in addition to any other language requirements.

OPS 1.1185

Dangerous Goods Transport Document

(a) An operator shall ensure that, except when otherwise specified in the Technical Instructions, dangerous goods are accompanied by a dangerous goods transport document.

(b) Where dangerous goods are carried on a flight which takes place wholly or partly outside the territory of a State, the English language must be used for the dangerous goods transport document in addition to any other language requirements.

OPS 1.1195

Acceptance of Dangerous Goods

(a) An operator shall not accept dangerous goods for transport until the package, overpack or freight container has been inspected in accordance with the acceptance procedures in the Technical Instructions.

(b) An operator or his handling agent shall use an acceptance check list. The acceptance check list shall allow for all relevant details to be checked and shall be in such form as will allow for the recording of the results of the acceptance check by manual, mechanical or computerised means.

OPS 1.1200

Inspection for Damage, Leakage or Contamination

An operator shall ensure that:

1. Packages, overpacks and freight containers are inspected for evidence of leakage or damage immediately prior to loading on an aeroplane or into a unit load device, as specified in the Technical Instructions;

2. A unit load device is not loaded on an aeroplane unless it has been inspected as required by the Technical Instructions and found free from any evidence of leakage from, or damage to, the dangerous goods contained therein;

3. Leaking or damaged packages, overpacks or freight containers are not loaded on an aeroplane;
4. Any package of dangerous goods found on an aeroplane and which appears to be damaged or leaking is removed or arrangements made for its removal by an appropriate authority or organisation. In this case the remainder of the consignment shall be inspected to ensure it is in a proper condition for transport and that no damage or contamination has occurred to the aeroplane or its load; and

5. Packages, overpacks and freight containers are inspected for signs of damage or leakage upon unloading from an aeroplane or from a unit load device and, if there is evidence of damage or leakage, the area where the dangerous goods were stowed is inspected for damage or contamination.

OPS 1.1205

Removal of Contamination

An operator shall ensure that:

1. Any contamination found as a result of the leakage or damage of dangerous goods is removed without delay; and

2. An aeroplane which has been contaminated by radioactive materials is immediately taken out of service and not returned until the radiation level at any accessible surface and the non-fixed contamination are not more than the values specified in the Technical Instructions.

OPS 1.1210

Loading Restrictions

(a) Passenger Cabin and Flight Deck

An operator shall ensure that dangerous goods are not carried in an aeroplane cabin occupied by passengers or on the flight deck, unless otherwise specified in the Technical Instructions.

(b) Cargo Compartments

An operator shall ensure that dangerous goods are loaded, segregated, stowed and secured on an aeroplane as specified in the Technical Instructions.

(c) Dangerous Goods Designated for Carriage Only on Cargo Aircraft

An operator shall ensure that packages of dangerous goods bearing the “Cargo Aircraft Only” label are carried on a cargo aircraft and loaded as specified in the Technical Instructions.

OPS 1.1215

Provision of Information

(a) Information to Ground Staff

An operator shall ensure that:

1. Information is provided to enable ground staff to carry out their duties with regard to the transport of dangerous goods, including the actions to be taken in the event of incidents and accidents involving dangerous goods; and

2. Where applicable, the information referred to in sub-paragraph (a) 1 above is also provided to his handling agent.

(b) Information to Passengers and Other Persons

1. An operator shall ensure that information is promulgated as required by the Technical Instructions so that passengers are warned as to the types of goods which they are forbidden from transporting aboard an aeroplane; and

2. An operator and, where applicable, his handling agent shall ensure that notices are provided at acceptance points for cargo giving information about the transport of dangerous goods.

(c) Information to Crew Members

An operator shall ensure that information is provided in the Operations Manual to enable crew members to carry out their responsibilities in regard to the transport of dangerous goods, including the actions to be taken in the event of emergencies arising involving dangerous goods.

(d) Information to the Commander

An operator shall ensure that the commander is provided with written information, as specified in the Technical Instructions.

(e) Information in the Event of an Aeroplane Incident or Accident

1. The operator of an aeroplane which is involved in an aeroplane incident shall, on request, provide any information required to minimise the hazards created by any dangerous goods carried.

2. The operator of an aeroplane which is involved in an aeroplane accident shall, as soon as possible, inform the appropriate authority of the State in which the aeroplane accident occurred of any dangerous goods carried.

OPS 1.1220

Training programmes

(a) An operator shall establish and maintain staff training programmes, as required by the Technical Instructions, which must be approved by the Authority.
(b) Operators not holding a permanent approval to carry dangerous goods

An operator shall ensure that:

1. Staff who are engaged in general cargo handling have received training to carry out their duties in respect of dangerous goods. As a minimum this training must cover the areas identified in Column 1 of Table 1 and be to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods and how to identify such goods; and

2. The following personnel:

   (i) Crew members;
   
   (ii) Passenger handling staff; and
   
   (iii) Security staff employed by the operator who deal with the screening of passengers and their baggage,

have received training which, as a minimum, must cover the areas identified in Column 2 of Table 1 and be to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods, how to identify them and what requirements apply to the carriage of such goods by passengers.

Table 1

<table>
<thead>
<tr>
<th>Areas of training</th>
<th>1</th>
<th>2</th>
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</thead>
<tbody>
<tr>
<td>General philosophy</td>
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</tr>
<tr>
<td>Limitations on Dangerous Goods in air transport</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>Package marking and labelling</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>Dangerous Goods in passengers baggage</td>
<td></td>
<td>×</td>
</tr>
<tr>
<td>Emergency procedures</td>
<td></td>
<td>×</td>
</tr>
</tbody>
</table>

Note: “×” indicates an area to be covered.

(c) Operators holding a permanent approval to carry dangerous goods

An operator shall ensure that:

1. Staff who are engaged in the acceptance of dangerous goods have received training and are qualified to carry out their duties. As a minimum this training must cover the areas identified in Column 1 of Table 2 and be to a depth sufficient to ensure the staff can take decisions on the acceptance or refusal of dangerous goods offered for carriage by air;

2. Staff who are engaged in ground handling, storage and loading of dangerous goods have received training to enable them to carry out their duties in respect of dangerous goods. As a minimum this training must cover the areas identified in Column 2 of Table 2 and be to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods, how to identify such goods and how to handle and load them;

3. Staff who are engaged in general cargo handling have received training to carry out their duties in respect of dangerous goods. As a minimum this training must cover the areas identified in Column 3 of Table 2 and be to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods, how to identify such goods and how to handle and load them;

4. Flight crew members have received training which, as a minimum, must cover the areas identified in Column 4 of Table 2. Training must be to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods and how they should be carried on an aeroplane; and

5. The following personnel:

   (i) Passenger handling staff;
   
   (ii) Security staff employed by the operator who deal with the screening of passengers and their baggage; and
   
   (iii) Crew members other than flight crew members,

have received training which, as a minimum, must cover the areas identified in Column 5 of Table 2. Training must be to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods and what requirements apply to the carriage of such goods by passengers or, more generally, their carriage on an aeroplane.

(d) An operator shall ensure that all staff who require dangerous goods training receive recurrent training at intervals of not longer than 2 years.

(e) An operator shall ensure that records of dangerous goods training are maintained for all staff trained in accordance with sub-paragraph (d) above.

(f) An operator shall ensure that his handling agent’s staff are trained in accordance with the applicable column of Table 1 or Table 2.
## Table 2

<table>
<thead>
<tr>
<th>Areas of training</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
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<tbody>
<tr>
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<td>Limitations on Dangerous Goods in the air transport</td>
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<td>Classification and list of Dangerous Goods</td>
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<tr>
<td>General packing requirements and Packing Instructions</td>
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<tr>
<td>Packaging specifications markings</td>
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<td>Documentation from the shipper</td>
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<tr>
<td>Acceptance of Dangerous Goods, including the use of a checklist</td>
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<tr>
<td>Loading, restrictions on loading and segregation</td>
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<td>×</td>
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</tr>
<tr>
<td>Inspections for damage or leakage and decontamination procedures</td>
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<tr>
<td>Provision of information to commander</td>
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<tr>
<td>Dangerous Goods in passengers' baggage</td>
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<tr>
<td>Emergency procedures</td>
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</tr>
</tbody>
</table>

Note: "×" indicates an area to be covered.

### Subpart S

#### SECURITY

**OPS 1.1235**

Security requirements

An operator shall ensure that all appropriate personnel are familiar, and comply, with the relevant requirements of the national security programmes of the State of the operator.

**OPS 1.1240**

Training programmes

An operator shall establish, maintain and conduct approved training programmes which enable the operator's personnel to take appropriate action to prevent acts of unlawful interference such as sabotage or unlawful seizure of aeroplanes and to minimise the consequences of such events should they occur.

**OPS 1.1245**

Reporting acts of unlawful interference

Following an act of unlawful interference on board an aeroplane the commander or, in his absence the operator, shall submit, without delay, a report of such an act to the designated local authority and the Authority in the State of the operator.

**OPS 1.1250**

Aeroplane search procedure checklist

An operator shall ensure that all aeroplanes carry a checklist of the procedures to be followed for that type in searching for concealed weapons, explosives, or other dangerous devices.

**OPS 1.1255**

Flight crew compartment security

If installed, the flight crew compartment door on all aeroplanes operated for the purpose of carrying passengers shall be capable of being locked from within the compartment in order to prevent unauthorised access.

### OPS 1.1225

**Dangerous Goods Incident and Accident Reports**

An operator shall report dangerous goods incidents and accidents to the Authority. An initial report shall be despatched within 72 hours of the event unless exceptional circumstances prevent this.
Amended proposal for a Council Regulation on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (1)

(2000/C 311 E/04)

COM(2000) 75 final — 1999/0102(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC-Treaty on 30 March 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point (c) of Article 61 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

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

(1) Whereas the Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured; whereas to establish such an area the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market.

(2) Whereas the sound operation of the internal market entails the need to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States.

(3) Whereas this is a subject now falling within the ambit of Article 65 of the Treaty.

(4) Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community; whereas this Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(5) Whereas the Council, by Act dated 26 May 1997 (2), concluded a Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters and recommended it for adoption by the Member States in accordance with their respective constitutional requirements; whereas that Convention has not entered into force; whereas continuity in the results of the negotiations for conclusion of the Convention should be ensured; whereas the content of this Regulation is substantially taken over from it.

(6) Whereas efficiency and speed in judicial procedures in civil matters means that the transmission of judicial and extrajudicial documents is to be made direct and by rapid means between bodies designated by the Member States; whereas, however, the Member States may indicate their intention of preserving central bodies for a transitional period of five years; whereas this transitional arrangement is warranted by the need to adapt the Member States' existing systems for transmission.

(7) Whereas speed in transmission warrants the use of all appropriate means, provided that certain conditions as to the legibility and reliability of the document received are observed; whereas security in transmission requires that the document to be transmitted be accompanied by a pre-printed form, to be completed in the language of the place where service is to be effected, or in another language accepted by the Member State in question.

(8) Whereas, to secure the effectiveness of the Regulation, the possibility of refusing service of documents is confined to exceptional situations.

(9) Whereas speed of transmission warrants documents being served within days of reception of the document; whereas, however, if service has not been effected after one month has elapsed, the receiving agency should inform the transmitting agency; whereas the expiry of this period should not imply that the request be returned to the transmitting body where it is clear that service is feasible within a reasonable period.

(10) Whereas, for the protection of the addressee's interests, service should be effected in the language of the place where it is to be effected or in one of the languages of the originating Member State which the addressee understands.

(11) Whereas, given the differences between the Member States as regards their rules of procedure, the material date for the purposes of service varies from one Member State to another; whereas in such situations this Regulation should provide for a double-date system, where it is the law of the receiving Member State which determines it, unless the relevant documents are to be served within a specified period; whereas the purpose of this is to protect both the addressee and the requesting party.

(12) Whereas this Regulation prevails over the provisions applying to these matters, contained in international conventions concluded by the Member States, and in particular the Protocol annexed to the Brussels Convention of 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (1) and the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, in relations between the Member States party thereto; whereas the Regulation does not preclude Member States from maintaining or adopting measures to expedite the transmission of documents, provided that they are compatible with the Regulation;

(13) Whereas the information transmitted pursuant to this Regulation should enjoy suitable protection; whereas the matter falls within the scope of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (2), and of Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (3);

(14) Whereas the Commission should be empowered to give effect to measures implementing this Regulation; whereas to that end it should be assisted by an advisory committee;

(15) Whereas, no later than three years after the date of entry into force of this Regulation, the Commission should review its application and propose such amendments as may appear necessary;

(16) Whereas, in accordance with Articles 1 and 2 of the Protocols on the position of the United Kingdom and Ireland, these two Member States have notified their decision to participate in the adoption of the present Regulation. In accordance with the protocol on the position of Denmark, this Member State is not participating in the adoption of this Regulation; whereas this Regulation is accordingly not binding on Denmark, nor is it applicable in its regard;

HAS ADOPTED THIS REGULATION:

CHAPTER I

General provisions

Article 1

Scope

1. This Regulation shall apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there.

2. This Regulation shall not apply where the address of the domicile or habitual residence of the person to be served with the document is not known.

Article 2

Transmitting and receiving agencies

1. Each Member State shall designate the public officers, authorities or other persons, hereinafter referred to as ‘transmitting agencies’, competent for the transmission of judicial or extrajudicial documents to be served in another Member State.

2. Each Member State shall designate the public officers, authorities or other persons, hereinafter referred to as ‘receiving agencies’, competent for the receipt of judicial or extrajudicial documents from another Member State.

3. A Member State may designate one transmitting agency and one receiving agency or one agency to perform both functions. A federal State, a State in which several legal systems apply or a State with autonomous territorial units shall be free to designate more than one such agency. The designation shall have effect for a period of five years and may be renewed at five-year intervals.

4. Each Member State shall provide the Commission with the following information:

a) the names and addresses of the receiving agencies referred to in paragraphs 2 and 3;

b) the geographical areas in which they have jurisdiction;

c) the means of receipt of documents available to them; and

d) the languages that may be used for the completion of the standard form in the Annex.

The Member States shall notify the Commission of any subsequent modification of such information.

Article 3

Central body

Each Member State shall designate a central body responsible for:

a) supplying information to the transmitting agencies;
b) seeking solutions to any difficulties which may arise during transmission of documents for service, including assistance in the case of a wrong address;

c) forwarding, in exceptional cases, at the request of a transmitting agency, a request for service to the competent receiving agency.

A federal State, a State in which several legal systems apply or a State with autonomous territorial units shall be free to designate more than one central body.

CHAPTER II
Judicial Documents

SECTION 1
TRANSMISSION AND SERVICE OF JUDICIAL DOCUMENTS

Article 4
Transmission of documents
1. Judicial documents shall be transmitted directly and as soon as possible between the agencies designated on the basis of Article 2.

2. The transmission of documents, requests, confirmations, receipts, certificates and any other papers between transmitting agencies and receiving agencies may be carried out by any appropriate means, provided that the content of the document received is true and faithful to that of the document forwarded and that all information in it is easily legible.

3. The document to be transmitted shall be accompanied by a request drawn up using the standard form in the Annex. The form shall be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it can accept. Each Member State shall indicate the official language or languages of the European Union other than its own which is or are acceptable to it for completion of the form.

4. The documents and all papers that are transmitted shall be exempted from legalisation or any equivalent formality.

5. When the transmitting agency wishes a copy of the document to be returned together with the certificate referred to in Article 10, it shall send the document in duplicate.

Article 5
Translation of documents
1. The applicant shall be advised by the transmitting agency to which he or she forwards the document for transmission that the addressee may refuse to accept it if it is not in one of the languages provided for in Article 8.

2. The applicant shall bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decision by the court or competent authority on liability for such costs.

Article 6
Receipt of documents by receiving agency
1. A receiving agency, on receipt of a document, shall, as soon as possible and in any event within seven days of receipt thereof, send a receipt to the transmitting agency by the swiftest possible means of transmission using the standard form in the Annex.

2. Where the request for service cannot be fulfilled on the basis of the information or documents transmitted, the receiving agency shall contact the transmitting agency by the swiftest possible means in order to secure the missing information or documents.

If there are legitimate doubts as to whether or not a request for service falls within the scope of this Regulation, the opinion of the transmitting agency shall prevail, subject to the exception provided for in paragraph 3.

3. If, as a result of an obvious mistake, the request for service does not fall within the scope of this Regulation or if non-compliance with the formal conditions required makes service impossible, the request and the documents transmitted shall be returned, on receipt, to the transmitting agency, together with the notice of return in the standard form in the Annex.

4. A receiving agency receiving a document for service but not having territorial jurisdiction to serve it shall forward it, as well as the request, to the receiving agency having territorial jurisdiction in the same Member State if the request complies with the conditions laid down in Article 4(3) and shall inform the transmitting agency accordingly, using the standard form in the Annex. That receiving agency shall inform the transmitting agency when it receives the document, in the manner provided for in paragraph 1.

Article 7
Service of documents
1. The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular form requested by the transmitting agency, unless such a method is incompatible with the law of that Member State.
2. All steps required for service of the document shall be effected as soon as possible. In any event, if it has not been possible to effect service within one month of receipt, the receiving agency shall inform the transmitting agency by means of the certificate in the standard form in the Annex, which shall be drawn up under the conditions referred to in Article 10(2). The period shall be calculated in accordance with the law of the Member State addressed.

Article 8

Refusal to accept a document

1. The receiving agency shall inform the addressee that he or she may refuse to accept the document to be served if it is in a language other than either of the following languages:

a) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected; or

b) a language of the Member State of transmission which the addressee understands.

2. Where the receiving agency is informed that the addressee refuses to accept the document in accordance with paragraph 1, it shall immediately inform the transmitting agency by means of the certificate provided for in Article 10 and return the request and the documents of which a translation is requested.

Article 9

Date of service

1. The date of service of a document pursuant to Article 7 shall be the date on which it is served in accordance with the law of the Member State addressed, without prejudice to Article 8.

2. Where a document must be served within a particular period in the context of proceedings to be brought or pending in the Member State of origin, the date to be taken into account with respect to the applicant shall be that fixed by the law of that Member State.

Article 10

Certificate of service and copy of the document served

1. When the formalities concerning the service of the document have been completed, a certificate of completion of those formalities shall be drawn up in the standard form in the Annex and addressed to the transmitting agency, together with, where Article 4(5) applies, a copy of the document served.

2. The certificate shall be completed in the official language or one of the official languages of the Member State of origin or in another language which the Member State of origin has indicated that it can accept. Each Member State shall indicate the official language or languages of the European Union other than its own which is or are acceptable to it for completion of the form.

Article 11

Costs of service

1. The service of judicial documents coming from a Member State shall not give rise to any payment or reimbursement of taxes or costs for services rendered by the Member State addressed.

2. When required under the law of the Member State addressed, the applicant shall pay or reimburse the costs occasioned by:

a) the employment of a judicial officer or of a person competent under the law of the Member State addressed;

b) the use of a particular method of service.

SECTION 2

OTHER MEANS OF TRANSMISSION AND SERVICE OF JUDICIAL DOCUMENTS

Article 12

Transmission by consular or diplomatic channels

Each Member State shall be free, in exceptional circumstances, to use consular or diplomatic channels to forward judicial documents, for the purpose of service, to those agencies of another Member State which are designated pursuant to Article 2 or 3.

Article 13

Service by diplomatic or consular agents

Each Member State shall be free, in exceptional circumstances, to effect service of judicial documents on persons residing in another Member State, without application of any compulsion, directly through its diplomatic or consular agents.

Any Member State may declare that it is opposed to such service within its territory, unless the documents are to be served on nationals of the Member State in which the documents originate.
**Article 14**

**Service by post**

1. Each Member State shall be free to effect service of judicial documents directly by post to persons residing in another Member State.

2. Any Member State may specify the conditions under which it will accept service of judicial documents by post.

**Article 15**

**Direct service**

1. This Regulation shall not interfere with the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the Member State addressed.

**CHAPTER III**

**Extrajudicial Documents**

**Article 16**

**Transmission**

Extrajudicial documents may be transmitted for service in another Member State in accordance with the provisions of this Regulation.

**CHAPTER IV**

**Final Provisions**

**Article 17**

**Implementing rules**

The Commission shall adopt, in accordance with the procedure prescribed by Article 18, rules for the purposes of:

a) drawing up and annually updating a manual containing the information provided by Member States in accordance with Article 2(4);

b) drawing up a glossary in the official languages of the European Union of documents which can be served under this Regulation;

c) making amendments to the standard forms shown in the Annex;

d) giving effect to implementing measures to expedite the transmission and service of documents.

**Article 18**

**Committee**

The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

**Article 19**

**Defendant not entering an appearance**

1. Where a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service, under the provisions of this Regulation, and the defendant has not appeared, judgment shall not be given until it is established that:

   a) the document was served by a method prescribed by the internal law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or

   b) the document was actually delivered to the defendant or to his residence by another method provided for by this Regulation;

   and that in either of these cases the service or the delivery was affected in sufficient time to enable the defendant to defend.

2. Each Member State shall be free to declare that the judge, notwithstanding the provisions of paragraph 1, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:

   a) the document was transmitted by one of the methods provided for in this Regulation;

   b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document;

   c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.
3. Notwithstanding the provisions of paragraphs 1 and 2, the judge may order, in case of urgency, any provisional or protective measures.

4. When a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service, under the provisions of this Regulation, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled:

a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal; and

b) the defendant has disclosed a prima facie defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Member State may declare that such application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

5. Paragraph 4 shall not apply to judgments concerning status or capacity of persons.

Article 20

Relationship with agreements or arrangements to which Member States are parties

1. This Regulation shall, in relation to matters to which it applies, prevail over other provisions contained in conventions concluded by the Member States, and in particular Article IV of the Protocol to the Brussels Convention of 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

2. This Regulation shall not preclude the maintenance or adoption of provisions to expedite the transmission of documents provided that they are compatible with the Regulation. Member States shall notify the Commission of drafts of the measures which they propose to adopt.

Article 21

Legal aid

This Regulation shall be without prejudice to the relevant law relating to legal aid and, in particular, to Article 23 of the Convention on civil procedure of 17 July 1905, Article 24 of the Convention on civil procedure of 1 March 1954 and Article 13 of the Convention on international access to justice of 25 October 1980 between the Member States parties to these Conventions.

Article 22

Protection of information transmitted

1. Information, including in particular personal data, transmitted under this Regulation shall be used by the receiving agency only for the purpose for which it was transmitted.

2. Receiving agencies shall ensure the confidentiality of such information, in accordance with their national law.

3. Paragraphs 1 and 2 shall not affect national laws enabling data subjects to be informed of the use made of information transmitted under this Regulation.

4. This Regulation shall be without prejudice to Directives 95/46/EC and 97/66/EC.

Article 23

Publication

The Commission shall publish in the Official Journal of the European Communities the information referred to in Articles 2, 3, 4, 9, 10, 13, 14, 15 and 19 and furnished by the Member States.

Article 24

Review

No later than three years after the date of entry into force of this Regulation, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation, paying special attention to the effectiveness of the bodies designated pursuant to Article 2 and to the practical application of point (c) of Article 3 and Article 9. The report shall also cover those aspects of legal transactions and the service of documents performed by electronic means for which a European regulatory framework should be devised at an early stage.

Article 25

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities. It applies from 1st October 2000.

Article 26

Addressees

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

REQUEST FOR SERVICE OF DOCUMENTS
(Article 4(3) of the Regulation)

Reference No (*) This item is optional

1. TRANSMITTING AGENCY
   1.1 Identity:
   1.2 Address:
      1.2.1 Street and Number/PO Box
      1.2.2 Place and Code:
      1.2.3 Country:
   1.3 Tel. No:
   1.4 Fax No (*):
   1.5 E-mail (*):

2. RECEIVING AGENCY
   2.1 Identity:
   2.2 Address:
      2.2.1 Street and Number/PO Box
      2.2.2 Place and Code:
      2.2.3 Country:
   2.3 Tel. No:
   2.4 Fax No (*):
   2.5 E-mail (*)

3. APPLICANT
   3.1 Identity:
   3.2 Address:
      3.2.1 Street and Number/PO Box
      3.2.2 Place and Code:
      3.2.3 Country:
   3.3 Tel. No (*)
   3.4 Fax No (*)
   3.5 E-mail (*)

4. ADDRESSEE
   4.1 Identity:
   4.2 Address:
      4.2.1 Street and Number/PO Box
      4.2.2 Place and Code:
      4.2.3 Country:
   4.3 Tel. No (*)
   4.4 Fax No (*)
   4.5 E-mail (*)
   4.6 Identification number/social security number/organisation number/or equivalent (*):
5. METHOD OF SERVICE

5.1 In accordance with the law of the Member State addressed

5.2 By the following particular method:

5.2.1 If this method is incompatible with the law of the Member State addressed, the document(s) should be served in accordance with the law:

5.2.1.1 yes

5.2.1.2 no

6. DOCUMENT TO BE SERVED

(a) 6.1 Nature of the document

6.1.1 Judicial

6.1.1.1 writ of summons

6.1.1.2 judgment

6.1.1.3 appeal

6.1.1.4 other:

6.1.2 Extrajudicial

(b) 6.2 Date or time-limit stated in the document (*)

(c) 6.3 Language of document:

6.3.1 original D EN DK ES FIN FR GR IT NL P S others:

6.3.2 translation (*) D EN DK ES FIN FR GR IT NL P S others:

d) 6.4 Number of enclosures:

7. A COPY OF DOCUMENT TO BE RETURNED WITH THE CERTIFICATE OF SERVICE (Article 4(5) of the Regulation)

7.1 Yes (in this case send two copies of the document to be served)

7.2 No

1. You are required by Article 7(2) of the Regulation to effect all steps required for service of the document as soon as possible. In any event, if it is not possible for you to effect service within one month of receipt, you must inform this Agency by means of the certificate provided for in point 13.

2. If you cannot fulfil this request for service on the basis of the information or documents transmitted, you are required by Article 6(2) of the Regulation to contact this Agency by the swiftest possible means in order to secure the missing information or document.

Done at:

Date:

Signature and/or stamp:
ACKNOWLEDGEMENT OF RECEIPT
(Article 6 (1) of the Regulation)

This acknowledgement must be sent by the swiftest possible means of transmission as soon as possible after receipt of the document and in any event within seven days of receipt.

8. DATE OF RECEIPT:

Done at:

Date:

Signature and/or stamp:
9. REASON FOR RETURN

9.1 The request is manifestly outside the scope of the Regulation:
   9.1.1 the document is not civil or commercial.
   9.1.2 the service is not from one Member State to another Member State

9.2 Non-compliance with formal conditions required makes service impossible:
   9.2.1 the document is not easily legible
   9.2.2 the language used to complete the form is incorrect
   9.2.3 the document received is not a true and faithful copy
   9.2.4 other (please give details):

9.3 The method of service is incompatible with the law of that Member State (Article 7 (1) of the Regulation)

Done at:

Date:

Signature and/or stamp:
NOTICE OF RETRANSMISSION OF REQUEST AND DOCUMENT TO THE APPROPRIATE RECEIVING AGENCY

Article 6(4) of the Regulation

The request and document were forwarded on to the following receiving agency, which has territorial jurisdiction to serve it:

10.1 IDENTITY:
10.2 Address:
   10.2.1 Street and Number/PO Box:
   10.2.2 Place and Code:
   10.2.3 Country:
10.3 Tel. No:
10.4 Fax No (*):
10.5 E-mail (*):

Done at:
Date:
Signature and/or stamp:
Reference No of the appropriate receiving agency.

NOTICE OF RECEIPT BY THE APPROPRIATE RECEIVING AGENCY TO THE TRANSMITTING AGENCY
(Article 6(4) of the Regulation)

This notice must be sent by the swiftest possible means of transmission as soon as possible after receipt of the document and in any event within seven days of receipt.

11. DATE OF RECEIPT:

Done at:

Date:

Signature and/or stamp:
CERTIFICATE OF SERVICE OR NON-SERVICE OF DOCUMENTS
(Article 10 of the Regulation)

The service shall be effected as soon as possible. In any event, if it has not been possible to effect service within one month of receipt, the receiving agency shall inform the transmitting agency (according to Article 7(2) of the Directive).

12. COMPLETION OF SERVICE
   (a) 12.1 Date and address of service:
   (b) 12.2 The document was
       (A) 12.2.1 served in accordance with the law of the Member State addressed, namely
           12.2.1.1 handed to
           12.2.1.1.1 the addressee in person
           12.2.1.1.2 another person
           12.2.1.1.2.1 Name:
           12.2.1.1.2.2 Address:
               12.2.1.1.2.2.1 Street and Number/PO Box:
               12.2.1.1.2.2.2 Place and Code:
               12.2.1.1.2.2.3 Country:
           12.2.1.1.2.3 Relation to the addressee:
               Family Employee Others
           12.2.1.1.3 the addressee's address
       12.2.1.2 served by post
       12.2.1.2.1 without acknowledgement of receipt
       12.2.1.2.2 with the enclosed acknowledgement of receipt
           12.2.1.2.2.1 from the addressee
           12.2.1.2.2.2 another person
           12.2.1.2.2.2.1 Name:
           12.2.1.2.2.2.2 Address:
               12.2.1.2.2.2.2.1 Street and Number/PO Box:
               12.2.1.2.2.2.2.2 Place and Code:
               12.2.1.2.2.2.2.3 Country:
           12.2.1.2.2.3 Relation to the addressee:
               Family Employee Others
       12.2.1.3 other method (please say how)
       (B) 12.2.2 served by the following particular method (please say how):
       (C) 12.2.3 served by (title, address, phone or fax number)
   (c) 12.3 The addressee of the document was informed (orally) (in writing) that he or she may refuse to accept it if it was not in an official language of the place of service or in an official language of the state of transmission which he or she understands.

13. INFORMATION IN ACCORDANCE WITH ARTICLE 7(2)
   It was not possible to effect service within one month of receipt.

14. REFUSAL OF DOCUMENT
   The addressee refused to accept the document on account of the language used. The documents are annexed to this certificate.

15. REASON FOR NON-SERVICE OF DOCUMENT
   15.1 Address unknown
   15.2 Address cannot be located
   15.3 Document could not be served before the date or time-limit stated in point 6.2.
   15.4 Others (please specify):

The documents are annexed to this certificate.

Done at:

Date:

Signature and/or stamp:
Amended proposal for a Regulation of the European Parliament and of the Council regarding the implementation of measures to promote economic and social development in Turkey

(2000/C 311 E/05)


(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 5 April 2000)

INITIAL PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 179 thereof,

Having regard to the proposal from the Commission,

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

Whereas:

(1) Relations between the European Union and Turkey are based mainly on the Association Agreement of 12 September 1963 and the decisions of the Association Council which the Association Agreement set up.

(2) Turkey is engaged in substantial reform to improve its economy, restructure and increase the efficiency of its public sector, modernise its economic and social infrastructure and develop its manufacturing sector.

(3) The Cardiff European Council on 15 and 16 June 1998 affirmed the importance it attached to the implementation of the European strategy for Turkey and requested the Commission to table proposals (including proposals on financial matters) in that connection.

(4) Income is unequally distributed across Turkey’s provinces. It will not be possible to act on the conclusions of the Cardiff European Council unless these disparities are remedied by backing the development of regions which are lagging behind and by strengthening economic and social cohesion.

(5) The conclusions of the Council meeting of 13 September 1999 referred to financial assistance for Turkey.

AMENDED PROPOSAL

Unchanged
**INITIAL PROPOSAL**

(6) The Helsinki European Council of 10/11 December 1999 stated that Turkey was an applicant country which could join the EU on the basis of the same criteria as those applicable to the other applicant countries.

(7) The provisions of this Regulation are based on respect for democratic principles, the rule of law, human rights and fundamental freedoms and respect for international law, which underpin the policies of the European Community and its Member States, and also on the obligations entered into under the various agreements in those fields.

(8) The Community attaches great importance to the need for Turkey to improve and promote its democratic practices and respect for fundamental human rights, and more closely involve civil society in that process.

(9) The European Parliament has adopted a number of resolutions on the importance of respect for human rights in Turkey to the development of close ties between that country and the European Union, in particular those of 13 December 1995 on the human rights situation in Turkey, 17 September 1998 on the Commission reports on developments in relations with Turkey since the entry into force of the customs union, 3 December 1998 on the communication from the Commission to the Council and the European Parliament on the further development of relations with Turkey and on the communication from the Commission to the Council entitled ‘European strategy for Turkey: the Commission’s initial operational proposals’ and 6 October 1999 on the state of relations between Turkey and the European Union (1).

(10) The measures needed to implement this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (2); whereas these measures should be adopted in accordance with the management procedure laid down in Article 4 of that Decision.

(11) On 6 May 1999 the European Parliament, the Council and the Commission approved an interinstitutional agreement on budgetary discipline and improvement of the budgetary procedure (3).

**AMENDED PROPOSAL**

(7) The provisions of this Regulation are based on respect for democratic principles, the rule of law, human rights and fundamental freedoms and respect for international law, which underpin the policies of the European Community and its Member States, and also on the obligations entered into under the various agreements in those fields.

(8) The Community attaches great importance to the need for Turkey to improve and promote its democratic practices and respect for fundamental human rights, and more closely involve civil society in that process.

(9) The European Parliament has adopted a number of resolutions on the importance of respect for human rights in Turkey to the development of close ties between that country and the European Union, in particular those of 13 December 1995 on the human rights situation in Turkey, 17 September 1998 on the Commission reports on developments in relations with Turkey since the entry into force of the customs union, 3 December 1998 on the communication from the Commission to the Council and the European Parliament on the further development of relations with Turkey and on the communication from the Commission to the Council entitled ‘European strategy for Turkey: the Commission’s initial operational proposals’ and 6 October 1999 on the state of relations between Turkey and the European Union (1).

(11) On 6 May 1999 the European Parliament, the Council and the Commission approved an interinstitutional agreement on budgetary discipline and improvement of the budgetary procedure (4).

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The European Parliament, the Council and the Commission adopted a declaration on 6 March 1995 on the incorporation of financial provisions into legislative acts.

Such a reference shall be part of the multiannual financial framework of the Mediterranean allocations.

The projects and programmes financed on this basis must further Turkey’s economic and social development, help to promote the defence of human rights and respect for, and the protection of, the country’s minorities, and contribute to the reform of its development policies and the restructuring of its institutional and legal framework in order to ensure compliance with these principles.

The projects and programmes financed on this basis must benefit the population affected by a development lag.

The Community shall assist Turkey in its efforts to achieve economic and social development.

The financial reference illustrating the will of the legislative authority is EUR 15 million for the period 2000-2002. This reference shall not affect the powers of the budgetary authority as defined in the Treaty. The budgetary authority shall set the annual funding in relation to the appropriations available for each financial year, taking into account the principles of sound management referred to in Article 2 of the Financial Regulation.

INITIAL PROPOSAL

Article 3

1. The beneficiaries of cooperation projects and operations may include not only the Turkish state and regions but also in particular local authorities, regional organisations, bodies and, local or traditional communities, business support organisations, cooperatives and civil society, in particular associations, foundations and non-governmental organisations.

2. Where an essential element for the continuation of assistance to Turkey is lacking, in particular in the case of violation of democratic principles, the rule of law, human rights and fundamental freedoms and international law, the Council, acting by qualified majority on a proposal from the Commission, may decide upon appropriate measures.

pass information on

The Commission shall pass information on its indicative programme to the committee referred to in Article 7 of this Regulation and the joint parliamentary committee and the EU-Turkey joint economic and social committee.

AMENDED PROPOSAL

Unchanged

1. The beneficiaries of cooperation projects and operations may include not only the Turkish state and regions but also in particular local authorities, regional organisations, public bodies and departments, including the customs administration, local or traditional communities, business support organisations, cooperatives and civil society, in particular associations, foundations and non-governmental organisations.

Unchanged

The Commission shall pass information on its indicative programme to the committee referred to in Article 7 of this Regulation and the joint parliamentary committee and the EU-Turkey joint economic and social committee.

Article 4

1. Cooperation projects and operations may be financed in the following indicative areas:

— modernising manufacturing, improving institutional and infrastructure capacity in areas including the environment, energy and transport;

— promotion of industrial cooperation by methods including support for diversification in industry and the establishment of small and medium-sized enterprises;

— cooperation in telecommunications, infrastructure, rural development and social services;

— boosting the capacity of the Turkish economy, inter alia by measures to encourage the restructuring of the country’s private sector and private initiative;

— cooperation in protecting health;

— cooperation in the field of education and training;

— regional and cross-border cooperation;

— any form of cooperation seeking to defend and promote democracy, the rule of law, human rights and the protection of minorities;
— cooperation on humanitarian issues;

— measures to promote the development of social dialogue within Turkey and between Turkey and the European Union;

— all forms of assistance aimed at promoting the development of relations between the European Union and Turkey;

— promotion of cooperation between the two parties’ public administrations with a view to the approximation of legislation and the training of staff, including customs officers.

2. Where appropriate, measures could be taken to underpin a structural adjustment programme on the basis of the following principles:

— support programmes must be tailored to Turkey's particular circumstances and take account of economic and social conditions;

— support programmes must include measures to alleviate any negative impact of the structural adjustment process in social and employment terms, most disadvantaged sectors of the population;

— account must be taken of Turkey's economic situation, and in particular, its level of indebtedness, debt servicing charges, balance of payments and foreign currency supply, monetary situation, per capita gross domestic product and unemployment level.

1. Financial support under this Regulation shall take the form of grants.

2. The instruments to be employed in the course of the operations covered by this Regulation shall include technical assistance, training or other services, supplies and works, along with audits and evaluation and monitoring missions.
3. Community financing may cover investment, with the exception of the purchase of buildings, and recurring costs (including administrative, maintenance and operational costs), taking account of the fact that the project must aim to have the recurring costs taken over by the beneficiaries.

4. A financial contribution from the partners defined in Article 3 shall be sought for each cooperation operation. The contribution requested shall be within the means of the partners concerned and shall depend on the nature of the operation. In specific cases where the partner is a non-governmental organisation or a community-based organisation, a contribution in kind may be made.

5. Opportunities may be sought for cofinancing with other providers of funds, especially with Member States.

6. The necessary measures shall be taken to emphasise the Community character of the aid provided under this Regulation.

7. In order to achieve the objectives of coherence and complementarity referred to in the Treaty, and with the aim of guaranteeing optimum efficiency for these actions as a whole, the Commission will take all necessary coordination measures, notably:

   a) the establishment of a system for systematic exchange and analysis of information on;

   b) on-the-spot coordination of these operations by means of regular meetings and exchange of information between the representatives of the Commission and Member States in the beneficiary.

8. The Commission, in conjunction with the Member States, may take any initiatives necessary for ensuring good coordination with the other providers of funds involved.

**Article 6**

1. The Commission shall appraise, approve and administer operations covered by this Regulation according to the budgetary and other procedures in force, and in particular those laid down in the Financial Regulation applicable to the general budget of the European Union.
2. Project and programme appraisal shall take into account the following factors:

— effectiveness and viability of operations,
— cultural, social and gender aspects,
— conservation and protection of the environment on the basis of the principles of sustainable development,
— institutional development necessary to achieve project goals,
— experience gained from operations of the same kind.

3. Decisions relating to grants of more than EUR 2 million for individual operations financed under this Regulation shall be taken under the procedure laid down in Article 7.

The Commission shall inform the Committee referred to in Article 7 succinctly of any financing decisions it intends to take with regard to projects and programmes of less than EUR 2 million in value. The information shall be made available at least one week before the decision is taken. The shall take all necessary steps to facilitate take-up of by.

4. The Commission is authorised to approve, without seeking the opinion of the Committee referred to in Article 7, any extra commitments needed for covering expected or real cost overruns in connection with the operations, provided that the overrun or additional requirement is not more than 20 % of the initial commitment fixed by the financing decision.

Where the additional commitment referred to in the previous subparagraph is less than EUR 4 million, the Committee referred to in Article 7 shall be informed of the decision taken by the Commission. Where the said additional commitment is more than EUR 4 million but less than 20 %, the Committee's opinion shall be sought.

5. All financing agreements or contracts concluded under this Regulation shall provide for the Commission and the Court of Auditors to conduct on-the-spot checks according to the usual procedures laid down by the Commission under the rules in force, and in particular those of the Financial Regulation applicable to the general budget of the European Union.
6. Where operations are the subject of financing agreements between the Community and Turkey, such agreements shall stipulate that the payment of taxes, duties or any other charges is not to be covered by the Community.

7. Participation in invitations to tender and the award of contracts shall be open on equal terms to natural and legal persons of the Member States and Turkey.

8. Supplies shall originate in the Member States or Turkey.

Article 7

1. The Commission shall be assisted by the committee set up by Regulation (EC) No 1488/96 of 23 July 1996 (1), known as the MED Committee, made up of representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this Article, the management procedure provided for in Article 4 of Decision 1999/468/EC shall apply, in accordance with Articles 7(3) and 8 thereof.

3. The period referred to in Article 4(3) of Decision 1999/468/EC shall be three months.

Article 8

An exchange of views shall take place, once a year, on the basis of a presentation by the Commission's representative of the indicative programme for the operations to be carried out in the year ahead, in a meeting of the Committee referred to in Article 7. The European Parliament shall be informed of the proposals and of the outcome of the discussions.

Article 9

The Commission shall submit an annual report to the European Parliament and to the Council during the first quarter of each year. This report shall contain at least the following:

a) a detailed summary of the operations financed during the previous financial year;

b) the planned indicative programme for the current financial year and a statement of the progress made with regard to the operations included therein;

c) the forecasts for the programme and the operations to be undertaken during the following financial year.

d) a summary of the conclusions of any evaluations, including those relating to specific operations;

e) information on the bodies with which the agreements or contracts have been concluded.

Article 10

The Commission shall regularly evaluate operations financed by the Community with a view to establishing whether the objectives of the operations have been achieved and to provide guidelines for improving the effectiveness of future operations. The Commission shall submit to the Committee referred to in Article 7 a summary of the evaluations made, which the latter may, if necessary, examine. Evaluation reports shall be made available to any Member States requesting them.

Article 11

the Commission shall submit to the European Parliament and the Council an overall assessment of the operations financed by the Community under this Regulation, together with suggestions regarding the future of this Regulation and, where necessary, proposals for amending it.

Six months before the end of the three-year financial framework, the Commission shall submit to the European Parliament and the Council an overall assessment of the operations financed by the Community under this Regulation, together with suggestions regarding the future of this Regulation and, where necessary, proposals for amending it.

Article 12

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities.

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

(2000/C 311 E/06)

(Text with EEA relevance)


(Submitted by the Commission on 6 April 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) Council Directive 76/768/EEC (1), as last amended by Commission Directive 2000/11/EC (2), has comprehensively harmonised the national laws relating to cosmetic products. The main objective of the Directive is to protect public health. To this end it is indispensable to carry out certain toxicological tests to evaluate the safety of cosmetic products for human health.

(2) In accordance with Directive 76/768/EEC, it is essential that the aim of abolishing animal experiments be pursued and that the prohibition of such experiments becomes effective on the territory of the Member States.

(3) The safety of finished cosmetic products can already be assessed from knowledge about the safety of the ingredients which they contain and by methods which do not involve the use of animals. Therefore animal tests with finished cosmetic products should be prohibited.

(4) It will progressively but slowly be possible to ensure the safety of the ingredients and combinations of ingredients used in cosmetic products, at least for the acute effects, without recourse to animal experiments, by using alternative methods validated at Community level, or approved as being scientifically validated, by the European Centre for the Validation of Alternative Methods (ECVAM). After consulting the Scientific Committee on Cosmetic Products and Non-Food Products intended for Consumers (SCCNFP) as regards the applicability of the validated alternative methods to the field of cosmetic products, the Commission will have immediately to publish the validated or approved methods recognised as being applicable to such ingredients. In order to achieve the highest possible degree of animal protection, a deadline has to be foreseen, when a definitive prohibition should be introduced. However, the date of implementation of this prohibition should be postponed if there has been insufficient progress in developing satisfactory methods to replace animal testing scientifically validated as offering an equivalent level of protection for the consumer.

(5) All efforts must be made to ensure that the ethical requirement of animal welfare is recognised world-wide. To this end, the Commission should endeavour to obtain the rapid acceptance by the Organisation for Economic Co-operation and Development (OECD) of alternative methods validated at Community level. Furthermore, in the framework of bilateral agreements with third countries, the Commission should make efforts to obtain recognition of the results of tests carried out in the Community using alternative methods so as not to obstruct the export of cosmetic products for which such methods have been used.

(6) It should be possible to claim on a cosmetic product that no experiment on animals was ever carried out on the finished cosmetic product and/or its ingredients and combinations of ingredients including for the purposes outside the scope of Directive 76/768/EEC. The Commission, in consultation with the Member States, should produce guidelines with the aim of providing clarity and practical guidance to the cosmetic industry, European regulators and above-all the consumer with respect to claims relating to animal testing within the cosmetic sector. These guidelines should aim to ensure that common criteria are applied in the use of claims and that an aligned understanding of the claims is reached, and in particular that such claims do not mislead the consumer.

(7) Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (3), they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision,

(2) OJ L 65, 14.3.2000, p. 22.
HAVE ADOPTED THIS DIRECTIVE:

Article 1

Council Directive 76/768/EEC is hereby amended as follows:

1. Article 4(1)(i) is deleted.

2. The following Article 4a is added:

‘Article 4a

1. Member States shall take all necessary measures to prohibit the performance on their territory of animal tests in order to meet the requirements of this Directive:

(a) for tests performed on finished cosmetic products (from 1 December 2001);

(b) for tests performed on ingredients or combinations of ingredients, as soon as an alternative method has been published by the Commission, after endorsement of its scientific validity by the European Centre for the Validation of Alternative Methods (ECVAM) and the ECVAM Scientific Advisory Committee, following consultation of the Scientific Committee on Cosmetic Products and Non-Food Products intended for Consumers, and in any case (from 1 December 2004). However, if there has been insufficient progress in developing satisfactory methods to replace animal testing scientifically validated as offering an equivalent level of protection for the consumer, the Commission shall, by (1 June 2004), submit draft measures to postpone the date of implementation of this provision for a sufficient period, and in any case for no more than two years, in accordance with the procedure laid down in Article 10.

2. For the purposes of this Directive, “finished cosmetic product” means the cosmetic product intended to be supplied in its existing state to the final consumer.

3. The Commission shall present an annual report to the European Parliament and the Council on progress in the development, validation and legal acceptance of alternative methods to those involving experiments on animals until the entry into force of the prohibition referred to in paragraph 1(b). That report shall contain precise data on the number and type of experiments relating to cosmetic products carried out on animals. The Member States shall be obliged to collect that information in addition to collecting statistics as laid down by Directive 86/609/EEC on the protection of animals used for experimental and other scientific purposes. The Commission shall pay particular attention to the development, validation and legal acceptance of experimental methods which do not use live animals.’.

4. In Article 8(2) and Article 8a(3), the title ‘Scientific Committee on Cosmetology’ is replaced by the title ‘Scientific Committee on Cosmetic Products and Non-Food Products intended for Consumers’.

5. In Article 9(1), the title ‘Committee on the Adaptation to Technical Progress of the Directives on the Removal of Technical Barriers to Trade in the Cosmetic Products Sector’ is replaced by the title ‘Standing Committee on Cosmetic Products’.

6. Article 10 is replaced by the following text:

‘Article 10

1. The Commission shall be assisted by the Committee.

2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.’.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than (1 December 2001). They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

This Directive shall enter into force on the third day following that of its publication in the Official Journal of the European Communities.

Article 4

This Directive is addressed to the Member States.
THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 174(4), in conjunction with Article 300(2), first sentence of the first subparagraph, and (3), first subparagraph, thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The Community signed in Aarhus on 24 June 1998 the Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Heavy Metals (hereafter 'the Protocol').

(2) The Protocol aims at controlling emissions of heavy metals caused by anthropogenic activities that are subject to long-range transboundary atmospheric transport and that are likely to have significant adverse effects on human health or the environment.

(3) The Protocol stipulates the reduction of total annual emissions into the atmosphere of cadmium, lead and mercury, and the application of product control measures.

(4) The measures envisaged in the Protocol contribute to achieving objectives of the Community policy on environment.

(5) The Community and the Member States cooperate, in the framework of their respective competences, with third countries and the competent international organisations.

(6) The Community, in consequence, should approve the Protocol,

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Heavy Metals, signed on 24 June 1998, is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person or persons empowered to deposit the instrument of approval with the Secretary General of the United Nations, in accordance with Article 16 of the Protocol.

Article 3

This Decision will be published in the Official Journal of the European Communities.
PROTOCOL

to the 1979 Convention on long-range Transboundary Air Pollution on Heavy Metals

THE PARTIES,

DETERMINED to implement the Convention on Long-range Transboundary Air Pollution,

CONCERNED that emissions of certain heavy metals are transported across national boundaries and may cause damage to ecosystems of environmental and economic importance and may have harmful effects on human health,

CONSIDERING that combustion and industrial processes are the predominant anthropogenic sources of emissions of heavy metals into the atmosphere,

ACKNOWLEDGING that heavy metals are natural constituents of the Earth's crust and that many heavy metals in certain forms and appropriate concentrations are essential to life,

TAKING INTO CONSIDERATION existing scientific and technical data on the emissions, geochemical processes, atmospheric transport and effects on human health and the environment of heavy metals, as well as on abatement techniques and costs,

AWARE that techniques and management practices are available to reduce air pollution caused by the emissions of heavy metals,

RECOGNIZING that countries in the region of the United Nations Economic Commission for Europe (UN/ECE) have different economic conditions, and that in certain countries the economies are in transition,

RESOLVED to take measures to anticipate, prevent or minimize emissions of certain heavy metals and their related compounds, taking into account the application of the precautionary approach, as set forth in principle 15 of the Rio Declaration on Environment and Development,

REAFFIRMING that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and development policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

MINDFUL that measures to control emissions of heavy metals would also contribute to the protection of the environment and human health in areas outside the UN/ECE region, including the Arctic and international waters,

NOTING that abating the emissions of specific heavy metals may provide additional benefits for the abatement of emissions of other pollutants,

AWARE that further and more effective action to control and reduce emissions of certain heavy metals may be needed and that, for example, effects-based studies may provide a basis for further action,

NOTING the important contribution of the private and non-governmental sectors to knowledge of the effects associated with heavy metals, available alternatives and abatement techniques, and their role in assisting in the reduction of emissions of heavy metals,

BEARING in mind the activities related to the control of heavy metals at the national level and in international forums,

HAVE AGREED AS FOLLOWS:

Article 1
Definitions

For the purposes of the present Protocol,

1. ‘Convention’ means the Convention on Long-range Transboundary Air Pollution, adopted in Geneva on 13 November 1979;

2. ‘EMEP’ means the Cooperative Programme for Monitoring and Evaluation of Long-range Transmission of Air Pollutants in Europe;

3. ‘Executive Body’ means the Executive Body for the Convention constituted under Article 10, paragraph 1, of the Convention;

4. ‘Commission’ means the United Nations Economic Commission for Europe;

5. ‘Parties’ means, unless the context otherwise requires, the Parties to the present Protocol;


7. ‘Heavy metals’ means those metals or, in some cases, metalloids which are stable and have a density greater than 4.5 g/cm³ and their compounds;

8. ‘Emission’ means a release from a point or diffuse source into the atmosphere;

9. ‘Stationary source’ means any fixed building, structure, facility, installation, or equipment that emits or may emit a heavy metal listed in annex I directly or indirectly into the atmosphere;

10. ‘New stationary source’ means any stationary source of which the construction or substantial modification is commenced after the expiry of two years from the date of entry into force of: (i) this Protocol; or (ii) an amendment to annex I or II, where the stationary source becomes subject to the provisions of this Protocol only by virtue of that amendment. It shall be a matter for the competent national authorities to decide whether a modification is substantial or not, taking into account such factors as the environmental benefits of the modification;

11. ‘Major stationary source category’ means any stationary source category that is listed in annex II and that contributes at least one per cent to a Party’s total emissions from stationary sources of a heavy metal listed in annex I for the reference year specified in accordance with annex I.

Article 2
Objective

The objective of the present Protocol is to control emissions of heavy metals caused by anthropogenic activities that are subject to long-range transboundary atmospheric transport and are likely to have significant adverse effects on human health or the environment, in accordance with the provisions of the following articles.

Article 3
Basic obligations

1. Each Party shall reduce its total annual emissions into the atmosphere of each of the heavy metals listed in annex I from the level of the emission in the reference year set in accordance with that annex by taking effective measures, appropriate to its particular circumstances.

2. Each Party shall, no later than the timescales specified in annex IV, apply:

   (a) The best available techniques, taking into consideration annex III, to each new stationary source within a major stationary source category for which annex III identifies best available techniques;

   (b) The limit values specified in annex V to each new stationary source within a major stationary source category. A Party may, as an alternative, apply different emission reduction strategies that achieve equivalent overall emission levels;

   (c) The best available techniques, taking into consideration annex III, to each existing stationary source within a major stationary source category for which annex III identifies best available techniques. A Party may, as an alternative, apply different emission reduction strategies that achieve equivalent overall emission reductions;

   (d) The limit values specified in annex V to each existing stationary source within a major stationary source category, insofar as this is technically and economically feasible. A Party may, as an alternative, apply different emission reduction strategies that achieve equivalent overall emission reductions.

3. Each Party shall apply product control measures in accordance with the conditions and timescales specified in annex VI.

4. Each Party should consider applying additional product management measures, taking into consideration annex VII.

5. Each Party shall develop and maintain emission inventories for the heavy metals listed in annex I, for those Parties within the geographical scope of EMEP, using as a minimum the methodologies specified by the Steering Body of EMEP, and, for those Parties outside the geographical scope of EMEP, using as guidance the methodologies developed through the work plan of the Executive Body.
6. A Party that, after applying paragraphs 2 and 3 above, cannot achieve the requirements of paragraph 1 above for a heavy metal listed in annex I, shall be exempted from its obligations in paragraph 1 above for that heavy metal.

7. Any Party whose total land area is greater than 6 000 000 km² shall be exempted from its obligations in paragraphs 2 (b), (c), and (d) above, if it can demonstrate that, no later than eight years after the date of entry into force of the present Protocol, it will have reduced its total annual emissions of each of the heavy metals listed in annex I from the source categories specified in annex II by at least 50 per cent from the level of emissions from these categories in the reference year specified in accordance with annex I. A Party that intends to act in accordance with this paragraph shall so specify upon signature of, or accession to, the present Protocol.

**Article 4**

**Exchange of information and technology**

1. The Parties shall, in a manner consistent with their laws, regulations and practices, facilitate the exchange of technologies and techniques designed to reduce emissions of heavy metals, including but not limited to exchanges that encourage the development of product management measures and the application of best available techniques, in particular by promoting:

   (a) The commercial exchange of available technology;

   (b) Direct industrial contacts and cooperation, including joint ventures;

   (c) The exchange of information and experience; and

   (d) The provision of technical assistance.

2. In promoting the activities specified in paragraph 1 above, the Parties shall create favourable conditions by facilitating contacts and cooperation among appropriate organisations and individuals in the private and public sectors that are capable of providing technology, design and engineering services, equipment or finance.

**Article 5**

**Strategies, policies, programmes and measures**

1. Each Party shall develop, without undue delay, strategies, policies and programmes to discharge its obligations under the present Protocol.

2. A Party may, in addition:

   (a) Apply economic instruments to encourage the adoption of cost-effective approaches to the reduction of heavy metal emissions;

   (b) Develop government/industry covenants and voluntary agreements;

   (c) Encourage the more efficient use of resources and raw materials;

   (d) Encourage the use of less polluting energy sources;

   (e) Take measures to develop and introduce less polluting transport systems;

   (f) Take measures to phase out certain heavy metal emitting processes where substitute processes are available on an industrial scale;

   (g) Take measures to develop and employ cleaner processes for the prevention and control of pollution.

3. The Parties may take more stringent measures than those required by the present Protocol.

**Article 6**

**Research, development and monitoring**

The Parties shall encourage research, development, monitoring and cooperation, primarily focusing on the heavy metals listed in annex I, related, but not limited to:

   (a) Emissions, long-range transport and deposition levels and their modelling, existing levels in the biotic and abiotic environment, the formulation of procedures for harmonising relevant methodologies;

   (b) Pollutant pathways and inventories in representative ecosystems;

   (c) Relevant effects on human health and the environment, including quantification of those effects;

   (d) Best available techniques and practices and emission control techniques currently employed by the Parties or under development;

   (e) Collection, recycling and, if necessary, disposal of products or wastes containing one or more heavy metals;

   (f) Methodologies permitting consideration of socio-economic factors in the evaluation of alternative control strategies;

   (g) An effects-based approach which integrates appropriate information, including information obtained under subparagraphs (a) to (f) above, on measured or modelled environmental levels, pathways, and effects on human health and the environment, for the purpose of formulating future optimised control strategies which also take into account economic and technological factors;
(h) Alternatives to the use of heavy metals in products listed in annexes VI and VII;

(i) Gathering information on levels of heavy metals in certain products, on the potential for emissions of those metals to occur during the manufacture, processing, distribution in commerce, use, and disposal of the product, and on techniques to reduce such emissions.

Article 7

Reporting

1. Subject to its laws governing the confidentiality of commercial information:

(a) Each Party shall report, through the Executive Secretary of the Commission, to the Executive Body, on a periodic basis as determined by the Parties meeting within the Executive Body, information on the measures that it has taken to implement the present Protocol;

(b) Each Party within the geographical scope of EMEP shall report, through the Executive Secretary of the Commission, to EMEP, on a periodic basis to be determined by the Steering Body of EMEP and approved by the Parties at a session of the Executive Body, information on the levels of emissions of the heavy metals listed in annex I, using as a minimum the methodologies and the temporal and spatial resolution specified by the Steering Body of EMEP. Parties in areas outside the geographical scope of EMEP shall make available similar information to the Executive Body if requested to do so. In addition, each Party shall, as appropriate, collect and report relevant information relating to its emissions of other heavy metals, taking into account the guidance on the methodologies and the temporal and spatial resolution of the Steering Body of EMEP and the Executive Body.

2. The information to be reported in accordance with paragraph 1(a) above shall be in conformity with a decision regarding format and content to be adopted by the Parties at a session of the Executive Body. The terms of this decision shall be reviewed as necessary to identify any additional elements regarding the format or the content of the information that is to be included in the reports.

3. In good time before each annual session of the Executive Body, EMEP shall provide information on the long-range transport and deposition of heavy metals.

Article 8

Calculations

EMEP shall, using appropriate models and measurements and in good time before each annual session of the Executive Body, provide to the Executive Body calculations of transboundary fluxes and depositions of heavy metals within the geographical scope of EMEP. In areas outside the geographical scope of EMEP, models appropriate to the particular circumstances of Parties to the Convention shall be used.

Article 9

Compliance

Compliance by each Party with its obligations under the present Protocol shall be reviewed regularly. The Implementation Committee established by decision 1997/2 of the Executive Body as its fifteenth session shall carry out such reviews and report to the Parties meeting within the Executive Body in accordance with the terms of the annex to that decision, including any amendments thereto.

Article 10

Reviews by the parties at sessions of the Executive Body

1. The Parties shall, at sessions of the Executive Body, pursuant to Article 10, paragraph 2(a), of the Convention, review the information supplied by the Parties, EMEP and other subsidiary bodies and the reports of the Implementation Committee referred to in Article 9 of the present Protocol.

2. The Parties shall, at sessions of the Executive Body, keep under review the progress made towards meeting the obligations set out in the present Protocol.

3. The Parties shall, at sessions of the Executive Body, review the sufficiency and effectiveness of the obligations set out in the present Protocol.

(a) Such reviews will take into account the best available scientific information on the effects of the deposition of heavy metals, assessments of technological developments, and changing economic conditions;

(b) Such reviews will, in the light of the research, development, monitoring and cooperation undertaken under the present Protocol:

(i) Evaluate progress towards meeting the objective of the present Protocol;

(ii) Evaluate whether additional emission reductions beyond the levels required by this Protocol are warranted to reduce further the adverse effects on human health or the environment; and

(iii) Take into account the extent to which a satisfactory basis exists for the application of an effects-based approach;

(c) The procedures, methods and timing for such reviews shall be specified by the Parties at a session of the Executive Body

4. The Parties shall, based on the conclusion of the reviews referred to in paragraph 3 above and as soon as practicable after completion of the review, develop a work plan on further steps to reduce emissions into the atmosphere of the heavy metals listed in annex I.
Article 11

Settlement of disputes

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the present Protocol, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice. The parties to the dispute shall inform the Executive Body of their dispute.

2. When ratifying, accepting, approving or acceding to the present Protocol, or at any time thereafter, a Party which is not a regional economic integration organisation may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Protocol, it recognises one or both of the following means of dispute settlement as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice;

(b) Arbitration in accordance with procedures to be adopted by the Parties at a session of the Executive Body, as soon as practicable, in an annex on arbitration.

A Party which is a regional economic integration organisation may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above.

3. A declaration made under paragraph 2 above shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute agree otherwise.

5. Except in a case where the parties to a dispute have accepted the same means of dispute settlement under paragraph 2, if after twelve months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the means mentioned in paragraph 1 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.

6. For the purpose of paragraph 5, a conciliation commission shall be created. The commission shall be composed of equal numbers of members appointed by each Party concerned or, where the Parties in conciliation share the same interest, by the group sharing that interest, and a chairman chosen jointly by the members so appointed. The commission shall render a recommendatory award, which the Parties shall consider in good faith.

Article 12

Annexes

The annexes to the present Protocol shall form an integral part of the Protocol. Annexes III and VII are recommendatory in character.

Article 13

Amendments to the protocol

1. Any Party may propose amendments to the present Protocol.

2. Proposed amendments shall be submitted in writing to the Executive Secretary of the Commission, who shall communicate them to all Parties. The Parties meeting within the Executive Body shall discuss the proposed amendments at its next session, provided that the proposals have been circulated by the Executive Secretary to the Parties at least ninety days in advance.

3. Amendments to the present Protocol and to annexes I, II, IV, V and VI shall be adopted by consensus of the Parties present at a session of the Executive Body, and shall enter into force for the Parties which have accepted them on the ninetieth day after the date on which two thirds of the Parties have deposited with the Depositary their instruments of acceptance thereof. Amendments shall enter into force for any other Party on the ninetieth day after the date on which that Party has deposited its instrument of acceptance thereof.

4. Amendments to annexes III and VII shall be adopted by consensus of the Parties present at a session of the Executive Body. On the expiry of ninety days from the date of its communication to all Parties by the Executive Secretary of the Commission, an amendment to any such annex shall become effective for those Parties which have not submitted to the Depositary a notification in accordance with the provisions of paragraph 5 below, provided that at least sixteen Parties have not submitted such a notification.

5. Any Party that is unable to approve an amendment to annex III or VII shall so notify the Depositary in writing within ninety days from the date of the communication of its adoption. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for its previous notification and, upon deposit of an instrument of acceptance with the Depositary, the amendment to such an annex shall become effective for that Party.

6. In the case of a proposal to amend annex I, VI or VII by adding a heavy metal, a product control measure or a product or product group to the present Protocol:

(a) The proposer shall provide the Executive Body with the information specified in Executive Body decision 1998/1, including any amendments thereto; and

(b) The Parties shall evaluate the proposal in accordance with the procedures set forth in Executive Body decision 1998/1, including any amendments thereto.
7. Any decision to amend Executive Body decision 1998/1 shall be taken by consensus of the Parties meeting within the Executive Body and shall take effect sixty days after the date of adoption.

**Article 14**

**Signature**

1. The present Protocol shall be open for signature at Aarhus (Denmark) from 24 to 25 June 1998, then at United Nations Headquarters in New York until 21 December 1998 by States members of the Commission as well as States having consultative status with the Commission pursuant to paragraph 8 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organisations, constituted by sovereign States members of the Commission, which have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by the Protocol, provided that the States and organisations concerned are Parties to the Convention.

2. In matters within their competence, such regional economic integration organisations shall, on their own behalf, exercise the rights and fulfil the responsibilities which the present Protocol attributes to their Member States. In such cases, the Member States of these organisations shall not be entitled to exercise such rights individually.

**Article 15**

**Ratification, acceptance, approval and accession**

1. The present Protocol shall be subject to ratification, acceptance or approval by Signatories.

2. The present Protocol shall be open for accession as from 21 December 1998 by the States and organisations that meet the requirements of Article 14, paragraph 1.

**Article 16**

**Depositary**

The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations, who will perform the functions of Depositary.

**Article 17**

**Entry into force**

1. The present Protocol shall enter into force on the ninetieth day following the date on which the sixteenth instrument of ratification, acceptance, approval or accession has been deposited with the Depositary.

2. For each State and organisation referred to in Article 14, paragraph 1, which ratifies, accepts or approves the present Protocol or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Protocol shall enter into force on the ninetieth day following the date of deposit by such Party of its instrument of ratification, acceptance, approval or accession.

**Article 18**

**Withdrawal**

At any time after five years from the date on which the present Protocol has come into force with respect to a Party, that Party may withdraw from it by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day following the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

**Article 19**

**Authentic texts**

The original of the present Protocol, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Protocol.

Done at Aarhus (Denmark), this twenty-fourth day of June, one thousand nine hundred and ninety-eight.
ANNEX I

HEAVY METALS REFERRED TO IN ARTICLE 3, PARAGRAPH 1, AND THE REFERENCE YEAR FOR THE OBLIGATION

<table>
<thead>
<tr>
<th>Heavy metal</th>
<th>Reference year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadmium (Cd)</td>
<td>1990; or an alternative year from 1985 to 1995 inclusive, specified by a Party upon ratification, acceptance, approval or accession</td>
</tr>
<tr>
<td>Lead (Pb)</td>
<td>1990; or an alternative year from 1985 to 1995 inclusive, specified by a Party upon ratification, acceptance, approval or accession</td>
</tr>
<tr>
<td>Mercury (Hg)</td>
<td>1990; or an alternative year from 1985 to 1995 inclusive, specified by a Party upon ratification, acceptance, approval or accession</td>
</tr>
</tbody>
</table>

ANNEX II

STATIONARY SOURCE CATEGORIES

I. INTRODUCTION

1. Installations or parts of installations for research, development and the testing of new products and processes are not covered by this annex.

2. The threshold values given below generally refer to production capacities or output. Where one operator carries out several activities falling under the same subheading at the same installation or the same site, the capacities of such activities are added together.

II. LIST OF CATEGORIES

<table>
<thead>
<tr>
<th>Category</th>
<th>Description of the category</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Combustion installations with a net rated thermal input exceeding 50 MW</td>
</tr>
<tr>
<td>2</td>
<td>Metal ore (including sulphide ore) or concentrate roasting or sintering installations with a capacity exceeding 150 tonnes of sinter per day for ferrous ore or concentrate, and 30 tonnes of sinter per day for the roasting of copper, lead or zinc, or any gold and mercury ore treatment</td>
</tr>
<tr>
<td>3</td>
<td>Installations for the production of pig-iron or steel (primary or secondary fusion, including electric arc furnaces) including continuous casting, with a capacity exceeding 2.5 tonnes per hour</td>
</tr>
<tr>
<td>4</td>
<td>Ferrous metal foundries with a production capacity exceeding 20 tonnes per day</td>
</tr>
<tr>
<td>5</td>
<td>Installations for the production of copper, lead and zinc from ore, concentrates or secondary raw materials by metallurgical processes with a capacity exceeding 30 tonnes of metal per day for primary installations and 15 tonnes of metal per day for secondary installations, or for any primary production of mercury</td>
</tr>
<tr>
<td>6</td>
<td>Installations for the smelting (refining, foundry casting, etc.), including the alloying, of copper, lead and zinc, including recovered products, with a melting capacity exceeding 4 tonnes per day for lead or 20 tonnes per day for copper and zinc</td>
</tr>
<tr>
<td>7</td>
<td>Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day</td>
</tr>
<tr>
<td>8</td>
<td>Installations for the manufacture of glass using lead in the process with a melting capacity exceeding 20 tonnes per day</td>
</tr>
<tr>
<td>9</td>
<td>Installations for chlor-alkali production by electrolysis using the mercury cell process</td>
</tr>
<tr>
<td>10</td>
<td>Installations for the incineration of hazardous or medical waste with a capacity exceeding 1 tonne per hour, or for the co-incineration of hazardous or medical waste specified in accordance with national legislation</td>
</tr>
<tr>
<td>11</td>
<td>Installations for the incineration of municipal waste with a capacity exceeding 3 tonnes per hour, or for the co-incineration of municipal waste specified in accordance with national legislation</td>
</tr>
</tbody>
</table>
ANNEX III

BEST AVAILABLE TECHNIQUES FOR CONTROLLING EMISSIONS OF HEAVY METALS AND THEIR COMPOUNDS FROM THE SOURCE CATEGORIES LISTED IN ANNEX II

1. INTRODUCTION

1. This annex aims to provide Parties with guidance on identifying best available techniques for stationary sources to enable them to meet the obligations of the Protocol.

2. ‘Best available techniques' (BAT) means the most effective and advanced stage in the development of activities and their methods of operation which indicate the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and their impact on the environment as a whole:

   — ‘Techniques' includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;

   — ‘Available' techniques means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the territory of the Party in question, as long as they are reasonably accessible to the operator;

   — ‘Best' means most effective in achieving a high general level of protection of the environment as a whole.

In determining the best available techniques, special consideration should be given, generally or in specific cases, to the factors below, bearing in mind the likely costs and benefits of a measure and the principles of precaution and prevention:

   — The use of low-waste technology;

   — The use of less hazardous substances;

   — The furthering of recovery and recycling of substances generated and used in the process and of waste;

   — Comparable processes, facilities or methods of operation which have been tried with success on an industrial scale;

   — Technological advances and changes in scientific knowledge and understanding;

   — The nature, effects and volume of the emissions concerned;

   — The commissioning dates for new or existing installations;

   — The time needed to introduce the best available technique;

   — The consumption and nature of raw materials (including water) used in the process and its energy efficiency;

   — The need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it;

   — The need to prevent accidents and to minimise their consequences for the environment.

The concept of best available techniques is not aimed at the prescription of any specific technique or technology, but at taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions.

3. The information regarding emission control performance and costs is based on official documentation of the Executive Body and its subsidiary bodies, in particular documents received and reviewed by the Task Force on Heavy Metal Emissions and the Ad Hoc Preparatory Working Group on Heavy Metals. Furthermore, other international information on best available techniques for emission control has been taken into consideration (e.g., the European Community's technical notes on BAT, the PARCOM recommendations for BAT, and information provided directly by experts).
4. Experience with new products and new plants incorporating low-emission techniques, as well as with the retrofitting of existing plants, is growing continuously; this annex may, therefore, need amending and updating.

5. The annex lists a number of measures spanning a range of costs and efficiencies. The choice of measures for any particular case will depend on, and may be limited by, a number of factors, such as economic circumstances, technological infrastructure, any existing emission control device, safety, energy consumption and whether the source is a new or existing one.

6. This annex takes into account the emissions of cadmium, lead and mercury and their compounds, in solid (particle-bound) and/or gaseous form. Speciation of these compounds is, in general, not considered here. Nevertheless, the efficiency of emission control devices with regard to the physical properties of the heavy metal, especially in the case of mercury, has been taken into account.

7. Emission values expressed as mg/m$^3$ refer to standard conditions (volume at 273.15 K, 101.3 kPa, dry gas) not corrected for oxygen content unless otherwise specified, and are calculated in accordance with draft CEN (Comité européen de normalisation) and, in some cases, national sampling and monitoring techniques.

II. GENERAL OPTIONS FOR REDUCING EMISSIONS OF HEAVY METALS AND THEIR COMPOUNDS

8. There are several possibilities for controlling or preventing heavy metal emissions. Emission reduction measures focus on add-on technologies and process modifications (including maintenance and operating control). The following measures, which may be implemented depending on the wider technical and/or economic conditions, are available:

   (a) Application of low-emission process technologies, in particular in new installations;

   (b) Off-gas cleaning (secondary reduction measures) with filters, scrubbers, absorbers, etc.;

   (c) Change or preparation of raw materials, fuels and/or other feed materials (e.g. use of raw materials with low heavy metal content);

   (d) Best management practices such as good housekeeping, preventive maintenance programmes, or primary measures such as the enclosure of dust-creating units;

   (e) Appropriate environmental management techniques for the use and disposal of certain products containing Cd, Pb, and/or Hg.

9. It is necessary to monitor abatement procedures to ensure that appropriate control measures and practices are properly implemented and achieve an effective emission reduction. Monitoring abatement procedures will include:

   (a) Developing an inventory of those reduction measures identified above that have already been implemented;

   (b) Comparing actual reductions in Cd, Pb and Hg emissions with the objectives of the Protocol;

   (c) Characterising quantified emissions of Cd, Pb and Hg from relevant sources with appropriate techniques;

   (d) Regulatory authorities periodically auditing abatement measures to ensure their continued efficient operation.

10. Emission reduction measures should be cost-efficient. Cost-efficient strategy considerations should be based on total costs per year per unit abated (including capital and operating costs). Emission reduction costs should also be considered with respect to the overall process.

III. CONTROL TECHNIQUES

11. The major categories of available control techniques for Cd, Pb and Hg emission abatement are primary measures such as raw material and/or fuel substitution and low-emission process technologies, and secondary measures such as fugitive emission control and off-gas cleaning. Sector-specific techniques are specified in chapter IV.
12. The data on efficiency are derived from operating experience and are considered to reflect the capabilities of current installations. The overall efficiency of flue gas and fugitive emission reductions depends to a great extent on the evacuation performance of the gas and dust collectors (e.g. suction hoods). Capture/collection efficiencies of over 99 % have been demonstrated. In particular cases experience has shown that control measures are able to reduce overall emissions by 90 % or more.

13. In the case of particle-bound emissions of Cd, Pb and Hg, the metals can be captured by dust-cleaning devices. Typical dust concentrations after gas cleaning with selected techniques are given in table 1. Most of these measures have generally been applied across sectors. The minimum expected performance of selected techniques for capturing gaseous mercury is outlined in table 2. The application of these measures depends on the specific processes and is most relevant if concentrations of mercury in the flue gas are high.

| Table 1 |
| Performance of dust-cleaning devices expressed as hourly average dust concentrations |
| Dust concentrations after cleaning (mg/m³) |
| Fabric filters | < 10 |
| Fabric filters, membrane type | < 1 |
| Dry electrostatic precipitators | < 50 |
| Wet electrostatic precipitators | < 50 |
| High-efficiency scrubbers | < 50 |

Note: Medium-and low-pressure scrubbers and cyclones generally show lower dust removal efficiencies.

| Table 2 |
| Minimum expected performance of mercury separators expressed as hourly average mercury concentrations |
| Mercury content after cleaning (mg/m³) |
| Selenium filter | < 0,01 |
| Selenium scrubber | < 0,2 |
| Carbon filter | < 0,01 |
| Carbon injection + dust separator | < 0,05 |
| Odda Norzink chloride process | < 0,1 |
| Lead sulphide process | < 0,05 |
| Bolkem (Thiosulphate) process | < 0,1 |

14. Care should be taken to ensure that these control techniques do not create other environmental problems. The choice of a specific process because of its low emission into the air should be avoided if it worsens the total environmental impact of the heavy metals' discharge, e.g. due to more water pollution from liquid effluents. The fate of captured dust resulting from improved gas cleaning must also be taken into consideration. A negative environmental impact from the handling of such wastes will reduce the gain from lower process dust and fume emissions into the air.

15. Emission reduction measures can focus on process techniques as well as on off-gas cleaning. The two are not independent of each other; the choice of a specific process might exclude some gas-cleaning methods.
16. The choice of a control technique will depend on such parameters as the pollutant concentration and/or speciation in the raw gas, the gas volume flow, the gas temperature, and others. Therefore, the fields of application may overlap; in that case, the most appropriate technique must be selected according to case-specific conditions.

17. Adequate measures to reduce stack gas emissions in various sectors are described below. Fugitive emissions have to be taken into account. Dust emission control associated with the discharging, handling, and stockpiling of raw materials or by-products, although not relevant to long-range transport, may be important for the local environment. The emissions can be reduced by moving these activities to completely enclosed buildings, which may be equipped with ventilation and dedusting facilities, spray systems or other suitable controls. When stockpiling in unroofed areas, the material surface should be otherwise protected against wind entrainment. Stockpiling areas and roads should be kept clean.

18. The investment/cost figures listed in the tables have been collected from various sources and are highly case-specific. They are expressed in 1990 USD (USD 1 (1990) = ECU 0.8 (1990)). They depend on such factors as plant capacity, removal efficiency and raw gas concentration, type of technology, and the choice of new installations as opposed to retrofitting.

IV. SECTORS

19. This chapter contains a table per relevant sector with the main emission sources, control measures based on the best available techniques, their specific reduction efficiency and the related costs, where available. Unless stated otherwise, the reduction efficiencies in the tables refer to direct stack gas emissions.

Combustion of fossil fuels in utility and industrial boilers (annex II, category 1)

20. The combustion of coal in utility and industrial boilers is a major source of anthropogenic mercury emissions. The heavy metal content is normally several orders of magnitude higher in coal than in oil or natural gas.

21. Improved energy conversion efficiency and energy conservation measures will result in a decline in the emissions of heavy metals because of reduced fuel requirements. Combusting natural gas or alternative fuels with a low heavy metal content instead of coal would also result in a significant reduction in heavy metal emissions such as mercury. Integrated gasification combined-cycle (IGCC) power plant technology is a new plant technology with a low-emission potential.

22. With the exception of mercury, heavy metals are emitted in solid form in association with fly-ash particles. Different coal combustion technologies show different magnitudes of fly-ash generation: grate-firing boilers 20-40 %; fluidised-bed combustion 15 %; dry bottom boilers (pulverised coal combustion) 70-100 % of total ash. The heavy metal content in the small particle size fraction of the fly-ash has been found to be higher.

23. Beneficiation, e.g. ‘washing’ or ‘bio-treatment’ of coal reduces the heavy metal content associated with the inorganic matter in the coal. However, the degree of heavy metal removal with this technology varies widely.

24. A total dust removal of more than 99,5 % can be obtained with electrostatic precipitators (ESP) or fabric filters (FF), achieving dust concentrations of about 20 mg/m$^3$ in many cases. With the exception of mercury, heavy metal emissions can be reduced by at least 90-99 %, the lower figure for the more easily volatilised elements. Low filter temperature helps to reduce the gaseous mercury off-gas content.

25. The application of techniques to reduce emissions of nitrogen oxides, sulphur dioxide and particulates from the flue gas can also remove heavy metals. Possible cross media impact should be avoided by appropriate waste water treatment.
26. Using the techniques mentioned above, mercury removal efficiencies vary extensively from plant to plant, as seen in table 3. Research is ongoing to develop mercury removal techniques, but until such techniques are available on an industrial scale, no best available technique is identified for the specific purpose of removing mercury.

Table 3

<table>
<thead>
<tr>
<th>Emission source</th>
<th>Control measure(s)</th>
<th>Reduction efficiency (%)</th>
<th>Abatement costs (total costs USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Combustion of fuel oil</td>
<td>Switch fuel oil to gas</td>
<td>Cd, Pb: 100; Hg: 70-80</td>
<td>Highly case-specific</td>
</tr>
<tr>
<td>Combustion of coal</td>
<td>Switch from coal to fuels with lower heavy metals emissions</td>
<td>Dust 70-100</td>
<td>Highly case-specific</td>
</tr>
<tr>
<td>ESP (cold-side)</td>
<td></td>
<td>Cd, Pb: &gt; 90; Hg: 10-40</td>
<td>Specific investment USD 5-10/m³ waste gas per hour (&gt; 200,000 m³/h)</td>
</tr>
<tr>
<td>Wet fuel-gas desulphurisation (FGD) (1)</td>
<td></td>
<td>Cd, Pb: &gt; 90; Hg: 10-90 (2)</td>
<td>15-30/Mg waste</td>
</tr>
<tr>
<td>Fabric filters (FF)</td>
<td></td>
<td>Cd: &gt; 95; Pb: &gt; 99; Hg: 10-60</td>
<td>Specific investment USD 8-15/m³ waste gas per hour (&gt; 200,000 m³/h)</td>
</tr>
</tbody>
</table>

(1) Hg removal efficiencies increase with the proportion of ionic mercury. High-dust selective catalytic reduction (SCR) installations facilitate Hg(II) formation.
(2) This is primarily for SO₂ reduction. Reduction in heavy metal emissions is a side benefit. (Specific investment USD 60-250/kWₜₑ.)

27. This section deals with emissions from sinter plants, pellet plants, blast furnaces, and steelworks with a basic oxygen furnace (BOF). Emissions of Cd, Pb and Hg occur in association with particulates. The content of the heavy metals of concern in the emitted dust depends on the composition of the raw materials and the types of alloying metals added in steel-making. The most relevant emission reduction measures are outlined in table 4. Fabric filters should be used whenever possible; if conditions make this impossible, electrostatic precipitators and/or high-efficiency scrubbers may be used.

28. When using BAT in the primary iron and steel industry, the total specific emission of dust directly related to the process can be reduced to the following levels:

- Sinter plants 40-120 g/Mg
- Pellet plants 40 g/Mg
- Blast furnace 35-50 g/Mg
- BOF 35-70 g/Mg.

29. Purification of gases using fabric filters will reduce the dust content to less than 20 mg/m³, whereas electrostatic precipitators and scrubbers will reduce the dust content to 50 mg/m³ (as an hourly average). However, there are many applications of fabric filters in the primary iron and steel industry that can achieve much lower values.
<table>
<thead>
<tr>
<th>Emissions source</th>
<th>Control measure(s)</th>
<th>Dust reduction efficiency (%)</th>
<th>Abatement costs (total costs USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sinter plants</td>
<td>Emission optimised sintering</td>
<td>ca. 50</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Scrubbers and ESP</td>
<td>&gt; 90</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Fabric filters</td>
<td>&gt; 99</td>
<td>—</td>
</tr>
<tr>
<td>Pellet plants</td>
<td>ESP + lime reactor + fabric filters</td>
<td>&gt; 99</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Scrubbers</td>
<td>&gt; 95</td>
<td>—</td>
</tr>
<tr>
<td>Blast furnaces</td>
<td>FF/ESP</td>
<td>&gt; 99</td>
<td>ESP: 0.24-1/Mg pig-iron</td>
</tr>
<tr>
<td>Blast furnace gas cleaning</td>
<td>Wet scrubbers</td>
<td>&gt; 99</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Wet ESP</td>
<td>&gt; 99</td>
<td>—</td>
</tr>
<tr>
<td>BOF</td>
<td>Primary dedusting: wet</td>
<td>&gt; 99</td>
<td>Dry ESP: 2.25/Mg steel</td>
</tr>
<tr>
<td></td>
<td>seacoarit/ESP/FF</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Secondary dedusting: dry</td>
<td>&gt; 97</td>
<td>FF: 0.26/Mg steel</td>
</tr>
<tr>
<td></td>
<td>ESP/FF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fugitive emissions</td>
<td>Closed conveyor belt, enclosure, wetting stored feedstock, cleaning of reads</td>
<td>80-99</td>
<td>—</td>
</tr>
</tbody>
</table>

30. Direct reduction and direct smelting are under development and may reduce the need for sinter plants and blast furnaces in the future. The application of these technologies depends on the ore characteristics and requires the resulting product to be processed in an electric arc furnace, which should be equipped with appropriate controls.

Secondary iron and steel industry (annex II, category 3)

31. It is very important to capture all the emissions efficiently. That is possible by installing doghouses or movable hoods or by total building evacuation. The captured emissions must be cleaned. For all dust-emitting processes in the secondary iron and steel industry, dedusting in fabric filters, which reduces the dust content to less than 20 mg/m³, shall be considered as BAT. When BAT is used also for minimising fugitive emissions, the specific dust emission (including fugitive emission directly related to the process) will not exceed the range of 0.1 to 0.35 kg/Mg steel. There are many examples of clean gas dust content below 10 mg/m³ when fabric filters are used. The specific dust emission in such cases is normally below 0.1 kg/Mg.

32. For the melting of scrap, two different types of furnace are in use: open-hearth furnaces and electric arc furnaces (EAF) where open-hearth furnaces are about to be phased out.

33. The content of the heavy metals of concern in the emitted dust depends on the composition of the iron and steel scrap and the types of alloying metals added in steel-making. Measurements at EAF have shown that 95% of emitted mercury and 25% of cadmium emissions occur as vapour. The most relevant dust emission reduction measures are outlined in table 5.
Emission sources, control measures, dust reduction efficiencies and costs for the secondary iron and steel industry

<table>
<thead>
<tr>
<th>Emission source</th>
<th>Control measure(s)</th>
<th>Dust reduction efficiency (%)</th>
<th>Abatement costs (total costs USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>EAF</td>
<td>ESP</td>
<td>&gt; 99</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>FF</td>
<td>&gt; 99,5</td>
<td>FF: 24/Mg steel</td>
</tr>
</tbody>
</table>

Iron foundaries (annex II, category 4)

34. It is very important to capture all the emissions efficiently. That is possible by installing doghouses or movable hoods or by total building evacuation. The captured emissions must be cleaned. In iron foundries, cupola furnaces, electric arc furnaces and induction furnaces are operated. Direct particulate and gaseous heavy metal emissions are especially associated with melting and sometimes, to a small extent, with pouring. Fugitive emissions arise from raw material handling, melting, pouring and fettling. The most relevant emission reduction measures are outlined in table 6 with their achievable reduction efficiencies and costs, where available. These measures can reduce dust concentrations to 20 mg/m³, or less.

35. The iron foundry industry comprises a very wide range of process sites. For existing smaller installations, the measures listed may not be BAT if they are not economically viable.

Emission sources, control measures, dust reduction efficiencies and costs for iron foundries

<table>
<thead>
<tr>
<th>Emission source</th>
<th>Control measure(s)</th>
<th>Dust reduction efficiency (%)</th>
<th>Abatement costs (total costs USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>EAF</td>
<td>ESP</td>
<td>&gt; 99</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>FF</td>
<td>&gt; 99,5</td>
<td>FF: 24/Mg iron</td>
</tr>
<tr>
<td>Induction furnace</td>
<td>FF/dry absorption + FF</td>
<td>&gt; 99</td>
<td>—</td>
</tr>
<tr>
<td>Cold blast cupola</td>
<td>Below-the-door take-off: FF</td>
<td>&gt; 98</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Above-the-door take-off: FF</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>FF + pre-dedusting</td>
<td>&gt; 97</td>
<td>8-12/Mg iron</td>
</tr>
<tr>
<td></td>
<td>FF + chemisorption</td>
<td>&gt; 99</td>
<td>45/Mg iron</td>
</tr>
<tr>
<td>Hot blast cupola</td>
<td>FF + pre-dedusting</td>
<td>&gt; 99</td>
<td>23/Mg iron</td>
</tr>
<tr>
<td></td>
<td>Disintegrator/venturi scrubber</td>
<td>&gt; 97</td>
<td>—</td>
</tr>
</tbody>
</table>

Primary and secondary non-ferrous metal industry (annex II, categories 5 and 6)

36. This section deals with emissions and emission control of Cd, Pb and Hg in the primary and secondary production of non-ferrous metals like lead, copper, zinc, tin and nickel. Due to the large number of different raw materials used and the various processes applied, nearly all kinds of heavy metals and heavy metal compounds might be emitted from this sector. Given the heavy metals of concern in this annex, the production of copper, lead and zinc are particularly relevant.
37. Mercury ores and concentrates are initially processed by crushing, and sometimes screening. Ore beneficiation techniques are not used extensively, although flotation has been used at some facilities processing low-grade ore. The crushed ore is then heated in either retorts, at small operations, or furnaces, at large operations, to the temperatures at which mercuric sulphide sublimes. The resulting mercury vapour is condensed in a cooling system and collected as mercury metal. Soot from the condensers and settling tanks should be removed, treated with lime and returned to the retort or furnace.

38. For efficient recovery of mercury the following techniques can be used:

— Measures to reduce dust generation during mining and stockpiling, including minimising the size of stockpiles;

— Indirect heating of the furnace;

— Keeping the ore as dry as possible;

— Bringing the gas temperature entering the condenser to only 10 to 20 °C above the dew point;

— Keeping the outlet temperature as low as possible; and

— Passing reaction gases through a post-condensation scrubber and/or a selenium filter.

Dust formation can be kept down by indirect heating, separate processing of fine grain classes of ore, and control of ore water content. Dust should be removed from the hot reaction gas before it enters the mercury condensation unit with cyclones and/or electrostatic precipitators.

39. For gold production by amalgamation, similar strategies as for mercury can be applied. Gold is also produced using techniques other than amalgamation, and these are considered to be the preferred option for new plants.

40. Non-ferrous metals are mainly produced from sulphitic ores. For technical and product quality reasons, the off-gas must go through a thorough dedusting (< 3 mg/m³) and could also require additional mercury removal before being fed to an SO₂ contact plant, thereby also minimising heavy metal emissions.

41. Fabric filters should be used when appropriate. A dust content of less than 10 mg/m³ can be obtained. The dust of all pyrometallurgical production should be recycled in-plant or off-site, while protecting occupational health.

42. For primary lead production, first experiences indicate that there are interesting new direct smelting reduction technologies without sintering of the concentrates. These processes are examples of a new generation of direct autogenous lead smelting technologies which pollute less and consume less energy.

43. Secondary lead is mainly produced from used car and truck batteries, which are dismantled before being charged to the smelting furnace. This BAT should include one melting operation in a short rotary furnace or shaft furnace. Oxy-fuel burners can reduce waste gas volume and flue dust production by 60 %. Cleaning the flue-gas with fabric filters makes it possible to achieve dust concentration levels of 5 mg/m³.

44. Primary zinc production is carried out by means of roast-leach electrowin technology. Pressure leaching may be an alternative to roasting and may be considered as a BAT for new plants depending on the concentrate characteristics. Emissions from pyrometallurgical zinc production in Imperial Smelting (IS) furnaces can be minimised by using a double bell furnace top and cleaning with high-efficiency scrubbers, efficient evacuation and cleaning of gases from slag and lead casting, and thorough cleaning (< 10 mg/m³) of the CO-rich furnace off-gases.

45. To recover zinc from oxidized residues these are processed in an IS furnace. Very low-grade residues and flue dust (e.g. from the steel industry) are first treated in rotary furnaces (Waelz-furnaces) in which a high-content zinc oxide is manufactured. Metallic materials are recycled through melting in either induction furnaces or furnaces with direct or indirect heating by natural gas or liquid fuels or in vertical New Jersey retorts, in which a large variety of oxidic and metallic secondary material can be recycled. Zinc can also be recovered from lead furnace slags by a slag fuming process.
Table 7(a)

Emission sources, control measures, dust reduction efficiencies and costs for the primary non-ferrous metal industry

<table>
<thead>
<tr>
<th>Emission source</th>
<th>Control measure(s)</th>
<th>Dust reduction efficiency (%)</th>
<th>Abatement costs (total costs USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fugitive emissions</td>
<td>Suction hoods, enclosure, etc. off-gas cleaning by FF</td>
<td>&gt; 99</td>
<td>—</td>
</tr>
<tr>
<td>Roasting/sintering</td>
<td>Updraught sintering: ESP + scrubbers (prior to double contact sulphuric acid plant) + FF for tail gases</td>
<td>—</td>
<td>7-10/Mg H₂SO₄</td>
</tr>
<tr>
<td>Conventional smelting (blast furnace reduction)</td>
<td>Shaft furnace: closed top/efficient evacuation of tap holes + FF, covered launders, double bell furnace top</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Imperial smelting</td>
<td>High-efficiency scrubbing</td>
<td>&gt; 95</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Venturi scrubbers</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Double bell furnace top</td>
<td>—</td>
<td>4/Mg metal produced</td>
</tr>
<tr>
<td>Pressure leaching</td>
<td>Application depends on leaching characteristics of concentrates</td>
<td>&gt; 99</td>
<td>site-specific</td>
</tr>
<tr>
<td>Direct smelting reduction processes</td>
<td>Flash smelting, e.g. kivcet, Outokumpu and Mitsubishi process</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Bath smelting, e.g. top blown rotary converter, Ausmelt, Isasmelt, QSL and Noranda processes</td>
<td>Ausmelt: Pb 77, Cd 97; QSL: Pb 92, Cd 93</td>
<td>QSL: operating costs 60/Mg Pb</td>
</tr>
</tbody>
</table>

Table 7(b)

Emission sources, control measures, dust reduction efficiencies and costs for the secondary non-ferrous metal industry

<table>
<thead>
<tr>
<th>Emission source</th>
<th>Control measure(s)</th>
<th>Dust reduction efficiency (%)</th>
<th>Abatement costs (total costs USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lead production</td>
<td>Short rotary furnace: suction hoods for tap holes + FF; tube condenser, oxy-fuel burner</td>
<td>99.9</td>
<td>45/Mg Pb</td>
</tr>
<tr>
<td>Zinc production</td>
<td>Imperial smelting</td>
<td>&gt; 95</td>
<td>14/Mg Zn</td>
</tr>
</tbody>
</table>

46. In general, processes should be combined with an effective dust collecting device for both primary gases and fugitive emissions. The most relevant emission reduction measures are outlined in tables 7(a) and (b). Dust concentrations below 5 mg/m³ have been achieved in some cases using fabric filters.
Cement industry (annex II, category 7)

47. Cement kilns may use secondary fuels such as waste oil or waste tyres. Where waste is used, emission requirements for waste incineration processes may apply, and where hazardous waste is used, depending on the amount used in the plant, emission requirements for hazardous waste incineration processes may apply. However, this section refers to fossil fuel fired kilns.

48. Particulates are emitted at all stages of the cement production process, consisting of material handling, raw material preparation (crushers, dryers), clinker production and cement preparation. Heavy metals are brought into the cement kiln with the raw materials, fossil and waste fuels.

49. For clinker production the following kiln types are available: long wet rotary kiln, long dry rotary kiln, rotary kiln with cyclone preheater, rotary kiln with grate preheater, shaft furnace. In terms of energy demand and emission control opportunities, rotary kilns with cyclone preheaters are preferable.

50. For heat recovery purposes, rotary kiln off-gases are conducted through the preheating system and the mill dryers (where installed) before being dedusted. The collected dust is returned to the feed material.

51. Less than 0.5 % of lead and cadmium entering the kiln is released in exhaust gases. The high alkali content and the scrubbing action in the kiln favour metal retention in the clinker or kiln dust.

52. The emissions of heavy metals into the air can be reduced by, for instance, taking off a bleed stream and stockpiling the collected dust instead of returning it to the raw feed. However, in each case these considerations should be weighed against the consequences of releasing the heavy metals into the waste stockpile. Another possibility is the hot-meal bypass, where calcined hot-meal is in part discharged right in front of the kiln entrance and fed to the cement preparation plant. Alternatively, the dust can be added to the clinker. Another important measure is a very well controlled steady operation of the kiln in order to avoid emergency shut-offs of the electrostatic precipitators. These may be caused by excessive CO concentrations. It is important to avoid high peaks of heavy metal emissions in the event of such an emergency shut-off.

53. The most relevant emission reduction measures are outlined in table 8. To reduce direct dust emissions from crushers, mills, and dryers, fabric filters are mainly used, whereas kiln and clinker cooler waste gases are controlled by electrostatic precipitators. With ESP, dust can be reduced to concentrations below 50 mg/m$^3$. When FF are used, the clean gas dust content can be reduced to 10 mg/m$^3$.

<table>
<thead>
<tr>
<th>Emission source</th>
<th>Control measure(s)</th>
<th>Reduction efficiency (%)</th>
<th>Abatement costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct emissions from crushers, mills, dryers</td>
<td>FF</td>
<td>Cd. Pb: &gt; 95</td>
<td>—</td>
</tr>
<tr>
<td>Direct emissions from rotary kilns, clinker coolers</td>
<td>ESP</td>
<td>Cd. Pb: &gt; 95</td>
<td>—</td>
</tr>
<tr>
<td>Direct emissions from rotary kilns</td>
<td>Carbon adsorption</td>
<td>Hg: &gt; 95</td>
<td>—</td>
</tr>
</tbody>
</table>

Glass industry (annex II, category 8)

54. In the glass industry, lead emissions are particularly relevant given the various types of glass in which lead is introduced as raw material (e.g. crystal glass, cathode ray tubes). In the case of soda-lime container glass, lead emissions depend on the quality of the recycled glass used in the process. The lead content in dusts from crystal glass melting is usually about 20-60 %.
55. Dust emissions stem mainly from batch mixing, furnaces, diffuse leakages from furnace openings, and finishing and blasting of glass products. They depend notably on the type of fuel used, the furnace type and the type of glass produced. Oxy-fuel burners can reduce waste gas volume and flue dust production by 60%. The lead emissions from electrical heating are considerably lower than from oil/gas-firing.

56. The batch is melted in continuous tanks, day tanks or crucibles. During the melting cycle using discontinuous furnaces, the dust emission varies greatly. The dust emissions from crystal glass tanks (< 5 kg/Mg melted glass) are higher than from other tanks (< 1 kg/Mg melted soda and potash glass).

57. Some measures to reduce direct metal-containing dust emissions are: pelleting the glass batch, changing the heating system from oil/gas-firing to electrical heating, charging a larger share of glass returns in the batch, and applying a better selection of raw materials (size distribution) and recycled glass (avoiding lead-containing fractions). Exhaust gases can be cleaned in fabric filters, reducing the emissions below 10 mg/m³. With electrostatic precipitators 30 mg/m³ is achieved. The corresponding emission reduction efficiencies are given in table 9.

58. The development of crystal glass without lead compounds is in progress.

Table 9

<table>
<thead>
<tr>
<th>Emission source</th>
<th>Control measure(s)</th>
<th>Dust reduction efficiency (%)</th>
<th>Abatement costs (total costs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct emissions</td>
<td>FF &gt; 98</td>
<td></td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>ESP &gt; 90</td>
<td></td>
<td>—</td>
</tr>
</tbody>
</table>

Chlor-alkali industry (annex II, category 9)

59. In the chlor-alkali industry, Cl₂, alkali hydroxides and hydrogen are produced through electrolysis of a salt solution. Commonly used in existing plants are the mercury process and the diaphragm process, both of which need the introduction of good practices to avoid environmental problems. The membrane process results in no direct mercury emissions. Moreover, it shows a lower electrolytic energy and higher heat demand for alkali hydroxide concentration (the global energy balance resulting in a slight advantage for membrane cell technology in the range of 10 to 15%) and a more compact cell operation. It is, therefore, considered as the preferred option for new plants. Decision 90/3 of 14 June 1990 of the Commission for the Prevention of Marine Pollution from Land-based Sources (PARCOM) recommends that existing mercury cell chlor-alkali plants should be phased out as soon as practicable with the objective of phasing them out completely by 2010.

60. The specific investment for replacing mercury cells by the membrane process is reported to be in the region of USD 700-1 000/Mg Cl₂ capacity. Although additional costs may result from, inter alia, higher utility costs and brine purification cost, the operating cost will in most cases decrease. This is due to savings mainly from lower energy consumption, and lower waste-water treatment and waste-disposal costs.

61. The sources of mercury emissions into the environment in the mercury process are: cell room ventilation; process exhausts; products, particularly hydrogen; and waste water. With regard to emissions into air, Hg diffusely emitted from the cells to the cell room are particularly relevant. Preventive measures and control are of great importance and should be prioritised according to the relative importance of each source at a particular installation. In any case specific control measures are required when mercury is recovered from sludges resulting from the process.

62. The following measures can be taken to reduce emissions from existing mercury process plants:

- Process control and technical measures to optimise cell operation, maintenance and more efficient working methods;
- Coverings, sealings and controlled bleeding-off by suction;
- Cleaning of cell rooms and measures that make it easier to keep them clean; and
- Cleaning of limited gas streams (certain contaminated air streams and hydrogen gas).
63. These measures can cut mercury emissions to values well below 2.0 g/Mg Cl₂ production capacity, expressed as an annual average. There are examples of plants that achieve emissions well below 1.0 g/Mg Cl₂ production capacity. As a result of PARCOM decision 90/3, existing mercury-based chlor-alkali plants were required to meet the level of 2 g of Hg/Mg of Cl₂ by 31 December 1996 for emissions covered by the Convention for the Prevention of Marine Pollution from Land-based Sources. Since emissions depend to a large extent on good operating practices, the average should depend on and include maintenance periods of one year or less.

**Municipal, medical and hazardous waste incineration** (annex II, categories 10 and 11)

64. Emissions of cadmium, lead and mercury result from the incineration of municipal, medical and hazardous waste. Mercury, a substantial part of cadmium and minor parts of lead are volatilised in the process. Particular actions should be taken both before and after incineration to reduce these emissions.

65. The best available technology for dedusting is considered to be fabric filters in combination with dry or wet methods for controlling volatiles. Electrostatic precipitators in combination with wet systems can also be designed to reach low dust emissions, but they offer fewer opportunities than fabric filters especially with pre-coating for adsorption of volatile pollutants.

66. When BAT is used for cleaning the flue gases, the concentration of dust will be reduced to a range of 10 to 20 mg/m³; in practice lower concentrations are reached, and in some cases concentrations of less than 1 mg/m³ have been reported. The concentration of mercury can be reduced to a range of 0.05 to 0.10 mg/m³ (normalised to 11 % O₂).

67. The most relevant secondary emission reduction measures are outlined in table 10. It is difficult to provide generally valid data because the relative costs in USD/tonne depend on a particularly wide range of site-specific variables, such as waste composition.

68. Heavy metals are found in all fractions of the municipal waste stream (e.g. products, paper, organic materials). Therefore, by reducing the quantity of municipal waste that is incinerated, heavy metal emissions can be reduced. This can be accomplished through various waste management strategies, including recycling programmes and the composting of organic materials. In addition, some UN/ECE countries allow municipal waste to be landfilled. In a properly managed landfill, emissions of cadmium and lead are eliminated and mercury emissions may be lower than with incineration. Research on emissions of mercury from landfills is taking place in several UN/ECE countries.

**Table 10**

**Emission sources, control measures, reduction efficiencies and costs for municipal, medical and hazardous waste incineration**

<table>
<thead>
<tr>
<th>Emission source</th>
<th>Control measure(s)</th>
<th>Reduction efficiency (%)</th>
<th>Abatement costs (total costs USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stack gases</td>
<td>High-efficiency scrubbers</td>
<td>Pd, Cd: &gt; 98; Hg: ca. 50</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>ESP (3 fields)</td>
<td>Pb, Cd: 80-90</td>
<td>10-20/Mg waste</td>
</tr>
<tr>
<td></td>
<td>Wet ESP (1 field)</td>
<td>Pb, Cd: 95-99</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Fabric filters</td>
<td>Pb, Cd: 95-99</td>
<td>15-30/Mg waste</td>
</tr>
<tr>
<td></td>
<td>Carbon injection + FF</td>
<td>Hg: &gt; 85</td>
<td>operating costs; ca. 2-3/Mg waste</td>
</tr>
<tr>
<td></td>
<td>Carbon bed filtration</td>
<td>Hg: &gt; 99</td>
<td>operating costs; ca. 50/Mg waste</td>
</tr>
</tbody>
</table>
ANNEX IV

TIMESCALES FOR THE APPLICATION OF LIMIT VALUES AND BEST AVAILABLE TECHNIQUES TO NEW AND EXISTING STATIONARY SOURCES

The timescales for the application of limit values and best available techniques are:

(a) For new stationary sources: two years after the date of entry into force of the present Protocol;

(b) For existing stationary sources: eight years after the date of entry into force of the present Protocol. If necessary, this period may be extended for specific existing stationary sources in accordance with the amortisation period provided for by national legislation.

ANNEX V

LIMIT VALUES FOR CONTROLLING EMISSIONS FROM MAJOR STATIONARY SOURCES

1. INTRODUCTION

1. Two types of limit value are important for heavy metal emission control:
   — Values for specific heavy metals or groups of heavy metals; and
   — Values for emissions of particulate matter in general.

2. In principle, limit values for particulate matter cannot replace specific limit values for cadmium, lead and mercury, because the quantity of metals associated with particulate emissions differs from one process to another. However, compliance with these limits contributes significantly to reducing heavy metal emissions in general. Moreover, monitoring particulate emissions is generally less expensive than monitoring individual species and continuous monitoring of individual heavy metals is in general not feasible. Therefore, particulate limit values are of great practical importance and are also laid down in this annex in most cases to complement or replace specific limit values for cadmium or lead or mercury.

3. Limit values, expressed as mg/m$^3$, refer to standard conditions (volume at 273.15 K, 101.3 kPa, dry gas) and are calculated as an average value of one-hour measurements, covering several hours of operation, as a rule 24 hours. Periods of start-up and shutdown should be excluded. The averaging time may be extended when required to achieve sufficiently precise monitoring results. With regard to the oxygen content of the waste gas, the values given for selected major stationary sources shall apply. Any dilution for the purpose of lowering concentrations of pollutants in waste gases is forbidden. Limit values for heavy metals include the solid, gaseous and vapour form of the metal and its compounds, expressed as the metal. Whenever limit values for total emissions are given, expressed as g/unit of production or capacity respectively, they refer to the sum of stack and fugitive emissions, calculated as an annual value.

4. In cases in which an exceeding of given limit values cannot be excluded, either emissions or a performance parameter that indicates whether a control device is being properly operated and maintained shall be monitored. Monitoring of either emissions or performance indicators should take place continuously if the emitted mass flow of particulates is above 10 kg/h. If emissions are monitored, the concentrations of air pollutants in gas-carrying ducts have to be measured in a representative fashion. If particulate matter is monitored discontinuously, the concentrations should be measured at regular intervals, taking at least three independent readings per check. Sampling and analysis of all pollutants as well as reference measurement methods to calibrate automated measurement systems shall be carried out according to the standards laid down by the Comité européen de normalisation (CEN) or the International Organization for Standardization (ISO). While awaiting the development of the CEN or ISO standards, national standards shall apply. National standards can also be used if they provide equivalent results to CEN or ISO standards.

5. In the case of continuous monitoring, compliance with the limit values is achieved if none of the calculated average 24-hour emission concentrations exceeds the limit value or if the 24-hour average of the monitored parameter does not exceed the correlated value of that parameter that was established during a performance test when the control device was being properly operated and maintained. In the case of discontinuous emission monitoring, compliance is achieved if the average reading per check does not exceed the value of the limit. Compliance with each of the limit values expressed as total emissions per unit of production or total annual emissions is achieved if the monitored value is not exceeded, as described above.

II. SPECIFIC LIMIT VALUES FOR SELECTED MAJOR STATIONARY SOURCES

Combustion of fossil fuels (annex II, category 1):

6. Limit values refer to 6 % $O_2$ in flue gas for solid fuels and to 3 % $O_2$ for liquid fuels.

7. Limit value for particulate emissions for solid and liquid fuels: 50 mg/m$^3$.

Sinter plants (annex II, category 2):

8. Limit value for particulate emissions: 50 mg/m$^3$. 

Pellet plants (annex II, category 2):
9. Limit value for particulate emissions:
   (a) Grinding, drying: 25 mg/m³; and
   (b) Pelletising: 25 mg/m³; or
10. Limit value for total particulate emissions: 40 g/Mg of pellets produced.

Blast furnaces (annex II, category 3):
11. Limit value for particulate emissions: 50 mg/m³.

Electric arc furnaces (annex II, category 3):
12. Limit value for particulate emissions: 20 mg/m³.

Production of copper and zinc, including Imperial Smelting furnaces (annex II, categories 5 and 6):
13. Limit value for particulate emissions: 20 mg/m³.

Production of lead (annex II, categories 5 and 6):
14. Limit value for particulate emissions: 10 mg/m³.

Cement industry (annex II, category 7):
15. Limit value for particulate emissions: 50 mg/m³.

Glass industry (annex II, category 8):
16. Limit values refer to different O₂ concentrations in flue gas depending on furnace type: tank furnaces: 8 %; pot furnaces and day tanks: 13 %.
17. Limit value for lead emissions: 5 mg/m³.

Chlor-alkali industry (annex II, category 9):
18. Limit values refer to the total quantity of mercury released by a plant into the air, regardless of the emission source and expressed as an annual mean value.
19. Limit values for existing chlor-alkali plants shall be evaluated by the Parties meeting within the Executive Body no later than two years after the date of entry into force of the present Protocol.
20. Limit value for new chlor-alkali plants: 0,01 g Hg/Mg Cl₂ production capacity.

Municipal, medical and hazardous waste incineration (annex II, categories 10 and 11):
21. Limit values refer to 11 % O₂ concentration in flue gas.
22. Limit value for particulate emissions:
   (a) 10 mg/m³ for hazardous and medical waste incineration;
   (b) 25 mg/m³ for municipal waste incineration.
23. Limit value for mercury emissions:
   (a) 0,05 mg/m³ for hazardous waste incineration;
   (b) 0,08 mg/m³ for municipal waste incineration;
   (c) Limit values for mercury-containing emissions from medical waste incineration shall be evaluated by the Parties meeting within the Executive Body no later than two years after the date of entry into force of the present Protocol.
ANNEX VI

PRODUCT CONTROL MEASURES

1. Except as otherwise provided in this annex, no later than six months after the date of entry into force of the present Protocol, the lead content of marketed petrol intended for on-road vehicles shall not exceed 0.013 g/l. Parties marketing unleaded petrol with a lead content lower than 0.013 g/l shall endeavour to maintain or lower that level.

2. Each Party shall endeavour to ensure that the change to fuels with a lead content as specified in paragraph 1 above results in an overall reduction in the harmful effects on human health and the environment.

3. Where a State determines that limiting the lead content of marketed petrol in accordance with paragraph 1 above would result in severe socio-economic or technical problems for it or would not lead to overall environmental or health benefits because of, inter alia, its climate situation, it may extend the time period given in that paragraph to a period of up to 10 years, during which it may market leaded petrol with a lead content not exceeding 0.15 g/l. In such a case, the State shall specify, in a declaration to be deposited together with its instrument of ratification, acceptance, approval or accession, that it intends to extend the time period and present to the Executive Body in writing information on the reasons for this.

4. A Party is permitted to market small quantities, up to 0.5 per cent of its total petrol sales, of leaded petrol with a lead content not exceeding 0.15 g/l to be used by old on-road vehicles.

5. Each Party shall, no later than five years, or ten years for countries with economies in transition that state their intention to adopt a ten-year period in a declaration to be deposited with their instrument of ratification, acceptance, approval or accession, after the date of entry into force of this Protocol, achieve concentration levels which do not exceed:

(a) 0.05 per cent of mercury by weight in alkaline manganese batteries for prolonged use in extreme conditions (e.g. temperature below 0 °C or above 50 °C, exposed to shocks); and

(b) 0.025 per cent of mercury by weight in all other alkaline manganese batteries.

The above limits may be exceeded for a new application of a battery technology, or use of a battery in a new product, if reasonable safeguards are taken to ensure that the resulting battery or product without an easily removable battery will be disposed of in an environmentally sound manner. Alkaline manganese button cells and batteries composed of button cells shall also be exempted from this obligation.
ANNEX VII

PRODUCT MANAGEMENT MEASURES

1. This annex aims to provide guidance to Parties on product management measures.

2. The Parties may consider appropriate product management measures such as those listed below, where warranted as a result of the potential risk of adverse effects on human health or the environment from emissions of one or more of the heavy metals listed in annex I, taking into account all relevant risks and benefits of such measures, with a view to ensuring that any changes to products result in an overall reduction of harmful effects on human health and the environment:

   (a) The substitution of products containing one or more intentionally added heavy metals listed in annex I, if a suitable alternative exists;

   (b) The minimisation or substitution in products of one or more intentionally added heavy metals listed in annex I;

   (c) The provision of product information including labelling to ensure that users are informed of the content of one or more intentionally added heavy metals listed in annex I and of the need for safe use and waste handling;

   (d) The use of economic incentives or voluntary agreements to reduce or eliminate the content in products of the heavy metals listed in annex I; and

   (e) The development and implementation of programmes for the collection, recycling or disposal of products containing one of the heavy metals in annex I in an environmentally sound manner.

3. Each product or product group listed below contains one or more of the heavy metals listed in annex I and is the subject of regulatory or voluntary action by at least one Party to the Convention based for a significant part on the contribution of that product to emissions of one or more of the heavy metals in annex I. However, sufficient information is not yet available to confirm that they are a significant source for all Parties, thereby warranting inclusion in annex VI. Each Party is encouraged to consider available information and, where satisfied of the need to take precautionary measures, to apply product management measures such as those listed in paragraph 2 above to one or more of the products listed below:

   (a) Mercury-containing electrical components, i.e. devices that contain one or several contacts/sensors for the transfer of electrical current such as relays, thermostats, level switches, pressure switches and other switches (actions taken include a ban on most mercury-containing electrical components; voluntary programmes to replace some mercury switches with electronic or special switches; voluntary recycling programmes for switches; and voluntary recycling programmes for thermostats);

   (b) Mercury-containing measuring devices such as thermometers, manometers, barometers, pressure gauges, pressure switches and pressure transmitters (actions taken include a ban on mercury-containing thermometers and ban on measuring instruments);

   (c) Mercury-containing fluorescent lamps (actions taken include reductions in mercury content per lamp through both voluntary and regulatory programmes and voluntary recycling programmes);

   (d) Mercury-containing dental amalgam (actions taken include voluntary measures and a ban with exemptions on the use of dental amalgams and voluntary programmes to promote capture of dental amalgam before release to water treatment plants from dental surgeries);

   (e) Mercury-containing pesticides including seed dressing (actions taken include bans on all mercury pesticides including seed treatments and a ban on mercury use as a disinfectant);

   (f) Mercury-containing paint (actions taken include bans on all such paints, bans on such paints for interior use and use on children's toys; and bans on use in antifouling paints); and

   (g) Mercury-containing batteries other than those covered in annex VI (actions taken include reductions in mercury content through both voluntary and regulatory programmes and environmental charges and voluntary recycling programmes).
Proposal for a Council Regulation relating to the conclusion of the Protocol defining, for the period 3 December 1999 to 2 December 2002, the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Government of Mauritius on fishing in the waters of Mauritius

(2000/C 311 E/08)


(Submitted by the Commission on 18 April 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37, in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) In accordance with the Agreement between the European Community and the Government of Mauritius on fishing in Mauritian waters (1), the Contracting Parties held negotiations with a view to determining amendments or additions to be made to the Agreement at the end of the period of application of the Protocol.

(2) As a result of these negotiations, a new Protocol defining, for the period 3 December 1999 to 2 December 2002, the fishing opportunities and the financial contribution provided for by the said Agreement was initialled on 3 December 1999.

(3) It is in the Community's interest to approve this Protocol;

(4) The method for allocating the fishing opportunities among the Member States should be defined on the basis of the traditional allocation of fishing opportunities under the Fisheries Agreement,

HAS ADOPTED THIS REGULATION:

Article 1

The Protocol defining, for the period 3 December 1999 to 2 December 2002, the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Government of Mauritius on fishing in the waters of Mauritius is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation.

Article 2

The fishing opportunities fixed in the Protocol shall be allocated among the Member States as follows:

— Tuna seiners: France 20, Spain 20, Italy 2, United Kingdom 1;

— Surface long-liners: Spain 19, France 13, Portugal 8;

— Vessels fishing by line: France 25 grt/month on an annual average

If licence applications from these Member States do not cover all the fishing opportunities fixed by the Protocol, the Commission may take into consideration licence application from any other Member State.

Article 3

The President of the Council is hereby authorised to designate the persons empowered to sign the Protocol in order to bind the Community.

Article 4

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities.

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

(1) OJ L 159, 10.6.89, p. 2.
PROTOCOL
Defining, for the period 3 December 1999 to 2 December 2002, the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Government of Mauritius on fishing in the waters of Mauritius

Article 1
Pursuant to Article 2 of the Agreement, and for a period of three years from 3 December 1999, the following fishing possibilities shall be accorded:
— tuna seiners: licences for 43 vessels;
— surface longliners: licences for 40 vessels;
— vessels fishing by line: licences for 25 grt/month on an annual average.

Article 2
1. The financial compensation referred to in Article 6 of the Agreement for the above-mentioned period is fixed at 206 250 euros per year.
2. This compensation shall cover a catch weight in waters of Mauritius of 5 500 tons of catches per year. If the annual amount of catches by Community vessels in the waters of Mauritius exceeds this quantity, the above-mentioned compensation shall be increased by 50 euros for each additional ton caught.
3. The use to which this compensation is put shall be the sole competence of Mauritius.
4. The financial compensation shall be paid into an account indicated by the government of Mauritius, in the name of the public Treasury.

Article 3
During the period covered by the Protocol, the Community shall contribute an additional 618 750 euros to financing the measures described below, allocated as follows:
1. 543 750 euros for scientific and technical programmes to promote better understanding and management of fisheries and living resources in Mauritius' fishing zone, and the implementation of an appropriate monitoring and control surveillance scheme, including an electronic fisheries management information system based on the vessel monitoring system;
2. 75 000 euros for study grants and practical training courses in the various scientific, technical and economic fields linked to fishing. Of this amount, up to 25 000 euros may be used, at the request of the Mauritian authority responsible for fisheries, to cover the costs of attending international meetings relating to fisheries;
3. The Mauritian Ministry responsible for fisheries shall transmit an annual report on the implementation of these measures and the results achieved to the Delegation of the European Commission in Mauritius, three months after the anniversary date of the protocol. The Commission reserves the right to request additional information on these results from the Mauritian authority responsible for fisheries and to review the payments concerned in the light of the actual implementation of the measures.
4. All the amounts indicated shall be paid into an account indicated by the government of Mauritius, in the name of the public Treasury.

Article 4
Should the Community fail to make any of the payments specified in Articles 2 and 3, the Agreement on fishing may be suspended.

Article 5
The Annex to the Agreement between the European Community and the Government of Mauritius on fishing in the waters of Mauritius is hereby repealed and replaced by the Annex to this Protocol.

Article 6
This Protocol with its Annex shall enter into force on the date of its signature.
It shall apply from 3 December 1999.
ANNEX

CONDITIONS FOR THE PURSUIT OF FISHING ACTIVITIES BY COMMUNITY VESSELS IN THE WATERS OF MAURITIUS

1. LICENCE APPLICATION AND ISSUING FORMALITIES

The application procedure for, and issue of, the licences enabling Community vessels to fish in the waters of Mauritius shall be as follows:

(a) The Commission of the European Communities shall present to the Mauritian authority via the representative of the Commission of the European Communities in Mauritius an application, made by the ship-owner, for each vessel that wishes to fish under this Agreement, at least 20 days before the date of commencement of the period of validity requested. The application shall be made on the forms provided for that purpose by Mauritius, a specimen of which is attached as appendix 1.

(b) Every licence shall be issued to the ship-owner for one designated vessel. At the request of the Commission of the European Communities the licence for a vessel may and, in cases of force majeure, shall be replaced by a licence for another Community vessel.

(c) The licences shall be delivered by the authorities of Mauritius to the representative of the Commission of the European Communities in Mauritius.

(d) The licence document must be held on board at all times. However, on receipt of the notification of the advance payment sent by the Commission of the European Communities to the Mauritian authority, the vessel will be included on a list, to be notified to the Mauritian fisheries control authorities. Whilst awaiting receipt of the licence document, a fax copy of this licence document may be obtained and shall be kept on board, which will authorise the vessel to fish, pending delivery on board of the licence document.

(e) The Mauritian authority shall communicate before the date of entry into force of the Protocol the arrangements for payments of the licence fees, and in particular the details of the bank account and the currency to be used.

2. VALIDITY OF LICENCES AND PAYMENT OF FEES

1. Advance payments

For tuna seiners and surface longliners, licences shall be valid for a period of one year. They are renewable.

The fee shall be set at 25 euros per ton caught in the waters of Mauritius.

For tuna seiners, licences shall be issued on advance payment of an annual sum of 1 750 euros per tuna seiner, equivalent to the fees for 70 tons of annual catches within the waters of Mauritius.

For surface longliners, licences shall be issued on advance payment to Mauritius of an annual sum of 1 375 euros for surface longliner of more than 150 grt and 1 000 euros for surface longliners of 150 grt or less. These amounts correspond respectively to the fees due for 55 tons and for 40 tons of annual catches in Mauritian waters.

For vessels fishing by line, licences shall be valid for three, six or twelve months. The fee shall be fixed in relation to the grt as follows: 80 euros per year per grt pro rata temporis.

II. Final statement

For tuna seiners and surface longliners, a final statement of the fees due for the fishing year shall be drawn up by the Commission of the European Communities at the end of each calendar year on the basis of the catch statements made by the ship-owners and confirmed by the scientific institutes competent for verifying catch statistics such as ORSTOM (Office of Overseas Scientific and technical research), IEO (Spanish Oceanographic Institute), IPIMAR (Instituto Nacional das Pescas e do Mar) and any international fishing organisations in the Indian Ocean, as may be designated by the Mauritian authority. The statement shall simultaneously be notified to the Mauritian authority and the ship-owners. The ship-owners shall meet their financial obligations within 30 days of the receipt of the statement. If the amount of the sum due for actual fishing operations is less than the advance payment, the corresponding outstanding sum shall not be recoverable by the ship-owner.

3. DECLARATIONS OF CATCHES

Vessels authorised to fish in the waters of Mauritius under the Agreement shall notify their catch statistics to the Mauritian authority, with a copy for the delegation of the European Communities in Mauritius, in accordance with the following procedure.
Tuna seiners shall complete a fishing form corresponding to the specimen in Appendix 2. Surface longliners shall complete a fishing form corresponding to the specimen in Appendix 3. Vessels fishing by line shall complete a fishing form corresponding to the specimen in Appendix 4.

Forms must be completed legibly and be signed by the master of the vessel. In addition, they must be completed by all vessels which have obtained a licence, even if they have not fished.

The forms shall be forwarded to the Mauritian authority not later than 45 days after each fishing campaign.

4. OBSERVERS

All vessels above 50 grt shall, at the request of the authorities of Mauritius, take on board an observer designated by these authorities in order to check catches made in the waters of Mauritius. Observers shall have all facilities necessary for the performance of this duty including access to places and documents. An observer must not be present for longer than the time required to fulfil his duties. They shall be provided with suitable food and accommodation while on board. Should a vessel with a Mauritian observer on board leave the waters of Mauritius, every step will be taken to ensure that the observer returns to Mauritius as soon as possible, at the ship-owner's expense.

5. RADIO COMMUNICATION

Vessels above 50 grt shall communicate, when entering and leaving Mauritian waters, and, every three days, while fishing in Mauritian waters, to a radio station (the name, call sign and frequency of which shall be specified in the licence) or by fax (No 230 208 1929) or by e-mail (fish@intnet.mu), their position and the volume of catches on board.

6. FISHING ZONES

Tuna seiners and surface longliners may fish in the waters of Mauritius except within a distance of 12 nautical miles measured from the baseline.

Vessels fishing by line are only authorised to fish in their traditional grounds, namely Soudan Bank and East Soudan Bank.

7. SUPPLY TO THE TUNA CANNING INDUSTRY

Community tuna vessels shall endeavour to sell part of their catch to the Mauritian tuna canning industry at a price to be fixed in common agreement between Community ship-owners and the owners of the Mauritian tuna canning industry.

8. BOARDING

I. Transmission of information

The Mauritian authority responsible for fisheries shall inform the Delegation and the flag State, within 48 hours, of the boarding of any fishing vessel flying the flag of a Member State of the Community fishing under the Fisheries Agreement in Mauritius's fishing zone and shall transmit a brief report of the circumstances and reasons leading to such boarding. The Delegation and the flag State shall be kept informed of any proceedings initiated and penalties imposed.

II. Settlement of boarding

In accordance with the law on fisheries and the relevant regulations, infringements may be settled:

(a) either by composition, in which case the amount of the fine shall be determined in accordance with the Mauritian legislation laying down minimum and maximum figures;

(b) or by legal proceedings, if no composition is possible, in accordance with the Mauritian law.

III. The vessel shall be released and its crew authorised to leave the port:

(a) either as soon as the obligation imposed by the composition procedure have been completed on presentation of the receipt for the settlement, or

(b) on presentation of proof that a bank security has been lodged, pending completion of the legal proceedings.
Appendix 1
APPLICATION FOR A FOREIGN FISHING VESSEL LICENCE

Name of applicant: .................................................................

Address of applicant: .................................................................

Name and address of charterers of vessels if different from above: .................................................................

Name and address of agent in Mauritius (if any): .................................................................

Name of vessel: .................................................................

Type of vessel: .................................................................

Country of registry: .................................................................

Port and registration number: .................................................................

Fishing vessel external identification: .................................................................

Radio call sign and frequency: .................................................................

Fax number of vessel: .................................................................

Length of vessel: .................................................................

Width of vessel: .................................................................

Engine type and power: .................................................................

Gross registered tonnage of vessel: .................................................................

Net registered tonnage of vessel: .................................................................

Minimum crew complement: .................................................................

Type of fishing practised: .................................................................

Proposed species of fish: .................................................................

Period of validity requested: .................................................................

I certify that the above particulars are correct.

Date: ................................................................. Signature: .................................................................
### TUNA VESSELS FISHING LOGBOOK

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<thead>
<tr>
<th>Name of vessel:</th>
<th>Gross tonnes:</th>
<th>Vessel left:</th>
<th>Month</th>
<th>Day</th>
<th>Year</th>
<th>Port</th>
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<tbody>
<tr>
<td>Flag country:</td>
<td>Capacity (TM):</td>
<td>Vessel returned:</td>
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<tr>
<td>Registration number:</td>
<td>Captain:</td>
<td>Number of crew:</td>
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<tr>
<td>Shipowner:</td>
<td>Number of days at sea:</td>
<td>Number of days at sea:</td>
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<tr>
<td>Address:</td>
<td>Reporting date:</td>
<td>Number of sets made:</td>
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<td>Trip Number:</td>
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### Dates

<table>
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<tr>
<th>Day/Month</th>
<th>Area</th>
<th>Catches</th>
<th>Bait used</th>
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<tbody>
<tr>
<td>Day/Month</td>
<td>Area</td>
<td>Catches</td>
<td>Bait used</td>
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</tbody>
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<th>Dates</th>
<th>Area</th>
<th>Catches</th>
<th>Bait used</th>
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### Catches

<table>
<thead>
<tr>
<th>Bluefin tuna (Thunnus thynnus)</th>
<th>Yellowfin tuna (Thunnus albacares)</th>
<th>Bigeye tuna (Thunnus obesus)</th>
<th>Albacore (Thunnus alalunga)</th>
<th>Swordfish (Xiphias gladius)</th>
<th>White marlin (Tetrapturus audax)</th>
<th>Black marlin (Makaira indica)</th>
<th>Sailfish (Istiophorus spp)</th>
<th>Skipjack (Katsuwonus pelamis)</th>
<th>Miscellaneous Fishes</th>
<th>Daily total</th>
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<tr>
<td>No</td>
<td>kg</td>
<td>No</td>
<td>kg</td>
<td>No</td>
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<td>kg</td>
<td>No</td>
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### Bait used

<table>
<thead>
<tr>
<th>Bait</th>
<th>Use</th>
<th>Amount</th>
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### Appendix 2

**Fishing method**
- [ ] Longline
- [ ] Purse seine
- [ ] Trawling
- [ ] Other

**Landing weight:** (in kg)
Appendix 3

Statement of Catch for Surface Longliners

Name of vessel: ____________________________  Skipper’s name: ____________________________
Date of setting: ______/____/____  Start of trip: ______/____/____ at: ____________________________
Trip number: ____________________________  Setting number: ____________________________

| Wind direction: ____________________________ | Force: ____________________________ (Beaufort) |
| Sea conditions: ____________________________ | Swell: ____________________________ ____________________________ |
| Surface temperature: ______ °C | Current speed: ____________________________  Direction: ____________________________ |
| Moon: New moon + ______ days | Moon rises: ____________________________  0 to 24 hours |
| Moon sets: ____________________________  hours |

Setting details

Start time: ____________________________  Finishing time: ____________________________

<table>
<thead>
<tr>
<th>Section</th>
<th>Position</th>
<th>Heading</th>
<th>Speed</th>
<th>Remarks</th>
</tr>
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<tbody>
<tr>
<td>Depart: radio buoy number 1</td>
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<tr>
<td>Radio buoy number 2</td>
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<td>Radio buoy number 4</td>
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<td>Radio buoy number 5</td>
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<tr>
<td>Radio buoy number 6</td>
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<tr>
<td>Radio buoy number 7</td>
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Number of hooks: ____________________________  Length: Buoy lines: ____________________________  Branch lines: ____________________________
Length of line: ____________________________  Recorded depth of the line (sounder): ____________________________
Bait: Shrimp: ____________________________  % Mackerel: ____________________________  %  %  %
### Details of catch

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<tr>
<th>Time (0 à 24 h)</th>
<th>Latitude</th>
<th>Longitude</th>
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<tr>
<td>Start of turn</td>
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<tr>
<td>End of turn</td>
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<table>
<thead>
<tr>
<th>Species</th>
<th>Number</th>
<th>Estimated unit weight</th>
<th>Total weight</th>
<th>Number of fish eaten</th>
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<tbody>
<tr>
<td>Swordfish (*)</td>
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<tr>
<td>Yellowfin (**)</td>
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<tr>
<td>Bigeye (**)</td>
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<tr>
<td>Marlin (**)</td>
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<tr>
<td>Sardine (**)</td>
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<td>Scadream</td>
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<tr>
<td>Shark</td>
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<td>Other (give details)</td>
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Total weight

Total weight of catch landed (weighted)
Appendix 4

FISHERY BY LINE

<table>
<thead>
<tr>
<th>Date</th>
<th>Fishing Area</th>
<th>Number of hours</th>
<th>Number of hours fishing</th>
<th>Fish Species</th>
<th>TOTAL</th>
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<tbody>
<tr>
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<td>Latitude</td>
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<td>TOTAL</td>
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</table>

Name of vessel: ________________________________

Engine Power: ________________________________

Fishing Method: ________________________________

Nationality (flag): ____________________________

Gross tonnage: ________________________________

Port of landing: ________________________________

Month

Year
Amended proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (1)

(2000/C 311 E/09)

(Text with EEA relevance)

COM(2000) 328 final — 1999/0253(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 26 April 2000)


THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular to Article 13 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

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

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

Whereas:

(1) The Treaty on European Union marks a new stage in the process of creating an ever closer union among the peoples of Europe.

(2) The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States. In accordance with Article 6(2) of the Treaty on European Union, the Union should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms, as general principles of Community Law.

(3) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, of which all Member States are signatories.


INITIAL PROPOSAL

AMENDED PROPOSAL

Unchanged
INITIAL PROPOSAL

(4) Article 13 of the Treaty establishing the European Community empowers the Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

(5) The European Council, at its extraordinary meeting in Tampere, on 15 and 16 October 1999, invited the Commission to come forward as soon as possible with proposals implementing Article 13 of the EC Treaty as regards the fight against racism and xenophobia.

(6) The 1999 Employment Guidelines agreed by the European Council in Vienna on 11 December 1998 stress the need to foster conditions for a socially inclusive labour market by formulating a coherent set of policies aimed at combating discrimination against groups such as ethnic minorities.

(7) Discrimination based on racial or ethnic origin may undermine the achievement of the objectives of the Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity. It may also undermine the objective of developing the European Union as an area of freedom, security and justice.

The Commission presented a Communication (1) on Racism, Xenophobia and Anti-Semitism in December 1995.

AMENDED PROPOSAL

(a) The European Parliament has adopted a number of resolutions on the fight against racism in the European Union.

Unchanged

(8) The Commission presented a Communication (1) on Racism, Xenophobia and Anti-Semitism in December 1995.

(a) The Council adopted on 15 July 1996 a Joint Action concerning action to combat racism and xenophobia (2), which undertakes to ensure effective judicial co-operation in respect of offences based on racist or xenophobic behaviour.

(b) In implementing the principle of equal treatment irrespective of racial or ethnic origin, the Community should aim to eliminate inequalities, and to promote equality, between men and women, especially since women are often the victims of multiple discrimination.

(1) COM(95) 653 final.

(2) OJ L 185, 24.7.1996.
To ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self employed activities and cover areas such as education, social protection and social security, social advantages and access to and supply of goods and services.

To this end, any direct or indirect discrimination based on racial or ethnic origin as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries. This prohibition does not apply to differences of treatment based on nationality.

Harassment on grounds of racial or ethnic origin of a person or group of persons which produces an intimidating, hostile, offensive or disturbing environment should be deemed to be discrimination.

The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular racial or ethnic origin.

A difference of treatment may be justified where a characteristic related to racial or ethnic origin constitutes a genuine occupational qualification.

Persons who have been subject to discrimination based on racial and ethnic origin should have adequate means of legal protection. To provide a more effective level of protection, associations, or legal entities should also be empowered to exercise the rights of defence on behalf of any victim.

The effective implementation of the principle of equality requires adequate judicial protection in civil matters against victimisation and an adjustment of the general rules on the burden of proof.
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<th>INITIAL PROPOSAL</th>
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<td>itself be strengthened by the existence of an independent body in each Member</td>
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<td>solutions and to provide concrete assistance for the victims.</td>
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<td>(20) This Directive lays down minimum requirements, thus giving the Member States</td>
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<td>the option of introducing or maintaining more favourable provisions. The</td>
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<td>implementation of this Directive should not serve to justify any regression in</td>
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<td>relation to the situation which already prevails in each Member State.</td>
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<td>(21) Member States should provide for effective, proportionate and dissuasive</td>
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<td>penalties in case of breaches of the obligations under this Directive.</td>
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<td>(22) In accordance with the principles of subsidiarity and proportionality as</td>
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<td>set out in Article 5 of the Treaty establishing the European Community, the</td>
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<td>objective of this Directive, namely ensuring a common high level of protection</td>
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<td>against discrimination in all the Member States of the European Union, cannot be</td>
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<td>sufficiently achieved by the Member States and can therefore, by reason of the</td>
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<td>scale and impact of the proposed action, be better achieved by the Community.</td>
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<td>objectives and does not go beyond what is necessary for that purpose,</td>
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HAS ADOPTED THIS DIRECTIVE:

CHAPTER I
GENERAL PROVISIONS

Article 1
Purpose

The purpose of this Directive is to put into effect in the
Member States the principle of equal treatment between indi-
viduals irrespective of racial or ethnic origin.

Article 2
Concept of discrimination

1. For the purposes of this Directive, the principle of equal
treatment shall mean that there shall be no direct or indirect
discrimination based on racial or ethnic origin.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one
person is treated less favourably than another is, has been
or would be treated on grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an
apparently neutral provision, criterion or practice is liable
to affect adversely a person or a group of persons of a
particular racial or ethnic origin unless that provision,
criterion or practice is objectively justified by a legitimate
aim which is unrelated to the racial or ethnic origin of a
person or group of persons and the means of achieving
that aim are appropriate and necessary.

3. Harassment of a person or group of persons related to
racial or ethnic origin, which has the purpose or effect of
creating an intimidating, hostile, offensive or disturbing
environment in any of the areas covered in Article 3, shall
be deemed to be discrimination within the meaning of
paragraph 1.

4. An instruction or incitement to discriminate against
persons on grounds of racial or ethnic origin shall be
deemed to be discrimination within the meaning of
paragraph 1.
Article 3

Material scope

Within the limits of the powers conferred upon the Community, this Directive shall apply to:

(a) the conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions, whatever the sector or branch of activity and at all levels of the professional hierarchy, including promotion;

(b) access to all types and to all levels, of vocational guidance, vocational training, advanced vocational training and retraining;

(c) employment and working conditions, including dismissals and pay;

(d) membership of and involvement in an organisation of workers or employers, or any other organisation whose members carry on a particular profession, including the benefits provided for by such organisations;

(e) social protection and social security;

(f) social advantages;

(g) education, including grants and scholarships, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity;

(h) access to and supply of goods and services.

Article 4

Genuine occupational qualifications

Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to racial or ethnic origin shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine occupational qualification.
INITIAL PROPOSAL

Article 5

Positive action

This Directive shall be without prejudice to the right of the Member States to maintain or adopt measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular racial or ethnic origin.

Article 6

Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.

2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

CHAPTER II

REMEDIES AND ENFORCEMENT

Article 7

Defence of rights

1. Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. Member States shall ensure that associations, organisations or other legal entities may pursue, on behalf of the complainant with his or her approval, any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

Article 8

Burden of proof

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to

AMENDED PROPOSAL

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages regarding persons of a particular racial or ethnic origin.

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prove that there has been no breach of the principle of equal
treatment.

2. Paragraph 1 shall not prevent Member States from intro-
ducing rules of evidence which are more favourable to
plaintiffs.

3. Paragraph 1 shall not apply to criminal procedures,
unless otherwise provided by the Member States.

4. Paragraphs 1, 2 and 3 shall apply to any legal
proceedings commenced in accordance with Article 7(2).

Article 9
Victimisation

Member States shall introduce into their national legal systems
such measures as are necessary to protect individuals from any
adverse treatment or adverse consequence as a reaction to a
complaint or to legal proceedings aimed at enforcing
compliance with the principle of equal treatment.

Article 10
Dissemination of information

1. Member States shall ensure that adequate information on
the provisions adopted pursuant to this Directive is provided
throughout their territory, and in particular in vocational
training and educational bodies and in the workplace.

2. Member States shall ensure that competent public auth-
orities are informed by appropriate means as regards all
national measures taken pursuant to this Directive.

2. Member States shall ensure that competent public auth-
orities are informed by appropriate means as regards all
national measures taken pursuant to this Directive. They shall
in particular stress the need to ensure that differences of
treatment based on nationality, religion or belief are not a
disguised form of discrimination on grounds of racial or
ethnic origin.

Article 11
Social dialogue

1. Member States shall take adequate measures to promote
the social dialogue between the two sides of industry with a
view to fostering equal treatment, including through the moni-
toring of workplace practices, collective agreements, codes of
conduct, research or exchange of experiences and good
practices.
2. Member States shall encourage the two sides of the industry to conclude, at the appropriate level, including at undertaking level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and the relevant national implementing measures.

3. Member States shall also encourage dialogue with appropriate non-governmental organisations which have a legitimate interest in contributing to the fight against discrimination on grounds of racial and ethnic origin with a view to promoting the principle of equal treatment.

CHAPTER III
INDEPENDENT BODIES FOR THE PROMOTION OF EQUAL TREATMENT

Article 12
Independent bodies

1. Member States shall provide for an independent body or bodies for the promotion of equal treatment of persons of different racial or ethnic origin. These bodies may form part of independent agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.

2. Member States shall ensure that the functions of these independent bodies include receiving and pursuing complaints from individuals about discrimination on grounds of racial or ethnic origin, commencing investigations or surveys concerning discrimination based on racial or ethnic origin and publishing reports and making recommendations on issues relating to discrimination based on racial or ethnic origin.

2. Member States shall ensure that the functions of these independent bodies include assisting victims of discrimination in pursuing their complaints, about discrimination on grounds of racial or ethnic origin, commencing investigations or surveys concerning discrimination based on racial or ethnic origin and publishing reports and making recommendations on issues relating to discrimination based on racial or ethnic origin.

CHAPTER IV
FINAL PROVISIONS

Article 13
Compliance

Member States shall take the necessary measures to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished.
(b) any provisions contrary to the principle of equal treatment which are included in individual or collective contracts or agreements, internal rules of undertakings, rules governing lucrative or non-lucrative associations, and rules governing the independent professions and workers' and employers' organisations, are declared null and void or are amended.

**Article 14**

**Penalties**

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 15 at the latest and shall notify it without delay of any subsequent amendment affecting them.

**Article 15**

**Implementation**

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002. They shall forthwith inform the Commission thereof.

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

**Article 16**

**Report**

Member States shall communicate to the Commission, within two years of the date mentioned in Article 15, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

Member States shall communicate to the Commission, within two years of the date mentioned in Article 15, and every five years thereafter, all the information necessary, including indications of the viewpoints of the social partners and relevant non-governmental organisations, for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

In accordance with the principle of gender mainstreaming, this report shall, inter alia, provide an assessment of the impact of the measures taken on women and men.
This report shall also take into account as appropriate the views of the European Union Monitoring Centre on Racism and Xenophobia, held in its annual report on the situation regarding racism and xenophobia in the Community, especially, as regards its conclusions and opinions for the Community and its Member States.

In the light of the information received, the Commission’s report shall include, if necessary, proposals to revise and update the directive.

Article 17

Entry into force

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

Article 18

Addressees

This Directive is addressed to the Member States.
THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 157, paragraph 3 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Having regard to the opinion of the Committee of the Regions,

Whereas:

(1) The importance of enterprise and entrepreneurship for the achievement of Community objectives and the difficulties faced by enterprises and entrepreneurs have been the subject of a number of Communications, Decisions and reports (1), and most recently of the Communication ‘Challenges for enterprise policy in the knowledge-driven economy’ (2). These have identified major areas for action at Community level.

(2) Small and Medium-sized enterprises (SMEs) make a significant contribution in terms of competitiveness, research, innovation and employment and face particular problems.

(3) Action is required to help overcome these difficulties. A series of Programmes, particularly the 3rd Multiannual Programme for Small and Medium-sized Enterprises (SMEs) in the European Union (1997-2000) (3), which expires on 31 December 2000, have provided a framework for such action.


(6) It is necessary to adopt a further programme for the period beginning 1 January 2001 and to ensure that enterprise policy is endowed with sufficient resources to attain its objectives. The new programme should be targeted to meet a limited number of objectives.

(7) The possibility for the Commission to undertake actions in related areas under other measures which constitute a legal base should not be prejudiced by this Decision.

(8) Measures providing for specific activities should be adopted by the Commission. Statistical work and analysis in preparation for such measures and the diffusion of the results of activities should be undertaken by the Commission under its own responsibility.

(9) Since the measures necessary for the implementation of this Decision are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 (5) laying down the procedures for the exercise of implementing powers conferred on the Commission, they should be adopted by use of the management procedure provided for in Article 4 of that Decision.

(10) This Decision constitutes the legal basis for specific complementary measures which are not part of other Community policies and which cannot be better carried out at Member State level.


(2) Commission Communication of (5 April 2000).


The Commission has adopted a Communication entitled ‘Towards a European Research Area’ (1).

The additional protocols to the Association Agreements concluded with the countries of Central and Eastern Europe provide for participation of those countries in Community programmes.

Provision should also be made for participation by Cyprus, Malta and Turkey in the framework of the Association Agreements concluded with those countries.

It is recognised that the European business support networks are important to the implementation of Community policy and that their management and daily activities require that the Commission services be supported by external professional and specialised expertise housed in an appropriate infrastructure,

DECIDES:

Article 1

A programme for Community policy for enterprise and entrepreneurship, in particular for small and medium-sized enterprises (SMEs), is adopted for a period of five years from 1 January 2001.

Article 2

1. The programme shall have the following objectives:
   (a) To promote entrepreneurship as a valuable and productive life skill, based on customer orientation and a stronger culture of service;
   (b) To encourage a favourable climate that takes account of sustainable development, and in which research, innovation and entrepreneurship can flourish;
   (c) To improve the financial environment for SMEs;
   (d) To enhance the competitiveness of SMEs in the knowledge-based economy.
   (e) To ensure that business support networks and services to enterprises are provided and co-ordinated;
2. Concerted actions and benchmarking will be used in support of the objectives listed in Article 2(1).

Article 3

1. Measures for the implementation, under this programme, of the objectives listed in Article 2 will be adopted in accordance with the provisions set out in Article 4.
2. With reference to the European Statistical System, statistical work and analysis for the implementation of the programme and the dissemination of the results of activities will be undertaken by the Commission, under its own responsibility.

Article 4

1. The Commission will be assisted by a committee composed of representatives of the Member States and chaired by a representative of the Commission.
2. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.
3. The period provided for in Article 4(3) of Decision 1999/468/EC shall be three months.
4. Representatives of the candidate countries that participate in the Multiannual Programme, in accordance with the agreed procedures, will be observers to the committee.

Article 5

1. The Commission will evaluate the implementation of the programme and make a report to the European Parliament and the Council before the end of June 2003.
2. The Commission will submit to the European Parliament and the Council, no later than the end of December 2004, an evaluation report on the implementation of the programme. This report will consider whether the objectives of the programme have been achieved. It will include an evaluation of cost-effectiveness and an assessment, based on performance indicators, of whether objectives have been reached.

Article 6

This programme shall be open to the participation of:
   — the EFTA/EEA countries in accordance with the conditions established in the EEA agreement,
   — the associated central and eastern European countries (CEEC) in accordance with the conditions established in the Europe agreements, in their additional protocols and in the decisions of the respective Association Councils,
   — Cyprus, under the same conditions as those applied to the EFTA/EEA countries, funded by the additional appropriations in accordance with the procedures to be agreed with that country,
   — Malta and Turkey, funded by additional appropriations, in accordance with the provisions of the Treaty.

Article 7

This Decision shall enter into force on 1 January 2001 and shall cover the period to 31 December 2005.

The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

ANNEX 1

ACTIONS FORESEEN UNDER THE MULTIANNUAL PROGRAMME FOR ENTERPRISE AND ENTREPRENEURSHIP (2001-2005)

It is recognised that enterprises, and in particular small and medium-sized enterprises (SMEs), represent key elements in efforts to stimulate economic growth, competitiveness and job creation in the European Union. Within the context of the European Union's economic and enterprise policies, the Multiannual Programme for Enterprise and Entrepreneurship (2001-2005) provides the framework for a series of actions designed to maximise the performance of enterprises and stimulate productive entrepreneurial activity.

The actions carried out under the Multiannual Programme for Enterprise and Entrepreneurship (2001-2005) will provide added value at European level to the corresponding policies operated at Member State level, respecting the principle of subsidiarity. Actions of a transnational nature will provide advantages not available from similar actions pursued at purely national level.

A number of existing Community initiatives tackle some of the problems identified in the Communication. These include the 5th Framework Programme for Research, Technological Development and Demonstration Activities (1) and the Programme for the promotion of innovation and encouragement of SME participation (2); the Strategy for Europe's Internal Market (3); and actions targeted at SMEs under the structural funds. The Multiannual Programme for Enterprise and Entrepreneurship will complement these activities. The Cardiff Procedure and the Broad Economic Policy Guidelines (4) integrate the different initiatives.

In order to fulfil objectives, measures will be undertaken as follows:

1. **To promote entrepreneurship as a valuable and productive life skill, based on customer orientation and a stronger culture of service**

   Much work will concentrate on the identification of best practices through peer review and concerted actions, the use of benchmarking methodology and an effective monitoring of progress (new BEST procedures). Studies and statistical analysis will be used in support.

2. **To encourage a regulatory and business environment that takes account of sustainable development, and in which research, innovation and entrepreneurship can flourish**

   The Business Impact Assessment system for proposed Community legislation will be further developed. Activities to foster better regulation in general will be undertaken in close co-operation with the Member States and the business community. Best practices will be identified through peer review and concerted actions, the use of benchmarking methodology and an effective monitoring of progress (new BEST procedures). Studies and statistical analysis will be used in support.

3. **To improve the financial environment for SMEs**

   Obtaining guarantees is still the biggest obstacle for SMEs when seeking finance. In response to the conclusions of the Lisbon Summit, future guarantee policy will focus on venture capital, micro-credits and SME loans (ICT). These actions will be managed by the EIF and implemented through the different guarantee schemes existing in each country.

   Risk capital will be further developed through participation in risk capital funds (ETF Start-up) and financing the operating costs of funds. These actions will be managed by the EIF.

   The SME guarantee facility and the ETF Start-up are actions initially carried out under the Growth and Employment Initiative (5). They will be continued in 2001. Any decision regarding further continuation will be subject, inter alia, to the results of an assessment of their effectiveness.

   Business Angels networks will be developed.

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Best practices will be identified through peer review and concerted actions, the use of benchmarking methodology and an effective monitoring of progress (new BEST procedures). This includes the organisation of Round Tables of Bankers and SMEs. Studies and statistical analysis will be used in support.

4. **To enhance the competitiveness of SMEs in the knowledge-based economy**

Best practices will be identified through peer review and concerted actions, the use of benchmarking methodology and an effective monitoring of progress (new BEST procedures). Studies and statistical analysis will be used in support.

5. **To ensure that business support networks and services to enterprises are provided and co-ordinated**

This is to ensure the effective operation of the Euro Info Centre and Euro Info Correspondence Centres network and the organisation of Europartenariat business cooperation events. In carrying out these activities, the Commission may have recourse to technical assistance organisations or experts the financing of which may be provided for within the overall financial framework of the programme.

Information on enterprise policy will be provided by printed and electronic means.

6. **Other**

The European Observatory for SMEs will be developed. Evaluations of the Multiannual Programme are foreseen.

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**ANNEX 2**

**COMMUNITY FINANCIAL INSTRUMENTS**

1. **INDICATIVE OUTLINE OF THE IMPLEMENTATION OF THE ETF START-UP SCHEME**

1.1. **Introduction**

The ETF Start-up will be operated by the EIF on a trust basis. The EIF will invest the Community funds allocated for the scheme in relevant specialised venture capital funds, particularly in smaller or newly established funds, funds operating regionally or funds focused on specific industries or technologies, or venture capital funds financing the exploitation of R&D results, e.g. funds linked to research centres and science parks which in turn provide risk capital for SMEs. The ETF Start-up scheme will reinforce the European Technology Facility established by the EIB in co-operation with the EIF by adopting an investment policy involving a higher risk-profile, both as regards intermediary funds and their investment policies.

1.2. **Intermediaries**

The EIF shall use its best efforts to target investments into smaller or newly established funds, funds covering specific regions, whether assisted or not, or focusing on specific industries or technologies, or venture capital funds linked to research centres and science parks. The intermediaries will be selected in conformity with best business and market practice in a fair and transparent manner in order to avoid any distortion of competition, having regard to the aim of working through a wide range of specialised funds.

1.3. **Maximum Investment**

The maximum aggregate investment in an intermediary venture capital fund shall be 25% of the total equity capital held by the relevant fund, or 35% in exceptional cases such as new funds which are likely to have a particularly strong catalytic role in the development of venture capital markets for a specific technology or in a specific region. No commitment in a single venture capital fund shall exceed EUR 10 million. The intermediary venture capital funds shall comply with established market practices with regard to portfolio diversification.

1.4. **Life of the Facility**

The ETF Start-up scheme is established as a long-term facility that will usually take 5 to 12 year positions in venture capital funds. The EIF shall use its best efforts to fully commit the funds allocated to the facility not later than during the calendar year following the year in which the relevant budgetary payments are made. In any case, investments will not exceed 16 years from the time of signature of the co-operation agreement.

1.5. **Realisation of investments**

As most of the investments to be made under the ETF Start-up scheme will be in unquoted, illiquid venture capital funds, the realisation of those investments will be based on the distribution of the proceeds received by the intermediary funds from the sale of their investments in SMEs.
1.6. **Reinvestment of proceeds from realised investments**

Proceeds from realised investments may be reinvested during the first four years of the operations of the scheme. The reinvestment period can be extended by up to three years, subject to a satisfactory evaluation of the facility 48 months after its adoption.

1.7. **Trust Account**

A separate trust account shall be set up within the EIF to hold budgetary funds underpinning the scheme. This account shall be interest bearing; interest earned shall be added to the resources of the facility. The investments made by the EIF under the ETF Start-up scheme and the EIF’s management fees and other eligible expenses shall be debited from, and the proceeds from realised investments shall be credited to the Trust Account. After the fourth anniversary of the scheme or, provided that the reinvestment period of the scheme is extended, after the end of the extended reinvestment period, any balances on the Trust Account, other than funds committed and not yet drawn down/invested and funds reasonably required to cover eligible costs and expenses, such as the EIF’s management fee, shall be returned to the Community budget.

1.8. **Court of Auditors**

Appropriate arrangements shall be made to allow the Court of Auditors of the European Union to exercise its mission in order to verify the regularity of payments made.

2. **INDICATIVE OUTLINE OF THE IMPLEMENTATION OF THE SME GUARANTEE FACILITY**

2.1. **Introduction**

The SME Guarantee Facility will be operated by the EIF on a trust basis. Whilst the EIF will provide counter-guarantees or, where appropriate, co-guarantees for guarantee schemes operating in Member States, and direct guarantees in the case of the EIB or any other appropriate financial intermediary, its losses from the relevant guarantees shall be covered by Community funds. This will permit the targeting of the scheme to SMEs with growth potential experiencing particular difficulty in raising finance because of the perceived high risk inherent in lending to them, such as small or newly established companies.

2.2. **Intermediaries**

Guarantee schemes operating in the Member States within the public or private sector, including mutual guarantee schemes, the EIB or any other appropriate financial institution in connection with any risk-taking SME facilities they may make available. Intermediaries will be selected in conformity with best business and market practice in a fair and transparent manner, having regard to: (a) the effect on the volume of debt finance made available to SMEs, and/or (b) the effect on the access to debt finance by SMEs, and/or (c) the effect on risk-taking in SME lending by the intermediary concerned.

2.3. **Eligible SME lending**

The financial criteria governing the eligibility of SME lending for guarantees under the SME Guarantee Facility shall be determined individually for each intermediary in the framework of the guarantee schemes they are already operating, with the aim of reaching as many SMEs as possible. These rules shall reflect market conditions and practices in the relevant territory. The guarantees and counter-guarantees will mainly be available to cover lending to SMEs with less than 100 employees. Particular attention shall be given to lending to finance intangible assets.

2.4. **EIF guarantees**

The guarantees given by the EIF shall relate to individual loans in a specific loan portfolio, which may be an existing loan portfolio, where that leads to the expansion of lending to SMEs, or a loan portfolio to be created within a specific period of time. The guarantees issued by the EIF shall cover a part of the credit risk inherent in the underlying loan portfolio with the risk shared with the relevant financial intermediary.

2.5. **EIF’s capped maximum cumulative losses**

The EIF’s obligation to pay its share of loan losses to the intermediary will continue until the cumulative amount of payments made to cover losses from a specific loan portfolio, reduced by the cumulative amount of corresponding loss recoveries, reaches a pre-agreed amount, after which the EIF’s guarantee is automatically cancelled.

2.6. **EIF pari passu with Intermediary**

The guarantees given by the EIF shall usually rank pari passu with the guarantees or where appropriate with the loans given by the intermediary.

2.7. **Trust Account**

A trust account shall be set up within the EIF to hold the budgetary funds underpinning the scheme. This account shall be interest bearing; interest earned shall be added to the resources of the facility.
2.8. EIF’s right to withdraw funds from the Trust Account

The EIF shall have the right to debit the Trust Account for payments to meet its obligations for the maximum cumulative losses under the guarantee facility, and, subject to agreement by the Commission, any other eligible costs, for example its management fees, eligible legal fees and promotional expenses of the scheme.

2.9. Loss recoveries payable to the Trust Account

Any monies recovered from loan losses for which payment has been made under guarantees called shall be credited to the Trust Account.

2.10. Duration of the Scheme

It is envisaged that the individual SME guarantees will have a maturity of 5-10 years. Provided that adequate funds are held in the Trust Account, the EIF will enter into new guarantee commitments up to the fourth anniversary of the adoption of the facility. Any amount outstanding on the Trust Account at the time of expiry of the outstanding guarantees shall be repaid to the Community budget.

2.11. Court of Auditors

Appropriate arrangements shall be made to allow the Court of Auditors of the European Union to exercise its mission in order to verify the regularity of payments made.

3. INDICATIVE OUTLINE OF THE IMPLEMENTATION OF THE SEED CAPITAL ACTION

The Seed Capital action aims at:

— Stimulating the supply of equity or quasi-equity finance for the creation and transfer of innovative small businesses with growth and job creation potential through support for seed funds or similar organisations in their early years,

— Creating a Community-wide network for seed capital funds and their managers and stimulating an exchange of best practices and training.

The new action will specifically include equity investment for the transfer of small companies and skilled craft businesses to new owners.

Therefore, the Seed Capital action will support new or recently created seed capital funds through the granting of reimbursable advances, covering a maximum of 50 % of the operating costs of the fund.

The reimbursable advances, over a maximum of three years, will be paid in 3 tranches: 30 % after the signature of the contract, another 30 % on the condition that at least 30 % of the fund capital was invested in at least 5 small companies. The final payment, up to 40 %, will be made on the condition that 60 % of which at least half in seed investments the fund capital was invested in at least 15 small companies. The second and third payments will be made on the basis of annual reports certified by accountancy firms.

Seed capital investment should stay in the investee company for a longer period (5 years or more) in order to assist newly created small companies through their difficult initial phase, facilitating their subsequent growth and the creation of lasting jobs. In addition, the funds should be able to increase their investments in the business and accompany their growth. However, if a fund wishes to withdraw from its investment sooner, the Commission should receive 10 % of the capital gain made for each exit. Reimbursements would never be greater than the advances received.

At the end of a period of 10 years after the signature of the contract, the Commission will transform the reimbursable advance into a grant, with a deduction for the provisions made for capital gains from early exits which have to be reimbursed to the Commission. By this provision, the Commission favours long-term investments in small companies in order to increase their life span and support the creation of viable and lasting jobs.

The seed capital action will be managed by the EIF.

4. INDICATIVE OUTLINE OF THE IMPLEMENTATION OF THE LOAN GUARANTEE FACILITY FOR ICT INVESTMENTS BY SMALL ENTERPRISES

4.1. Introduction

The Loan Guarantee Facility for ICT Investments by small enterprises will be operated by the EIF on a trust basis. Whilst the EIF will provide counter-guarantees or, where appropriate, co-guarantees for guarantee schemes operating in Member States, and direct guarantees in the case of the EIB or any other appropriate financial intermediary, its losses from the relevant guarantees shall be covered by Community funds. This will permit the targeting of the scheme on small enterprises with growth potential wishing to modernise their business and exploit the potential of the Internet and e-commerce through the acquisition of ICT and investment in training and who are experiencing particular difficulty in raising finance because of the perceived high risk inherent in lending to them, such as small or newly established companies.
4.2. **Intermediaries**

Guarantee schemes operating in the Member States within the public or private sector, including mutual guarantee schemes, the EIB or any other appropriate financial institution in connection with any risk-taking SME facilities they may make available. Intermediaries will be selected in conformity with best business and market practice in a fair and transparent manner, having regard to: (a) the effect on the volume of debt finance made available to small enterprises, and/or (b) the effect on the access to debt finance by small enterprises, and/or (c) the effect on risk-taking in small enterprises lending by the intermediary concerned.

4.3. **Eligible small enterprises lending**

The financial criteria governing the eligibility of small enterprises lending for guarantees under the SME Guarantee Facility shall be determined individually for each intermediary in the framework of the guarantee schemes they are already operating, with the aim of reaching as many small enterprises as possible. These rules shall reflect market conditions and practices in the relevant territory. The guarantees and counter-guarantees will mainly be available to cover lending to SMEs with fewer than 50 employees. Particular attention shall be given to lending to finance intangible assets.

4.4. **EIF guarantees**

The guarantees given by the EIF shall relate to individual loans in a specific loan portfolio, which may be an existing loan portfolio, where that leads to the expansion of lending to small enterprises for investments in ICT, or a loan portfolio to be created within a specific period of time. The guarantees issued by the EIF shall cover a part of the credit risk inherent in the underlying loan portfolio with the risk shared with the relevant financial intermediary.

4.5. **EIF’s capped maximum cumulative losses**

The EIF’s obligation to pay its share of loan losses to the intermediary will continue until the cumulative amount of payments made to cover losses from a specific loan portfolio, reduced by the cumulative amount of corresponding loss recoveries, reaches a pre-agreed amount, after which the EIF’s guarantee is automatically cancelled.

4.6. **EIF pari passu with Intermediary**

The guarantees given by the EIF shall usually rank pari passu with the guarantees or where appropriate with the loans given by the intermediary.

4.7. **Trust Account**

A trust account shall be set up within the EIF to hold the budgetary funds underpinning the scheme. This account shall be interest bearing; interest earned shall be added to the resources of the facility.

4.8. **EIF’s right to withdraw funds from the Trust Account**

The EIF shall have the right to debit the Trust Account for payments to meet its obligations for the maximum cumulative losses under the guarantee facility, and, subject to agreement by the Commission, any other eligible costs, for example its management fees, eligible legal fees and promotional expenses of the scheme.

4.9. **Loss recoveries payable to the Trust Account**

Any moneys recovered from loan losses for which payment has been made under guarantees called shall be credited to the Trust Account.

4.10. **Duration of the Scheme**

It is envisaged that the individual guarantees for small enterprises will have a maturity of 5-10 years. Provided that adequate funds are held in the Trust Account, the EIF will enter into new guarantee commitments up to the fourth anniversary of the adoption of the facility. Any amount outstanding on the Trust Account at the time of expiry of the outstanding guarantees shall be repaid to the Community budget.

4.11. **Court of Auditors**

Appropriate arrangements shall be made to allow the Court of Auditors of the European Union to exercise its mission in order to verify the regularity of payments made.
Amended proposal for a Directive of the European Parliament and of the Council on the posting of workers who are third-country nationals for the provision of cross-border services (1)

(2000/C 311 E/11)

(Text with EEA relevance)


(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 8 May 2000)


INITIAL PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57(2), and 66 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee (1),

Acting in accordance with the procedure laid down in Article 189b of the Treaty,

(1) Whereas, pursuant to point (c) of Article 3 of the Treaty, the abolition, between Member States, of obstacles to the free movement of services constitutes one of the objectives of the Community.

(2) Whereas the free movement of services includes the right for service providers to post their staff even if the persons in question are not citizens of the Union but third-country nationals legally present in the Community. Whereas the staff also includes the managers of companies.

(3) Whereas the freedom to provide services neither creates direct rights for the workers concerned nor affects rights already recognised at Community or national level or under international agreements, including those guaranteed by the Convention for the Protection of Human Rights, particularly as regards family life.

AMENDED PROPOSAL

Unchanged

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), and 55 thereof,

Having regard to the opinion of the Economic and Social Committee (1),

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

Whereas:

(1) Pursuant to point (c) of Article 3(1) of the Treaty, the abolition, between Member States, of obstacles to the free movement of services constitutes one of the objectives of the Community.

(2) The free movement of services includes the right for service providers to post their staff even if the persons in question are not citizens of the Union but third-country nationals legally present in the Community. The staff also includes the managers of companies.

(3) The freedom to provide services neither creates direct rights for the workers concerned nor affects rights already recognised at Community or national level or under international agreements, including those guaranteed by the Convention for the Protection of Human Rights, particularly as regards family life.

(1) OJ C 209, 22.7.1999, p. 5.
(4) Whereas service providers who need to post a worker who is a third-country national encounter such difficulties that they are often obliged to withdraw from providing the service or put up with damaging delays. Whereas the preventive checks carried out by the Member States in which the services are provided before any workers are posted duplicate both the checks they make after the event and those made in the country of establishment.

(5) Whereas The authorities of a Member State in which services are provided have no guarantee of the lawfulness, in the Member State in which the provider is established, of the situation of the service provider and worker to be posted. Furthermore, the Member States have no guarantee that the workers posted will return to the Member State in which they chiefly work when the services have been completed.

(6) Whereas A document known as an 'EC service provision card', to be issued by the Member State in which the service provider is established, should be the instrument that facilitates postings so that a provider can react with a view to current or potential postings in connection with normal activities even if his staff includes one or more third-country nationals; whereas it should be for the service provider to decide whether to apply for the EC service provision card:

Whereas This Directive, similarly, does not affect the undertakings of the Community and its Member States, given in the context of the General Agreement on Trade in Services (GATS) (1), whereas The EC service provision card should include only the data required under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (2).

(7) Whereas the Member State issuing the EC service provision card should take account of public policy aimed at combating clandestine immigration by certifying the lawfulness of the situation in the Member State in which the service provider employs the third-country national. whereas The document should ensure that the main activity of the posted worker takes place in the Member State in which the service provider is established. whereas The document should be safeguarded against falsification. whereas It is therefore no longer necessary to require an entry visa.

(4) Service providers who need to post a worker who is a third-country national encounter such difficulties that they are often obliged to withdraw from providing the service or put up with damaging delays. The preventive checks carried out by the Member States in which the services are provided before any workers are posted duplicate both the checks they make after the event and those made in the country of establishment.

(5) The authorities of a Member State in which services are provided have no guarantee of the lawfulness, in the Member State in which the provider is established, of the situation of the service provider and worker to be posted. Furthermore, the Member States have no guarantee that the workers posted will return to the Member State in which they chiefly work when the services have been completed.

(6) A document known as an 'EC service provision card', to be issued by the Member State in which the service provider is established, must aim to eliminate the legal uncertainty associated with postings and thus facilitate the free movement of services. The service provider must be entitled to ask for a service provision card in his Member State of establishment with a view to providing one or more services in other Member States. The card must be valid, depending on the application, in one or more or all of the other Member States.

(6a) This Directive, similarly, does not affect the undertakings of the Community and its Member States, given in the context of the General Agreement on Trade in Services (GATS) (1). The EC service provision card should include only the data required under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (2).

(7) The Member State issuing the EC service provision card should take account of public policy aimed at combating clandestine immigration by certifying the lawfulness of the situation in the Member State in which the service provider employs the third-country national. The document should ensure that the main activity of the posted worker takes place in the Member State in which the service provider is established. The document should be safeguarded against falsification. It is therefore no longer necessary to require an entry visa.

(8) Whereas the EC service provision card issued by a Member State should thus provide the guarantee necessary to ensure that all other Member States in which services are to be provided will allow persons to enter and reside in the country in order to provide one or more services, namely during and at the time of the provision of services, whereas this guarantee should include the obligation not to consider the posting as an interruption of the period of residence and of the permitted paid activity, and in particular not, under any circumstances, to refuse readmission of the person posted, whereas consequently, the Member State in which the service is provided should therefore no longer be able to impose its own requirements as regards entry, residence and access to a temporary paid activity, whereas this Directive does not affect the binding rules on conditions of work and employment prevailing in the Member State in which a service is provided, those rules having been laid down by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (1).

(9) Whereas each Member State in which a service is provided should be able to make it obligatory to declare, before the entry of the posted worker into the territory, his intended presence and the service or services for which he is to be posted, whereas a compulsory prior declaration should enable the Member State in question to take measure in specific cases on grounds of public order, public security or public health, within the limits set by this Directive. Whereas each Member State in which a service is provided should also be able to make it obligatory to obtain, after entry, a temporary residence permit if the time required for the service or services for which the posted worker will reside exceeds six months out of a period of twelve months.

(10) Whereas each Member State should thus be able to check, particularly if a temporary residence permit is issued, that the residence of the worker posted is for the purpose of providing a service or services in the Member State. Whereas the freedom to provide services should always be of a temporary nature which must be determined on the basis of the continuity, frequency, and duration of the service. Whereas the validity of the temporary residence permit should be capable of limitation to the period of validity of the EC service provision card on the grounds that the Member State intends to issue, in conformity with the freedom to provide services, a residence permit in accordance with its own national provisions for postings exceeding six or twelve months.

(11) Whereas for this Directive to be effective, there must be equality of treatment between third-country nationals and citizens of the Union posted as workers as regards the recognition of diplomas, certificates and other qualifications acquired within the Community. Whereas under this Directive, this equality of treatment should be invoked only by service providers who employ third-country nationals. Whereas this equality of treatment should not cover diplomas, certificates and other qualifications acquired in a third country and only recognised in a Member State.

(12) Whereas Member States should not be able to confer more favourable treatment on service providers established outside the Community than on those established within the Community. Whereas the Member States may derogate from this Directive on grounds of public order, public security or public health. Whereas the limits of such derogation must be determined with respect to service providers as employers and the workers who are third-country nationals on the basis of the coordination provided for in Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (1), as last amended by Directive 75/35/EEC (2), in order to establish a uniform framework for the service provider regardless of the nationality of his staff.

(13) Whereas it is vital for the implementation of this Directive to ensure close cooperation between the competent authorities of the Member States. Whereas it would be useful for the competent authorities of the Member States to adopt a uniform format for the EC service provision card. Whereas the Commission should be empowered to lay down this format and other procedures in connection with the EC service provision card, acting in accordance with the procedure set out in Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (3).

(11) For this Directive to be effective, there must be equality of treatment between third-country nationals and citizens of the Union posted as workers as regards the recognition of diplomas, certificates and other qualifications acquired within the Community. Under this Directive, this equality of treatment should be invoked only by service providers who employ third-country nationals. This equality of treatment should not cover diplomas, certificates and other qualifications acquired in a third country and only recognised in a Member State.

(12) Member States should not be able to confer more favourable treatment on service providers established outside the Community than on those established within the Community. The Member States may derogate from this Directive on grounds of public order, public security or public health. The limits of such derogation must be determined with respect to service providers as employers and the workers who are third-country nationals on the basis of the coordination provided for in Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (1), as last amended by Directive 75/35/EEC (2), in order to establish a uniform framework for the service provider regardless of the nationality of his staff.

(13) It is vital for the implementation of this Directive to ensure close cooperation between the competent authorities of the Member States. It would be useful for the competent authorities of the Member States to adopt a uniform format for the EC service provision card. The Commission should be empowered to lay down this format and other procedures in connection with the EC service provision card, acting in accordance with the procedure set out in Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (3).

(13a) Since the measures needed to implement this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (4) these measures should be adopted according to the regulatory procedure set out in Article 5 of that Decision.

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(1) OJ 56, 4.4.1964, p. 850.
(14) Whereas this Directive does not affect the competence of the Member States to decide which third-country nationals are to be admitted for the purpose of a paid activity, the conditions on which such admission should be extended or which professional activities are regulated on national territory, and which are not.

(15) Whereas in accordance with the principle of proportionality as set out in the third paragraph of Article 3b, this Directive does not go beyond what is necessary for achieving the objective of the free movement of services. Whereas it covers only the checks that precede the provision of cross-border services, but not the checks made afterwards in the Member State in which the service is provided. Whereas it is limited to postings for periods of not more than twelve months and to the recognition of diplomas, certificates and other qualifications acquired within the Community.

(16) Whereas, for the purpose of implementing this Directive, Member States should lay down an appropriate system of sanctions.

(17) Whereas, not later than four years after the date of transposition of this Directive, the Commission must examine its application with a view to proposing any necessary amendments,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

This Directive applies to service providers established in a Member State who, in connection with the provision of cross-border services, post workers who are nationals of a third country to the territory of another Member State.

Article 2

1. When a provider of services proposes, in the ordinary course of his business, to post an employed worker who is a national of a third country to the territory of another Member State, the Member State in which the service-provider is established shall be obliged to issue to him, at his request, a document to be known as an ‘EC service provision card’.

1. When a provider of services proposes, in the ordinary course of his business, to post an employed worker who is a national of a third country, for the provision of one or more services to be carried out in one or more or all of the other Member States, the Member State in which the service-provider is established shall be obliged to issue to him, at his request, a document to be known as an ‘EC service provision card’.
1a. A posted worker is one whom the service provider intends to post, for his account and under his direction, either under one or more contracts with one or more parties for whom the services are intended, operating in another Member State, or to an establishment or to an undertaking owned by the same group but established in another Member State. The card may be issued only if the service provider in question provides evidence

(a) that he is not a temporary employment undertaking hiring out the worker to another user undertaking;

(b) that the worker is legally resident in that Member State in accordance with its national legislation for a period of 12 months or more, excepting persons possessing documents which confirm that their presence in that Member State is only accepted pending their expulsion.

(c) that the worker is insured against the risk of sickness and industrial accident at the time of his posting to the other Member State(s) concerned by the social security institution of the Member State in which the service provider is established, or by a private insurance scheme.

2. The EC service provision card shall be valid for the period during which the worker is in lawful actual employment which may not exceed 12 months. The period of preceding lawful employment may not be less than six months.

(a) twelve months in the case of lawful actual employment for more than twelve months before the card is issued; or

(b) six months in the case of lawful actual employment for more than six months before the card is issued.

'Lawful employment' means work carried out under Community or national regulations or with the authorisation of the Member State issuing the EC service card, which permits access to a job either with the applicant service provider or with another employer established in the Member State in question.

2. The EC service provision card shall be valid for the period during which the worker is in lawful employment. The period of validity may not exceed the period of lawful employment preceding the issue of the card, and may under no circumstances exceed 12 months. The period of preceding lawful employment may not be less than six months.

(a) deleted

(b) six months in the case of lawful actual employment for more than six months before the card is issued.

'Lawful employment' means a paid activity which may be carried out by virtue of a provision of Community law or of legislative, regulatory or administrative provisions of the Member State in which the service provider is established, by a worker who legally resides in that Member State, excepting persons possessing documents which only confirm that their presence in that Member State is only accepted pending their expulsion.
'Actual employment' means the work actually carried out on the territory of the Member State issuing the EC service provision card.

3. The EC service provision card shall be renewable only if the conditions as to its issue set out in paragraphs 1 and 2 are fulfilled once more.

4. The EC service provision card shall be a separate document belonging to the service provider, which he puts at the disposal of the posted employed worker described therein. Shall contain the following data:

(a) details of the service provider and the posted worker;
(b) the period of validity;
(c) the issuing authority and issuing Member State;
(d) the Member State(s) for which the card is valid.

The precise details, a specimen of the document to be issued, and the technical specifications designed to prevent falsification shall be laid down in an implementing regulation in accordance with the procedure provided for in Article 6 of Regulation (EC) No 1683/95.

5. The Member State issuing the EC service provision card may not regard posting for the provision of services in another Member State as being an interruption of the posted worker's period of residence or paid activity.

The issuing Member State may not refuse, under national regulations, the readmission to its territory of the posted worker, for any reason whatsoever.
Article 3

1. Any Member State in which services are provided shall permit the entry and residence of a worker who is a third-country national to its territory for the purpose of one or more provisions of services, if such person is in possession of the EC service provision card, an identity card or passport valid for the period during which the services are to be provided.

2. No Member State in which a service is provided may require from the posted worker or the service provider in his capacity as employer

(a) an entry or exit visa;

(b) a residence permit other than that specified in paragraph 3; or

(c) a work permit or permit for access to a job; or

(d) impose any obligation equivalent to those in points (a), (b) and (c).

3. Any Member State in which a service is provided may require the service provider to declare, before the worker enters the territory, the intended presence of the posted worker, the period of presence provided for and the service provision or provisions for which he is to be posted;

If the total period required for the service provision or provisions in question exceeds six months out of a period of twelve months, the Member State shall issue, after entry of the posted worker, a temporary residence permit showing that residence is authorised.

4. In order to facilitate the provision of services, any Member State in which a service is carried out shall ensure equality of treatment between third-country nationals and citizens of the Union posted as workers for the purpose of provision of services as regards the recognition of diplomas, certificates and other qualifications acquired within the Community with a view to performing the activity concerned, and issued by a competent authority of a Member State. The Member State shall ensure that legal remedy under national law is available to the service provider in his capacity as employer in connection with decisions that fail to observe this equality of treatment.

Unchanged
Article 4

1. Member States shall not give more favourable treatment to service providers established outside the Community than to those established within the Community.

2. Member States may not derogate from this Directive except on grounds of public order, public security or public health, in which case Directive 64/221/EEC shall apply mutatis mutandis.

Article 5

1. The Member States shall designate the authorities responsible for issuing the EC service provision card and the temporary residence permit, and for receiving the information referred to in Article 3(3). They shall provide the Commission and the other Member States with a list of such authorities. They shall take the necessary measures for simplifying as far as possible the formalities, deadlines and procedures for obtaining the above-mentioned documents, which shall be issued free of charge or on payment of a sum not exceeding the duties and taxes payable for the issuing of identity cards to national citizens.

2. Member States shall provide for cooperation between the public administrations responsible under national legislation for matters connected with the implementation of this Directive. Cooperation shall in particular entail replying to any reasoned request for information. Such cooperation shall be provided free of charge and without delay.

Article 5a

1. The Commission shall be assisted by the committee set up by Article 6 of Regulation (EC) No 1683/95.

2. If reference is made to this paragraph, the procedure set out in Article 5 of Decision 1999/468/EC shall apply, while respecting the provisions of Article 7(3) and Article 8 of that Decision.

3. The period provided for in Article 5(6) of Decision 1999/468/EC is fixed at three months.

Article 6

Member States shall lay down the penalties applicable to infringements of national rules adopted for the implementation of this Directive and shall take all necessary measures to ensure their enforcement. The penalties shall be effective, proportionate and deterrent. Member States shall notify the Commission of these provisions not later than the date specified in Article 8, and as soon as possible in the event of any subsequent changes.
Article 7

No later than four years after the date specified in Article 8, the Commission shall report to the European Parliament and the Council on the implementation of this Directive in the Member States and shall propose any necessary changes.

Article 8

The Member States shall adopt and publish no later than 30 June 2002 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

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

Article 9

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

Article 10

This Directive is addressed to the Member States.
Amended proposal for a Council Directive extending the freedom to provide cross-border services to third-country nationals established within the Community (1)

(2000/C 311 E/12)

(Text with EEA relevance)


(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 8 May 2000)

(1) OJ C 67, 10.3.1999, p. 17.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the second paragraph of Article 59 thereof,

Having regard to the Treaty establishing the European Community, and in particular the second paragraph of Article 49 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

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

Whereas:

(1) Whereas, pursuant to point (c) of Article 3 of the Treaty, the abolition, between Member States, of obstacles to the free movement of services constitutes one of the objectives of the Community. Whereas the free movement of services may be extended to self-employed persons who are not citizens of the Union but third-country nationals legally present in the Community.

(1) Pursuant to point (c) of Article 3(1) of the Treaty, the abolition, between Member States, of obstacles to the free movement of services constitutes one of the objectives of the Community. The free movement of services may be extended to self-employed persons who are not citizens of the Union but third-country nationals legally present in the Community.

(2) Whereas the Treaty has provided for this extension for more than 40 years. Whereas it is not justifiable that a third-country national with an ongoing actual link with the economy of a Member State should be unable to enjoy the benefit of the freedom to provide services, otherwise than by setting up a company within the meaning of Article 58 of the Treaty, nor that self-employed third-country nationals cannot, in their capacity as natural persons, enjoy such freedom.

(2) The Treaty has provided for this extension for more than 40 years. It is not justifiable that a third-country national with an ongoing actual link with the economy of a Member State should be unable to enjoy the benefit of the freedom to provide services, otherwise than by setting up a company within the meaning of Article 48 of the Treaty, nor that self-employed third-country nationals cannot, in their capacity as natural persons, enjoy such freedom.


(2) OJ C 209, 22.7.1999, p. 5.
(3) Whereas employed workers who are third-country nationals may be posted whereas self-employed persons whose activities add to the value of the economy of a Member State are debarred from cross-border activities throughout the internal market. Whereas the extension of the freedom to provide services to self-employed third-country nationals does not affect the application of national provisions affording such persons a degree of social protection equivalent to that enjoyed by employed workers.

(4) Whereas it is appropriate, therefore, to introduce such an extension at a time when, through European Parliament and Council Directive .../. . ./EC, the Community is clarifying the conditions for posting workers who are nationals of a third country for the provision of services. Whereas in view of Article 61(1) of the Treaty, the scope ratione personae of this Directive cannot be extended to service providers operating in the transport sector except by a specific act adopted under the Treaty provisions governing the common transport policy.

(5) Whereas a self-employed person who is a national of a third country should enjoy no right of establishment in the Member State in which he provides his services. Whereas this Directive does not affect other rights already recognised at Community or national level or under international agreements, including those guaranteed by the Convention for the Protection of Human Rights, particularly as regards family life.

(6) Whereas the temporary nature of the activities in question has to be determined in the light, not only of the duration of the provision of the service, but also of its regularity, periodicity or continuity. Whereas this does not mean that the provider of services may not equip himself with some form of infrastructure in so far as such infrastructure is necessary for the purposes of performing the service.

(3) Employed workers who are third-country nationals may be posted whereas self-employed persons whose activities add to the value of the economy of a Member State are debarred from cross-border activities throughout the internal market. The extension of the freedom to provide services to self-employed third-country nationals does not affect the application of national provisions affording such persons a degree of social protection equivalent to that enjoyed by employed workers.

(4) It is appropriate, therefore, to introduce such an extension at a time when, through European Parliament and Council Directive .../. . ./EC, the Community is clarifying the conditions for posting workers who are nationals of a third country for the provision of services. In view of Article 51(1) of the Treaty, the scope ratione personae of this Directive cannot be extended to service providers operating in the transport sector except by a specific act adopted under the Treaty provisions governing the common transport policy.

(5) A self-employed person who is a national of a third country should enjoy no right of establishment in the Member State in which he provides his services. This Directive does not affect other rights already recognised at Community or national level or under international agreements, including those guaranteed by the Convention for the Protection of Human Rights, particularly as regards family life.

(5a) A self-employed worker who is a third-country national may benefit from the freedom to provide services only if he maintains his principal establishment in a Member State and if his residence is authorised for at least twelve months. If there are doubts as to the self-employed status of a third-country national, it is essential for a person covered by this Directive to be properly identified.

(6) The temporary nature of the activities in question has to be determined in the light, not only of the duration of the provision of the service, but also of its regularity, periodicity or continuity. This does not mean that the provider of services may not equip himself with some form of infrastructure in so far as such infrastructure is necessary for the purposes of performing the service.
(7) Whereas the freedom to provide services entails as a corollary the right of entry into and residence on the territory of the Member State in which the service is provided. Whereas in the absence of uniform national documents covering the various aspects of movement, a document known as an ‘EC service provision card’ should be the instrument facilitating the provision of cross-border services with a view to current or potential movements in connection with normal activities. Whereas it should be for the service provider to decide whether to apply for the EC service provision card. Whereas this Directive, similarly, does not affect the undertakings of the Community and its Member States given in the context of the General Agreement on Trade in Services (GATS) (1). Whereas the EC service provision card should include only the data required under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (2).

(8) Whereas the Member State issuing the EC service provision card should take account of public policy factors aimed at combating clandestine immigration, by certifying the lawfulness of the situation in the Member State in which the service provider is established. Whereas this document should ensure that the main activity of a self-employed person is pursued in the Member State in which he is established. Whereas that document should be safeguarded against falsification. Whereas it is therefore no longer necessary to require an entry visa.

(9) Whereas the EC service provision card issued by the Member State in which the self-employed person is established should thus afford the necessary guarantee that any other Member State in which services are provided will permit the entry and residence of that person for the purpose of one or more services, namely residence during and at the time of the provision of the service. Whereas this guarantee should include the obligation not to consider the movement as an interruption of the period of residence and of the initially permitted self-employed activity, and in particular not, under any circumstances, to refuse readmission of the person concerned. Whereas the Member State in which the service is provided should therefore no longer be able to impose its own requirements as regards entry and residence and access to a self-employed activity.

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(10) Whereas each Member State in which a service is provided should be able to make it obligatory to declare, before the entry of the provider concerned into the territory, his intended presence and the service or services for which he is moving. Whereas an obligation to make a prior declaration should enable the Member State in question to take measures in specific cases on grounds of public order, public security or public health, within the limits set by this Directive. Whereas each Member State in which a service is provided should also be able to make it obligatory to obtain, after entry, a temporary residence permit if the time required for the services for which the self-employed person is moving exceeds six months out of a period of twelve months. Whereas the period of validity of a residence permit should be limited to the period of validity of the EC service provision card on the grounds that the Member State intends to issue a residence permit in accordance with its own rules in the case of residence for a period of more than twelve months.

(11) Whereas for this extension to be effective there must be equality of treatment between third-country nationals and citizens of the Union in their capacity as service providers as regards the recognition of diplomas, certificates and other qualifications acquired within the Community. Whereas this equality of treatment should be restricted to the provision of services. Whereas it should not cover diplomas, certificates and other qualifications acquired in a third country and only recognised in a Member State.

(12) Whereas the Member States should not be able to confer more favourable treatment on self-employed persons established outside the Community than on those established within the Community. Whereas the Member States should be able to derogate from this Directive on grounds of public order, public security or public health. Whereas the limits of such derogation should be determined with respect to the third-country national service providers concerned on the basis of the coordination provided for in Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (1), as last amended by Directive 75/35/EEC (2):

(10) Each Member State in which a service is provided should be able to make it obligatory to declare, before the entry of the provider concerned into the territory, his intended presence and the service or services for which he is moving. An obligation to make a prior declaration should enable the Member State in question to take measures in specific cases on grounds of public order, public security or public health, within the limits set by this Directive. Each Member State in which a service is provided should also be able to make it obligatory to obtain, after entry, a temporary residence permit if the time required for the services for which the self-employed person is moving exceeds six months out of a period of twelve months. The period of validity of a residence permit should be limited to the period of validity of the EC service provision card on the grounds that the Member State intends to issue a residence permit in accordance with its own rules in the case of residence for a period of more than twelve months.

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(1) OJ 56, 4.4.1964, p. 850.
(13) Whereas it is vital to ensure close cooperation between the competent authorities of the Member States. Whereas it would be useful for the competent authorities of the Member States to adopt a standard format for the EC service provision card. Whereas the Commission should be empowered to lay down this format and other procedures in connection with the EC service provision card in accordance with the committee procedures set out in Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (1).

(13a) Since the measures needed to implement this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (2), these measures should be adopted according to the regulatory procedure set out in Article 5 of that Decision.

(14) Whereas this Directive does not affect the competence of the Member State to decide which third-country nationals are to be admitted for the purposes of a self-employed activity, the conditions on which such admission should be extended or which professional activities are regulated on national territory, and which are not.

(14) This Directive does not affect the competence of the Member State to decide which third-country nationals are to be admitted for the purposes of a self-employed activity, the conditions on which such admission should be extended or which professional activities are regulated on national territory, and which are not.

(15) Whereas in accordance with the principle of proportionality as set out in the third paragraph of Article 3b of the EC Treaty, this Directive does not go beyond what is necessary for achieving the objective of the free movement of services. Whereas it allows Member States to make their checks to determine whether a third-country national is providing cross-border services on a temporary basis or is pursuing a permanent activity on the territory of a Member State other than the one in which he has his main establishment. Whereas it is limited to movements for periods of not more than twelve months for the purpose of providing services in another Member State, and to the recognition of diplomas, certificates and other qualifications acquired within the Community.

(15) In accordance with the principle of proportionality as set out in the third paragraph of Article 5 of the EC Treaty, this Directive does not go beyond what is necessary for achieving the objective of the free movement of services. It allows Member States to make their checks to determine whether a third-country national is providing cross-border services on a temporary basis or is pursuing a permanent activity on the territory of a Member State other than the one in which he has his main establishment. It is limited to movements for periods of not more than twelve months for the purpose of providing services in another Member State, and to the recognition of diplomas, certificates and other qualifications acquired within the Community.

(16) Whereas for the purpose of implementing this Directive, Member States should lay down an appropriate system of sanctions.

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(17) Whereas not later than four years after the date of transposition of this Directive, the Commission must examine its application with a view to proposing any necessary amendments.

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HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall ensure that nationals of a third country established within the Community enjoy the freedom to provide services in accordance with the provisions of this Directive.

2. This Directive shall not cover nationals of a third country as recipients of cross-border services and provisions of services in the transport sector.

3. For the purposes of this Directive, ‘service provider’ means any natural person who is a third-country national and who, in the Member State of establishment,

(a) has lawfully set up his main establishment from which he has maintained an actual, continuous link as a self-employed person with the economy of that Member State; for at least twelve months.

(b) resides, in accordance with the legislation of that State, for a period of 12 months or more, excepting persons possessing documents which confirm that their presence is only accepted pending expulsion.

(c) is not also an employee.

Article 2

1. When a provider of services proposes, in the ordinary course of his business, to move to, and to reside in, other Member States, in his capacity as such, the Member State in which he is established shall be obliged to issue to him, at his request, a document to be known as an 'EC service provision card'.

For the purposes of the first paragraph, confirmation shall be given

that the service provider is affiliated to the social security scheme of the competent Member State against the risk of sickness and industrial accident, or, failing such affiliation, is covered by insurance against sickness and industrial accident during his movements through one or more other Member States

1. When a provider of services proposes, in the ordinary course of his business, to move to, and to reside in, one or more or all of the other Member States, in his capacity as such, the Member State in which he is established shall be obliged to issue to him, at his request, a document to be known as an 'EC service provision card'.

1a. The card may be issued only if the service provider in question provides evidence

(a) that he meets the conditions set out in Article 1(3);
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<th>INITIAL PROPOSAL</th>
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<td>(b) that he is insured against the risk of sickness and industrial accident at the time of his posting to the other Member State(s) concerned by the social security institution of the Member State in which the service provider is established, or by a private insurance scheme.</td>
<td><strong>2. The EC service provision card shall be valid for the period during which the service provider continues to have a residence in the Member State in which he is established, excepting persons possessing documents which confirm that their presence is only accepted pending expulsion.</strong></td>
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<td>Elle shall be renewable only if the conditions as to its issue are fulfilled once more.</td>
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<td><strong>2b. The EC service provision card shall lose its validity if one of the conditions set out in paragraphs 1, 1a and 2 are no longer fulfilled because of events occurring after the card was issued.</strong></td>
<td><strong>The precise details, a specimen of the document to be issued, and the technical specifications designed to prevent falsification shall be laid down in accordance with the procedure laid down in Article 5a(2).</strong></td>
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<td><strong>3. The EC service provision card shall be a separate document belonging to the service provider and shall contain the following data:</strong></td>
<td><strong>3. The EC service provision card shall be a separate document belonging to the service provider. If the card is no longer valid, the Member State in which the service provider is established shall require him to return it immediately to the competent authorities. The card shall contain the following data:</strong></td>
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<td>(a) details of the service provider;</td>
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<td>(b) the period of validity;</td>
<td><strong>Unchanged</strong></td>
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<td>(c) the issuing authority and issuing Member State;</td>
<td>(d) the Member State(s) for which the card is valid.</td>
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<td>The precise details, a specimen of the document to be issued, and the technical specifications designed to prevent falsification shall be laid down in an implementing regulation in accordance with the procedure laid down in Article 6 of Regulation (EC) No 1683/95.</td>
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4. The Member State issuing the EC service provision card may not regard the movement for the provision of services as being an interruption of the service provider's period of residence or self-employed activity on its territory.

The issuing Member State may not refuse, under national regulations, the readmission to its territory of the service provider, for any reason whatsoever.

**Article 3**

1. Any Member State in which services are provided shall permit the entry into and residence on its territory of a self-employed person who is a third-country national for the purposes of one or more provisions of services, if such person is in possession of the EC service provision card, and of an identity card or passport valid for the period in which the services are to be provided.

2. No Member State in which a service is provided may require from the service provider

   (a) an entry or exit visa;

   (b) a residence permit other than that specified in paragraph 3; or

   (c) an authorisation to provide services, such as a work permit, a foreign businessman's identity card or a business card; or

   (d) impose any obligation equivalent to points (a), (b) and (c).

3. Any Member State in which a service is provided may require the service provider to declare, before he enters the territory, his intended presence, the period of presence provided for and the service provision or provisions for which he is moving. If the total period required for the service provision or provisions in question exceeds six months out of a period of twelve months, the Member State shall issue, after entry, a temporary residence permit showing that residence is authorised.

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**Article 3**

1. Any Member State in which services are provided shall permit the entry into and residence on its territory of a self-employed person who is a third-country national for the purposes of one or more provisions of services, if such person is in possession of the EC service provision card, an identity card or passport valid for the period in which the services are to be provided, and a statement from the service recipient confirming the provision of a particular service, showing the probable duration of the stay.

2. No Member State in which a service is provided may require from the service provider

   (a) an entry or exit visa;

   (b) a residence permit other than that specified in paragraph 3; or

   (c) an authorisation to provide services, such as a work permit, a foreign businessman's identity card or a business card; or

   (d) impose any obligation equivalent to points (a), (b) and (c).

3. Any Member State in which a service is provided may require the service provider to declare, before he enters the territory, his intended presence, the period of presence provided for and the service provision or provisions for which he is moving. If the total period required for the service provision or provisions in question exceeds six months out of a period of twelve months, the Member State shall issue, after entry, a temporary residence permit showing that residence is authorised.
4. In order to facilitate the provision of services, any Member State in which a service is carried out shall ensure equality of treatment between third-country nationals and citizens of the Union in their capacity as service providers as regards the recognition of diplomas, certificates and other qualifications acquired within the Community with a view to performing the activity concerned and issued by a competent authority of a Member State.

**Article 4**

1. Member States shall not give more favourable treatment to self-employed persons established outside the Community than to those established within the Community.

2. Member States may not derogate from this Directive except on grounds of public order, public security or public health, in which case Directive 64/221/EEC shall apply mutatis mutandis.

**Article 5**

1. The Member States shall designate the authorities responsible for issuing the EC service provision card and the temporary residence permit, and for receiving the information referred to in Article 3(3). They shall provide the Commission and the other Member States with a list of such authorities. They shall take the necessary measures for simplifying as far as possible the formalities, deadlines and procedures for obtaining the above-mentioned documents, which shall be issued free of charge or on payment of a sum not exceeding the duties and taxes payable for the issuing of identity cards to national citizens.

2. Member States shall provide for cooperation between the public administrations responsible under national legislation for matters connected with the implementation of this Directive. Cooperation shall in particular entail replying to any reasoned request for information. It shall be provided free of charge and without delay.

**Article 5a**

1. The Commission shall be assisted by the committee set up by Article 6 of Regulation (EC) No 1683/95.
INITIAL PROPOSAL

2. If reference is made to this paragraph, the procedure set out in Article 5 of Decision 1999/468/EC shall apply, while respecting the provisions of Article 7(3) of that Decision.

3. The period provided for in Article 5(6) of Decision 1999/468/EC is fixed at three months.

AMENDED PROPOSAL

Unchanged

Article 6

Member States shall lay down the penalties applicable to infringements of national rules adopted for the implementation of this Directive and shall take all necessary measures to ensure their enforcement. The penalties shall be effective, proportionate and deterrent. Member States shall notify the Commission of these provisions not later than the date specified in Article 8, and as soon as possible in the event of any subsequent changes.

Article 7

No later than four years after the date specified in Article 8, the Commission shall report to the European Parliament and the Council on the implementation of this Directive in the Member States and shall propose any necessary changes.

Article 8

Member States shall adopt and publish not later than 30 June 2002 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

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

Article 9

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

Article 10

This Directive is addressed to the Member States.
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) There is an increasing number of products marketed in the Community as foods containing concentrated sources of nutrients and presented for supplementing the intake of those nutrients from the normal diet.

(2) Those products are regulated in Member States by differing national rules that may impede their free movement, may create unequal conditions of competition, and thus have a direct impact on the functioning of the internal market. It is therefore necessary to adopt Community rules on those products marketed as foodstuffs.

(3) An adequate and varied diet could, under normal circumstances, provide all necessary nutrients for normal development and maintenance of a healthy life in quantities as those established and recommended by generally acceptable scientific data. However, surveys show that this ideal situation is not being achieved for all nutrients and by all groups of the population across the Community.

(4) Consumers, because of their particular lifestyles or for other reasons, may choose to supplement their intake of some nutrients through food supplements.

(5) In order to ensure a high level of protection for consumers and facilitate their choice the products that will be put onto the market must be safe and bear adequate and appropriate labelling.

(6) There is a wide range of nutrients and other ingredients that might be present in food supplements including, but not limited to, vitamins, minerals, amino acids, essential fatty acids, fibre and various plant and herbal extracts. However, as a first stage, this Directive should only cover food supplements containing vitamins and minerals.

(7) Only vitamins and minerals normally found in and consumed as part of the diet and considered essential nutrients should be allowed to be present in food supplements although this does not mean that their presence therein is necessary. Controversy as to the identity of those essential nutrients that could potentially arise should be avoided. Therefore it is appropriate to establish a positive list of those vitamins and minerals.

(8) The chemical substances used as sources of vitamins and minerals in the manufacture of food supplements should be safe and also be available to be used by the body. For this reason, a positive list of those substances should also be established. Such substances as have been approved by the Scientific Committee for Food, on the basis of the said criteria, for use in the manufacture of foods intended for infants and young children and other foods for particular nutritional uses can also be used in the manufacture of food supplements.

(9) In order to keep up with scientific and technological developments it is important to revise the lists promptly, when necessary. Such revisions would be implementing measures of a technical nature and their adoption should be entrusted to the Commission in order to simplify and expedite the procedure.

(10) For vitamins and minerals excessive intakes may result in adverse effects and therefore necessitate the setting of maximum safe levels for them in food supplements, as appropriate. Those levels must ensure that the normal use of the products under the instructions of use provided by the manufacturer will be safe for the consumer.

(11) For that reason, when setting those maximum safe levels, account should be taken of the upper safe levels of the vitamins or minerals, as established by scientific risk assessment based on generally acceptable scientific data, of intakes of those nutrients from the normal diet and of the fact that for some nutrients upper safe levels may be close to the level that may be recommended for consumption. The latter consideration is of particular importance where generally acceptable scientific data prove that excess intake of the vitamins and minerals concerned cause adverse effects.
Food supplements are purchased by consumers for supplementing intakes from the diet. In order to ensure that this aim is achieved, if vitamins and minerals are declared on the label of food supplements, they should be present in the product in a significant amount.

The adoption of the specific values for maximum and minimum levels for vitamins and minerals present in food supplements, based on the criteria set out in this Directive and appropriate scientific advice, would be an implementing measure and should be entrusted to the Commission.


Council Directive 90/496/EEC of 24 September 1990 on nutrition labelling for foodstuffs (3) does not apply to food supplements. Information relating to nutrient content in food supplements is essential for allowing the consumer who purchases them to make an informed choice and use them properly and safely. That information should, in view of the nature of those products, be confined to the nutrients actually present and be compulsory.

Given the particular nature of food supplements, additional means to those usually available to monitoring bodies should be available in order to facilitate efficient monitoring of those products.

Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (4), they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision.

Article 1

This Directive concerns food supplements marketed in pre-packaged form as foodstuffs and presented as such.

2. This Directive does not apply to:

(a) foods for particular nutritional uses covered by Council Directive 89/398/EEC (5);


Article 2

For the purposes of this Directive:

(a) ‘food supplements’ means foodstuffs that are concentrated sources of nutrients as specified in (b), alone or in combination, marketed in dose form, whose purpose is to supplement the intake of those nutrients in the normal diet;

(b) ‘nutrients’ means the following substances:

(i) vitamins listed in point 1 of Annex I,

(ii) minerals listed in point 2 of Annex I;

(c) ‘dose form’ means forms such as capsules, tablets, pills and other similar forms, sachets of powder, ampoules of liquids and drop dispensing bottles.

Article 3

Member States shall ensure that the food supplements containing the nutrients listed in Article 2(b) may be marketed within the Community only if they comply with the rules laid down in this Directive.

Article 4

1. Only the vitamins and minerals listed in Annex I and the vitamin formulations and the permitted mineral substances listed in Annex II may be used for the manufacture of food supplements.

2. The criteria of purity for the substances, referred to in paragraph 1 shall be adopted in accordance with the procedure referred to in Article 13(2).

3. Modifications to the lists referred to in paragraph 1 shall be adopted in accordance with the procedure referred to in Article 13(2).

Article 5

1. Maximum amounts of vitamins and minerals present in food supplements per daily portion of consumption as recommended by the manufacturer shall be set taking the following into account:

(a) upper safe levels of vitamins and minerals established by scientific risk assessment based on generally acceptable scientific data;

(b) reference intakes of vitamins and minerals for the population, where these are close to the upper safe levels;

(c) intakes of vitamins and minerals from other dietary sources.

2. To ensure that significant amounts of vitamins and minerals shall be present in food supplements minimum amounts per daily portion of consumption as recommended by the manufacturer shall be set, as appropriate.

3. The maximum and minimum amounts of vitamins and minerals referred to in paragraphs 1 and 2 shall be adopted in accordance with the procedure referred to in Article 13(2).

Article 6

1. The name under which products covered by this Directive are sold shall include the word ‘supplement’ and the name of the category of the nutrient(s) characterising the product. The name of the category of the nutrient(s) may be completed or replaced by the specific name of the nutrient(s) characterising the product.

2. The labelling, presentation and advertising must not attribute to food supplements the property of preventing, treating or curing a human disease, or refer to such properties.

3. Without prejudice to the requirements of Directive 79/112/EEC, the labelling shall bear the following mandatory particulars:

(a) the portion of the product recommended for daily consumption;

(b) a warning as to the possible health risks, as the case may be, in exceeding the recommended portion for daily consumption;

(c) a statement to the effect that food supplements should not be used as a substitute for a diversified diet.

Article 7

The labelling of food supplements shall not include any mention stating or implying that an adequate and diversified diet cannot provide appropriate quantities of nutrients.

Article 8

1. The amount of the nutrient(s) listed in Article 2(b) present in the product shall be declared in the labelling in numerical form. The units to be used shall be those specified in Annex I.

2. The amounts of the nutrient(s) declared shall be those per portion of the product as recommended for daily consumption on the labelling and per unit dose form, as appropriate. The amounts declared shall be those of the product as sold.

3. Information on vitamins and minerals shall also be expressed as a percentage of the reference values mentioned, as the case may be, in the Annex to Directive 90/496/EEC.

Article 9

1. The declared values mentioned in Article 8(1) and (2) shall be average values based on the manufacturer’s analysis of the product.

The rules for implementing this paragraph with regard in particular to the differences between the declared values and those established in the course of official checks shall be decided upon in accordance with the procedure referred to in Article 13(2).

2. The percentage of the reference values for vitamins and minerals mentioned in Article 8(3) may also be given in graphical form.

Rules for implementing this paragraph may be adopted in accordance with the procedure referred to in Article 13(2).

Article 10

To facilitate efficient monitoring of food supplements, when a product is placed on the market the manufacturer or, where a product is manufactured in a third country, the importer, shall notify the competent authority of each Member State where the product is being marketed by forwarding it a model of the label used for the product.
Member States may not impose this requirement, if they can demonstrate to the Commission that notification is not necessary in order to monitor those products efficiently in their territory.

**Article 11**

1. Member States shall not, for reasons related to their composition, manufacturing specifications, presentation or labelling, prohibit or restrict trade in products referred to in Article 1 which comply with this Directive and where appropriate, with Community acts adopted in implementation of this Directive.

2. Without prejudice to the relevant provisions of the EC Treaty, in particular Articles 28 and 30 thereof, paragraph 1 shall not affect national provisions which are applicable in the absence of Community acts adopted in implementation of this Directive.

**Article 12**

1. Where a Member State, as a result of new information or of a reassessment of existing information made since this Directive or one of the implementing Community acts was adopted, has detailed grounds for establishing that a product referred to in Article 1 endangers human health though it complies with those provisions, that Member State may temporarily suspend or restrict application of the provisions in question within its territory. It shall immediately inform the other Member States and the Commission thereof and give reasons for its decision.

2. The Commission shall examine as soon as possible the grounds adduced by the Member State concerned and shall consult the Member States within the Standing Committee for Foodstuffs, and shall then deliver its opinion without delay and take appropriate measures.

3. If the Commission considers that amendments to this Directive or to the implementing Community acts are necessary in order to remedy the difficulties mentioned in paragraph 1 and to ensure the protection of human health, it shall initiate the procedure referred to in Article 13(2) with a view to adopting those amendments. The Member State that has adopted safeguard measures may in that event retain them until the amendments have been adopted.

**Article 13**

1. The Commission shall be assisted by the Standing Committee for Foodstuffs instituted by Decision 69/414/EEC (1).

2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

**Article 14**

Provisions that may have an effect upon public health shall be adopted after consultation with the Scientific Committee for Food.

**Article 15**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 May 2002. They shall forthwith inform the Commission thereof.

Those laws, regulations and administrative provisions shall be applied in such a way as to:

(a) permit trade in products complying with this Directive, from 1 June 2002 at the latest;

(b) prohibit trade in products which do not comply with the Directive, from 1 June 2004 at the latest.

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

**Article 16**

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

**Article 17**

This Directive is addressed to the Member States.

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ANNEX I

Vitamins and minerals which may be used in the manufacture of food supplements

1. Vitamins

Vitamin A (µg RE)
Vitamin D (µg)
Vitamin E (mg α-TE)
Vitamin K (µg)
Vitamin B1 (mg)
Vitamin B2 (mg)
Niacin (mg NE)
Pantothenic acid (mg)
Vitamin B6 (µg)
Folic acid (µg)
Vitamin B12 (µg)
Biotin (µg)
Vitamin C (mg)

2. Minerals

Calcium (mg)
Magnesium (mg)
Iron (mg)
Copper (µg)
Iodine (µg)
Zinc (µg)
Manganese (mg)
Sodium (mg)
Potassium (mg)
Selenium (µg)
Chromium (µg)
Molybdenum (µg)
Fluoride (mg)
Chloride (mg)
Phosphorus (mg)

ANNEX II

Vitamin and mineral substances which may be used in the manufacture of food supplements

1. Vitamins

VITAMIN A
— retinol
— retinyl acetate
— retinyl palmitate
— beta-carotene

VITAMIN D
— cholecalciferol
— ergocalciferol

VITAMIN E
— D-alpha-tocopherol
— DL-alpha-tocopherol
— D-alpha-tocopheryl acetate
— DL-alpha-tocopheryl acetate
— D-alpha-tocopheryl acid succinate

VITAMIN K
— phylloquinone (phytomenadione)

VITAMIN B1
— thiamin hydrochloride
— thiamin mononitrate

VITAMIN B2
— riboflavin
— riboflavin 5'-phosphate, sodium

NIACIN
— nicotinic acid
— nicotinamid
<table>
<thead>
<tr>
<th>Calcium Salts of Orthophosphoric Acid</th>
<th>Zinc Lactate</th>
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</thead>
<tbody>
<tr>
<td>Calcium Hydroxide</td>
<td>Zinc Oxide</td>
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<tr>
<td>Calcium Oxide</td>
<td>Zinc Carbonate</td>
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<tr>
<td>Magnesium Acetate</td>
<td>Zinc Sulphate</td>
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<tr>
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<tr>
<td>Magnesium Chloride</td>
<td>Magnesium Chloride</td>
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<tr>
<td>Magnesium Salts of Citric Acid</td>
<td>Magnesium Citrate</td>
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<tr>
<td>Magnesium Gluconate</td>
<td>Magnesium Glycerophosphate</td>
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<tr>
<td>Magnesium Glycerophosphate</td>
<td>Magnesium Sulphate</td>
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<tr>
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<td>Sodium Bicarbonate</td>
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<tr>
<td>Magnesium Sulphate</td>
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<td>Ferrous Carbonate</td>
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<td>Ferric Sulphate</td>
<td>Potassium Gluconate</td>
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<tr>
<td>Ferric Diphosphate (Ferric Pyrophosphate)</td>
<td>Potassium Glycerophosphate</td>
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<td>Ferric Saccharate</td>
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<td>Elemental Iron (Carbonyl + Electrolytic + Hydrogen Reduced)</td>
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<tr>
<td>Cupric Sulphate</td>
<td>Sodium Selenite</td>
</tr>
<tr>
<td>Copper Lysine Complex</td>
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<tr>
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<td>Ammonium Molybdate (Molybdenum (VI))</td>
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<td>Potassium Iodide</td>
<td>Potassium Molybdate (Molybdenum (VI))</td>
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<td>Potassium Fluoride</td>
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<td>Zinc Acetate</td>
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<td>Zinc Gluconate</td>
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Proposal for a Council Regulation creating the Rapid Reaction Facility

(2000)C 311 E/14


(Submitted by the Commission on 18 May 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The aim of preserving peace and liberty is expressed in the preamble to the Treaty establishing the European Community.

(2) The Community is concerned that the spread of crises affecting political and social stability and security jeopardise not only international peace and security but also the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.

(3) In the interests of fostering sustainable economic and social development, there is a need to prevent the crises from spreading or escalating into armed conflicts.

(4) The conclusions of the European Council of Helsinki of 10 and 11 December 1999 state that 'A non-military crisis management mechanism will be established to coordinate and make more effective the various civilian means and resources, in parallel with the military ones, at the disposal of the Union and the Member States'.

(5) The Report of the Presidency on non-military crisis management attached to the above conclusions further explains that 'Rapid financing mechanisms such as the creation by the Commission of a Rapid Reaction Fund should be set up to allow the acceleration of the provision of finance to support EU activities, to contribute to operations run by other international organisations and to fund NGO activities, as appropriate'.

(6) There is a need, in support of existing Community programmes relating to cooperation with third countries, to undertake rapid and efficient action to project security and stability beyond the borders of the European Union wherever the lives and physical integrity of women and men and the respect for human solidarity depend on its intervention.

(7) The Community’s early awareness of crises and rapid response mechanisms need further development with a view to permitting rapid deployment of financial and other resources to prevent crises from spreading or escalating into armed conflicts.

(8) There is a need to make available at short notice, in the event of security-related crisis situations, accelerated decision-making mechanisms for specific and immediate interventions limited in time, and acting, if so required, as precursors of regular Community instruments to which action can thereafter be transferred.

(9) Community interventions must be coherent with the European Union’s external activities as a whole in the context of its external relations, security, economic, social and development policies.

(10) Activities covered by the ECHO regulation, Council Regulation (EC) No 1257/96 (1), should not be funded under this Regulation.

(11) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (2), measures for the implementation of this Regulation should be adopted by use of the advisory procedure provided for in Article 3 of that Decision.

(12) There is a need for maximum transparency in the implementation of the Community’s financial assistance as well as for proper control of use of appropriations.

(13) The protection of the Community’s financial interests and the fight against fraud and irregularities should constitute an integral part of this Regulation.

(14) The Treaty does not provide, for the adoption of this Regulation, powers other than those of Article 308.

HAS ADOPTED THIS REGULATION:

Article 1

1. The purpose of this Regulation, in support of existing Community programmes relating to cooperation with third countries, is to lay down procedures for establishing a rapid, efficient and flexible mechanism (hereinafter referred to as the ‘Rapid Reaction Facility’) designed to respond to situations of crisis or the emergence of crisis and to provide immediate financing for non-combat activities related to urgent operations of crisis management and conflict prevention, with a view to fostering international peace and security, the principles of liberty and democracy, respect for human rights and fundamental freedoms and the rule of law, as a basis for economic and social development in those third countries.

2. The Rapid Reaction Facility shall be triggered by situations of crisis or emerging crisis, such as circumstances of growing violence destabilising law and order, breaches of the peace, outbreaks of fighting, armed conflicts, massive population movements, or exceptional circumstances with security-related implications and concerns, or major environmental catastrophes threatening safety, stability and security.

3. The Rapid Reaction Facility builds upon the scope of intervention of existing Community regulations, with the exception of ECHO regulation, Regulation (EC) No 1257/96. Its specific added-value is represented by the rapidity of interventions in situations of high tension and by the possibility of mixing different instruments of intervention in order to achieve a comprehensive and coherent action in security-related emergencies. If actions provided for by this Regulation fall under the scope of other regulations, this Regulation shall apply only if:

(a) the action is intended to be immediate and ad hoc to meet the most urgent safety and security-related requirements of societies and peoples in third countries; and

(b) the action is limited in time, as further specified in Article 7.

Article 2

1. The principal objectives of actions under the Rapid Reaction Facility shall be, in situations of crisis or emerging crisis, the preservation or re-establishment of conditions of public order, security and safety, the facilitation of dialogue, conciliation and mediation among different groups within a society and the fight against human-rights abuses, ethnic, religious, and gender discrimination, and violence.

2. Interventions financed under this Regulation may comprise any non-combat activities aimed at counteracting or resolving emerging crises and serious threats or outbreaks of conflict, all logistical measures necessary for the planning, implementation, monitoring and auditing of such interventions, including information and communication management, technical assistance and training, the purchase and/or delivery of essential products and equipment, safe transport and all administrative expenditure related to such measures as well as the measures necessary to strengthen the Community’s coordination with Member States and other donor countries, international organisations, non-governmental organisations (NGOs) and their representatives.

3. If the actions are eligible for ECHO funding, they shall be financed under Regulation (EC) No 1257/96. In particular security or crisis management circumstances, the Commission may decide that RRF intervention is more appropriate if combined with ECHO action, as necessary. While in these cases a clear division of labour between ECHO and the Rapid Reaction Facility shall be maintained both at headquarters and in the field, close coordination shall be established in order to achieve optimal overall coherence and to ensure the security of humanitarian workers.

Article 3

1. Community financing under this Regulation shall take the form of grants.

2. The interventions covered by this Regulation shall be exempt from taxes, charges, duties and customs duties.

Article 4

1. Implementing partners eligible under this Regulation may include national governments and their agencies, regional and international organisations and their agencies, NGOs and public and private operators with appropriate specialised expertise and experience.

2. The Commission may conclude framework agreements with relevant government agencies, international organisations, NGOs and private or public operators on the basis of their ability to carry out rapid interventions in crisis management. In situations where unique personal expertise is needed, or where the credibility of the operation and the confidence of the parties is linked to a specific person, as may be the case in mediation, arbitration or advice activities, the Commission may sign contracts with individual organisations or operators, even if no framework agreement had been previously concluded.

3. After a financing Decision has been taken by the Commission in accordance with Article 5 and as soon as practically possible, a financial agreement shall be concluded with NGOs, private or public operators which have been chosen for conducting the intervention, on the basis of the provisions of the respective framework agreements.

4. Non-governmental organisations eligible for financial agreements with a view to the implementation of interventions under this Regulation shall meet the following criteria:

(a) be non-profit-making autonomous organisations;

(b) have their main headquarters in a Member State or in the third country in receipt of Community aid.

Exceptionally, their headquarters may be located in another third country.

5. When determining a private operator's or NGO's suitability for Community funding, account shall be taken of the following factors:

(a) its administrative and financial management capacities;
(b) its technical and logistical capacity in relation to the urgency of planned operations;
(c) its experience in the field in question;
(d) its readiness to take part, if need be, in any specific coordination system to be set up for conducting the intervention;
(e) its record and guarantee of impartiality in the implementation of the tasks assigned.

6. The Commission will inform the Committee established in Article 8 of the choice of implementing entity and the reasons for such choice.

**Article 5**

Interventions covered by this Regulation shall be decided by the Commission in accordance with the procedures laid down in this Regulation.

They shall be implemented by the Commission in accordance with the budgetary and other procedures in force, including those laid down in Articles 116 and 118 of the Financial Regulation applicable to the general budget of the European Communities.

**Article 6**

1. All financing agreements or contracts concluded under this Regulation shall provide for the Commission, the Anti-Fraud Office (OLAF) and the Court of Auditors to conduct on-the-spot checks according to the rules in force.

2. The Commission may carry out on-the-spot checks and inspections in conformity with Council Regulation (EC) No 2185/96 (1). The measures taken by the Commission shall provide for adequate protection of the financial interests of the Community in conformity with Council Regulation (EC) No 2988/95 (2).

**Article 7**

1. No single intervention to be funded under this Regulation may receive Community contributions exceeding EUR 12 million.

2. The implementation period of any intervention under this Regulation may not exceed a limited period up to nine months.

3. Should it appear, in exceptional cases, that the implementation period is insufficient to achieve the objectives laid down in Article 1(1) on account of the specific nature of the crisis concerned or its intensity, the Commission shall present a report to the Committee established in Article 8, at the latest one month before the expiry of the original action. Thereafter the Commission may present to the Committee a draft for an extension of the intervention and related financial requirements concerning the same crisis. This further intervention shall comply with the requirements of Article 1.

4. Where interventions provided for by this Regulation require a Community contribution in excess of EUR 5 million, or in the exceptional circumstances described in paragraph 3, the Commission shall adopt its decision after consulting the Committee established in Article 8.

**Article 8**

1. The Commission shall be assisted by a committee (hereinafter referred to as 'the Crisis Committee'), composed of representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of the Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.

**Article 9**

1. When adopting its rules of procedure, in accordance with Article 7(1) of Decision 1999/468/EC, the Crisis Committee shall take into account the objectives of the Rapid Reaction Facility, and in particular:

(a) the need of rapid decisions and implementation in view of the exceptional and urgent nature of the circumstances of crisis which trigger the use of the Rapid Reaction Facility;
(b) the flexibility necessary to meet the evolving nature of the crisis.

2. The Crisis Committee may also discuss any other questions related to the implementation of this Regulation, in particular the arrangements for follow-up and the transfer of action, where appropriate, to other instruments once intervention under this Regulation comes to an end.

**Article 10**

1. The Commission shall, on the basis of a reciprocal and regular exchange of information, including exchange of information on the spot, ensure the effective coordination of its crisis management operations with those of the Member States, in order to increase the coherence and complementarity of all interventions.

2. In the interests of overall coherence of Community strategy for rapid response to crises with civilian instruments, the Crisis Committee may also be a forum for the exchange of information between Member States and the Commission.

3. The Commission shall promote coordination and cooperation with international and regional organisations.

4. The necessary measures shall be taken to give visibility to the Community's contribution.
**Article 11**

1. The Commission shall regularly assess crisis-management interventions under this Regulation in order to establish whether the objectives of the interventions have been achieved and to provide guidelines for improving the effectiveness of future interventions.

2. The Commission shall present to the European Parliament and to the Council a report summarising Community rapid reaction interventions in the previous year, by 30 April each year, and shall evaluate the implementation of interventions supported by this Regulation upon their completion.

**Article 12**

Three years after entry into force of this Regulation, the Commission shall present to the European Parliament and to the Council an overall evaluation of the interventions financed by the Community under this Regulation, together with any proposals for amendments to it.

**Article 13**

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Amended proposal for a regulation of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (1)

(2000/C 311 E/15)

(Text with EEA relevance)

COM(2000) 301 final — 1999/0204(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 18 May 2000)

INITIAL PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152 thereof,

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions,

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

Whereas:

(1) Article 19 of Council Regulation (EC) No 820/97 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products (1), lays down that a compulsory beef labelling system shall be introduced, which shall be obligatory in all Member States, from 1 January 2001 onwards. On the basis of a Commission proposal, the same Article also states that the general rules for that compulsory system shall be decided before that date.

(2) Council Regulation (EC) No 2772/1999 of 21 December 1999 providing for the general rules for a compulsory beef labelling system (2) specifies that such general rules are to be applicable only on a provisional basis, for a maximum period of eight months, i.e. from 1 January to 31 August 2000.

AMENDED PROPOSAL

Unchanged

(1) Article 19 of Council Regulation (EC) No 820/97 of 21 April 1997 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products (1), lays down that a compulsory beef labelling system shall be introduced, which shall be obligatory in all Member States, from 1 January 2000 onwards. On the basis of a Commission proposal, the same Article also states that the general rules for that compulsory system shall be decided before that date.

(2) Council Regulation (EC) No 2772/1999 of 21 December 1999 providing for the general rules for a compulsory beef labelling system (2) specifies that such general rules are to be applicable only on a provisional basis, for a maximum period of eight months, i.e. from 1 January to 31 August 2000.


(2) It is appropriate to include those general rules into Regulation (EC) No 820/97. For reasons of clarity that Regulation should be repealed and replaced by a new Regulation.

(3) As a consequence of the instability in the market in beef and beef products caused by the bovine spongiform encephalopathy crisis, the improvement in the transparency of the conditions for the production and marketing of the products concerned, particularly as regards traceability, has exerted a positive influence on consumption of beef. To maintain and strengthen this consumer confidence in beef, it is necessary to develop the framework in which the information is made available to consumers on the label.

(4) To this end it is essential to establish, on the one hand, an efficient system for the identification and registration of bovine animals at the production stage and, on the other hand, a specific Community labelling system in the beef sector based on objective criteria at the marketing stage.

(5) By means of the guarantees provided for such an improvement, certain public interest requirements will also be attained, in particular the protection of human and animal health. Therefore, the appropriate legal basis for this Regulation is Article 152 of the Treaty.

(6) As a result, consumer confidence in the quality of beef and beef products will be encouraged.

(7) Article 3(1)(c) of Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (1) states that animals for intra-Community trade must be identified in accordance with the requirements of Community rules and be registered in such a way that the original or transit holding, centre or organisation can be traced, and that before 1 January 1993 these identification and registration systems are to be extended to the movements of animals within the territory of each Member State.

(8) Article 3(1)(c) of Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (1) states that animals for intra-Community trade must be identified in accordance with the requirements of Community rules and be registered in such a way that the original or transit holding, centre or organisation can be traced, and that before 1 January 1993 these identification and registration systems are to be extended to the movements of animals within the territory of each Member State.

For the introduction of an improved identification system, it is necessary to ensure the rapid and efficient exchange of information between Member States for the correct application of this Regulation. Community provisions have been established by Council Regulation (EEC) No 1468/81 on mutual assistance between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs or agriculture matters (1) and by Council Directive 89/608/EEC of 21 November 1989 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of legislation on veterinary and zootechnical matters (2). The current rules concerning the identification and the registration of bovine animals have been laid down in Council Directive 92/102/EEC of 27 November 1992 on the identification and registration of animals (3) and Council Regulation (EC) No 820/97. Experience has shown that the implementation of that Directive for bovine animals has not been entirely satisfactory and needs further improvement. It is therefore necessary to adopt a specific regulation for bovine animals in order to reinforce the provisions of the Directive.

For the introduction of an improved identification system to be accepted, it is essential not to impose excessive demands on the producer in terms of administrative formalities. Feasible time limits for its implementation must be laid down.

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(13) For the purpose of rapid and accurate tracing of animals for reasons relating to the control of Community aid schemes, each Member State must create a computerised database which will record the identity of the animal, all holdings on its territory and the movements of the animals, in accordance with the provisions of Council Directive 97/12/EC of 17 March 1997 amending and updating Directive 64/432/EEC on health problems affecting intra-Community trade in bovine animals and swine (1), which clarifies the health requirements concerning this database.

(14) Steps must be taken to ensure that the technical conditions exist to guarantee the best communication possible by the producer with the data base and a comprehensive use of data bases.

(15) In order to permit movements of bovine animals to be traced, animals must be identified by an ear tag applied in each ear and in principle accompanied by a passport throughout any movement. The characteristics of the ear tag and of the passport must be determined on a Community basis. In principle a passport must be issued for each animal to which an ear tag has been allocated.

(16) Animals imported from third countries pursuant to Directive 91/496/EEC must be subject to the same identification requirements.

(17) Every animal must keep its ear tag throughout its life.

(18) The Commission is examining on the basis of work performed by the Joint Research Centre the feasibility of using electronic means for the identification of animals.

(19) Keepers of animals, with the exception of transporters, must maintain an up-to-date register of the animals on their holdings. The characteristics of the register must be determined on a Community basis. The competent authority must have access to these registers on request.

(20) Member States may spread the costs arising from the application of these measures over the entire beef sector.

(18) Animals imported from third countries pursuant to Directive 91/496/EEC must be subject to the same identification requirements.

(21) Keepers of animals, with the exception of transporters, must maintain an up-to-date register of the animals on their holdings. The characteristics of the register must be determined on a Community basis. The competent authority must have access to these registers on request.

(22) Member States may spread the costs arising from the application of these measures over the entire beef sector.

(21) The authority or authorities responsible for the application of each Title in this Regulation should be designated.

(22) In the context of the labelling system set up by this Regulation, beef shall be taken to mean certain products referred to in Article 1(1) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal (1).

(23) A compulsory beef labelling system shall be introduced which is obligatory in all Member States. Under this compulsory system, operators and organisations marketing beef shall indicate on the label information about certain characteristics of the beef and the point of slaughter of the animal or animals from which that beef was derived.

(24) The compulsory beef labelling system shall be reinforced from 1 January 2003. Under this compulsory system, operators and organisations marketing beef shall, in addition, indicate on the label information concerning origin, in particular where the animal or animals from which the beef was derived were born, reared and slaughtered.

(25) The date of 1 January 2003 is the earliest date by which it is feasible to introduce the compulsory labelling of origin. The principal reason for not introducing compulsory labelling of origin before 1 January 2003 is that full information on movements made by bovine animals in the Community is only required for animals born after 1 January 1998.

(26) In terms of the public interest requirement, the compulsory beef labelling system shall also apply to beef imported into the Community. However, provision must be made for the fact that not all the information required for the indication of origin on the label may be available to a third country operator or organisation. It is therefore necessary to state the minimum information that shall be indicated on the label by third countries.

(27) For operators or organisations producing and marketing minced beef, beef trimmings or cut beef and operators or organisations exporting beef from third countries to the Community, who may not be in a position to provide all the information required under the compulsory beef labelling system, exceptions ensuring a certain minimum number of indications must be provided.

(28) For operators or organisations producing and marketing minced beef, beef trimmings or cut beef and operators or organisations exporting beef from third countries to the Community, who may not be in a position to provide all the information required under the compulsory beef labelling system, exceptions ensuring a certain minimum number of indications must be provided.

The objective of labelling is to give the maximum transparency in the marketing of beef. It is therefore appropriate that those operators and organisations that choose to market their beef under a label which ensures traceability to the individual animal, should be permitted to label beef with a specific logo.

For all indications other than those falling under the compulsory beef labelling system, a Community framework for such beef labelling is also required. The diversity of descriptions of marketed beef in the Community means that the establishment of a voluntary beef labelling system is most appropriate. An efficient labelling system depends on the possibility of tracing back any labelled beef to the animal or animals of origin. The labelling arrangements of an operator or organisation shall be valid only once a specification has been submitted to the competent authority within a certain delay. In order to identify correctly the person responsible for the information on the label, operators and organisations shall be entitled to label beef only if the label contains their name or their identifying logo. In order to ensure that labelling specifications may be recognised across the Community, it is necessary to provide for the mutual exchange of information between Member States.

Operators and organisations importing beef from third countries into the Community may also wish to label their products according to the voluntary beef labelling system. Provisions should thus be made for imported beef to be included in that system. These provisions must ensure that labelling arrangements relating to imported beef are of equivalent reliability to those set up for Community beef.

The change from the arrangements in Title II of Regulation (EC) No 820/97 to those in this Regulation could give rise to difficulties that are not dealt with in this Regulation. In order to deal with that eventuality, provision should be made for the Commission to adopt the necessary transitional measures. The Commission should also be authorised to solve specific practical problems.

The provisions of this Regulation should not undermine the provisions of Council Regulation (EC) No 2081/92 on the protection of geographical indications and designations of origin.

Operators and organisations importing beef from third countries into the Community may also wish to label their products according to the voluntary beef labelling system. Provisions should thus be made for imported beef to be included in that system. These provisions must ensure that labelling arrangements relating to imported beef are of equivalent reliability to those set up for Community beef.

The change from the arrangements in Title II of Regulation (EC) No 820/97 to those in this Regulation could give rise to difficulties that are not dealt with in this Regulation. In order to deal with that eventuality, provision should be made for the Commission to adopt the necessary transitional measures. The Commission should also be authorised to solve specific practical problems.

(32) With a view to guaranteeing the reliability of the arrangements provided for by this Regulation, it is necessary to oblige the Member States to carry out adequate and efficient control measures. These controls shall be without prejudice to any controls that the Commission may carry out by analogy with Article 9 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (1). The competent authorities of the Member States shall be authorised to withdraw their approval of any specification in the event of irregularities.

(33) Appropriate penalties should be laid down in the event of a breach of the provisions of this Regulation.

HAVE ADOPTED THIS REGULATION:

UNCHANGED

TITLE I

IDENTIFICATION AND REGISTRATION OF BOVINE ANIMALS

Article 1

1. Each Member State shall establish a system for the identification and registration of bovine animals (hereinafter referred to as 'animals'), in accordance with this Title.

2. This Title shall apply without prejudice to Community rules for disease eradication or control purposes and without prejudice to Directive 91/496/EEC and Regulation (EEC) No 3508/92. However, those provisions of Directive 92/102/EEC, which relate specifically to bovine animals shall no longer apply from the date on which those animals must be identified in accordance with this Title.

Article 2

For the purposes of this Title:

— 'animal': shall mean a bovine animal within the meaning of Article 2 of Directive 97/12/EC,

— 'holding': shall mean any establishment, construction or, in the case of an open-air farm, any place situated within the territory of the same Member State, in which animals covered by this Regulation are held, kept or handled.

— ‘keeper’: shall mean any natural or legal person responsible for animals, whether on a permanent or on a temporary basis, including during transportation or at a market,

— ‘competent authority’: shall mean the central authority or authorities in a Member State responsible for, or entrusted with, carrying out veterinary checks and implementing this Title or, in the case of the monitoring of premiums, the authorities entrusted with implementing Regulation (EC) No 3308/92.

**Article 3**

The system for the identification and registration of bovine animals shall comprise the following elements:

(a) eartags to identify animals individually;

(b) computerised databases;

(c) animal passports;

(d) individual registers kept on each holding.

The Commission and the competent authority of the Member State concerned shall have access to all information under this Title. The Member States and the Commission shall take the measures necessary to ensure access to this data for all parties concerned, including consumer organisations having a particular interest which are recognised by the Member State, provided that the data confidentiality and protection prescribed by national law are ensured.

**Article 4**

1. All animals on a holding born after 1 January 1998 or intended for intra-Community trade after 1 January 1998 shall be identified by an eartag approved by the competent authority, applied to each ear. Both eartags shall bear the same unique identification code, which makes it possible to identify each animal individually together with the holding on which it was born. By way of derogation from the above requirement, animals born before 1 January 1998 which are intended for intra-Community trade after that date may be identified in accordance with Directive 92/102/EEC until 1 September 1998. By way of further derogation from the above requirement, animals born before 1 January 1998 which are intended for intra-Community trade after that date with a view to immediate slaughter may be identified in accordance with Directive 92/102/EEC until 1 September 1999. Bovine animals intended for cultural and sporting events (with the exception of fairs and exhibitions) may, instead of by an eartag, be identified by an identification system offering equivalent guarantees that has been recognised by the Commission.
2. The eartag shall be applied within a period to be determined by the Member State as from the birth of the animal and in any case before the animal leaves the holding on which it was born. That period may not be longer than 30 days up to and including 31 December 1999, and not longer than 20 days thereafter.

However, at the request of a Member State and in accordance with the procedure referred to in Article 10, the Commission may determine the circumstances in which Member States may extend the maximum period.

No animal born after 1 January 1998 may be moved from a holding unless it is identified in accordance with this Article.

3. Any animal imported from a third country which has passed the checks laid down in Directive 91/496/EEC and which remains within Community territory shall be identified on the holding of destination by an eartag complying with the requirements of this Article, within a period to be determined by the Member State of at most 20 days of undergoing the aforesaid checks, and in any event before leaving the holding.

However, it is not necessary to identify the animal if the holding of destination is a slaughterhouse situated in the Member State where such checks are carried out and the animal is slaughtered within 20 days of undergoing the checks.

The original identification established by the third country shall be recorded in the computerised database provided for in Article 5 or, if this is not yet fully operational, in the registers provided for in Article 3, together with the identification code allocated to it by the Member State of destination.

4. Any animal from another Member State shall retain its original eartag.

5. No eartag may be removed or replaced without the permission of the competent authority.

6. The eartags shall be allocated to the holding, distributed and applied to the animals in a manner determined by the competent authority.

7. Not later than 31 December 2001 the Parliament and Council, acting on the basis of a report from the Commission accompanied by any proposals and in accordance with the procedure provided for in Article 95 of the Treaty, shall decide on the possibility of introducing electronic identification arrangements in the light of progress achieved in this field.
INITIAL PROPOSAL

Article 5

The competent authority of the Member States shall set up a computerised database in accordance with Articles 14 and 18 of Directive 97/12/EC.

The computerised databases shall become fully operational no later than 31 December 1999, after which they shall store all data required pursuant to the aforementioned Directive.

Article 6

1. As from 1 January 1998, the competent authority shall, for each animal which has to be identified in accordance with Article 4, issue a passport within 14 days of the notification of its birth, or, in the case of animals imported from third countries, within 14 days of the notification of its re-identification by the Member State concerned in accordance with Article 4(3). The competent authority may issue a passport for animals from another Member State under the same conditions. In such cases, the passport accompanying the animal on its arrival shall be surrendered to the competent authority, which shall return it to the issuing Member State. However, at the request of a Member State and in accordance with the procedure referred to in Article 10, the Commission may determine the circumstances under which the maximum period may be extended.

2. Whenever an animal is moved, it shall be accompanied by its passport.

3. By way of derogation from the first sentence of paragraph 1 and from paragraph 2, Member States:

— which have a computerised database which the Commission deems to be fully operational before 1 January 2000 in accordance with Article 5 may determine that a passport is to be issued only for animals intended for intra-Community trade and that those animals shall be accompanied by their passports only when they are moved from the territory of the Member State concerned to the territory of another Member State, in which case the passport shall contain information based on the computerised database.

In these Member States, the passport accompanying an animal imported from another Member State shall be surrendered to the competent authority on its arrival,

— may until 1 January 2000 authorise the issue of collective animal passports for herds moved within the Member State concerned provided that such herds have the same origin and destination and are accompanied by a veterinary certificate.

4. In the case of the death of an animal, the passport shall be returned by the keeper to the competent authority within seven days after the death of the animal. If the animal is sent to the slaughterhouse, the operator of the slaughterhouse shall be responsible for returning the passport to the competent authority.

AMENDED PROPOSAL

Article 5

The competent authority of the Member States shall set up a computerised database in accordance with Articles 14 and 18 of Directive 97/12/EC.

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Unchanged

— which have a computerised database which the Commission deems to be fully operational in accordance with Article 5 may determine that a passport is to be issued only for animals intended for intra-Community trade and that those animals shall be accompanied by their passports only when they are moved from the territory of the Member State concerned to the territory of another Member State, in which case the passport shall contain information based on the computerised database.
5. In the case of animals exported to third countries, the passport shall be surrendered by the last keeper to the competent authority at the place where the animal is exported.

**Article 7**

1. With the exception of transporters, each keeper of animals shall:

— keep an up-to-date register,

— once the computerised database is fully operational, report to the competent authority all movements to and from the holding and all births and deaths of animals on the holding, along with the dates of these events, within 15 days and, as from 1 January 2000, within seven days of the event occurring. However, at the request of a Member State and in accordance with the procedure referred to in Article 10, the Commission may determine the circumstances in which Member States may extend the maximum period.

2. Where applicable and having regard to Article 6, each animal keeper shall complete the passport immediately on arrival and prior to departure of each animal from the holding and ensure that the passport accompanies the animal.

3. Each keeper shall supply the competent authority, upon request, with all information concerning the origin, identification and, where appropriate, destination of animals, which he has owned, kept, transported, marketed or slaughtered.

4. The register shall be in a format approved by the competent authority, kept in manual or computerised form, and be available at all times to the competent authority, upon request, for a minimum period to be determined by the competent authority but which may not be less than three years.

**Article 8**

Member States shall designate the authority responsible for ensuring compliance with this Title. They shall inform each other and the Commission of the identity of this authority.

**Article 9**

Member States may charge to keepers as referred to in Article 2 the costs of the systems referred to in Article 3 and of the controls referred to in this Title.
Article 10

Without prejudice to Article 8 of Council Decision 1999/468/EC (1), the Commission shall adopt detailed rules for the implementation of this Title in accordance with the procedure laid down in Article 13 of Council Regulation (EC) 1258/1999 (2). These detailed rules shall cover in particular:

(a) provisions concerning ear tags;

(b) provisions concerning the passport;

(c) provisions concerning the register;

(d) minimum level of controls to be carried out;

(e) application of administrative sanctions;

(f) transitional measures required to facilitate the application of the present Title.

TITLE II

LABELLING OF BEEF AND BEEF PRODUCTS

Article 11

An operator or an organisation, as defined in Article 12, which:

— is required, by virtue section I of this Title, to label beef at the point of sale and/or,

— wishes, by virtue of section II of this Title, to label beef at the point of sale in such a way as to provide information, other than that laid down by Article 13, concerning certain characteristics or production conditions of the labelled meat or of the animal from which it derives,

shall do so in accordance with this Title.

However, this title shall apply without prejudice to the provisions laid down in Council Directive 79/112/EEC.

For the purposes of this Title, the following definitions shall apply:

— ‘beef’ shall mean all products falling within CN codes 0201, 0202, 0206 10 95 and 0206 29 91,

— ‘labelling’ shall mean the attachment of a label to an individual piece or pieces of meat or to their packaging material, including the supply of information to the consumer at the point of sale,

— ‘organisation’ shall mean a group of operators from the same or different parts of the beef trade.

Section I

Compulsory EC beef labelling system

Article 13

General rules

1. Operators and organisations marketing beef in the Community shall label it in accordance with the provisions of this Article.

The compulsory labelling system shall ensure a link between, on the one hand, the identification of the carcass, quarter or pieces of meat and, on the other hand, the individual animal or, where this is sufficient to enable the accuracy of the information on the label to be checked, the group of animals concerned.

2. The label shall contain the following indications:

— a reference number or reference code ensuring the link between the meat and the animal or animals. This number may be the identification number of the individual animal from which the beef was derived or the identification number relating to a group of animals,

— the approval number of the slaughterhouse at which the animal or group of animals was slaughtered and the region or Member State or third country in which the slaughterhouse is established. The indication shall read: ‘Slaughtered in [name of the region or Member State or third country] [approval number]’,

— the approval number of the de-boning hall at which the carcass or group of carcasses were de-boned and the region or Member State or third country in which the de-boning hall is established. The indication shall read: ‘De-boned in: [name of the region or Member State or third country] [approval number]’,
— the category of animal or animals from which the beef was derived,

— date of slaughter of the animal or group of animals from which the beef was derived,

— ideal minimum maturation period of the beef.

3. However, Member States where sufficient details are available in the identification and registration system for bovine animals, provided for in Title I, may decide that, for beef from animals born, raised and slaughtered in the same Member State, supplementary items of information must also be indicated on labels.

4. A compulsory system as provided for in paragraph 3 must not lead to any disruption of trade between the Member States.

The implementation arrangements applicable in those Member States intending to apply the provisions of paragraph 3 shall require prior approval from the Commission.

5. As from 1 January 2003, operators and organisations shall indicate also on the labels:

— Member State, region or holding, or third country, of birth,

— all Member States, regions or holdings, or third countries, where fattening took place,

— Member State, region or slaughterhouse, or third country, where slaughter took place.

— Member State, region or de-boning hall, or third country, where de-boning took place.

However, where the beef is derived from animals born, raised, slaughtered and de-boned:

— in the same Member State, the indication may be given as ‘Origin: [name of Member State]’, or ‘Origin: EC’,

— in more than one Member State and one or more third country, the indication may be given as ‘Origin: EC and Non-EC’,

— in one or more third country, the indication may be given as either ‘Origin: [name of third country or countries]’, or ‘Origin: Non-EC’.
INITIAL PROPOSAL

Article 14
Derogations from the Compulsory labelling system

1. By way of derogation from Article 13(2), the first three indents of Article 13(5) and Article 13(6), an operator or organisation producing minced beef, beef trimmings or cut beef shall at least indicate on the label the Member States, regions or de-boning halls, or third countries, where production of the beef took place.

Where this beef is produced:

— in the same region or Member State, the indication may be given as either 'Produced in: [name of region or Member State]', or 'Produced in the EC',

— in more than one Member State, the indication may be given as either 'Produced in: [names of Member States]' or 'Produced in the EC',

— in one or more Member State and one or more third country, the indication may be given as either 'Produced in: [names of Member States and third countries]' or 'Produced in EC and Non-EC countries',

— in one or more third country, the indication may be given as either 'Produced in: [name of third country or countries]', or 'Produced in Non-EC countries'.

2. By way of derogation from the sixth indent of Article 13(2), an operator or organisation may label veal without indicating the minimum maturation of the meat.

Article 15
Compulsory labelling for beef from third countries

By way of derogation from Article 13, beef imported into the Community, for which all the information provided for in Article 13 is not available, shall be labelled with the indication:

'Origin: Non-EC, or 'Slaughtered in: [name of third country]' .

Article 16
Beef traceable to the individual animal

An operator or organisation that ensures a link between the identification of the beef and the individual animal from which the beef was derived, shall be entitled to label beef with a specific logo.

AMENDED PROPOSAL

Article 14
Derogations from the Compulsory labelling system

By way of derogation from Article 13(2), the first three indents of Article 13(5) and Article 13(6), an operator or organisation producing minced beef, beef trimmings or cut beef shall at least indicate on the label the Member States, regions or de-boning halls, or third countries, where production of the beef took place.

Unchanged
Section II

Voluntary labelling system

Article 17

General rules

1. For labels containing indications other than those provided for in Section I of this Title, each operator or organisation shall submit a specification for information to the competent authority of each Member State in which production or sale of the beef in question takes place. Such prior notification shall be made at least one month before labelling of beef takes place. The competent authority may also establish specifications to be used in the Member State concerned, provided that use thereof is not compulsory.

Voluntary labelling specifications shall indicate:

— the information to be included on the label,
— the measures to be taken to ensure the accuracy of the information,
— the control system which will be applied at all stages of production and sale, including the controls to be carried out by an independent body recognised by the competent authority and designated by the operator or the organisation. These bodies shall comply with the criteria set out in European Standard EN/45011,
— in the case of an organisation, the measures to be taken in relation to any member which failed to comply with the specifications.

Member States may decide that controls by an independent body can be replaced by controls by a competent authority. The competent authority shall in that case have at its disposal the qualified staff and resources necessary to carry out the requisite controls.

The costs of controls provided for under this Title shall be borne by the operator or organisation using the labelling system.

2. A specification shall also ensure a link between, on the one hand, the identification of the carcass, quarter or pieces of meat and, on the other hand, the individual animal or, where this is sufficient to enable the accuracy of the information on the label to be checked, the animals concerned.

3. A label shall provide information that:

— has been the subject of prior notification to the competent authority,
— is correct and verifiable in accordance with the specification as transmitted to the competent authority,
— is clear, not misleading and is common to any beef which is mixed from different animals.

4. If, within one month from the day following the date of submission of the specification, the competent authority has not raised objection to nor requested supplementary information on the specification, the operator or organisation concerned shall be entitled to label beef, in accordance with the specification, provided that the label contains its name or logo.

5. Where the production and/or sale of beef takes place in two or more Member States, the competent authorities of the Member States shall:
— assist one another mutually to ensure effective interchange of information on the labelling specifications operating in any other Member State,
— recognise the specifications operating in any other Member State.

Article 18
Voluntary labelling system for beef from third countries

1. Where the production of beef takes place, in full or in part, in a third country, operators and organisations shall be entitled to label beef according to this Section on condition that they have previously submitted their specifications to the competent authority, designated for that purpose by each third country concerned, and that the competent authority has not raised objection nor requested further information on the specification within one month of having received the specification.

2. The validity within the Community of any specification operating in a third country shall be subject to prior notification by the third country to the Commission of:
— the competent authority which has been designated,
— the procedures and criteria to be followed by the competent authority when examining the specification,
— each operator and organisation whose specification was accepted by the competent authority.

The Commission shall transmit these notifications to the Member States.

Where, on the basis of the above notifications, the Commission reaches the conclusion that the procedures and/or criteria applied in a third country are not equivalent to the standards set out in this Regulation, the Commission shall, after consultation with the third country concerned, decide that specifications from that third country shall not be valid within the Community.
INITIAL PROPOSAL

Article 19

Sanctions

Without prejudice to any action taken by the organisation itself or the independent control body provided for in Article 17, where it is shown that an operator or organisation has failed to comply with the specification referred to in Article 17(1), the Member State may impose supplementary conditions to be respected if its label is to be maintained.

Section III

General Provisions

Article 20

Detailed rules

1. Without prejudice to Article 8 of Council Decision 1999/468/EC, the Commission shall adopt, in accordance with the procedure laid down in Article 43 of Council Regulation (EC) No 1254/1999, detailed rules for the application of this Title and, in particular,

— definition of the maximum number of animals in a group, referred to in Article 13,

— definition of the categories of animals, referred to in the fourth indent of Article 13(2),

— definition of the minced beef, beef trimmings or cut beef, referred to in Article 14(1),

— definition of the logo, referred to in Article 16,

— definition of specific indications that may be put on labels.

2. The Commission shall also adopt, in accordance with the same procedure:

(a) measures required to facilitate the transition from the application of Regulation (EC) No 820/97 to application of the present Title;

(b) measures required to resolve specific practical problems. Such measures, if duly justified, may derogate from certain parts of this Title.

Article 21

Designation of Competent Authorities

Member States shall designate the competent authority or authorities responsible for implementing this Title, no later than six months after the entry into force of this Regulation.

AMENDED PROPOSAL

Article 19

Sanctions

Without prejudice to any action taken by the organisation itself or the independent control body provided for in Article 17, where it is shown that an operator or organisation has failed to comply with the specification referred to in Article 17(1), the Member State may impose supplementary conditions to be respected if its label is to be maintained.

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— definition of specific indications that may be put on labels.

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(a) measures required to facilitate the transition from the application of Regulation (EC) No 820/97 to application of the present Title;

(b) measures required to resolve specific practical problems. Such measures, if duly justified, may derogate from certain parts of this Title.

Article 21

Designation of Competent Authorities

Member States shall designate the competent authority or authorities responsible for implementing this Title, no later than two months after the entry into force of this Regulation.
INITIAL PROPOSAL

TITLE III
COMMON PROVISIONS

Article 22

1. Member States shall take all the necessary measures to ensure compliance with the provisions of this Regulation. The controls provided for shall be without prejudice to any controls, which the Commission may carry out by analogy with Article 9 of Regulation (EC, Euratom) No 2988/95.

Any sanctions imposed by the Member State shall be proportionate to the gravity of the breach. The sanctions may involve, where justified, a restriction on movement of animals to or from the holding of the keeper concerned.

2. Whenever uniform application of the requirements of this Regulation renders it necessary, Veterinary experts from the Commission may, in conjunction with the competent authorities:

(a) verify that the Member states are complying with the said requirements;

(b) make on-the-spot checks to ensure that the checks are carried out in accordance with this Regulation.

3. A Member State in whose territory an inspection is made shall provide the veterinary experts from the Commission with any assistance they may require in the performance of their tasks.

The outcome of the checks made must be discussed with the competent authority of the Member State concerned before a final report is drawn up and circulated.

4. Where the Commission deems that the outcome of checks so justifies, it shall review the situation within the Standing Veterinary Committee. It may adopt the necessary decisions in accordance with the procedure laid down in Article 22A.

5. The Commission shall monitor developments; in the light of such developments and in accordance with the procedure laid down in Article 22A it may amend or repeal the decisions referred to in paragraph 3.

AMENDED PROPOSAL

Unchanged

2. Veterinary experts from the Commission shall, in conjunction with the competent authorities:

(a) verify that the Member states are complying with the said requirements;

(b) make on-the-spot checks to ensure that the checks are carried out in accordance with this Regulation.

4. Where the Commission deems that the outcome of checks so justifies, it shall review the situation within the Standing Veterinary Committee. It may adopt the necessary decisions in accordance with the procedure laid down in Article 23.

5. The Commission shall monitor developments; in the light of such developments and in accordance with the procedure laid down in Article 23 it may amend or repeal the decisions referred to in paragraph 3.
6. Detailed rules for the application of this Article shall be adopted, where necessary, in accordance with the procedure laid down in Article 22A.

**Article 22A**

1. For the implementation of Article 22 the Commission shall be assisted by the Standing Veterinary Committee set up by Decision 68/361/EEC acting in accordance with the procedure laid down in Article 5 of Decision 1999/468/EC and in compliance with Article 8 thereof.

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

**Article 23**

1. Regulation (EC) No 820/97 is hereby repealed.

2. References to Regulation (EC) No 820/97 shall be construed as references to this Regulation and should be read in accordance with the correlation table in Annex I.

**Article 24**

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

It shall be applicable from [one month after the day of its entry into force]

**Article 25**

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

It shall be applicable to beef derived from animals slaughtered from 1 September 2000.
### ANNEX

**Correlation table**

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(2000/C 311 E/16)
(Submitted by the Commission on 22 May 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas:

(1) Article 26(3) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (1), grants Sweden the right to continue to apply, until 30 June 2000, the same restrictions as laid down in the Act of Accession of Sweden on the quantity of alcoholic drinks and tobacco products, which may be brought into Swedish territory without further excise duty payment by private individuals for their own use.

(2) This derogation was granted because in a Europe without frontiers where excise rates vary widely, an immediate, total removal of excise limitations would have caused an unacceptable diversion of trade and revenue and distortion of competition in Sweden, which has traditionally applied high excise duties to the products concerned both as an important source of revenue and for health and social reasons.

(3) Finland and Denmark have been authorised to apply similar restrictions until 31 December 2003.

(4) Sweden has requested authorisation to continue to apply such restrictions for the same period as Finland and Denmark, as more time is needed to adjust their alcohol policy to a situation without restrictions.

(5) At the same time, Sweden undertakes to raise the current quantitative limits for alcoholic drinks and tobacco products brought into Swedish territory from other Member States in several steps in order to align Sweden gradually with the Community rules laid down in Articles 8 and 9 of Directive 92/12/EEC and to ensure a complete removal of intra-Community restrictions for these products by 31 December 2003.

(6) The provisions of Article 26 represent a derogation from a fundamental principle of the internal market, namely the right of its citizens to transport goods purchased for their own use throughout the Community without incurring liability to new duty charges, so it is necessary to limit its effects as far as possible.

(7) It is therefore appropriate to provide further time for adjustment in Sweden by extending the deadline laid down in Article 26(3) of Directive 92/12/EEC for a non-renewable period until 31 December 2003 and to fix the steps of the gradual liberalisation of the restrictions prior to their complete removal at that date.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 92/12/EEC is amended as follows:

1. In Article 26, paragraph 3 is replaced by the following:

‘3. Without prejudice to Article 8, Sweden shall be authorised to apply the restrictions set out in the Annex on the quantity of alcoholic drinks and tobacco products.

The authorisation shall concern the quantity of alcoholic drinks and tobacco products which may be brought into Swedish territory without further excise duty payment by private individuals for their own use.

It shall apply until 31 December 2003.’

2. The Annex in the Annex to this Directive is added.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2000 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

Article 3

This Directive shall enter into force on the third day following that of its publication in the Official Journal of the European Communities.

Article 4

This Directive is addressed to the Member States.

ANNEX

Article 26(3)

Quantity of alcoholic drinks and tobacco products which may be brought into Swedish territory without further excise duty payment by private individuals for their own use

<table>
<thead>
<tr>
<th>Alcoholic drinks</th>
<th>From 1 July 2000</th>
<th>From 1 January 2001</th>
<th>From 1 January 2002</th>
<th>From 1 January 2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spirits</td>
<td>1 l</td>
<td>1 l</td>
<td>2 l</td>
<td>5 l</td>
</tr>
<tr>
<td>Intermediate products</td>
<td>3 l</td>
<td>3 l</td>
<td>3 l</td>
<td>3 l</td>
</tr>
<tr>
<td>Wines (including sparkling wine)</td>
<td>20 l</td>
<td>26 l</td>
<td>26 l</td>
<td>52 l</td>
</tr>
<tr>
<td>Beer</td>
<td>24 l</td>
<td>32 l</td>
<td>32 l</td>
<td>64 l</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tobacco products</th>
<th>From 1 July 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cigarettes or</td>
<td>400</td>
</tr>
<tr>
<td>cigarillos or</td>
<td>200</td>
</tr>
<tr>
<td>cigars or</td>
<td>100</td>
</tr>
<tr>
<td>smoking tobacco</td>
<td>550 g’</td>
</tr>
</tbody>
</table>
Proposal for a Directive of the European Parliament and of the Council establishing requirements and harmonised procedures for the safe loading and unloading of bulk carriers

(2000/C 311 E/17)

(Text with EEA relevance)

COM(2000) 179 final — 2000/0121(COD)

(Submitted by the Commission on 22 May 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions,

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

Whereas:

(1) In view of the high number of shipping accidents involving bulk carriers with an associated loss of human lives, further measures should be taken to enhance safety in maritime transport within the framework of the common transport policy.

(2) Assessments into the causes of bulk carrier casualties indicate that loading and unloading of solid bulk cargoes, if not properly conducted, can contribute to the loss of bulk carriers, either by over-stressing the ship’s structure or by mechanically damaging its structural members in the cargo holds; the protection of the safety of bulk carriers can be enhanced through the adoption of measures aimed at reducing the risk of structural damage and losses due to improper loading and unloading operations.

(3) At international level, the International Maritime Organisation (the ‘IMO’), through a number of Assembly Resolutions, has adopted recommendations on the safety of bulk carriers addressing ship/port interface issues in general and loading and unloading operations in particular.

(4) By Assembly Resolution A.862(20), the IMO adopted a Code of practice for the safe loading and unloading of bulk carriers (hereinafter ‘the BLU Code’), and urged contracting governments to implement this Code at the earliest possible opportunity and to inform IMO of any non-compliance. In the Resolution, the IMO further urged contracting governments in whose territories solid bulk cargo loading and unloading terminals are situated to introduce laws to the effect that a number of key principles necessary for the implementation of this Code could be enforced.

(5) The impact of loading and unloading operations on bulk carrier safety, in view of the global character of dry bulk carrier trade, has transboundary implications. The development of action to prevent the foundering of bulk carriers due to improper loading and unloading practices is best done at Community level, since Member States in isolation cannot take adequate and effective action.

(6) Action at Community level is the most effective way of establishing harmonised requirements and procedures to implement the IMO recommendations laid down in the Assembly Resolution A.862(20) and the Code of practice for the safe loading and unloading of bulk carriers.

(7) In view of the subsidiarity principle set out in Article 5 of the Treaty, a Directive is the appropriate legal instrument as it provides a framework for the Member States’ uniform and compulsory application of the requirements and procedures for the safe loading and unloading of bulk carriers, while leaving each Member State the right to decide which implementation tools best fit its internal system. In accordance with the principle of proportionality, this Directive does not go beyond what is necessary for the objectives pursued.

(8) The protection of the safety of bulk carriers and their crews can be enhanced by reducing the risks of improper loading and unloading at dry bulk cargo terminals; this can be implemented by establishing harmonised procedures for cooperation and communication between ship and terminal and by laying down suitability requirements for ships and terminals.

(9) In the interests of enhancing bulk carrier safety and avoiding distortion of competition, the harmonised procedures and suitability criteria should apply to all bulk carriers, irrespective of the flag they fly, and to all terminals in the Community at which such carriers call for the purpose of loading or unloading solid bulk cargoes.

(10) Bulk carriers calling at terminals for the loading or unloading of solid bulk cargoes should be suitable for that purpose. Terminals should Verify that visiting bulk carriers comply with the relevant suitability criteria laid down in the BLU Code.
(11) Terminals should also be suitable for receiving and loading or unloading visiting bulk carriers; for that purpose they should comply with the suitability criteria of the BLU Code relating to berthing facilities, cargo-handling and weighing equipment, training and working patterns of terminal personnel.

(12) Terminals should, in the interests of enhancing the cooperation and communication with the ship's master on matters relating to the loading and unloading of solid bulk cargoes, appoint a terminal representative and make information books with the terminal's and port's requirements available to the masters in accordance with the provisions of the BLU Code.

(13) The development, implementation and maintenance of a quality management system by the terminals would ensure that the cooperation and communication procedures and the actual loading and unloading by the terminal are planned and executed in accordance with a harmonised framework that is internationally recognised and auditable. In view of its international recognition, the quality management system should be based upon the ISO 9000 series of standards adopted by the International Standardisation Organisation.

(14) For the purpose of ensuring that loading and unloading operations are carefully prepared, agreed and conducted with a view to avoid endangering the structural integrity of the ship, the responsibilities of the master and the terminal representative should be laid down in accordance with the relevant provisions of the SOLAS Convention, IMO Assembly Resolution A.862(20) and the BLU Code. For the same purpose, procedures for the preparation, agreement and conduct of loading or unloading operations should be laid down on the basis of the provisions of those international instruments.

(15) In the general interests of the Community in deflecting sub-standard shipping from its ports, the responsibility of the terminal representative should include a duty to notify port State control authorities of any apparent deficiency on board a bulk carrier that could prejudice the safety of the loading or unloading operations.

(16) It is necessary that the competent authorities of the Member States have the right to prevent or halt the loading or unloading operations whenever ship or crew safety is reported to be endangered by these operations. The authorities should also intervene in the interests of safety in the event of disagreement between the master and the terminal representative as to the application of these procedures.

(17) It is necessary to lay down procedures whereby damage to ships incurred during loading or unloading operations is reported, and repaired if necessary. Where such damage could impair the safety or seaworthiness of the ship, the decision as to the necessity and urgency of repairs should be taken by the port State control authorities in consultation with the administration of the flag State. In view of the technical expertise necessary to take such a decision, the authorities should have the right to call upon a recognised organisation to inspect the damage and to advise them on any need for repairs.

(18) Enforcement of this Directive should be enhanced by the establishment of a surveillance system in the Member States, including unannounced inspections during loading and unloading operations: reporting the results of this monitoring effort will provide valuable information on the effectiveness of the requirements and harmonised procedures laid down in this Directive.

(19) The IMO in its Assembly Resolution A.797(19) on the safety of ships carrying solid bulk cargoes requested port State authorities to submit confirmation that loading and unloading terminals for solid bulk cargoes comply with the IMO Codes and recommendations on ship/shore cooperation. Notification of the adoption of this Directive to the IMO will provide an appropriate response to this request and a clear signal to the international maritime community that the Community is committed to supporting the efforts undertaken at international level to enhance the safe loading and unloading of bulk carriers.

(20) Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1), they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision.

(21) It should be possible to amend certain provisions of this Directive in accordance with that procedure, so as to bring them into line with international and Community instruments adopted, amended or entering into force after the entry into force of this Directive and for the implementation of the procedures laid down in this Directive, without broadening its scope.

(22) The provisions of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (2) and its relevant individual directives are fully applicable to the work relating to the loading and unloading of bulk carriers.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to enhance the safety of bulk carriers calling at terminals in the Community in order to load or unload solid bulk cargoes, by reducing the risks of excessive stresses and physical damage to the ship's structure during loading or unloading, through the establishment of:

1. suitability requirements for those ships and terminals, and
2. harmonised procedures for cooperation and communication between those ships and terminals.

Article 2

Scope

This Directive shall apply to:

1. all bulk carriers, irrespective of their flag, calling at a terminal for the loading or unloading of solid bulk cargoes; and
2. all terminals within the territory of the Member States.

Article 3

Definitions

For the purpose of this Directive:

1. 'international convention' shall mean the conventions currently in force, as defined in Article 2(1) of Council Directive 95/21/EC (1);
2. '1974 SOLAS Convention' shall mean the International Convention for the Safety Of Life At Sea, together with the Protocols and amendments thereto, in force;
3. 'BLU; Code' shall mean the Code of Practice for the Safe Loading and Unloading of Bulk Carriers, as contained in the Annex to IMO Assembly Resolution A.862 (20) of 27 November 1997, as amended;
4. 'bulk carrier' shall bear the meaning given to it in Regulation IX/1.6 of the 1974 SOLAS Convention and interpreted by Resolution 6 of the 1997 SOLAS Conference, namely:
   — a ship constructed with single deck, top-side tanks and hopper-side tanks in cargo spaces and intended primarily to carry dry cargo in bulk; or
   — an ore carrier, meaning a sea-going single deck ship having two longitudinal bulkheads and a double bottom throughout the cargo region and intended for the carriage of ore cargoes in the centre holds only; or
   — a combination carrier as defined in Regulation II-2/3.27 of the 1974 SOLAS Convention;
5. 'dry cargo in bulk' or 'solid bulk cargo' shall mean solid bulk cargo as defined in Regulation XII/1.4 of the 1974 SOLAS Convention, excluding grain;
6. 'grain' shall bear the meaning given to it in Regulation VI/8.2 of the 1974 SOLAS Convention;
7. 'terminal' shall mean any fixed, floating or mobile facility equipped and used for the loading or unloading of dry cargo in bulk into or from bulk carriers;
8. 'terminal operator' shall mean the owner of a terminal, or any organisation or person having taken over from the owner the responsibility for operating the terminal;
9. 'terminal representative' shall mean a person appointed by the terminal operator, who has the overall responsibility for and authority to control the loading or unloading operations conducted by the terminal for a particular bulk carrier;
10. 'master' shall mean the person who has command over a bulk carrier or a ship's officer designated by the master for the loading or unloading operations;
11. 'recognised organisation' shall mean an organisation recognised in accordance with Article 4 of Council Directive 94/57/EC (2);
12. 'administration of the flag State' shall mean the competent authorities of the State whose flag the bulk carrier is entitled to fly;
13. 'port State control authority' shall mean the competent authority of a Member State empowered to exercise the control provisions of Directive 95/21/EC;
14. 'competent authority' shall mean a national, regional or local public authority in the Member State empowered by national legislation to implement and enforce the requirements of this Directive;

15. ‘cargo information’ shall mean the cargo information required by Regulation VI/2 of the 1974 SOLAS Convention;

16. ‘loading or unloading plan’ shall mean a plan as referred to in Regulation VI/7.3 of the 1974 SOLAS Convention and having the format as contained in Appendix 2 of the BLU Code;

17. ‘ship/shore safety checklist’ shall mean the checklist as referred to in section 4 of the BLU Code and having the format as contained in Appendix 3 of the BLU Code;

18. ‘solid bulk cargo density declaration’ shall mean the information on the density of the cargo to be provided in compliance with Regulation XII/10 of the 1974 SOLAS Convention.

Article 4
Requirements in relation to the suitability of bulk carriers
Member States shall make the necessary arrangements to ensure that terminal operators verify the suitability of bulk carriers for loading or unloading of solid bulk cargoes, by checking compliance with the provisions of Annex I.

Article 5
Requirements in relation to the suitability of terminals
Member States shall ensure that terminals:

1. comply with the provisions of Annex II;

2. have an appointed terminal representative for each bulk carrier calling at the terminal for the loading or unloading of solid bulk cargoes;

3. have prepared information books containing the requirements of the terminal and the competent authorities and the information on the port and terminal as listed in Appendix 1 of the BLU Code, and that they make these information books available to the masters of bulk carriers calling at the terminal for loading or unloading solid bulk cargoes; and

4. have developed, implemented and maintain a quality management system, certified in accordance with the ISO 9001:2000 standards and audited in accordance with the guidelines of the ISO 10011:1991 standard.

Article 6
Responsibilities of masters and terminal representatives
Member States shall make the necessary arrangements to ensure that the following principles concerning the responsibilities of masters and terminal representatives are respected and applied:

1. Responsibilities of the master:

(a) The master shall be responsible at all times for the safe loading and unloading of the bulk carrier under his command.

(b) The master shall, well in advance of the ship's estimated time of arrival at the terminal, provide the terminal with the information set out in Annex III.

(c) Before any solid bulk cargo is loaded, the master shall ensure that he has received the cargo information required by Regulation VI/7.2 of the 1974 SOLAS Convention, and where required, a solid bulk cargo density declaration. This information shall be contained in a cargo declaration form as set out in Appendix 3 of the BLU Code.

(d) Prior to the start of and during loading or unloading, the master shall discharge the responsibilities listed in Annex IV.

2. Responsibilities of the terminal representative:

(a) Upon receipt of the ship's initial notification of its estimated time of arrival, the terminal representative shall provide the master with the information mentioned in Annex V.

(b) The terminal representative shall be satisfied that the master has been advised as early as possible of the information contained in the cargo declaration form.

(c) The terminal representative shall without delay notify the port State control authority of apparent deficiencies on board a bulk carrier which could endanger the safe loading or unloading of solid bulk cargoes.

(d) Prior to the start of and during loading or unloading, the terminal representative shall discharge the responsibilities listed in Annex VI.

Article 7
Procedures between bulk carriers and terminals
Member States shall ensure that the following procedures are applied in respect of the loading or unloading of bulk carriers with solid bulk cargoes:
1. Before solid bulk cargoes are loaded or unloaded, the master shall agree with the terminal representative on the loading or unloading plan in accordance with the provisions of Regulation VI/7.3 of the 1974 SOLAS Convention. The loading or unloading plan shall be prepared in the form laid down in Appendix 2 of the BLU Code, and the master and the terminal representative shall confirm their agreement to the plan by signing it. Any change to the plan shall be prepared, accepted and agreed by both parties in the form of a revised plan. The agreed loading or unloading plan and any subsequent agreed revisions shall be kept by the ship and the terminal for a period of six months and a copy of it shall be lodged with the competent authority.

2. Before loading or unloading is commenced the ship/shore safety checklist shall be completed and signed jointly by the master and the terminal representative in accordance with the guidelines of Appendix 4 of the BLU Code.

3. An effective communication between the ship and the terminal shall be established and maintained at all times, capable of responding to requests for information on the loading or unloading process and to ensure prompt compliance should the master or the terminal representative order the loading or unloading operations to be suspended.

4. The master and the terminal representative shall conduct the loading or unloading operations in accordance with the agreed plan. The terminal representative shall be responsible for the loading or unloading of the solid bulk cargo in accordance with the hold order, quantity and rate of loading or unloading stated on that plan. He shall not deviate from the agreed loading or unloading plan, otherwise than by prior consultation and written agreement with the master.

5. On completion of the loading or unloading, the master and the terminal representative shall agree in writing that the loading or unloading has been done in accordance with the loading or unloading plan, including any agreed variations. In the case of unloading, such agreement shall include a record that the cargo holds have been emptied and cleaned to the master’s requirements, as well as recording any damage suffered by the ship and any repairs carried out.

Article 8
Role of the competent authorities

1. Member States shall ensure that, without prejudice to the rights and obligations of the master provided under Regulation VI/7.7 of the 1974 SOLAS Convention, their competent authorities have the right to prevent or halt the loading or unloading of solid bulk cargoes whenever the safety of the ship is reported to be endangered thereby.

2. In case of disagreement between the master and the terminal representative as to the application of the procedures provided for in Article 7, the competent authority shall intervene where this is required in the interests of safety and/or the marine environment.

Article 9
Repair of damage incurred during loading or unloading

1. If damage to the ship's structure or equipment occurs during loading or unloading, it shall be reported by the terminal representative to the master and, if necessary, repaired.

2. If the damage could impair the structural capability or watertight integrity of the hull, or the ship's essential engineering systems, the administration of the flag State, or an organisation recognised by it and acting on its behalf, and the port State control authority shall be informed in order that it may decide whether immediate repair is necessary or whether it can be deferred. The decision shall be taken by the port State control authority, due account being taken of the opinion of the administration of the flag State, or the organization recognised by it and acting on its behalf.

3. For the purpose of taking the decision referred to in paragraph 2, a port State control authority may rely upon a recognised organisation to undertake the inspection of the damage and to advise on the necessity of carrying-out repairs or their deferral.

Article 10
Verification and reporting

1. Member States shall regularly verify that terminals are complying with the requirements of Articles 5, point (1), 6 point (2) and 7. Verification shall include the carrying-out of unannounced inspections during loading or unloading operations.

2. Member States shall provide the Commission every two years with a report on the results of such verification. The report shall also provide an assessment of the effectiveness of the harmonised procedures for cooperation and communication between bulk carriers and terminals as provided for in this Directive. The report shall be provided at the latest by 30 April of the year following the two years upon which it reports.
Article 11

Notification to the IMO

The Presidency of the European Parliament, the Council and the Commission shall jointly inform the IMO of the adoption of this Directive, whereby reference shall be made to paragraph 1.7 of the Annex to IMO Resolution A.797(19) of 23 November 1995 concerning the Safety of Ships Carrying Solid Bulk Cargoes.

Article 12

Committee procedure

1. The Commission shall be assisted by the committee instituted by Article 12(1) of Directive 93/75/EEC (1).

2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

Article 13

Amendment procedure

1. The definitions, the references to international conventions and codes and to IMO Resolutions and Circulars, the references to ISO standards, the references to Community instruments, and the Annexes, may be amended in accordance with the procedure referred to in Article 12, in order to bring them into line with international and Community instruments which have been adopted, amended or brought into force after the adoption of this Directive, provided that the scope of this Directive is not thereby broadened.

2. In accordance with the procedure referred to in Article 12, provisions may be adopted and incorporated in Article 7 and the Annexes for the implementation of the procedures laid down in this Directive, provided that such provisions do not broaden the scope of this Directive.

Article 14

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in the first subparagraph of Article 15(1) at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 15

Implementation and application

1. Member States shall adopt and publish, not later than (18 months after its entry into force), the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply those provisions with effect from 1 January 2003.

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

2. Member States shall notify to the Commission the provisions of domestic law which they adopt in the field governed by this Directive.

Article 16

Entry into force

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

Article 17

Addressees

This Directive is addressed to the Member States.

ANNEX I

VERIFICATION OF THE SUITABILITY OF BULK CARRIERS FOR LOADING AND UNLOADING SOLID BULK CARGOES

(as referred to in Article 4)

Bulk carriers calling at terminals in the Member States for the loading or unloading of solid bulk cargoes shall be checked on compliance with the following suitability requirements:

1. They shall be provided with cargo holds and hatch openings of sufficient size and such a design to enable the solid bulk cargo to be loaded, stowed, trimmed and unloaded satisfactorily.

2. They shall be provided with the cargo hold hatch identification numbers as used in the loading or unloading plan. The location, size and colour of these numbers shall be clearly visible to and identifiable by the operator of the terminal loading or unloading equipment.

3. Their cargo hold hatches, hatch operating systems and safety devices shall be in good functional order and used only for their intended purpose.

4. List indicating lights, if fitted, shall be tested prior to loading or unloading and proved to be operational.

5. If required to have an approved loading instrument on board, this instrument shall be certified and operational to carry out stress calculations during loading and unloading.

6. If fitted with own cargo-handling equipment on board, such equipment shall be certified and maintained, and used only under the general supervision of suitably qualified ship’s crew.

7. All propulsion and auxiliary machinery shall be in good functional order.

8. Deck equipment related to mooring and berthing operations shall be operable and in good order and condition.

ANNEX II

REQUIREMENTS IN RELATION TO THE SUITABILITY OF TERMINALS FOR LOADING AND UNLOADING SOLID BULK CARGOES

(as referred to in Article 5(1))

1. Terminal operators shall ensure that they only accept bulk carriers for loading or unloading of solid bulk cargoes at their terminal that can safely berth alongside the loading or unloading installation, taking into consideration water depth at the berth, maximum size of the ship, mooring arrangements, fendering, safe access and possible obstructions to loading or unloading operations.

2. Terminal loading and unloading equipment shall be properly certified and maintained in good order, in compliance with the relevant regulations and standards, and only operated by duly qualified and, if appropriate, certified personnel.

3. Terminals shall use cargo weighing equipment that is well maintained and regularly tested and calibrated to provide an accuracy to within 1% of the rated quantity required over the normal range of loading rates at regular intervals.

4. Terminal personnel shall be trained in all aspects of safe loading and unloading of bulk carriers, commensurate with their responsibilities. The training shall be designed to provide familiarity with the general hazards of loading and unloading of solid bulk cargoes and the adverse effect improper loading and unloading operations may have on the safety of the ship.

5. Terminal operators shall ensure that personnel involved in the loading and unloading operations are provided with and using personnel protective equipment and are duly rested to avoid accidents due to fatigue.
ANNEX III

INFORMATION TO BE PROVIDED BY THE MASTER TO THE TERMINAL

(as referred to in Article 6(l)(b))

1. The ship's estimated time of arrival off the port as early as possible. This advice shall be updated as appropriate.

2. At the time of the initial time of arrival advice:

   (a) Name, call sign, IMO number, flag, port of registry;

   (b) Loading or unloading plan, stating the quantity of cargo, stowage by hatches, loading or unloading order and the quantity to be loaded in each pour or unloaded in each stage of the discharge;

   (c) Arrival and proposed departure draughts;

   (d) Time required for ballasting or de-ballasting;

   (e) Ship's length overall, beam, and length of the cargo area from the forward coaming of the forward-most hatch to the after coaming of the aft-most hatch into which cargo is to be loaded or from which cargo is to be unloaded;

   (f) Distance from the waterline to the first hatch to be loaded or unloaded and the distance from the ship's side to the hatch opening;

   (g) Location of the ship's accommodation ladder;

   (h) Air draught;

   (i) Details and capacities of ship's cargo-handling gear, if any

   (j) Number and type of mooring lines;

   (k) Specific requests, such as for trimming or continuous measurement of the water content of the cargo;

   (l) Details of any necessary repairs which may delay berthing, the commencement of loading or unloading, or may delay the ship sailing on completion of loading or unloading;

   (m) Any other information related to the ship requested by the terminal.
ANNEX IV

DUTIES OF THE MASTER PRIOR TO AND DURING LOADING OR UNLOADING OPERATIONS

(as referred to in Article 6(1)(d))

Prior to and during loading or unloading operations the master shall ensure that:

1. the loading or unloading of cargo and the discharge or intake of ballast water is under the control of the ship's officer in charge;

2. the disposition of cargo and ballast water is monitored throughout the loading or unloading process to ensure that the ship's structure is not overstressed;

3. the ship shall be kept upright or, if a list is required for operational reasons, it shall be kept as small as possible;

4. the ship remains securely moored, taking due account of local weather conditions and forecasts;

5. sufficient officers and crew are retained on board to attend to the adjustment of the mooring lines or for any normal or emergency situation, having regard to the need of the crew to have sufficient rest periods to avoid fatigue;

6. the terminal representative is made aware of the cargo trimming requirements, which shall be in accordance with the procedures of the IMO Code of Safe Practice for Solid Bulk Cargoes;

7. the terminal representative is made aware of the requirements for harmonisation between de-ballasting or ballasting and cargo loading or unloading rates for his ship and of any deviation from the de-ballasting or ballasting plan or any other matter which may affect cargo loading or unloading;

8. the ballast water is discharged at rates, which conform to the agreed loading plan, and does not result in flooding of the quay or of adjacent craft. Where it is not practical for the ship to completely discharge its ballast water prior to the trimming stage in the loading process, he agrees with the terminal representative on the times at which loading may need be suspended and the duration of such suspensions;

9. there is agreement with the terminal representative as to the actions to be taken in the event of rain, or other change in the weather, when the nature of the cargo would pose a hazard in the event of such a change;

10. no hot work is carried out on board or in the vicinity of the ship while the ship is alongside the berth, except with the permission of the terminal representative and in accordance with any requirements of the competent authority;

11. close supervision of the loading or unloading operation and of the ship during final stages of the loading or unloading;

12. the terminal representative is warned immediately if the loading or unloading process has caused damage, has created a hazardous situation, or is likely to do so;

13. the terminal representative is advised when final trimming of the ship has to commence in order to allow for the conveyor system to run-off;

14. the unloading of the port side closely matches that of the starboard side in the same hold to avoid twisting the ship's structure;

15. when ballasting one or more holds, account is taken of the possibility of the discharge of flammable vapours from the holds and precautions are taken before any hot work is permitted adjacent to or above these holds.
ANNEX V

INFORMATION TO BE PROVIDED BY THE TERMINAL TO THE MASTER

(as referred to in Article 6(2)(a))

1. The name of the berth at which loading or unloading will take place and the estimated times for berthing and completion of loading or unloading (1);

2. Characteristics of loading or unloading equipment, including the terminal’s nominal loading or unloading rate and the number of loading or unloading heads to be used, as well as the estimated time required to complete each pour or — in the case of unloading — the estimated time required for each stage of the discharge;

3. Features on the berth or jetty the master may need to be aware of, including the position of fixed and mobile obstructions, fenders, bollards and mooring arrangements;

4. Minimum depth of water alongside the berth and in approach and departure channels (1);

5. Water density at the berth;

6. Maximum distance between the water line and the top of the cargo hatch covers or coamings, whichever is relevant to the loading or unloading operation, and the maximum air draught;

7. Arrangements for gangways and access;

8. Which side of the ship is to be alongside the berth;

9. Maximum allowable speed of approach to the jetty and availability of tugs, their type and bollard pull;

10. The loading sequence for different parcels of cargo, and any other restrictions if it is not possible to take the cargo in any order or any hold to suit the ship;

11. Any properties of the cargo to be loaded which may present a hazard when placed in contact with cargo or residues on board;

12. Advance information on the proposed loading or unloading operations or changes to existing plans for loading or unloading;

13. If the terminal’s loading or unloading equipment is fixed, or has any limits to its movement;

14. Mooring lines required;

15. Warning of unusual mooring arrangements;

16. Any restrictions on ballasting or de-ballasting;

17. Maximum sailing draught permitted by the competent authority; and

Any other item related to the terminal requested by the master.

(1) Information on estimated times for berthing and departure and on minimum waterdepth at the berth shall be progressively updated and passed to the master on receipt of successive ETA advices. Information on minimum waterdepth in approach and departure channels shall be provided by the terminal or the port authority, as appropriate.
ANNEX VI

DUTIES OF THE TERMINAL REPRESENTATIVE PRIOR TO AND DURING LOADING OR UNLOADING OPERATIONS

(as referred to in Article 6(2)(d))

Prior to the start of and during loading or unloading operations the terminal representative shall:

1. provide the master with the names and procedures for contacting the terminal personnel or shipper’s agent who will have the responsibility for the loading or unloading operation and with whom the master will have contact;

2. take all precautionary measures to avoid damage to the ship by the loading or unloading equipment and inform the master if damage occurs;

3. in the case of high density cargoes, or when the individual grab loads are large, alert the master that there may be high, localised impact loads on the ship’s structure until the tank top is completely covered by cargo, especially when high free-fall drops are permitted and special care is taken at the start of the loading operation in each cargo holds;

4. ensure that there is agreement between the master and the terminal representative at all stages and in relation to all aspects of the loading or unloading operations and that the master is advised on any change to the agreed loading rate, and at the completion of each pour of the weight loaded;

5. maintain a record of the weight and disposition of the cargo loaded or unloaded and ensure that the weights in the holds do not deviate from the agreed loading or unloading plan;

6. ensure that the quantities of cargo required to achieve the departure draft and trim shall allow for all cargo on the terminal’s conveyor systems to be run off and empty on completion of a loading. For that purpose the terminal representative shall advise the master of the nominal tonnage contained on the terminal’s conveyor system and any requirements for clearing the conveyor system on completion of the loading;

7. in the case of unloading, give the master the maximum warning when it is intended to increase, or to reduce, the number of unloading heads used and advise the master when unloading is considered to be completed from each hold;

8. ensure that no hot work is carried out on board or in the vicinity of the ship while the ship is alongside the berth, except with the permission of the master and in accordance with any requirements of the competent authority.
Proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

(2000/C 311 E/18)

(Text with EEA relevance)


(Submitted by the Commission on 24 May 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point 2(a) and (b) of Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

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

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

Whereas:

(1) The preparation of a common policy on asylum, including common European arrangements for asylum, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union.

(2) Cases of mass influx of displaced persons who cannot return to their country of origin have become substantially more frequent in Europe in recent years. It is often necessary to set up exceptional temporary protection schemes to offer them immediate temporary protection to avert the risk of harmful dysfunctions in the asylum system.

(3) In the conclusions relating to persons displaced by the conflict in the former Yugoslavia adopted by the Ministers responsible for immigration at their meetings in London on 30 November and 1 December 1992 and Copenhagen on 1 and 2 June 1993, the Member States and the European Union institutions expressed their concern at the situation of displaced persons.

(4) On 25 September 1995 the Council adopted a Resolution on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis (1), and, on 4 March 1996, adopted Decision 96/198/JHA on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis (2).

(5) The Action Plan of the Council and the Commission of 3 December 1998 (3) provides for the rapid adoption, in accordance with the Treaty of Amsterdam, of minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and of measures promoting a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons.

(6) On 27 May 1999 the Council adopted conclusions on displaced persons from Kosovo. These conclusions call on the Commission and the Member States to learn the lessons of their response to the Kosovo crisis in order to establish the measures in accordance with the Treaty.

(7) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States.

(8) It therefore seems necessary to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and to take measures to promote a balance of efforts between the Member States in receiving and bearing the consequences of receiving such persons.

(9) Those standards and measures are linked and interdependent for reasons of effectiveness, coherence and solidarity and in order to avert the risk of secondary movements and support the common European arrangements for asylum. They should therefore be enacted in a single legal instrument.

(10) This temporary protection should be compatible with the Member States' international obligations as regards refugees. In particular, it must not prejudice the recognition of refugee status pursuant to the Geneva Convention of 28 July 1951 on the status of refugees, as amended by the New York Protocol of 31 January 1967, ratified by all the Member States.


The mandate of the United Nations High Commissioner for Refugees regarding refugees and other persons in need of international protection should be respected, and, in the context of temporary protection in the event of a mass influx of displaced persons, effect should be given to Declaration No 17 relating to Article 73k, now Article 63, of the Treaty establishing the European Community, to the Amsterdam Treaty.

Provision should be made for this Directive not to apply to persons received under temporary protection schemes before its entry into force.

It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for persons enjoying temporary protection in the event of a mass influx of displaced persons.

Given the specific nature of temporary protection in the event of a mass influx of displaced persons and the impossibility of setting quantitative criteria as to what constitutes a mass influx in advance, a maximum duration for such protection should be set and its implementation should be made subject to a Council Decision. That Decision should then be binding in all Member States in relation to the displaced persons to whom the Decision applies. The conditions for the expiry of the Decision should also be determined.

Member States wishing to do so should be allowed to extend the temporary protection in the event of a mass influx of displaced persons to additional categories of displaced persons over and above those to whom the Council Decision applies, where they are displaced for the same reasons and from the same country of origin, and the conditions for exercising this possibility should be determined.

The Member States' obligations as to the conditions of reception and residence of persons enjoying temporary protection in the event of a mass influx of displaced persons should be determined. These obligations should be fair and offer an adequate level of protection to those concerned.

Any discrimination liable to compromise the objective of developing the European Union as an area of freedom, security and justice, including as regards asylum policy and temporary protection in the event of a mass influx of displaced persons, should be avoided.

Rules should be laid down to govern access to the asylum procedure in the context of temporary protection in the event of a mass influx of displaced persons, in conformity with the Member States' international obligations and with the Treaty.

Provision should be made for principles and measures governing return to the country of origin and the situation in the Member States for the purposes of temporary protection in the event of a mass influx of displaced persons.

Provision should be made for a solidarity mechanism intended to contribute to the attainment of a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons in the event of a mass influx. The mechanism should consist of two components. The first is financial. The second concerns the physical reception of persons in the Member States on the basis of voluntary action by both the receiving Member States and the displaced persons. The possibility of not applying the second component should be provided for, as should the conditions for its application.

The implementation of temporary protection should be accompanied by administrative cooperation.

It is necessary to determine cases of exclusion from temporary protection in the event of a mass influx of displaced persons.

The Member States should provide for penalties in the event of infringement of this Directive.

The implementation of this Directive should be evaluated at regular intervals.

In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and measures promoting a balance of efforts between the Member States in receiving and bearing the consequences of receiving such persons, cannot be sufficiently attained by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

The purpose of this Directive is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin, and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.
Article 2

(a) 'temporary protection in the event of a mass influx' means exceptional measures to provide, in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, where there is a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection; hereinafter referred to as 'temporary protection';

(b) 'Geneva Convention' means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;

(c) 'displaced persons from third countries who are unable to return to their country of origin' means third-country nationals or stateless persons who have had to leave their country of origin and are unable to return in safe and humane conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving protection, in particular:

— persons who have fled areas of armed conflict or endemic violence;

— persons at serious risk of or who have been the victims of systematic or generalised violations of their human rights;

(d) 'mass influx' means arrival in the Community of a large number of displaced persons from third countries who are unable to return to their country of origin, who come from a specific country or geographical area;

(e) 'refugees' means third-country nationals or stateless persons within the meaning of Article 1A of the Geneva Convention;

(f) 'unaccompanied minors' means third-country nationals below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person;

(g) 'residence permit' means any permit or authorisation issued by the authorities of a Member State and taking the form provided for in that State's legislation, allowing a third country national to reside in its territory;

(h) 'applicant for reunification' or 'applicant' means a third-country national enjoying temporary protection regime in a Member State and applying to be joined by one or more members of his family.

Article 3

1. Temporary protection does not prejudge recognition of refugee status under the Geneva Convention.


3. The establishment, implementation and termination of temporary protection shall be the subject of regular consultations with the United Nations High Commission for Refugees (UNHCR) and other organisations concerned.

4. This Directive shall not apply to persons who have been accepted under temporary protection schemes prior to its entry into force.

5. This Directive shall not affect the prerogative of the Member States to adopt or retain more favourable provisions for persons covered by temporary protection.

CHAPTER II

Duration and implementation of temporary protection

Article 4

The duration of temporary protection shall be one year. Unless terminated under the terms of Article 6(1)(b), it may be extended automatically by six-month periods for a maximum of one year.

The maximum duration of temporary protection may not exceed two years in total.

Article 5

1. A mass influx of displaced persons shall be established by a Council decision adopted by qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council. The Council Decision shall have the effect of introducing temporary protection, for the displaced persons to which it refers, in all the Member States, in accordance with the provisions of this Directive. The Decision shall include at least:

(a) a description of the specific groups of persons to whom the temporary protection applies;

(b) the date on which the temporary protection will take effect;

(c) the declarations by the Member States pursuant to Article 25.
2. The Council Decision shall be based on:

(a) an examination of the situation and the scale of the population movements;

(b) an assessment of the advisability of establishing temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures;

(c) information received from the Member States, the Commission, the UNHCR and other organisations concerned.

3. The relevant provisions of the Council’s Rules of Procedure governing urgent cases may apply where appropriate.


Article 6

1. Temporary protection shall come to an end:

(a) when the maximum duration has been reached

or

(b) at any time, by Council Decision adopted by qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.

2. The Council Decision shall be based on the establishment of the fact that the situation in the country of origin is such as to permit the long-term, safe and dignified return, in accordance with Article 33 of the Geneva Convention and the European Convention on Human Rights. The European Parliament shall be informed of the Decision.

Article 7

Member States may extend temporary protection to additional categories of persons who are displaced for the same reasons and from the same country of origin in cases where these categories are not included in the Council Decision provided for in Article 5. They shall notify the Council and the Commission immediately.

CHAPTER III

Obligations of the Member States towards persons enjoying temporary protection

Article 8

1. The Member States shall adopt the necessary measures to provide persons enjoying temporary protection with residence permits for the entire duration of the protection. Documents shall be issued for that purpose.

2. Whatever the period of validity of the residence permits referred to in paragraph 1, the treatment granted by the Member States to persons enjoying temporary protection may not be less favourable than that set out in Articles 9 to 15.

3. The Member States shall, if necessary, provide persons admitted to their territory for the purposes of temporary protection with every facility for obtaining the necessary visas, including transit visas. These visas shall be free of charge. Formalities must be reduced to a minimum because of the urgency of the situation.

Article 9

The Member States shall issue to persons enjoying temporary protection a document, in the official language or languages of the country of origin and the host country, in which the provisions relating to temporary protection are clearly set out.

Article 10

The Member States shall authorise persons enjoying temporary protection to engage in employed or self-employed activities under the same conditions. This principle of equal treatment of persons enjoying temporary protection and refugees also applies to remuneration, social security related to employed or self-employed activities, and other conditions of employment.

Article 11

1. The Member States shall ensure that persons enjoying temporary protection have access to suitable accommodation or, if necessary, receive the means to obtain housing.

2. The Member States shall make provision for persons enjoying temporary protection to receive the necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources, as well as medical care. Without prejudice to paragraph 4, the financial support necessary for medical care shall include at least emergency care and the treatment of illness.

3. Where persons enjoying temporary protection are engaged in employed or self-employed activities, account shall be taken, when fixing the proposed level of aid, of their ability to meet their own needs.

4. The Member States shall provide appropriate medical or other assistance to persons enjoying temporary protection who have special needs, such as unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.

Article 12

1. The Member States shall grant minors enjoying temporary protection access to the education system under the same conditions as nationals of the host Member State. The Member States may limit such access to the state education system. Minors shall be younger than the age of legal majority in the Member State concerned.
2. The Member States shall allow adults enjoying temporary protection access to the general education system, as well as to vocational training, further training or retraining.

Article 13

1. When the circumstances surrounding the mass influx have led to the separation of families which already existed in the country of origin, the Member States shall authorise the entry and residence of the following persons:

(a) the spouse or unmarried partner in a stable relationship, if the legislation of the Member State concerned treats unmarried couples in the same way as married couples;

(b) the children of the couple referred to in point (a) or of the applicant, on condition that they are unmarried and dependent and without distinction according to whether they were born in or out of wedlock or adopted;

(c) other family members if they are dependent on the applicant or have undergone particularly traumatic experiences or require special medical treatment.

2. Families may be reunited at any time during the period of temporary protection until two months before the end of the maximum two-year period. Reunited family members shall be granted residence permits under the temporary protection scheme.

3. The application for reunification shall be lodged by the applicant in the Member State where he resides. The Member States shall establish that the various members of the family agree to this reunification.

4. For the purposes of any decision under paragraph 1, the absence of documentary evidence of the family relationship shall not be regarded as an obstacle in itself. Member States shall take into account all of the facts and specific circumstances in assessing the validity of the evidence submitted and the credibility of the statements by the interested parties.

5. If the members of a single family as described in paragraph 1 enjoy temporary protection in different Member States, the Member States shall authorise the family to be reunited in the host Member State of their choice under the same conditions as in paragraph 2. Transfer of the family to this Member State for the purposes of reunification shall result in the withdrawal of the residence permit issued in the Member State of departure and termination of the obligations towards the persons concerned relating to temporary protection in the Member State of departure.

The application for reunification shall be lodged in the host State in which the family wishes to be united. The Member States shall establish that the various members of the family agree to this reunification.

6. The Member State concerned shall examine the application for reunification as quickly as possible. Any decision rejecting the application shall be accompanied by a statement of reasons and be open to legal challenge in the Member State concerned. When examining applications, the Member States shall give priority to the interests of minors.

7. The practical implementation of this Article may involve cooperation with the international organisations concerned.

Article 14

1. The Member States shall take the necessary measures as soon as possible, to ensure the representation of unaccompanied minors enjoying the temporary protection by legal guardianship, or representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation.

2. During the period of temporary protection Member States shall provide for unaccompanied minors to be placed:

(a) with adult relatives;

(b) with a foster family;

(c) in reception centres with special provisions for minors, or in other accommodation suitable for minors.

3. The Member States shall take the necessary steps to enable an unaccompanied minor whose family has not been located to be placed, where appropriate, with a person or persons who looked after the child when fleeing. The Member States shall establish that the unaccompanied minor and the person or persons concerned agree to this reunification.

Article 15

The Member States shall implement their obligations under Articles 8 to 14 without discriminating between persons enjoying temporary protection, on the grounds of sex, race, ethnic origin, nationality, religion or convictions, handicap, age or sexual orientation.

CHAPTER IV
Access to the asylum procedure in the context of temporary protection

Article 16

1. Persons enjoying temporary protection shall be guaranteed access to the procedure for determining refugee status if they so wish.
2. Access shall be granted no later than the end of the temporary protection. Where an asylum application has been submitted before or during temporary protection and consideration of the application has been suspended, the suspension may not extend beyond the end of the temporary protection. The Member States may provide for mechanisms for confirming the asylum application, setting reasonable deadlines and ensuring that applicants are properly informed.

**Article 17**
The criteria and mechanisms for deciding which Member State is responsible for considering asylum application shall apply.

**Article 18**
1. The Member States may provide that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration.

2. Where, after an asylum application has been examined, refugee status is not granted to a person eligible for temporary protection, the Member States shall, without prejudice to Article 29, provide for that person to continue to enjoy temporary protection for the remainder of the period of protection.

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**CHAPTER V**

**Return and measures after temporary protection**

**Article 19**
When the temporary protection ends, the ordinary law on protection and entry and residence of foreign nationals in the Member States shall apply.

**Article 20**
The Member States shall consider any compelling humanitarian reasons which may make return impossible or unrealistic in specific cases.

**Article 21**
1. The Member States shall take the measures necessary to facilitate the voluntary return, in a secure and dignified manner, of persons enjoying temporary protection or whose temporary protection has ended. The Member States shall ensure that the decision of those persons to return is taken in full knowledge of the facts. The Member States may provide for the possibility of exploratory visits.

2. For as long as the temporary protection has not ended, the Member States shall, on the basis of the circumstances prevailing in the country of origin, give favourable consideration to requests for return to the host Member State from persons who have enjoyed temporary protection and exercised their right to voluntary return.

3. At the end of the temporary protection, the Member States may provide for the obligations laid down in Chapter III to be extended individually to persons who have been covered by temporary protection and are benefiting from a voluntary return programme. The extension shall have effect until the date of return.

**Article 22**
1. The Member States shall take the measures necessary concerning the conditions of residence of persons who have enjoyed temporary protection and have special needs such as medical or psychological treatment, in order to avoid interrupting such treatment to the detriment of their personal medical interests, even though the temporary protection has ended.

2. The Member States shall ensure that families whose children are minors and attend school in a Member State can, if they so wish, benefit from residence conditions allowing the children concerned to complete the current school period.

**Article 23**
The Member States shall take appropriate measures, in agreement with the persons concerned and in cooperation with the international organisations responsible, to facilitate any resettlement programmes which may be necessary.

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**CHAPTER VI**

**Solidarity**

**Article 24**
The measures provided for in this Directive shall be financed by the European Refugee Fund set up by Decision . . ./. . ., under the conditions laid down in that Decision.

**Article 25**
1. The Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity. They shall either indicate — in figures or in general terms — their capacity to receive such persons, or state the reasons for their incapacity to do so. This information shall be set out in a declaration by the Member States to be annexed to the Decision provided for in Article 5. After that Decision has been adopted, the Member States may indicate additional reception capacity by notifying the Council and the Commission. This information shall be passed on swiftly to the UNHCR.

2. The Member States, acting in cooperation with the competent international organisations, shall ensure that the beneficiaries defined in the Decision referred to at Article 5, who are not yet on their territory are willing to be received on their territory.
Article 26

1. For the duration of the temporary protection, the Member States shall cooperate with each other, where appropriate, with a view to transferring the residence of persons enjoying temporary protection from one Member State to another. The beneficiaries’ consent shall be obtained.

2. A Member State shall communicate its requests for transfers to the other Member States and notify the Commission and the UNHCR. The Member States shall inform the requesting Member State of their capacity for receiving transferees.

3. Where a transfer is made from one Member State to another, the residence permit in the Member State of departure expires and the obligations towards the persons concerned relating to temporary protection in the Member State of departure shall come to an end. The new host Member State shall grant temporary protection to the persons concerned.

4. The Member States shall use the model pass set out in the Annex for transfers between Member States of persons enjoying temporary protection.

Article 27

The application of Article 25 and 26 shall be without prejudice to the Member States’ obligations regarding non-refoulement.

CHAPTER VII

Administrative cooperation

Article 28

1. With a view to the administrative cooperation required to implement the temporary protection scheme, the Member States shall each appoint a national contact point, whose address they shall communicate to each other and to the Commission. The Member States shall, in liaison with the Commission, take all the appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

2. The Member States shall, regularly and as quickly as possible, communicate the data concerning the number of persons covered by temporary protection and full information on the national laws, regulations and administrative provisions relating to the implementation of temporary protection.

CHAPTER VIII

Special provisions

Article 29

1. The Member States may exclude a person from temporary protection if they are regarded as a danger to their national security or if there are serious grounds for believing that they have committed a war crime or crime against humanity or if, during consideration of the asylum application, it is found that the exclusion clauses in Article 1F of the Geneva Convention apply.

2. These grounds for exclusion shall be based solely on the personal conduct of the person concerned. Exclusion decisions or measures shall be based on the principle of proportionality. The persons concerned shall be entitled to seek redress in the courts of the Member State concerned.

CHAPTER IX

Final provisions

Article 30

The Member States shall lay down the penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 32 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 31

1. No later than two years after the date specified in Article 32, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. The Member States shall send the Commission all the information that is appropriate for drawing up this report.

2. After presenting the report referred to at paragraph 1, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.

Article 32

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.

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

Article 33

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

Article 34

This Directive is addressed to the Member States.
ANNEX

Model pass for the transfer of persons under temporary protection

PASS

Reference number ():

Issued under Article 26 of Directive .../.../EC of ... on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

Valid only for the transfer of () to (). The person in question must present himself/herself at () by ()

Issued at:

Surname:

Forename:

Place and date of birth:

Nationality:

Date issued:

The passholder has been identified by the authorities ()

This document is issued only pursuant to Article 26 of Directive .../.../EC of ... and in no way constitutes a document which can be assimilated to a travel document authorising the crossing of the external border or a document proving the individual's identity.

() The reference number is allocated by the country from which the transfer to another Member State is made.
() Member State from which the transfer is being made.
() Member State to which the transfer is being made.
() Place where the person must present himself/herself on arrival in the second Member State.
() Deadline by which the person must present himself/herself on arrival in the second Member State.
() On the basis of the following travel or identity documents, presented to the authorities.
() On the basis of documents other than a travel or identity document.
Amended proposal for a Decision of the European Parliament and of the Council European Year of Languages 2001 (*)

(Text with EEA relevance)


(Presented by the Commission pursuant to Article 250(2) of the EC Treaty on 25 May 2000)


THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular to Articles 149 and 150 thereof,

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

Having regard to the proposal from the Commission, Having regard to the proposal from the Commission (2),

Having regard to the opinion of the Committee of the Regions, Having regard to the opinion of the Committee of the Regions (3),

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

Whereas:

(1) In the preamble to the EC Treaty, it is stated that the Member States are: 'Determined to promote the development of the highest possible level of knowledge for their peoples through a wide access to education and through its continuous updating';

(2) Article 18 of the EC Treaty establishes the right of every citizen of the European Union to move and reside freely within the territory of the Member States', and whereas the ability to use foreign languages is essential to the ability in practice fully to exercise that right;

(2) CES 1129/99 (1999/0208COD).
(3) CdR 465/99 fin.
(3) Article 151 of the EC Treaty states that the Community shall contribute to the flowering of the cultures of the Member States while respecting their national and regional diversity, and shall take cultural aspects into account in its action under other provisions of the Treaty; whereas among the cultural aspects, matters pertaining to languages are of great importance;

(4) All the European languages, in their spoken and written forms, are equal in value and dignity from the cultural point of view and are an integral part of European cultures and civilisation;

(5) The languages question is a challenge that must be tackled as part of the European integration process and the European Year of Languages may therefore prove to be highly instructive as far as the formulation of measures to encourage cultural and linguistic diversity is concerned;

(6) Article 6 of the Treaty on European Union states that the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950;

(7) Access to the vast literary heritage in the languages in which it was originally produced would contribute to developing mutual understanding and giving a tangible content to the concept of European citizenship;

(8) It is important to learn languages as it enhances awareness of cultural diversity and helps eradicate xenophobia, racism, anti-Semitism and intolerance;

(9) In addition to the human, cultural and political advantages, learning languages is also of considerable potential economic benefit;

(10) A command of the respective mother tongue and knowledge of the classical languages, in particular Latin and Greek, can make it easier to learn other languages;
It is important to raise awareness among public and private decision-makers of the importance of easy access to language learning facilities;

The Council Conclusions of 12 June 1995 on linguistic diversity and multilingualism in the European Union emphasised that linguistic diversity must be preserved and multilingualism promoted in the Union, with equal respect for the languages of the Union and with due regard to the principle of subsidiarity', and whereas Decision 2493/95/EC of the European Parliament and Council, adopted on 23 October 1995 and establishing 1996 as the European Year of Lifelong Learning (1), highlighted the importance of the role of lifelong learning in developing competencies, including linguistic, throughout an individual's lifetime;

The Commission's 1995 White Paper 'Education, training, research: Teaching and learning: towards a learning society' (2) established as its Objective Four proficiency for all in three Community languages and whereas the Commission's 1996 Green Paper 'Education, Training, Research: The obstacles to transnational mobility' (3) concluded that 'learning at least two Community languages has become a precondition if citizens of the European Union are to benefit from occupational and personal opportunities open to them in the single market';

The Council resolution of 31 March 1995 on improving and diversifying language learning and teaching within the education systems of the European Union (4) stipulates that pupils should, as a general rule, have the opportunity of learning two languages other than their mother tongue(s) for a minimum of two consecutive years for each language during compulsory schooling and if possible for a longer period;

(5) The measures in the Lingua programme, adopted on 28 July 1989 under Decision 89/489/EEC of the Council (1), were reinforced and partially integrated as horizontal measures into the Socrates programme established on 14 March 1995 by Decision 819/95/EC of the European Parliament and the Council (2) and modified on 23 February 1998 by Decision 576/98/EC (3), and whereas those measures have promoted the improvement of knowledge of the languages of the Union and have thus contributed to greater understanding and solidarity between the peoples of the Union; whereas the Council in its common position of 21 December 1998 proposes that those measures be further developed and reinforced in the second phase of the Socrates programme (4);

(6) The Leonardo da Vinci programme, established on 6 December 1994 by Decision 94/819/EC (5) of the European Parliament and the Council, has, building on the results achieved under the Lingua programme, supported activities aimed at developing linguistic skills as part of vocational training measures; whereas that support will be further developed and reinforced in the second phase of the Leonardo da Vinci programme, established on 26 April 1999 by Decision 99/382 EC of the Council (6);

(15) The measures in the Lingua programme, adopted on 28 July 1989 under Decision 89/489/EEC of the Council (1), were reinforced and partially integrated as horizontal measures into the Socrates programme established on 14 March 1995 by Decision 819/95/EC of the European Parliament and the Council (2) and modified on 23 February 1998 by Decision 576/98/EC (3), and whereas those measures have promoted the improvement of knowledge of the languages of the Union and have thus contributed to greater understanding and solidarity between the peoples of the Union; whereas the Council in its common position of 21 December 1998 proposes that those measures be further developed and reinforced in the second phase of the Socrates programme (4);

(16) The Leonardo da Vinci programme, established on 6 December 1994 by Decision 94/819/EC (5) of the European Parliament and the Council, has, building on the results achieved under the Lingua programme, supported activities aimed at developing linguistic skills as part of vocational training measures; whereas that support will be further developed and reinforced in the second phase of the Leonardo da Vinci programme, established on 26 April 1999 by Decision 99/382 EC of the Council (6);

(17) The ‘Culture 2000’ programme, established 14 February 2000 by Decision 508/2000/EC of the European Parliament and the Council, also contributes to improving mutual understanding of the cultural achievements of the European peoples, especially by highlighting cultural diversity and multilingualism;

(7) A multiannual programme to promote the linguistic diversity of the Community in the information society was established by Council Decision 96/664/EC of 21 November 1996;

(18) A multiannual programme to promote the linguistic diversity of the Community in the information society was established by Council Decision 96/664/EC of 21 November 1996;

(8) The Report of the High Level Panel on the Free Movement of Persons (\(^1\)) presented to the Commission on 18 March 1997, considered ‘the multiplicity of European languages [to be] . . . a treasure to be safeguarded’ and suggested measures to foster language training and the use of languages in the Community;

(9) In accordance with the principle of subsidiarity as defined in Article 5 of the EC Treaty, the objectives of the proposed action cannot be sufficiently achieved by the Member States, \textit{inter alia} because of the need for a coherent Community-wide information campaign avoiding duplication and achieving economies of scale; whereas those objectives can be better achieved by the Community, owing to the transnational dimension of Community actions and measures; whereas this Decision does not go beyond what is necessary to achieve those objectives;

(10) It is important to develop appropriate cooperation between the European Community and the Council of Europe so as to ensure consistency between actions undertaken at Community level and those undertaken by the Council of Europe, and whereas such cooperation is expressly mentioned in Article 149 of the Treaty establishing the Community;

(19) The Report of the High Level Panel on the Free Movement of Persons (\(^1\)) presented to the Commission on 18 March 1997, considered ‘the multiplicity of European languages [to be] . . . a treasure to be safeguarded’ and suggested measures to foster language training and the use of languages in the Community;

(20) In accordance with the principle of subsidiarity as defined in Article 5 of the EC Treaty, the objectives of the proposed action cannot be sufficiently achieved by the Member States, \textit{inter alia} because of the need for a coherent Community-wide information campaign avoiding duplication and achieving economies of scale; whereas those objectives can be better achieved by the Community, owing to the transnational dimension of Community actions and measures; whereas this Decision does not go beyond what is necessary to achieve those objectives;

(21) However, it is also important that there should be close cooperation and coordination between the Commission and the Member States, so as to ensure that actions undertaken at European level are underpinned by small-scale actions undertaken at local, regional and national level which are likely to be more suited to the needs of target groups and specific situations, and that cultural diversity is strengthened as a result;

(22) It is important to develop appropriate cooperation between the European Community and the Council of Europe so as to ensure consistency between actions undertaken at Community level and those undertaken by the Council of Europe, and whereas such cooperation is expressly mentioned in Article 149 of the Treaty establishing the Community;

(23) It is important to take into account the fact that the European Year will take place against the background of preparations for the enlargement of the Union;


This Decision lays down for the entire duration of the programme, a financial framework constituting the prime reference, within the meaning of point 33 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 6 May 1999, for the budgetary authority, during the annual budgetary procedure (1);

The Joint Declaration of 4 May 1999 by the European Parliament, the Council and the Commission sets out the practical arrangements for the implementation of the procedure laid down in Article 251 of the EC Treaty (2);

The measures to be taken for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (3);

HAVE DECIDED AS FOLLOWS:

Article 1

Establishment of the European Year of Languages

1. 2001 shall be designated as the ‘European Year of Languages’.

2. During the European Year, information and promotional measures will be undertaken on the theme of languages, with the aim of encouraging language learning by all persons legally residing in the Member States, notably by raising awareness of the influence of language competencies on the quality of life and on economic competitiveness. These measures will cover the official languages of the Community, together with Irish, Letzeburgesch, and other languages recognised by the Member States.

(2) OJ C 148, 28.5.1999.
Article 2

Objectives

The objectives of the European Year of Languages shall be:

a) to raise awareness of the richness of linguistic diversity within the European Union

b) to bring to the notice of the widest possible public the advantages of competencies in a range of languages, as a key element in personal development, in intercultural understanding, in making full use of the rights conferred by European citizenship and in enhancing the economic potential of individuals, enterprises and society as a whole;

c) to encourage the lifelong learning of languages and related skills, by all persons legally residing in the Member States, whatever their age, background or previous educational experiences and achievements;

d) to collect and disseminate information about the teaching and learning of languages, and about skills, methods, and tools which assist that teaching and learning and/or facilitate communication between users of different languages.

AMENDED PROPOSAL

Unchanged

a) to raise awareness of the richness of linguistic diversity within the European Union and the value in terms of civilisation and culture embodied therein, acknowledging the principle that all languages must be recognised to have equal value and dignity and encouraging multilingualism;

b) to bring to the notice of the widest possible public the advantages of competencies in several languages, as a key element in personal and professional development (including in finding one's first job), in intercultural understanding, in making full use of the rights conferred by citizenship of the Union and in enhancing the economic and social potential of individuals, enterprises and society as a whole; the public referred to above shall include, among others: pupils and students, parents, workers, job seekers, the speakers of certain languages, the inhabitants of border areas, the peripheral regions, cultural bodies, deprived social groups, migrants, etc;

c) to encourage the lifelong learning, where appropriate, starting at preschool and primary school age, of languages and related skills, involving the use of languages for specific purposes, particularly in a professional context, by all persons residing in the Member States, whatever their age, background, social situation or previous educational experiences and achievements;

d) to collect and disseminate information about the teaching and learning of languages, and about skills, methods (especially innovative methods), and tools which assist that teaching and learning, including those that are developed in the framework of other Community actions and initiatives, and/or facilitate communication between users of different languages.
### Article 3

**Content of actions**

The actions designed to meet the objectives set out in Article 2 above may include, in particular:

- the use of a common logo and of slogans;  
- a Community-wide information campaign;  
- the organisation of meetings, competitions, prizes and events at Community, transnational, national, regional and local level;  
- the organisation of competitions and, prizes at Community, transnational, national and regional level;  
- financial support for initiatives, at transnational, national, regional and local level, which promote the objectives of the European Year of Languages.

Details of these actions are set out in the Annex.

### Article 4

**Implementation**

1. The Commission shall be responsible for the implementation of this Decision.

2. Each Member State shall designate an appropriate body to organise its participation in the European Year, and to be responsible for the coordination and implementation at national level of the actions provided for in this Decision, including through assistance with the selection procedure described in Article 7.
Article 5

Committee

1. The Commission shall be assisted by a committee.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

2. Whenever this article is referred to, Articles 3 and 7 of Council Decision 1999/468/EC shall apply, without prejudice to Article 8 thereof.

3. The Committee shall draw up its own rules of procedure.

Article 6

Financial arrangements

1. Actions which are Community-wide in nature, as described in Part A of the Annex, may be financed in total by the Community budget.

2. Actions which are local, regional, national, or transnational in nature, as described in Part B of the Annex, may be co-financed by the Community budget, up to a maximum of 50% of the total cost.
Article 7

Application and selection procedure

1. Applications for the co-financing of actions from the Community budget under Article 6, paragraph 2, shall be submitted to the Commission through the body designated under Article 4, paragraph 2.

2. Decisions on the financing and co-financing of actions under Article 6 shall be taken by the Commission in accordance with the procedures set out in Article 5. The Commission shall ensure a balanced distribution among Member States and among the different relevant fields of activity.

Article 8

Coherence

The Commission, in cooperation with the Member States, shall ensure:

— consistency between the actions provided for in this Decision and other Community actions and initiatives, in particular those in the field of education and training;

— optimal complementarity between the European Year and other existing Community, national and regional initiatives and resources, where these can contribute to fulfilling the objectives of the European Year.

Article 9

Budget

1. The financial framework for the implementation of this action for the period 1 January-31 December 2001 shall be EUR 8 million.
2. The appropriations shall be authorised by the budgetary authority within the limits of the financial perspectives.

**Article 10**

**International cooperation**

In the framework of the European Year, and in accordance with the procedure laid down in Article 5, the Commission may cooperate with relevant international organisations. In particular, it shall make appropriate arrangements for cooperation with the Council of Europe.

In the framework of the European Year, and in accordance with the procedure laid down in Article 5, the Commission may cooperate with relevant international organisations. In particular, there shall be close cooperation and coordination as well as joint initiatives with the Council of Europe in order to help establish links between the peoples of Europe.

**Article 11**

**Monitoring and evaluation**

The Commission shall submit, by 31 December 2002 at the latest, a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the implementation, results and overall assessment of the actions provided for in this Decision.

The Commission shall submit, by 31 December 2002 at the latest, a detailed report containing factual information to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the implementation, results and overall assessment of every action provided for in this Decision.

**Article 12**

**Entry into force**

This Decision shall be published in the *Official Journal of the European Communities*. It shall take effect on the day of its publication.

Unchanged
ANNEX

1. NATURE OF THE ACTIONS REFERRED TO IN ARTICLE 3

(A) Actions which may be financed up to 100 % from the Community budget

As a guideline, such actions may be allocated 40 % of the total budget, which the Commission may adjust pursuant to the procedure laid down in Article 5(2).

1. Meetings and events:

(a) organisation of meetings on a Community level

(b) organisation of events raising awareness of linguistic diversity, including the opening and closing events of the Year;

(c) organisation in each Member State of one or more presentations of the Year designed to reach large numbers of people from different social backgrounds;

2. Information and promotional campaigns involving:

(a) the development of a logo and of slogans for the European Year, for use in the framework of all activities linked to the Year;

(b) an information campaign on a Community-wide scale, including, among other things, the setting-up of an interactive Web site and the dissemination of information on projects (including those referred to in section (C);

(c) the production of tools and aids, for use throughout the Community, designed to raise public awareness of the conditions for successful language learning and of effective teaching and learning techniques;

(d) the organisation of European competitions highlighting achievements and experiences on the themes of the European Year.

3. Other actions:

Surveys and studies on a Community-wide scale, having notably the aim of better defining;
— the situation in Europe with regard to languages, their use and language teaching and learning;

— the expectations of different target groups with regard to the objectives of the European Year;

— the way in which the Community could fulfil those expectations both in the course of the Year and afterwards, in particular in the framework of its programmes in the fields of education and training;

— evaluation studies concerning the effectiveness and impact of the European Year;

(B) Actions which may be co-financed by the Community budget

Actions at local, regional, national or transnational level may qualify for financing from the Community budget up to a maximum of 50% of the cost, according to the nature and circumstances of what is proposed. These may include, inter alia:

1. Events around the objectives of the European Year;

2. Information actions and actions disseminating examples of good practice, other than those described in Part 1(A) of this Annex;

3. The organisation of prizes or competitions;

4. Surveys and studies other than those mentioned in 1(A) above;

5. Other actions promoting language teaching and learning, provided that those actions would be ineligible for funding under existing Community programmes and initiatives;
(C) **Actions receiving no financial aid from the Community budget**

The Community will offer its moral support, including written authorisation to use the logo and other material associated with the European Year, for initiatives undertaken by public or private organisations, where those organisations can demonstrate to the satisfaction of the Commission that the initiatives involved are or will be in progress during the year 2001 and are likely to contribute significantly to one or more of the objectives of the European Year.

2. **TECHNICAL ASSISTANCE**

In carrying out the action, the Commission may have recourse to technical assistance organisations the financing of which may be provided for within the overall envelope for the programme. It can, under the same conditions, have recourse to experts.

In carrying out the action, the Commission may have recourse to technical assistance organisations the financing of which may be provided for within the overall envelope for the programme. It can, under the same conditions, have recourse to experts. The Commission shall consult the committee referred to in Article 5 on the financial impact of this assistance.

(2000/C 311 E/20)

(Text with EEA relevance)

COM(2000) 331 final — 98/0242(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 30 May 2000)


INITIAL PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 57(2) thereof,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Having regard to the proposal from the Commission,

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

Acting in accordance with the procedure laid down in Article 189b of the Treaty,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee (1),

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

Whereas:

(1) Whereas Directive 85/611/EEC on undertakings for collective investment in transferable securities (UCITS) (1), as last amended by Directive 88/220/EEC (2), has already contributed substantially to the achievement of the Single Market in this field, laying down — for the first time in the financial services sector — the principle of mutual recognition of authorisation and other provisions which facilitate the free circulation within the European Union of the units of the collective investment undertakings (unit trusts/common funds or as investment companies) covered by that Directive.


(2) Directive 85/611/EEC on undertakings for collective investment in transferable securities (UCITS) (2), as last amended by Directive 95/26/EC (3), has already contributed substantially to the achievement of the Single Market in this field, laying down — for the first time in the financial services sector — the principle of mutual recognition of authorisation and other provisions which facilitate the free circulation within the European Union of the units of the collective investment undertakings (unit trusts/common funds or as investment companies) covered by that Directive.


AMENDED PROPOSAL

Unchanged

Unchanged

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

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

Having regard to the opinion of the Economic and Social Committee (1),

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

Whereas:


(2) Whereas, Directive 85/611/EEC does not regulate to a great extent the companies which manage collective investment undertakings (so-called 'management companies'); whereas, in particular, Directive 85/611/EEC does not lay down provisions assuring in all Member States equivalent market access rules and operating conditions for such companies; whereas, Directive 85/611/EEC does not lay down provisions regulating the establishment of branches and the free provision of services by such companies in Member States other than their home Member State.

(3) Whereas, authorisation granted in the management company's home Member State must ensure investor protection and the stability of the financial system; whereas the approach adopted is to ensure the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems, making possible the grant of a single authorisation valid throughout the European Union and the application of the home Member State supervision.

(4) Whereas it is necessary, for the protection of investors, to guarantee the internal supervision of every management company in particular by means of a two-man management and by adequate internal control mechanisms.

(5) Whereas by virtue of mutual recognition, management companies authorised in their home Member States shall be permitted to carry on the services for which they have received authorisation throughout the European Union by establishing branches or under the freedom to provide services; whereas the approval of the fund rules of common funds/unit trusts falls within the competence of the management company's home Member State.

(6) Whereas, with regard to collective portfolio management (management of unit trusts/common funds and investment companies), the authorisation granted to a management company authorised in its home Member State should permit the company to carry on in host Member States the following activities: to distribute the units of the unit trusts/common funds set up by the company in its home Member State; to distribute the shares of the investment companies, managed by such a company; to perform all the other functions and tasks included in the activity of collective portfolio management; to manage the assets of investment companies incorporated in Member States other than its home Member State; to perform, on the basis of mandates, on behalf of management companies incorporated in Member States other than its home Member State, the functions included in the activity of collective portfolio management.

(2) However, Directive 85/611/EEC does not regulate to a great extent the companies which manage collective investment undertakings (so-called 'management companies'); in particular, Directive 85/611/EEC does not lay down provisions assuring in all Member States equivalent market access rules and operating conditions for such companies; Directive 85/611/EEC does not lay down provisions regulating the establishment of branches and the free provision of services by such companies in Member States other than their home Member State.

(3) Authorisation granted in the management company's home Member State must ensure investor protection and the stability of the financial system; the approach adopted is to ensure the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems, making possible the grant of a single authorisation valid throughout the European Union and the application of the home Member State supervision.

(4) It is necessary, for the protection of investors, to guarantee the internal overview of every management company in particular by means of a two-man management and by adequate internal control mechanisms.

(5) By virtue of mutual recognition, management companies authorised in their home Member States shall be permitted to carry on the services for which they have received authorisation throughout the European Union by establishing branches or under the freedom to provide services; the approval of the fund rules of common funds/unit trusts falls within the competence of the management company's home Member State.

(6) With regard to collective portfolio management (management of unit trusts/common funds and investment companies), the authorisation granted to a management company authorised in its home Member State should permit the company to carry on in host Member States the following activities: to distribute the units of the unit trusts/common funds set up by the company in its home Member State; to distribute the shares of the investment companies, managed by such a company; to perform all the other functions and tasks included in the activity of collective portfolio management; to manage the assets of investment companies incorporated in Member States other than its home Member State; to perform, on the basis of mandates, on behalf of management companies incorporated in Member States other than its home Member State, the functions included in the activity of collective portfolio management.
(7) Whereas this Directive represents therefore an important step to complete the Single Market in the field of collective investment undertakings.

(8) Whereas the principles of mutual recognition and of home Member State supervision require that the Member States’ competent authorities should not grant or should withdraw authorisation where factors, such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that a management company has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities; whereas, for the purpose of this Directive, a management company must be authorised in the Member State in which it has its registered office; whereas, in accordance with the principle of the home country control, only the Member State in which the management company has its registered office can be considered competent to approve the fund rules of unit trusts/common funds set up by such a company and the choice of the depositary;

(9) Whereas Directive 85/611/EEC limits the scope of management companies to the sole activity of management of unit trusts/common funds and of investment companies (collective portfolio management); whereas, in order to take into account recent developments in national legislation of Member States and to permit such companies to achieve important economies of scale, it is desirable to revise this restriction; whereas therefore it is desirable to permit such companies to carry out also the activity of management of portfolios of investments on a client-by-client basis (individual portfolio management) including the management of pension funds as well as some specific non-core activities linked to the main business; whereas such an extension of the scope of the activity of the management company would not prejudice the stability of such companies; whereas, however, specific rules shall be introduced preventing conflicts of interest when management companies are authorised to carry on both the business of collective and individual portfolio management.

(7) This Directive represents therefore an important step to complete the Single Market in the field of collective investment undertakings.

(8) The principles of mutual recognition and of home Member State supervision require that the Member States’ competent authorities should not grant or should withdraw authorisation where factors, such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that a management company has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities; for the purpose of this Directive, a management company must be authorised in the Member State in which it has its registered office; in accordance with the principle of the home country control, only the Member State in which the management company has its registered office can be considered competent to approve the fund rules of unit trusts/common funds set up by such a company and the choice of the depositary; in order to prevent supervisory arbitrage and to promote confidence in the effectiveness of supervision by the home Member State authorities, a requirement for authorisation of a UCITS must be that it should not be prevented in any legal way to be marketed in its home Member State; this does not affect the free decision, once the UCITS has been authorised, to chose the Member State(s) where the units of the UCITS shall be marketed in accordance with this directive.

(9) Directive 85/611/EEC limits the scope of management companies to the sole activity of management of unit trusts/common funds and of investment companies (collective portfolio management); in order to take into account recent developments in national legislation of Member States and to permit such companies to achieve important economies of scale, it is desirable to revise this restriction; therefore it is desirable to permit such companies to carry out also the activity of management of portfolios of investments on a client-by-client basis (individual portfolio management) including the management of pension funds as well as some specific non-core activities linked to the main business; such an extension of the scope of the activity of the management company would not prejudice the stability of such companies; however, specific rules shall be introduced preventing conflicts of interest when management companies are authorised to carry on both the business of collective and individual portfolio management.
(10) Whereas the activity of management of portfolios of investments is an investment service already covered by Directive 93/22/EEC (Investment Services Directive — ISD) (1); whereas, in order to ensure a homogeneous regulatory framework in this area, it is desirable to subject management companies the authorisation of which covers also that service to the operating conditions laid down in the ISD.

(11) Whereas a home Member State may, as a general rule, establish rules stricter than those laid down in this Directive, in particular as regards authorisation conditions, prudential requirements and the rules of reporting and prospectuses.

(12) Whereas it is desirable to lay down rules defining the pre-conditions under which a management company may delegate, on the basis of mandates, specific tasks and functions to third parties so as to increase the efficiency of the conduct of its business; whereas, in order to ensure the correct functioning of the principles of mutual recognition of the authorisation and of the home country control, Member States permitting such delegations shall ensure that the management company to which they granted an authorisation does not delegate globally its functions to one or more third parties, so as to become an empty entity, and the existence of mandates does not hinder an effective supervision over the management company; whereas, however, the fact that the management company delegated own functions shall in no case affect the liabilities of that company and of the depositary vis-à-vis the unit holders and the competent authorities.

(13) Whereas to take into account developments of information techniques, it is desirable to revise the current information framework provided for in Directive 85/611/EEC; whereas, in particular, it is desirable to introduce, in addition to the existing full prospectus, a new type of prospectus for UCITS (simplified prospectus); whereas such a new prospectus should be designed to be investor-friendly and should therefore represent a source of valuable information for the average investor; whereas such a prospectus should give key information about the UCITS in a clear, synthetic and easily understandable way; whereas, however, the investor must always be informed, by an appropriate statement to be included in the simplified prospectus, that more detailed information is contained in the full prospectus and in the UCITS yearly and half-yearly report, which can be obtained free of charge at his/her request; whereas the simplified prospectus shall always be offered free of charge to subscribers before the conclusion of the contract; whereas this shall be a sufficient pre-condition to meet the legal obligation under this Directive to provide information to subscribers before the conclusion of the contract.

(10) The activity of management of portfolios of investments is an investment service already covered by Directive 93/22/EEC (Investment Services Directive — ISD) (1); in order to ensure a homogeneous regulatory framework in this area, it is desirable to subject management companies the authorisation of which covers also that service to the operating conditions laid down in the ISD.

(11) A home Member State may, as a general rule, establish rules stricter than those laid down in this Directive, in particular as regards authorisation conditions, prudential requirements and the rules of reporting and prospectuses.

(12) It is desirable to lay down rules defining the pre-conditions under which a management company may delegate, on the basis of mandates, specific tasks and functions to third parties so as to increase the efficiency of the conduct of its business; in order to ensure the correct functioning of the principles of mutual recognition of the authorisation and of the home country control, Member States permitting such delegations shall ensure that the management company to which they granted an authorisation does not delegate globally its functions to one or more third parties, so as to become an empty entity, and the existence of mandates does not hinder an effective supervision over the management company; however, the fact that the management company delegated own functions shall in no case affect the liabilities of that company and of the depositary vis-à-vis the unit holders and the competent authorities.

(13) To take into account developments of information techniques, it is desirable to revise the current information framework provided for in Directive 85/611/EEC; in particular, it is desirable to introduce, in addition to the existing full prospectus, a new type of prospectus for UCITS (simplified prospectus); such a new prospectus should be designed to be investor-friendly and should therefore represent a source of valuable information for the average investor; such a prospectus should give key information about the UCITS in a clear, synthetic and easily understandable way; however, the investor must always be informed, by an appropriate statement to be included in the simplified prospectus, that more detailed information is contained in the full prospectus and in the UCITS yearly and half-yearly report, which can be obtained free of charge at his/her request; the simplified prospectus shall always be offered free of charge to subscribers before the conclusion of the contract; whereas this shall be a sufficient pre-condition to meet the legal obligation under this Directive to provide information to subscribers before the conclusion of the contract.


(14) Whereas, considering the need to ensure the level playing field among intermediaries in the financial services area when providing the same services and a harmonised minimum degree of investor protection; whereas a harmonised minimum degree of harmonisation of the conditions for taking up business and operating conditions represents the essential pre-condition to complete the internal market for these operators, whereas, therefore, only a binding Community Directive laying down agreed minimum standards can achieve the desired objectives; whereas this Directive effects only the minimum harmonisation required.

(15) Whereas, for the time being, no harmonised rules for compensation arrangements for unit-holders exist when a management company or an investment company is unable to redeem or to repurchase the units from unit-holders; whereas Directive 97/9/EC (1) provides harmonised rules for compensation arrangements for investors demanding investment services from investment firms (including banks); whereas, according to Article 14 of that Directive, the Commission will submit no later than 31 December 1999 to the Council and the Parliament a report on the application of the Directive; whereas, depending on the outcome of that report, the Commission might consider it appropriate to submit a proposal for the introduction of compensation arrangements for unit-holders.

HAVE ADOPTED THIS DIRECTIVE: Unchanged

Article 1

Directive 85/611/EEC is amended as follows:

1. The following Article 1(a) is inserted:

‘Article 1(a)

For the purposes of this Directive:

1. depositary shall mean any institution entrusted with the duties mentioned in Articles 7 and 14 and subject to the other provisions laid down in Sections III and IV;

### INITIAL PROPOSAL

2. management company shall mean any company the regular business of which is the management of unit trusts/common funds and of investment companies (collective portfolio management);

3. a management company's home Member State shall mean the Member State in which is situated the management company's registered office;

4. a management company's host Member State shall mean the Member State, other than the home Member State, within the territory of which a management company has a branch or provides services;

5. a UCITS home Member State shall mean:

   (a) with regard to a UCITS constituted as unit trust/common fund, the Member State in which is situated the management company's registered office;

   (b) with regard to a UCITS constituted as investment company, the Member State in which is situated the investment company's registered office,

6. a UCITS host Member State shall mean a Member State in which the units of the common fund/unit trust or of the investment company are marketed;

7. branch shall mean a place of business which is a part of the management company, which has no legal personality and which provides the services for which the management company has been authorised: all the places of business set up in the same Member State by a management company with headquarters in another Member State shall be regarded as a single branch;

8. competent authorities shall mean the authorities which each Member State designates under Article 49 of Directive 85/611/EEC;

9. close links shall mean a situation as defined in Article 2, paragraph 1 of Directive 95/26/EC (1);

### AMENDED PROPOSAL

2. management company shall mean any company the regular business of which is the management of the assets of UCITS in the form of unit trusts/common funds and/or of investment companies (collective portfolio management of UCITS), this includes the functions mentioned in Annex II;

3. a management company's home Member State shall mean the Member State in which is situated the management company's registered office;

4. a management company's host Member State shall mean the Member State, other than the home Member State, within the territory of which a management company has a branch or provides services;

5. a UCITS home Member State shall mean:

   (a) with regard to a UCITS constituted as unit trust/common fund, the Member State in which is situated the management company's registered office;

   (b) with regard to a UCITS constituted as investment company, the Member State in which is situated the investment company's registered office,

6. a UCITS host Member State shall mean a Member State in which the units of the common fund/unit trust or of the investment company are marketed;

7. branch shall mean a place of business which is a part of the management company, which has no legal personality and which provides the services for which the management company has been authorised: all the places of business set up in the same Member State by a management company with headquarters in another Member State shall be regarded as a single branch;

8. competent authorities shall mean the authorities which each Member State designates under Article 49 of Directive 85/611/EEC;

9. close links shall mean a situation as defined in Article 2, paragraph 1 of Directive 95/26/EC (1);

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10. qualifying holdings shall mean any direct or indirect holding in a management company which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the management company in which that holding subsists.

For the purpose of this definition, the voting rights referred to in Article 7 of Directive 88/627/EEC (1) shall be taken into account:


12. group shall mean issuers/bodies which are connected as described in Article 1(1) of Directive 83/349/EEC (3); issuers/bodies situated in non-Member States which are linked in a similar way either to issuers/bodies in a Member State or to such in a non-Member State shall be included.

2. Article 4(3) shall be replaced by the following:

Unchanged

‘3. The competent authorities may not authorise a UCITS if the management company does not comply with the pre-conditions laid down in Section III of this Directive. Moreover the competent authorities may not authorise a UCITS if the directors of the investment company or of the depositary are not of sufficiently good repute or lack the experience required for the performance of their duties. To that end, the names of the directors of the investment company and of the depositary and of every person succeeding them in office must be communicated forthwith to the competent authorities.

Directors shall mean those persons who, under the law or the instruments of incorporation, represent the investment company or the depositary, or who effectively determine the policy of the investment company or the depositary.’

3. Articles 5 and 6 shall be replaced by the following:

‘SECTION III

Obligations regarding management companies

(2) OJ L 141, 11.6.1993, p. 27.
(3) OJ L 193, 18.7.1983, p. 1.'
Title A

Conditions for taking up business

Article 5

1. The access to the business of management companies is subject to prior official authorisation to be granted by the home Member State's competent authorities. Authorisation granted under this Directive to a management company shall be valid for all Member States.

2. No management company may engage in activities other than the management of unit trusts/common funds and of investment companies.

The activity of management of unit trusts/common funds and of investment companies includes, for the purpose of this Directive, the activities mentioned in Annex II which is not exhaustive.

3. By way of derogation of paragraph 2, Member States may authorise management companies to provide, in addition to the management of unit trusts/common funds and of investment companies, the following services:

— management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section B of the Annex of the ISD,

— as non-core services:

(a) investment advice concerning one or more of the instruments listed in Section B of the annex of the ISD,

(b) safekeeping and administration in relation to units of collective investment undertakings.

2. No management company may engage in activities other than the management of UCITS in the form of unit trusts/common funds and of investment companies except the additional management of other collective investment undertakings which are not covered by this Directive and thus cannot be marketed in other Member States under this Directive.

The activity of management of unit trusts/common funds and of investment companies includes, for the purpose of this Directive, the activities mentioned in Annex II which is not exhaustive.

3. By way of derogation from paragraph 2, Member States may authorise management companies to provide, in addition to the management of unit trusts/common funds and of investment companies, the following services:

Unchanged

(b) safekeeping and administration in relation to units of collective investment undertakings which are managed by the management company.
Management companies may in no case be authorised under this Directive to provide only the services mentioned in this paragraph.

4. Articles 2(4), 8(2), 10, 11, 12(1) and 13 of the ISD shall apply to management companies, the authorisation of which covers the discretionary portfolio management service mentioned in the first indent of paragraph 3.

5. The competent authorities shall not grant authorisation if the UCITS is legally prevented (e.g. through a provision in the fund rules or articles of incorporation) from marketing its units in its home Member State.

Article 5(a)

1. Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorisation to a management company unless:

— it has sufficient initial capital of the following amount:

(a) if it is authorised to manage only unit trusts/common funds and investment companies, ECU 50 000;

(b) if its authorisation covers also the discretionary portfolio management service mentioned in Article 5(3), first indent, in addition to the capital mentioned in the previous letter (a), an amount of capital to be determined in accordance with the rules laid down in Article 3, paragraphs 1 and 2 of Directive 93/6/EEC (1) having regard to the nature of the service in question;

— the persons who effectively direct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company. The direction of a management company's business must be decided by at least two persons meeting these conditions;

-- the application for authorisation is accompanied by a programme of activity setting out, *inter alia*, the organisational structure of the management company;

-- both its head office and its registered office are located in the same Member State.

2. Moreover, where close links exist between the management company and other natural or legal persons, the competent authorities shall grant authorisation only if those do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorisation if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the management company has close links, or difficulties involved in their enforcement prevent the effective exercise of their supervisory functions.

The competent authorities shall require management companies to provide them with the information they require to monitor compliance with the conditions referred to in this indent on a continuous basis.

3. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

4. A management company may commence business as soon as authorisation has been granted.

5. The competent authorities may withdraw the authorisation issued to a management company subject to this Directive only where that company:

   (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this Directive more than six months previously unless the Member State concerned has provided for authorisation to lapse in such cases;

   (b) has obtained the authorisation by making false statements or by any other irregular means;

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(c) no longer fulfils the conditions under which authorisation was granted;

(d) no longer complies with Directive 93/6/EEC if its authorisation covers also the discretionary portfolio management service mentioned in Article 5(3), first indent;

(e) has seriously and systematically infringed the provisions adopted pursuant to this Directive;

(f) falls within any of the cases where national law provides for withdrawal.

Article 5(b)

1. The competent authorities shall not grant authorisation to take up the business of management companies until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of a management company, they are not satisfied as to the suitability of the aforementioned shareholders or members.

2. In the case of branches of management companies that have registered offices outside the European Union and are commencing or carrying on business, the Member States shall not apply provisions that result in treatment more favourable than that accorded to branches of management companies that have registered offices in Member States.

3. The competent authorities of the other Member State involved shall be consulted beforehand on the authorisation of any management company which is:

— a subsidiary of another management company, an investment firm or a credit institution authorised in another Member State,

— a subsidiary of the parent undertaking of another management company, an investment firm or a credit institution authorised in another Member State,
controlled by the same natural or legal persons as control another management company, an investment firm or a credit institution authorised in another Member State.

Title B

Relations with third countries

Article 5(c)

1. Relations with third countries are regulated according to the relevant rules laid down in Article 7 of Directive 93/22/EEC.

For the purpose of this Directive, the expressions “firm/investment firm” and “investment firms” contained in Article 7 of the ISD shall be read respectively as “management company” and “management companies”; the expression “providing investment services” in Article 7(2) of the ISD shall be read as “providing services”.

2. The Member States shall also inform the Commission of any general difficulties which UCITS encounter in marketing their units in any third country.

Title C

Operating conditions

Article 5(d)

1. The competent authorities of the management company's home Member State shall require that the management company which they have authorised complies at all times with the conditions imposed in Articles 5 and 5(a)(1) and (2) of this Directive.

2. The prudential supervision of a management company shall be the responsibility of the competent authorities of the home Member State, whether the management company establishes a branch or provides services in another Member State or not, without prejudice to those provisions of this Directive which give responsibility to the authorities of the host country.

Article 5(e)

1. Qualifying holdings in management companies shall be subject to the same rules as those laid down in Article 9 of the ISD.
For the purpose of this Directive, the expressions “firm/investment firm” and “investment firms” contained in Article 9 of the ISD shall be read respectively as “management company” and “management companies”.

2. For the purpose of this Directive, the expressions “firm/investment firm” and “investment firms” contained in Article 9 of the ISD shall be read respectively as “management company” and “management companies”.

**Article 5(f)**

1. Each home Member State shall draw up prudential rules which management companies, the authorisation of which covers only the activity of management of unit trusts/common funds and investment companies, shall observe at all times.

In particular, the competent authorities of the home Member State having regard also to the nature of the UCITS managed by a management company, shall require that each such company has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms ensuring, inter alia, that the assets of the unit trusts/common funds or of the investment companies managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force.

2. Each management company the authorisation of which covers also the discretionary portfolio management service mentioned in Article 5(3), first indent:

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<td>— shall not be permitted to invest all or a part of the investor's portfolio in units of unit trusts/common funds or of investment companies it manages, unless it receives prior general approval from the client,</td>
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<td>— shall not be permitted to provide the discretionary portfolio management service to the depositary which performs for that management company the duties mentioned in Articles 7 and 14 of this Directive,</td>
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Article 5(g)

1. When a Member State permits a management company to delegate to third parties, on the basis of specific mandates and for the purpose of a more efficient conduct of the company's business, to carry out on its behalf one or more of the functions included in the activity of collective portfolio management mentioned in Annex II, each mandate must be submitted to the competent authorities for prior approval.

2. The competent authorities shall approve the mandate only after having verified the compliance with the following pre-conditions:

— the mandate shall not prevent the effectiveness of supervision over the management company,

— in order to prevent conflicts of interest, the mandate shall not be given to the depositary and to persons having qualifying holdings in the management company's or the depositary's capital or to any other person whose interests may conflict with those of the management company or the unit-holders,

— measures shall exist which enable the persons who direct the business of the management company to monitor at any time the activity of the person to whom the mandate is given,

— the mandate shall not prevent the persons who direct the business of the management company to give at any time further instructions to the person to whom functions are delegated and to withdraw the mandate at any time,


Unchanged
— having regard to the nature of the functions to be delegated, the person to whom functions will be delegated must furnish sufficient professional and financial guarantees,

— the UCITS’ prospectuses and any promotional literature list the functions which the management company has been permitted to delegate.

3. In no case shall the management company’s and the depositary’s liabilities be affected by the fact that the management company delegated own functions to third parties.

*Article 5(h)*

The Council and the Parliament note the Commission’s statement to the effect that, based on the outcome of the report the Commission will submit, according to Article 14 of Directive 97/9/EC on investor compensation schemes no later than 31 December 1999 to the Council and the Parliament, it may, if appropriate, propose the introduction of compensation arrangements for unit-holders of UCITS.

*Title D*

The right of establishment and the freedom to provide services

*Article 6*

1. Member States shall ensure that a management company, authorised in accordance with this Directive by the competent authorities of another Member State, may carry on within their territories the activity for which it has been authorised, either by the establishment of a branch or under the freedom to provide services.

2. Member States may not make the establishment of a branch or the provision of the services subject to any authorisation requirement, to any requirement to provide endowment capital or to any other measure having equivalent effect.

*Article 6(a)*

1. In addition to meeting the conditions imposed in Article 5 and 5(a), any management company wishing to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.
2. Member States shall require every management company wishing to establish a branch within the territory of another Member State to provide the following information and documents, when effecting the notification provided for in paragraph 1:

I. General information:

(a) the Member State within the territory of which the management company plans to establish a branch;

(b) a programme of the activity envisaged and the organisational structure of the branch;

(c) the address in the host Member State from which documents may be obtained;

(d) the names of those responsible for the management of the branch.

II. Information concerning the distribution, by the branch, of the units of the unit trusts/common funds and of the investment companies subject to this Directive which are managed by the management company:

(a) details about the planned distribution and of the arrangements made for the marketing of the units in that other Member State;

(b) for each unit trust/common fund and investment company concerned: the fund rules or the instruments of incorporation; the prospectuses and, where appropriate, its latest annual report and any subsequent half-yearly report;

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of a management company, taking into account the activities envisaged, they shall, within three months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the host Member State and shall inform the management company accordingly.
They shall also communicate:

— details of any compensation scheme intended to protect investors,

— an attestation for each unit trust/common fund or investment company, the units of which are distributed in the host country, that it fulfils the conditions imposed by this Directive.

Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the host Member State, they shall give reasons for their refusal to the management company concerned within two months of receiving all the information. That refusal or failure to reply shall be subject to the right to apply to the courts in the home Member State.

4. Before the branch of a management company commences business, the competent authorities of the host Member State shall, within two months of receiving the information referred to in paragraph 2, prepare for the supervision of the management company and, if necessary, indicate the conditions, including the rules mentioned in Articles 44 and 45 in force in the host Member State and the rules of conduct to be respected in the case of provision of the portfolio management service mentioned in Article 5(3), under which, in the interest of the general good, that business must be carried on in the host Member State.

5. On receipt of a communication from the competent authorities of the host Member State or on the expiry of the period provided for in paragraph 4 without receipt of any communication from those authorities, the branch may be established and commence business. From that moment the management company may also begin distributing the units of the unit trusts/common funds and of the investment companies subject to this Directive which it manages, unless the competent authorities of the host Member State establish, in a reasoned decision taken before the expiry of that period of two months — to be communicated to the competent authorities of the home Member State — that the arrangements made for the marketing of the units do not comply with the provisions referred to in Article 44(1) and 45.
6. In the event of change of any particulars communicated in accordance with paragraphs 2(I)(b), (c) or (d) and subparagraph II, a management company shall give written notice of that change to the competent authorities of the home and host Member States at least one month before implementing the change so that the competent authorities of the home Member State may take a decision on the change under paragraph 3 and the competent authorities of the host Member State may do so under paragraph 4.

7. In the event of a change in the particulars communicated in accordance with the second subparagraph of paragraph 3, the authorities of the home Member State shall inform the authorities of the host Member State accordingly.

Article 6(b)

1. Any management company wishing to carry on business within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the competent authorities of its home Member State:

I. General information:

(a) the Member State within the territory of which the management company intends to operate;

(b) a programme of the activity envisaged.

II. Information concerning the distribution, in the host Member State, of units of the unit trusts/common funds and of the investment companies subject to this Directive which are managed by the management company:

(a) details about the planned distribution and of the arrangements made for the marketing of the units in that other Member State;

(b) for each unit trust/common fund and investment company concerned: the fund rules or the instruments of incorporation; the prospectuses and, where appropriate, its latest annual report and any subsequent half-yearly report.

2. The competent authorities of the home Member State shall, within one month of receiving the information referred to in paragraph 1, forward it to the competent authorities of the host Member State.
They shall also communicate:

— details of any compensation scheme intended to protect investors,

— an attestation for each trust/common fund or investment company, the units of which are distributed in the host country, that it fulfils the conditions imposed by this Directive.

3. The management company may then commence business in the host Member State. The distribution of the units of the unit trusts/common funds and the investment companies subject to this Directive may begin one month after the host Member State's competent authorities receive of the information referred to in paragraphs 1 and 2, unless the competent authorities of the host Member State establish, in a reasoned decision taken before the expiry of that period of one month to be communicated to the competent authorities of the home Member State, that the arrangements made for the marketing of the units do not comply with the provisions referred to in Articles 44(1) and 45.

When appropriate, the competent authorities of the host Member State shall, on receipt of the information referred to in paragraph 1, indicate to the management company the conditions, including the rules of conduct to be respected in the case of provision of the portfolio management service mentioned in Article 5(3), with which, in the interest of the general good, the management company must comply in the host Member State.

4. Should the content of the information communicated in accordance with paragraph 1(I)(b) and (II) be amended, the management company shall give notice of the amendment in writing to the competent authorities of the home Member State and of the host Member State before implementing the change, so that the competent authorities of the host Member State may, if necessary, inform the company of any change or addition to be made to the information communicated under paragraph 2.

5. A management company shall also be subject to the notification procedure laid down in this Article in the case where it entrusts a third party with the marketing of the units in a host Member State.

Article 6(c)

1. Host Member States may, for statistical purposes, require all management companies with branches within their territories to report periodically on their activities in those host Member States to the competent authorities of those host Member States.
2. In discharging their responsibilities under this Directive, host Member States may require branches of management companies to provide the same particulars as national management companies for that purpose.

Host Member States may require management companies, carrying on business within their territories under the freedom to provide services, to provide the information necessary for the monitoring of their compliance with the standards set by the host Member State that apply to them, although those requirements may not be more stringent than those which the same Member State imposes on established management companies for the monitoring of their compliance with the same standards.

3. Where the competent authorities of a host Member State ascertain that a management company that has a branch or provides services within its territory is in breach of the legal or regulatory provisions adopted in that State pursuant to those provisions of this Directive which confer powers on the host Member State's competent authorities, those authorities shall require the management company concerned to put an end to its irregular situation.

4. If the management company concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly. The latter shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.

5. If, despite the measures taken by the home Member State or because such measures prove inadequate or are not available in the State in question, the management company persists in violating the legal or regulatory provisions referred to in paragraph 2 in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalise further irregularities and, in so far as necessary, to prevent that management company from initiating any further transaction within its territory. The Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on management companies.
6. The foregoing provisions shall not affect the powers of host Member States to take appropriate measures to prevent or to penalise irregularities committed within their territories which are contrary to legal or regulatory provisions adopted in the interest of the general good. This shall include the possibility of preventing offending management companies from initiating any further transactions within their territories.

7. Any measure adopted pursuant to paragraphs 4, 5 or 6 involving penalties or restrictions on the activities of a management company must be properly justified and communicated to the management company concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

8. Before following the procedure laid down in paragraphs 3, 4 or 5 the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission and the competent authorities of the other Member States concerned must be informed of such measures at the earliest opportunity.

After consulting the competent authorities of the Member States concerned, the Commission may decide that the Member State in question must amend or abolish those measures.

9. In the event of the withdrawal of authorisation, the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the management company concerned from initiating any further transactions within its territory and to safeguard investors’ interests. Every two years the Commission shall submit a report on such cases to the Contact Committee set up according to Article 53.

10. The Member States shall inform the Commission of the number and type of cases in which there have been refusals pursuant to Article 6(a) or measures have been taken in accordance with paragraph 5. Every two years the Commission shall submit a report on such cases to the Contact Committee set up according to Article 53 of this Directive.'
INITIAL PROPOSAL

4. Before Article 7 the following shall be included:

'SECTION IIIa

Obligations regarding the depositary'

5. Article 27(1) shall be replaced by the following:

'1. An investment company and, for each of the unit trusts it manages, a management company, must publish:

— a simplified prospectus,
— a full prospectus,
— an annual report for each financial year, and
— a half-yearly report covering the first six months of the financial year.'

6. Article 28(1) shall be replaced by the following:

'1. Both the simplified and the full prospectuses must include the information necessary for investors to be able to make an informed judgement of the investment proposed to them.

2. The full prospectus shall contain at least the information provided for in Schedule A annexed to this Directive, in so far as that information does not already appear in the fund rules or instruments of incorporation annexed to the full prospectus in accordance with Article 29(1).

3. The simplified prospectus shall contain synthetically at least the key information provided for in Schedule C annexed to this Directive. It shall be structured and written in such a way that it can be easily understood by the average investor. Member States may permit that the simplified prospectus be attached to the full prospectus as a removable part of it.'

AMENDED PROPOSAL

4. Before Article 7 the following shall be included:

'SECTION IIIa

Obligations regarding the depositary'

5. Article 27(1) shall be replaced by the following:

'1. Both the simplified and the full prospectuses must include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto. The latter shall include, independent of the instruments invested in, a clear and easily understandable explanation of the fund's risk profile.

2. The full prospectus shall contain at least the information provided for in Schedule A annexed to this Directive, in so far as that information does not already appear in the fund rules or instruments of incorporation annexed to the full prospectus in accordance with Article 29(1).

3. The simplified prospectus shall contain in summary form the key information provided for in Schedule C annexed to this Directive. It shall be structured and written in such a way that it can be easily understood by the average investor. Member States may permit that the simplified prospectus be attached to the full prospectus as a removable part of it. The simplified prospectus can be used as a marketing tool designed to be used in all Member States without alterations except translation. Member States may therefore not require any further documents or additional information to be added.'
4. Both the full and the simplified prospectus can be incorporated in a written document or in any durable medium having an equivalent legal status approved by the competent authorities.

7. Article 29 shall be replaced by the following:

‘Article 29

1. The fund rules or an investment company's instruments of incorporation shall form an integral part of the full prospectus and must be annexed thereto.

2. The documents referred to in paragraph 1 need not, however, be annexed to the full prospectus provided that the unit-holder is informed that on request he or she will be sent those documents or be apprised of the place where, in each Member State in which the units are placed on the market, he or she may consult them.’

8. Article 30 shall be replaced by the following:

‘Article 30

The essential elements of the simplified and the full prospectuses must be kept up to date.’

9. Article 32 shall be replaced by the following:

‘Article 32

UCITS must send their simplified and full prospectuses and any amendments thereto, as well as their annual and half-yearly reports, to the competent authorities.’

10. Article 33 shall be replaced by the following:

‘Article 33

1. The simplified prospectus must be offered to subscribers free of charge before the conclusion of the contract.

In addition, the full prospectus and the latest published annual and half-yearly reports shall be supplied to subscribers free of charge on request.

2. The annual and half-yearly reports shall be supplied to unit-holders free of charge on request.

3. The annual and half-yearly reports must be available to the public at the places, or through other means approved by the competent authorities, specified in the full and simplified prospectus.’
11. Article 35 shall be replaced by the following:

‘Article 35

All publicity comprising an invitation to purchase the units of UCITS must indicate that prospectuses exist and the places where they may be obtained by the public or how the public may have access to them.’

12. Article 46 shall be replaced by the following:

‘Article 46

If an investment company proposes to market its units in a Member State other than that in which it is situated, it must first inform the competent authorities of that other Member State accordingly. It must simultaneously send the latter authorities:

— an attestation by the competent authorities to the effect that it fulfils the conditions imposed by this Directive,

— its instruments of incorporation,

— its full prospectus and its simplified prospectus,

— where appropriate, its latest annual report and any subsequent half-yearly report, and

— details of the arrangements made of the marketing of its units in that other Member State.

An investment company may begin to market its units in that other Member State one month after such communication, unless the authorities of the Member States concerned establish, in a reasoned decision taken before the expiry of that period of one month, that the arrangements made for the marketing of units do not comply with the provisions referred to in Articles 44(1) and 45.’

13. Article 47 shall be replaced by the following:

‘Article 47

If a UCITS markets its units in a Member State other than that in which it is situated, it must distribute in that other Member State, in accordance with the same procedures as those provided for in the home Member State:

— its fund rules or its instruments of incorporation,

— details of the arrangements made of the marketing of its units in that other Member State.

An investment company or a management company may begin to market its units in that other Member State one month after such communication, unless the authorities of the Member States concerned establish, in a reasoned decision taken before the expiry of that period of one month, that the arrangements made for the marketing of units do not comply with the provisions referred to in Articles 44(1) and 45.’
1. the simplified prospectus and the other information provided for in Articles 29 and 30 of this Directive in a language which is easily understandable for the investors concerned in the host Member State;

2. the full prospectus and the annual and half-yearly reports in the official language or in one of the official languages of the host Member State or in another language, provided that in the Member State in question that other language is customary in the sphere of finance, accepted by the competent authorities and, when appropriate, such further conditions as they may impose are complied with.

14. After Article 52 the following Articles shall be added:

‘Article 52(a)

1. Where, through the provision of services or by the establishment of branches, a management company operates in one or more host Member States, the competent authorities of all the Member States concerned shall collaborate closely.

They shall supply one another on request with all the information concerning the management and ownership of such management companies that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies. In particular, the authorities of the home Member State shall cooperate to ensure that the authorities of the host Member State collect the particulars referred to in Article 6(c)(2).

2. In so far as it is necessary for the purpose of exercising their powers of supervision, the competent authorities of the home Member State shall be informed by the competent authorities of the host Member State of any measures taken by the host Member State pursuant to Article 6(c)(6) which involve penalties imposed on a management company or restrictions on a management company’s activities.

‘Article 52(b)

1. Each host Member State shall ensure that, where a management company authorised in another Member State carries on business within its territory through a branch, the competent authorities of the management company’s home Member State may, after informing the competent authorities of the host Member State, themselves or through the intermediary of persons they instruct for the purpose, carry out on-the-spot verification of the information referred to in Article 52(a).
2. The competent authorities of the management company's home Member State may also ask the competent authorities of the management company's host Member State to have such verification carried out. Authorities which receive such requests must, within the framework of their powers, act upon them by carrying out the verifications themselves, by allowing the authorities who have requested them to carry them out or by allowing auditors or experts to do so.

3. This Article shall not affect the right of the competent authorities of the host Member State, in discharging their responsibilities under this Directive, to carry out on-the-spot verifications of branches established within their territory.

15. Schedule A of the Annex shall be amended as follows:

Under the column 'Information concerning the investment company', after paragraph 1.2 the following shall be added:

‘1.3. In the case of investment companies having different investment compartments, the indication of the compartments.’

Under the column 'Information concerning the investment company', in paragraph 1.13 the following sentence shall be added:

‘In the case of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases.’

After paragraph 4 the following paragraphs 5 and 6 shall be added:

‘5. Other investment information

5.1. Historical performance of the unit trust/common fund or of the investment company (where applicable);

5.2. Profile of the typical investor for whom the unit trust/common fund or the investment company is designed.

6. Economic information

6.1. Possible expenses or fees, other than the charges mentioned in paragraph 1.17, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust’s/common fund’s or of the investment company’s assets.’
Transitional and final provisions

Article 2

1. Investment firms, as defined in Article 1(2) of the ISD, authorised to carry out only the services provided for in Section A(3) and in Section C(1) and (6) of the Annex to Directive 93/22/EEC, may obtain authorisation under this Directive to manage unit trusts/common funds and investment companies and to qualify themselves as 'management companies'. In that case, such investment firms must give up the authorisation obtained under the ISD.

2. Management companies already authorised before 31 December 2002, in their home Member State under Directive 85/611/EEC to manage unit trusts/common funds and investment companies shall be deemed to be authorised for the purposes of this Directive if the laws of those Member States provide that to take up such activity they must comply with conditions equivalent to those imposed in Articles 5(a) and 5(b).

3. Management companies, already authorised before 31 December 2002, which are not included among those referred to in paragraph 2 may continue such activity provided that, no later than 31 December 2005 and pursuant to the provisions of their home Member State, they obtain authorisation to continue such activity in accordance with the provisions adopted in implementation of this Directive.

Only the grant of such authorisation shall enable such management companies to qualify under the provisions of this Directive on the right of establishment and the freedom to provide services.

Article 3

No later than 30 June 2002 Member States shall adopt the laws, regulations and administrative provisions necessary for them to comply with this Directive.

These provisions shall enter into force no later than 31 December 2002. The Member States shall forthwith inform the Commission thereof.

When Member States adopt these provisions they shall include a reference to this Directive or accompany them with such a reference on the occasion of their official publication. The manner in which such references are to be made shall be laid down by the Member States.

Article 4

This Directive shall enter into force 20 days after the date of publication in the Official Journal of the European Communities.

Article 5

This Directive is addressed to the Member States.
CONTENTS OF THE SIMPLIFIED PROSPECTUS

Brief presentation of the UCITS

— when the unit trust/common fund or the investment company was created and indication of the Member State where the unit trust/common fund or the investment company has been registered/incorporated,

— management company (when applicable),

— expected period of existence (when applicable),

— depositary,

— auditors

— financial group (e.g. a bank) promoting the UCITS.

Investment information

— short definition of the UCITS' objectives,

— in the case of investment companies having different investment compartments, the indication of this circumstance,

— the unit trust's/common fund's or the investment company's investment policy,

— historical performance of the common fund/investment company (where applicable),

— profile of the typical investor the unit trust/common fund or the investment company is designed for

— the unit trust's/common fund's or the investment company's investment policy and a brief assessment of the fund's risk profile (including, if applicable, information according to Article 24a and Article 24b),

— historical performance of the unit trust/common fund/investment company (where applicable),

— Unchanged

Economic information

— tax regime,

— entry and exit commissions,

— other possible expenses or fees, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust's/common fund's or the investment company's assets.

Commercial information

— how to buy the units,

— how to sell the units,
— in the case of investment companies having different investment compartments how to pass from one investment compartment into another and the charges applicable in such cases,

— when and how dividends (if applicable) are distributed,

— frequency and where/how prices are published or made available,

— indication of a contact point (person/department, timing, etc.) where additional explanations may be obtained if needed.

Additional information

— statement that, on request, the full prospectus, the annual and half-yearly reports may be obtained free of charge before the conclusion of the contract and afterwards.

ANNEX II

Functions included in the activity of collective portfolio management

— Investment activity:
  (a) investment management;
  (b) investment administration (such as: instructing brokers, arranging settlement, instructing the depositary on the exercise of voting rights).

— Marketing:
  (a) production of literature;
  (b) distribution of the units of the unit trusts/common funds and of the investment companies managed by the management company;
  (c) relations with distribution agents.

— Administration:
  (a) legal and fund management accounting services;
  (b) customer inquiries;
  (c) valuation and pricing (including tax returns);
  (d) regulatory compliance monitoring;
  (e) maintenance of unit-holder register;
  (f) distribution of income;
  (g) unit issues and redemptions;
  (h) contract settlements (including certificate dispatch);
  (i) record keeping.

(2000/C 311 E/21)

(Text with EEA relevance)

COM(2000) 329 final — 98/0243(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 30 May 2000)


INITIAL PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 57(2) thereof,

Having regard to the proposal from the Commission,

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

Acting in accordance with the procedure laid down in Article 189b of the Treaty,

Whereas:

(1) Whereas the scope of Council Directive 85/611/EEC (2), as last amended by Directive 88/220/EEC (3), was confined initially to collective investment undertakings of the open-ended type which promote the sale of their units to the public in the Community and the sole object of which is investment in transferable securities (UCITS); whereas it was envisaged in the preamble to Directive 85/611/EEC that undertakings falling outside its scope would be the subject of co-ordination at a later stage;

(2) Whereas, taking into account market developments, it is desirable that the investment objective of UCITS is widened in order to permit them to invest in financial assets, other than transferable securities, which are sufficiently liquid;

AMENDED PROPOSAL

Unchanged

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Unchanged

Having regard to the opinion of the Economic and Social Committee (4),

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

Whereas:

(1) The scope of Council Directive 85/611/EEC (5), as last amended by Directive 95/26/EC (6), was confined initially to collective investment undertakings of the open-ended type which promote the sale of their units to the public in the Community and the sole object of which is investment in transferable securities (UCITS); it was envisaged in the preamble to Directive 85/611/EEC that undertakings falling outside its scope would be the subject of coordination at a later stage;

(2) Taking into account market developments, it is desirable that the investment objective of UCITS is widened in order to permit them to invest in financial assets, other than transferable securities, which are sufficiently liquid; financial instruments which are eligible to be investment assets of the portfolio of the UCITS are stated in Article 19(1); the ‘Securities lending’ mentioned in Article 21 is not an ‘instrument for investment’ but a technique to improve the return of the portfolio; the investment of a portfolio according to an index is a management technique; the instruments bought in order to replicate the index are transferable securities or derivatives and are covered in Article 19(1);


(4) OJ C 116, 28.4.1999, p. 44.


(3) Whereas the definitions of transferable securities and money market instruments included in this Directive are valid only for this Directive and consequently in no way affect the various definitions of financial instruments used in national legislation for other purposes such as taxation; whereas, furthermore, the definition of transferable securities covers negotiable instruments only; whereas, consequently, shares and other securities equivalent to shares issued by bodies, such as building societies and industrial and provident societies, the ownership of which cannot in practice be transferred except by the issuing body buying them back, are not covered by this definition;

(4) Whereas money market instruments cover those classes of transferable instruments which are normally dealt in on the money market, for example treasury and local authority bills, certificates of deposit, commercial paper and bankers’ acceptances; whereas Member States should have the option of choosing the list of eligible money market instruments on the basis of objective criteria to take account of the existing structural differences in the money markets of different countries;

(5) Whereas it is desirable to permit a UCITS to invest its assets in units of other collective investment undertakings of the open-ended type which also invest in transferable securities and which operate on the principle of risk spreading; whereas the requirement of risk spreading for UCITS investing in other collective investment undertakings is indirectly respected since such UCITS can only invest in units issued by collective investment undertakings complying with the risk-spreading criteria of Directive 85/611/EEC; whereas, it is important that such UCITS adequately disclose to investors the fact that they invest in units of other collective investment undertakings;

(6) Whereas to take market developments into account and in consideration of the completion of the EMU it is desirable to permit UCITS to invest in bank deposits;

(3) The definition of transferable securities including money market instruments traded on regulated markets included in this Directive is valid only for this Directive and consequently in no way affect the various definitions of financial instruments used in national legislation for other purposes such as taxation; furthermore, the definition of transferable securities covers negotiable instruments only; consequently, shares and other securities equivalent to shares issued by bodies, such as building societies and industrial and provident societies, the ownership of which cannot in practice be transferred except by the issuing body buying them back, are not covered by this definition;

(4) Money market instruments cover also those transferable instruments which are normally not traded on regulated markets but dealt in on the money market, for example treasury and local authority bills, certificates of deposit, commercial paper and bankers’ acceptances;

(5) It is useful to ensure that the concept of regulated markets in this directive corresponds to that in Directive 93/22/EEC (1);

(6) It is desirable to permit a UCITS to invest its assets in units of UCITS and/or other collective investment undertakings of the open-ended type which also invest in transferable securities and which operate on the principle of risk spreading; UCITS or other collective investment undertakings in which a UCITS invests should also be subject to effective supervision; investments in units of UCITS and/or other collective investment undertakings shall not result in cascades of funds; UCITS shall adequately disclose to investors if they invest in units of UCITS and/or other collective investment undertakings;

(7) To take market developments into account and in consideration of the completion of the EMU it is desirable to permit UCITS to invest in bank deposits; to ensure adequate liquidity of the investments in deposits the terms of these deposits should include a break clause; if the deposits are made with a credit institution situated in a non-Member State, the credit institution should be subject to effective supervision;

INITIAL PROPOSAL

(7) Whereas, in addition to the case in which a UCITS invests in bank deposits according to its fund rules or instruments of incorporation, it may be necessary to allow all UCITS to hold ancillary liquid assets, such as bank deposits at sight and/or cash; whereas the holding of such ancillary liquid assets may be justified, for example, in the following cases: in order to cover current or unexpected payments; in the case of sales, for the time necessary to reinvest in transferable securities and/or in other financial assets provided for by this Directive; for a period of time strictly necessary when, because of unfavourable market conditions, the investment in transferable securities and in other financial assets needs to be suspended:

(8) Whereas, for prudential reasons, UCITS should avoid assuming an excessive concentration in deposits with a single credit institution;

(9) Whereas UCITS should be permitted to invest their assets in standardised options and futures contracts dealt in on regulated derivatives markets; whereas, in order to ensure that the risks involved are adequately covered, it is necessary that such UCITS hold at any time assets of sufficient value and of the right kind (i.e. securities, if the exposure is in terms of securities; cash or securities which are, or, on being turned into money in the right currency, if the exposure is in terms of money); whereas, such UCITS too have to operate on the principle of risk spreading; whereas, considering that the value of the portfolio of such UCITS may fluctuate widely, such UCITS should address only experienced investors or investors whose financial situation allows them to bear the risks involved in the investment in units of such UCITS; whereas the risks involved should be adequately disclosed to the investing public in the UCITS' prospectuses and in any promotional literature;

(10) Whereas new portfolio management techniques for collective investment undertakings investing primarily in shares are based on the replication of stock-indices; whereas it is desirable to permit UCITS to replicate well-known and recognised stock-indices; whereas therefore it is necessary to introduce more flexible risk-spreading rules for UCITS investing in shares; whereas in order to ensure transparency of the stock-indices which the Member States consider to be replicable by harmonised UCITS and a wide acceptance of such indices, it is desirable to provide for adequate publication of the list of replicable stock-indices;

AMENDED PROPOSAL

(8) In addition to the case in which a UCITS invests in bank deposits according to its fund rules or instruments of incorporation, it may be necessary to allow all UCITS to hold ancillary liquid assets, such as bank deposits at sight and/or cash; the holding of such ancillary liquid assets may be justified, for example, in the following cases: in order to cover current or unexpected payments; in the case of sales, for the time necessary to reinvest in transferable securities and/or in other financial assets provided for by this Directive; for a period of time strictly necessary when, because of unfavourable market conditions, the investment in transferable securities and in other financial assets needs to be suspended;

(9) For prudential reasons, UCITS should avoid assuming an excessive concentration in deposits with a single credit institution or with institutions belonging to the same group;

(10) UCITS should be explicitly permitted to invest, as part of their general investment policy and/or for hedging purposes, in standardised and over-the-counter (OTC) financial derivative instruments; in regard to the OTC derivatives, additional requirements must be set in terms of the eligibility of counter-parties and instruments, liquidity and on-going assessment of the position; the purpose of such additional requirements is to ensure an adequate level of investor protection which is close to that of derivatives dealt in on regulated markets;

(11) New portfolio management techniques for collective investment undertakings investing primarily in shares are based on the replication of stock-indices and/or indices on debt securities; it is desirable to permit UCITS to replicate well-known and recognised stock-indices and/or debt indices; therefore it is necessary to introduce more flexible risk-spreading rules for UCITS investing in shares and/or debt securities; in order to ensure transparency of the indices which the Member States consider to be replicable by harmonised UCITS and a wide acceptance of such indices, it is desirable to provide for adequate publication of the list of replicable indices and an indication about where updated information can be obtained, possibly by electronic means; UCITS may also replicate the index by appropriate investments in other instruments, such as standardised derivatives; UCITS tracking an index may also dedicate a part of their portfolio to counteract adverse movements of the replicated index in accordance with their disclosed investment objectives and within the limit set by this Directive;
(11) Whereas the employment of techniques and instruments for the purpose of efficient portfolio management may never be permitted if they do not comply with the principles enshrined in the Directive and if they hinder the competent authorities from exercising effectively their supervisory functions;

(12) Whereas, considering the new portfolio management techniques which have been developed in recent years, it is desirable to permit UCITS to make use of all sorts of derivative instruments for an efficient portfolio management; whereas, in order to ensure investor protection, it is necessary to provide for a harmonised framework for the utilisation of financial derivatives and for an adequate cover for exposure deriving from such transactions; whereas, transactions on financial derivatives, not dealt in on specialised derivatives markets (over-the-counter derivatives) involve counter-party risks; whereas therefore the counter-parties for such transactions shall be chosen only among qualified institutions approved by the UCITS' competent authorities;

(13) Whereas, notwithstanding Article 41 of Directive 85/611/EEC, it is desirable to permit UCITS to enter into securities lending transactions for the purposes of efficient portfolio management; whereas, in order to limit the risks involved in such transactions, it is necessary to regulate the conditions under which a UCITS may be permitted to act as a lender in securities lending transactions;

(14) Notwithstanding Article 41 of Directive 85/611/EEC, it is desirable to permit UCITS to enter into securities lending transactions; in order to limit the risks involved in such transactions, it is necessary to regulate the conditions under which a UCITS may be permitted to act as a lender in securities lending transactions; considering the need for liquidity of a UCITS' portfolio, securities lending transactions shall only be carried out on parts of the portfolio and on a temporary basis;

(15) The development of opportunities for a UCITS to invest in UCITS and other collective investment undertakings should be facilitated; it is therefore essential to ensure that such investment activity does not diminish investor protection; taking into account the nature of investments in sufficiently diversified collective investment undertakings, it may be necessary to restrict the possibility for a UCITS to combine its direct investments in a liquid financial asset with the investments made through these UCITS and/or other collective investment undertakings; because of the enhanced possibilities for UCITS to invest in units of other UCITS and/or collective investment undertakings, it is necessary to lay down certain rules on quantitative limits and disclosure of information to prevent the cascade phenomenon;
(14) Whereas collective investment undertakings falling within the scope of this Directive shall not be used for purposes other than the collective investment of the money raised from the public according to the rules laid down in this Directive; whereas the depositary of the assets of a UCITS carries out crucial controlling functions over the compliance of a UCITS with the law and its fund rules or instruments of incorporation; whereas therefore it is important to ensure an effective independence between the management company and the depositary; whereas when both the management company and the depositary belong to the same economic group or when the depositary has a qualifying holding in the management company’s capital, or vice versa, or in all other cases in which the depositary may exercise a significant influence over the management company, or vice versa, it is necessary to undertake all measures assuring the independence between the two entities; whereas, when a management company, acting on behalf of the common funds or investment companies it manages, is permitted to enter into transactions with the depositary, arrangements have to be made preventing conflicts of interests and ensuring the compliance of the transaction with the law and the UCITS’ fund rules or instruments or incorporation;

(15) Whereas the depositary of the assets of a UCITS carries out crucial controlling functions over the compliance of a UCITS with the law and its fund rules or instruments of incorporation; whereas therefore it is important to ensure an effective independence between the management company and the depositary; whereas when both the management company and the depositary belong to the same economic group or when the depositary has a qualifying holding in the management company’s capital, or vice versa, or in all other cases in which the depositary may exercise a significant influence over the management company, or vice versa, it is necessary to undertake all measures assuring the independence between the two entities; whereas, when a management company, acting on behalf of the common funds or investment companies it manages, is permitted to enter into transactions with the depositary, arrangements have to be made preventing conflicts of interests and ensuring the compliance of the transaction with the law and the UCITS’ fund rules or instruments or incorporation;

(16) Collective investment undertakings falling within the scope of this Directive shall not be used for purposes other than the collective investment of the money raised from the public according to the rules laid down in this Directive; in the cases identified by this Directive, a UCITS may hold subsidiaries only when necessary to carry out effectively on behalf of that UCITS certain activities, also identified by this Directive; whereas it is necessary to ensure an effective supervision of UCITS; whereas therefore the establishment of a UCITS’ subsidiary in third countries should be permitted only in the cases and under the conditions identified in the Directive; whereas the general obligation to act solely in the interest of unit-holders and, in particular, the objective to increase cost efficiencies, never justify a UCITS undertaking measures which may hinder the competent authorities from exercising effectively their supervisory functions;

(17) For prudential reasons, a UCITS should, whether its chosen investment policy is to invest in a variety of liquid financial assets or to specialise in a certain category of such assets, avoid assuming an excessive concentration in liquid financial assets issued by and/or made with a single body;

(18) The depositary of the assets of a UCITS carries out crucial controlling functions over the compliance of a UCITS with the law and its fund rules or instruments of incorporation; therefore it is important to ensure an effective independence between the management company and the depositary; when both the management company and the depositary belong to the same economic group or when the depositary has a qualifying holding in the management company’s capital, or vice versa, or in all other cases in which the depositary may exercise a significant influence over the management company, or vice versa, it is necessary to undertake all measures assuring the independence between the two entities; when a management company, acting on behalf of the common funds or investment companies it manages, is permitted to enter into transactions with the depositary, arrangements have to be made preventing conflicts of interests and ensuring the compliance of the transaction with the law and the UCITS’ fund rules or instruments or incorporation;

(19) Considering the depositary’s liabilities towards the management company and the unit-holders and the complexity of its controlling functions, only institutions which have adequate financial resources and an adequate organisational structure and which are subject to prudential supervision should fall within the categories of institutions eligible to be depositaries;
(17) Whereas, considering the need to ensure the free cross-border marketing of the units of a wider range of collective investment undertakings, while providing a uniform minimum level of investor protection; whereas, therefore, only a binding Community Directive laying down agreed minimum standards can achieve the desired objectives; whereas this Directive effects only the minimum harmonisation required,

(20) Considering the need to ensure the free cross-border marketing of the units of a wider range of collective investment undertakings, while providing a uniform minimum level of investor protection; therefore, only a binding Community Directive laying down agreed minimum standards can achieve the desired objectives; this Directive effects only the minimum harmonisation required;

(21) The measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission (1), they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision;

(22) The Commission may consider proposing codification in due time after adoption of the proposals,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 85/611/EEC is amended as follows:

1. In Article 1(2), the first indent shall be replaced by the following:

‘— the sole object of which is the collective investment in transferable securities and/or in other liquid financial assets mentioned in Article 19 of this Directive of capital raised from the public and which operates on the principle of risk-spreading.’

2. In Article 1 the following paragraph shall be added:

‘8. For the purpose of this Directive

(a) transferable securities shall mean:

— shares in companies and other securities equivalent to shares in companies,

— bonds and other forms of securitised debt,

— the sole object of which is the collective investment in transferable securities and/or in other liquid financial assets mentioned in Article 19(1) of this Directive of capital raised from the public and which operates on the principle of risk-spreading, and’;

(a) transferable securities shall mean

— shares in companies and other securities equivalent to shares in companies ("shares"),

— bonds and other forms of securitised debt ("debt securities"),

— money market instruments normally dealt in on regulated markets within Article 19(1)(a), (b) or (c), and

— any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange.

excluding the techniques and instruments referred to in Article 21:

(b) money market instruments, which, for the purposes of this Directive shall be regarded as transferable securities, shall mean those classes of transferable instruments normally dealt in on the money market which Member States consider to:

— be liquid, and

— have a value which can be accurately determined at any time or at least with the frequency stipulated in Article 34, excluding the techniques and instruments referred to in Article 21.

3. In Article 19 the following shall be added to paragraph 1:

'(e) units of other collective investment undertakings within the meaning of the first and second indent of Article 1(2)

3. In Article 19 paragraph 1, subparagraph (a) shall be replaced by the following:

'(a) transferable securities admitted to or dealt in on a regulated market within the meaning of Article 1(13) of Directive 93/22/EEC in a Member State; and/or'

4. In Article 19 the following shall be added to paragraph 1:

'(e) units of UCITS and/or other collective investment undertakings within the meaning of the first and second indent of Article 1(2) provided that the latter:

— is authorised under laws which provide that it is subject to supervision considered by the UCITS’ competent authorities to be equivalent to that laid down in Community law, and that cooperation between authorities is sufficiently ensured;

— the level of protection for unitholders in the other collective investment undertaking is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on borrowing, lending, and uncovered sales of transferable securities are equivalent to the requirements of this Directive;

— the business of the other collective investment undertaking is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period; and/or
(f) deposits with credit institutions and/or deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the credit institution has its registered office in a Member State or, if the registered office of the credit institution is situated in a non-Member State, provided that it is subject to prudential rules considered by the UCITS’ competent authorities as equivalent to those laid down in Community law; and/or

(g) standardised financial-futures contracts, including equivalent cash-settled instruments, dealt in on a regulated market mentioned in the previous sub-paragraphs (b) and (c); and/or standardised financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market mentioned in the previous sub-paragraphs (a), (b) and (c) (“standardised derivatives”); this category includes, in particular, options on currency and on interest rates dealt in on the mentioned markets; and/or

(h) standardised options to acquire or dispose of any instruments falling within this Article, including equivalent cash-settled instruments, dealt in on a regulated market mentioned in the previous subparagraphs (b) and (c). This category includes, in particular, options on currency and on interest rates, financial derivative instruments dealt in over-the-counter (“OTC derivatives”), provided that

— the counter-parties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the UCITS’ competent authorities,

— the underlying consists of instruments covered by Article 19(1), financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in the UCITS’ fund rules or instruments of incorporation, and

— the OTC derivatives are subject to reliable and verifiable valuation and can be sold or liquidated on a daily basis;

and/or

(i) money market instruments which are not dealt in on a regulated market, unless the issue of such instruments is itself regulated for the purpose of protecting investors and savings, and provided that they are: money market instruments other than those dealt in on a regulated market, which fall under Article 1(8) third indent, unless the issue of such instruments is itself regulated for the purpose of protecting investors and savings, and provided that they are:
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<td>— issued by a central, regional or local authority, a central bank of a Member</td>
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<td>State, the European Central Bank, the European Union or the European Investment</td>
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<td>Bank, a non-Member State or, in the case of a Federal State, by one of the</td>
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<td>members making up the federation, or by a public international body to which</td>
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<td>one or more Member States belong, or</td>
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<td>— issued by an undertaking any securities of which are admitted to official</td>
<td>— issued by an undertaking any securities of which are admitted to official listing on a stock exchange or are dealt in on other regulated markets which operate regularly, are recognised and are open to the public, or</td>
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<td>listing on a stock exchange or are dealt in on other regulated markets which</td>
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<td>operate regularly, are recognised and are open to the public, or</td>
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<td>— issued or guaranteed by an establishment subject to prudential supervision, in</td>
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<td>accordance with criteria defined by Community law or by an establishment which</td>
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<td>are subject to and comply with prudential rules considered by the competent</td>
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<td>authorities to be at least as stringent as those laid down by Community law;</td>
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4. Article 19(2)(b), and (3) shall be deleted:                                      5. Article 19(2)(b), and (3) shall be deleted:

5. Article 20 shall be deleted;                                                    6. Article 20 shall be replaced by the following:

1. The Member States shall send to the Commission in due time all information which is required to be provided according to the relevant Articles of this Directive. They shall also furnish any amendments to the information concerned and shall indicate a source where up-to-date information can be obtained or accessed. Information covered by this Article shall be disclosed to the public on request by any holder of the information if it is not made public on a general basis.

2. The Commission shall forward the received information to the other Member States together with any comments which it considers appropriate. Such communications may be the subject of exchanges of view within the Contact Committee in accordance with the procedure laid down in Article 53(4). The Commission shall publish the received information and updated thereto in an adequate form in the Official Journal of the European Communities or make such information publicly available in an appropriate manner.'
6. In Article 21, the following paragraphs shall be added:

‘3. In this context, a UCITS may carry out transactions in financial derivative instruments, also other than those mentioned in Article 24b, provided that the exposure relating to such instruments is covered according to the rules laid down in Article 24b.

If the UCITS carries out transactions in financial derivative instruments which are not dealt in on a regulated market (over-the-counter derivatives), the counter-parties to such transactions must be qualified institutions belonging to the categories approved by the UCITS’ competent authorities.’

4. Further, in the context of efficient portfolio management, a UCITS may enter into securities lending transactions in which it acts as a lender, provided that the following conditions are fulfilled:

(a) securities lending transactions may be concluded only with a recognised securities clearing house or exchange, or with a counter-party which is an authorised person specialised in that type of transaction and subject to prudential supervision at Community level; or is a Zone A credit institution as defined in Directive 89/647/EEC or an investment firm as defined in Directive 93/22/EEC; or is a recognised third country investment firm which is subject to and complies with prudential rules considered by the UCITS’ competent authorities to be at least as stringent as those laid down in Directive 93/6/EEC;

(b) in relation to each securities lending transaction appropriate collateral shall be given covering the risk of default of the borrower. The value of collateral must be, during the entire period of the contract, at least equal to the total value of the financial instruments lent

When a UCITS is permitted to conclude securities lending transactions with the depositary which performs for that UCITS the duties mentioned in Articles 7 and 14 of this Directive, the competent authorities shall ensure that the collateral is entrusted, during the entire period of the contract, with a third party custodian and that measures are undertaken preventing the depositary from using it;

7. Article 21 shall be replaced by the following:

‘On a limited basis prescribed by the Member States, a UCITS may enter into securities lending transactions in which it acts as a lender, provided that the following conditions are fulfilled:

(a) securities lending transactions may be concluded only with a recognised securities clearing house or exchange, or with a counter-party which is an authorised person specialised in that type of transaction and subject to prudential supervision at Community level; or is a Zone A credit institution as defined in Directive 89/647/EEC (1) or an investment firm as defined in Directive 93/22/EEC; or is a recognised third country investment firm which is subject to and complies with prudential rules considered by the UCITS’ competent authorities to be at least as stringent as those laid down in Directive 93/6/EEC (2);

(b) in relation to each securities lending transaction appropriate collateral shall be given covering the risk of default of the borrower. The value of collateral must be, during the entire period of the contract, at least equal to the total value of the financial instruments lent and must be kept as collateral,

(c) if the securities lending transaction is carried out by recognised security clearing houses and/or exchanges, collateral must be provided in accordance with the relevant rules of these entities; the collateral must be kept as collateral and may not be used by the UCITS for further investments.

When a UCITS is permitted to conclude securities lending transactions with the depositary which performs for that UCITS the duties mentioned in Articles 7 and 14 of this Directive, the competent authorities shall ensure that the collateral is entrusted, during the entire period of the contract, with a third party custodian and that measures are undertaken preventing the depositary from using it;’

### Initial Proposal

8. Article 22(1), (2) and the second sub-paragraph of (5) shall be replaced by the following:

‘1. A UCITS may invest no more than 5% of its assets in each of the following instruments issued by or made with the same body or to which the same body is the counter-party:

- transferable securities,
- money market instruments according to Article 19(1)(i),
- deposits,
- OTC financial derivative instruments.

Member States may allow to cumulate investments in different instruments with the same body/counter-party up to a limit of 15%. Companies within the same group are regarded as a single body for the purpose of calculating the limits contained in this Article.

2. The Member States may raise the limit laid down in paragraph 1 sentence 1 to a maximum of 10%, and in case of group investments to a maximum of 15%; paragraph 1 sentence 2 does not apply. However, the total value of the UCITS' investments in the instruments mentioned in paragraph 1 with one body/counter-party/group in each of which it invests more than 5% of its assets must not then exceed 40% of the value of its assets.

5. (. . .)

The limits provided for in paragraphs 1, 2, 3 and 4 may not be combined, and thus investments in the instruments mentioned in Article 19(1) with one body/counter-party/group carried out in accordance with paragraphs 1, 2, 3 and 4 shall under no circumstances exceed in total 35% of the assets of a UCITS.’

7. The following Article 22a shall be inserted:

‘**Article 22a**

1. Without prejudice to the limits laid down in Article 25, the Member States may raise the limits laid down in Article 22 to a maximum of 35% for investment in shares issued by the same body when, according to the fund rules or instruments of incorporation, the aim of the UCITS' investment policy is to replicate the composition of a certain stock index.'

### Amended Proposal

8. Article 22(1), (2) and the second sub-paragraph of (5) shall be replaced by the following:

‘1. A UCITS may invest no more than 5% of its assets in each of the following instruments issued by or made with the same body or to which the same body is the counter-party:

- transferable securities,
- money market instruments according to Article 19(1)(i),
- deposits,
- OTC financial derivative instruments.

Member States may allow to cumulate investments in different instruments with the same body/counter-party up to a limit of 15%. Companies within the same group are regarded as a single body for the purpose of calculating the limits contained in this Article.

2. The Member States may raise the limit laid down in paragraph 1 sentence 1 to a maximum of 10%, and in case of group investments to a maximum of 15%; paragraph 1 sentence 2 does not apply. However, the total value of the UCITS' investments in the instruments mentioned in paragraph 1 with one body/counter-party/group in each of which it invests more than 5% of its assets must not then exceed 40% of the value of its assets.

5. (. . .)

The limits provided for in paragraphs 1, 2, 3 and 4 may not be combined, and thus investments in the instruments mentioned in Article 19(1) with one body/counter-party/group carried out in accordance with paragraphs 1, 2, 3 and 4 shall under no circumstances exceed in total 35% of the assets of a UCITS.'

9. The following Article 22a shall be inserted:

‘**Article 22a**

1. Without prejudice to the limits laid down in Article 25, the Member States may raise the limits laid down in Article 22 to a maximum of 20% for investment in shares and/or debt securities issued by the same body when, according to the fund rules or instruments of incorporation, the aim of the UCITS' investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the UCITS' competent authorities, on the following basis:'
2. Replicable stock indices shall be indices which Member States consider to:

— have a composition which is sufficiently diversified,

— be easy to replicate,

— represent an adequate benchmark for the equity market to which they refer,

— be published in an appropriate manner.

3. Each Member State shall send to the Commission the list of stock-indices which they consider replicable by UCITS, together with details of the characteristics of such stock-indices. A similar communication shall be effected in respect of each change to the aforementioned list. The Commission shall publish the complete list of replicable stock-indices and updates thereto in the Official Journal of the European Communities at least once a year. This list may be subject to exchanges of views within the Contact Committee in accordance with the procedure laid down in Article 53(4).

4. The UCITS fund rules or instruments of incorporation, its prospectuses and any promotional literature shall describe the characteristics of the replicated stock-index.

These documents shall also contain a prominent statement drawing attention to the fact that the aim of the UCITS' investment policy is to replicate a certain stock-index and that therefore it may invest a relevant part of its assets in shares issued by the same issuer.

8. Article 24 shall be replaced by the following:

‘Article 24

1. A UCITS may acquire the units of other collective investment undertakings within the meaning of the first and second indent of Article 1(2), provided that it invests no more than 10 % of its own assets in units of a single UCITS.
2. The Member States may raise the limit laid down in paragraph 1 to a maximum of 35%. However, in that case the UCITS must invest in at least five different collective investment undertakings mentioned in paragraph 1.

3. A UCITS may not invest in units of a collective investment undertaking within the meaning of the first and second indent of Article 1(2), which invests more than 10% of its own assets in units of other collective investment undertakings.

4. Investment in the units of a unit trust managed by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, shall be permitted only in the case of a unit trust which, in accordance with its rules, has specialised in investment in a specific geographical area or economic sector, and provided that such investment is authorised by the competent authorities. Authorisation shall be granted only if the unit trust has announced its intention of making use of that option and if that option has been expressly stated in its rules.

A management company may not charge any fees or costs on account of transactions relating to a unit trust's units where some of a unit trust's assets are invested in the units of another unit trust managed by the same management company or by any other company with which the management company is linked by common management or control or by a substantial direct or indirect holding.

5. Paragraph 4 shall also apply where an investment company acquires units in another investment company to which it is linked within the meaning of the previous subparagraph.

Paragraph 4 shall also apply where an investment company acquires units of a unit trust to which it is linked or where a unit trust acquires units of an investment company to which it is linked.

6. The UCITS' fund rules or instruments of incorporation, its prospectuses and any promotional literature shall describe the characteristics of the other collective investment undertakings in the units of which the UCITS is authorised to invest.

2. Investments made in units of collective investment undertakings other than UCITS may not exceed, in aggregate, 30% of the assets of the UCITS.

The Member States may allow that, when a UCITS has acquired units of UCITS and/or other collective investment undertakings, the assets of the respective UCITS or other collective investment undertaking do not have to be combined to the limits laid down in Article 22.

3. A UCITS may not invest in units of another UCITS and/or other collective investment undertaking which invests itself more than 10% in units of other UCITS and/or other collective investment undertakings.

Unchanged

Deleted
These documents shall also contain a prominent statement drawing attention to the fact that the UCITS invests a part of or all its assets in units of other collective investment undertakings.

9. The following Articles 24a and 24b shall be inserted:

`Article 24a`

1. Notwithstanding the provision laid down in Article 19(4), a UCITS may invest its assets in deposits with credit institutions furnishing sufficient financial and professional guarantees, provided that the UCITS places nor more than 10% of its assets in deposits with the same credit institution or with credit institutions within the same group.

2. Member States may raise the limit laid down in paragraph 1 to a maximum of 35%. However, in that case a UCITS must invest in deposits with at least five different credit institutions. For the purpose of this rule, credit institutions belonging to the same group are considered to be one single institution.

3. The UCITS’ fund rules or instruments of incorporation, its prospectuses and any promotional literature must include a prominent statement drawing attention to the fact that the UCITS invests all or a part of its assets in deposits with credit institutions.

4. Member States shall not permit UCITS to invest in deposits with a credit institution which performs for that UCITS the duties of a depositary mentioned in Articles 7 and 14.

11. The following Articles 24a and 24b shall be inserted:

If the UCITS intends to invest its assets in instruments other than transferable securities, the UCITS’ fund rules or instruments of incorporation, its prospectuses and any promotional literature shall:

— in the case of investments according to Article 22a: describe the characteristics of the replicated index and contain a prominent statement drawing attention to the fact that the aim of the UCITS’ investment policy is to replicate a certain index and that therefore it may invest a relevant part of its assets in securities issued by the same issuer,

— in the case of investments according to Article 24: include a clear statement drawing the attention to the fact that the UCITS invests in units of UCITS and/or other collective investment undertakings and describe the characteristics of the other UCITS or other collective investment undertakings in the units of which the UCITS is authorised to invest,

— in the case of investments according to Article 24b: include a clear statement drawing attention to the fact that the UCITS invests in standardised and/or OTC derivatives and contain a warning that those investments may be more risky and therefore are only suitable for experienced investors and for investors whose financial situation allows them to bear the risks involved in the investment in units of such UCITS,

— in the case of investments in deposits: include a prominent statement drawing attention to the fact that the UCITS invests all or a part of its assets in deposits with credit institutions,

— in case the net asset value of a UCITS is likely to have a high volatility due to its portfolio composition or the management techniques used: include a clear statement referring to this feature of the UCITS.
Article 24b

1. Notwithstanding the provisions laid down in Article 21, a UCITS may invest, as a part of its general investment policy, in financial-futures contracts and options mentioned in Article 19(1)(g) and (h), provided that the maximum potential exposure relating to the conclusion of each such derivative transaction is covered, during the entire period of the contract, by assets belonging to the UCITS of the right kind and sufficient in value.

2. The UCITS’ fund rules or instruments of incorporation, its prospectuses and any promotional literature must include a prominent statement drawing attention to the fact that the UCITS invests, as a part of its general investment policy, in the financial-futures contracts and options.

These documents shall also contain a warning that the investment in the units of such a UCITS is only suitable for experienced investors and for investors whose financial situation allows them to bear the risks involved in the investment in units of such UCITS.

Unchanged

1. A UCITS may invest, as a part of its general investment policy and/or for hedging purposes, in financial derivative instruments mentioned in Article 19(1)(g) and (h), provided that

— the management or investment company has a risk-management process which enables it to daily monitor and measure the material risk of the positions and their contribution to the overall risk profile of the portfolio,

— the management or investment company has a process for accurate and independent assessment of the value of OTC derivative instruments.

2. When a UCITS intends to invest, as part of its general investment policy and/or for hedging operations, in the financial derivative instruments mentioned in Article 19(1)(g) and (h), it must disclose this intention in the documents referred to in Article 24a. In particular, it must list which instruments can be dealt in and the derivatives’ contribution to the risks and returns of the entire portfolio. Information must also be given on quantitative limits, as provided for either in this directive or in the UCITS’ investment objectives, for daily exposure in such instruments, and the methodologies used to calculate such limits.

3. In any case:

— the amount of all the commitments entered into by the UCITS through financial derivatives operations must not exceed the total net value of the UCITS’ portfolio. In calculating the value of the commitments, reference must be made to the current value of the underlying; and,

— the amount of all the commitments entered into by the UCITS through OTC derivatives operations must not exceed 30% of the total net value of the UCITS’ portfolio. When calculating on a daily basis the value of such commitments, reference must be made to the current value of the underlying.

4. When the underlying of a financial derivative instrument consists of instruments for which the Directive sets quantitative limits, the underlying must be taken into account in the calculation of such limits. When a transferable security embeds a derivative, the latter must be taken into account when complying with the requirements of this Article.
5. Under no circumstances:

— shall the use of derivatives cause the UCITS to diverge from its investment objectives as laid down in the UCITS' prospectus,

— shall the UCITS carry out deals in the financial derivative instruments mentioned in Article 19(1)(g) and (h), which correspond to uncovered sales of transferable securities.

6. For the purpose of calculating the limits set out in Article 22 for counter-party risk, the management or investment company must calculate a UCITS' counter-party exposure for OTC financial derivatives according to the methodology described in annex II, paragraph 5 of Directive 93/6/EEC as amended by Directive 98/33/EC (1), without application of the weightings for counter-party-risk.

10. In Article 25(2), the following indent shall be added:

'— 10 % of the units of any single UCITS and/or other collective investment undertaking within the meaning of the first and second indent of Article 1(2);'

11. In Article 25(2), the second sentence shall be replaced by the following:

'The limits laid down in the second and fourth indents may be disregarded at the time of acquisition if at that time the gross amount of the debt securities or of the money market instruments, or the net amount of the securities in issue cannot be calculated.'

12. In Article 25(2), the third indent shall be replaced and the following fourth indent shall be added:

'— 10 % of the units of any single UCITS and/or other collective investment undertaking within the meaning of the first and second indent of Article 1(2);'

13. In Article 25(2), the second sentence shall be replaced by the following:

'The limits laid down in the second, third and fourth indents may be disregarded at the time of acquisition if at that time the gross amount of the debt securities or of the money market instruments, or the net amount of the securities in issue cannot be calculated.'

14. Article 25(3)(e) shall be replaced by the following:

'e) shares held by an investment company or investment companies in the capital of subsidiary companies carrying on only the business of management, advice or marketing in the country where the subsidiary is located, in regard to the repurchase of units at unit-holders' request exclusively on its or their behalf.'

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<th>AMENDED PROPOSAL</th>
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<tr>
<td>13. Article 26(1), second sentence shall be replaced by the following:</td>
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<td>‘While ensuring observance of the principle of risk spreading, the Member</td>
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<td>States may allow recently authorised UCITS to derogate from Articles 22, 22a,</td>
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<td>23, 24, 24a and 24b for six months following the date of their authorisation.’</td>
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<td>14. Article 41(2), shall be replaced by the following:</td>
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<td>‘2. Paragraph 1 shall not prevent such undertakings from acquiring transferable</td>
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<td>securities or other financial instruments mentioned in Article 19(1)(e), (g),</td>
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<td>(h) and (i) which are not fully paid.’</td>
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<td>15. Article 42 shall be replaced by the following:</td>
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<td>‘Article 42</td>
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<td>Neither</td>
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<td>— an investment company, nor</td>
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<td>— a management company or depositary acting on behalf of a unit trust</td>
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<td>may carry out uncovered sales of transferable securities or other financial</td>
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<td>instruments mentioned in Article 19(1)(e), (g), (h) and (i).’</td>
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<tr>
<td>16. After Article 53 the following Article 53a is inserted:</td>
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<tr>
<td>‘Article 53a</td>
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<td>The technical modifications to be made to this Directive in the following</td>
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<td>areas shall be adopted in accordance with the procedure to be regulated at a</td>
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<td>later stage by a Directive amending this Directive:</td>
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<td>— clarification of the definitions in order to ensure uniform application of</td>
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<td>this Directive throughout the Community,</td>
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<td>— adaptation of the ceilings referred to in Section V and in Article 36(2)</td>
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<td>in order to take account of developments on financial markets, where such</td>
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<td>adaptations will not lead to stricter requirements for the UCITS,</td>
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<td>— alignment of terminology on and the framing of definitions in accordance</td>
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<td>with subsequent acts on UCITS and related matters.’</td>
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<td>17. Article 42 shall be replaced by the following:</td>
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<td>Unchanged</td>
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<td>18. After Article 53 the following Article 53a is inserted:</td>
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<tr>
<td>Unchanged</td>
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<tr>
<td>1. In addition to its functions provided for in Article 53(1), the Contact</td>
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<td>Committee may also meet as a Regulatory Committee within the meaning of</td>
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<td>Article 5 of Decision 1999/468/EC to assist the Commission in regard to the</td>
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<tr>
<td>technical modifications to be made to this Directive in the following areas:</td>
</tr>
<tr>
<td>— alignment of terminology on and the framing of definitions in accordance</td>
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<tr>
<td>with subsequent acts on UCITS and related matters.’</td>
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2. The regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.'

**Article 2**

No later than 30 June 2002 Member States shall adopt the laws, regulations and administrative provisions necessary for them to comply with this Directive.

These provisions shall enter into force no later than 31 December 2002. The Member States shall forthwith inform the Commission thereof.

When Member States adopt these provisions they shall include a reference to this Directive or accompany them with such a reference on the occasion of their official publication. The manner in which such references are to be made shall be laid down by the Member States.

**Article 3**

This Directive shall enter into force 20 days after the date of its publication in the *Official Journal of the European Communities*.

**Article 4**

This Directive is addressed to the Member States.
Proposal for a directive of the European Parliament and of the Council on the promotion of electricity from renewable energy sources in the internal electricity market

(2000/C 311 E/22)

(Text with EEA relevance)

COM(2000) 279 final — 2000/0116(COD)

(Submitted by the Commission on 31 May 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions,

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

Whereas:

(1) The potential for exploitation of renewable sources of energy is underused in the Community at present, and it is therefore necessary to take measures to ensure that the potential is better exploited within the framework of the internal electricity market.

(2) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity (1) provides for an important step in the completion of the internal market in electricity.

(3) Article 6 of the Treaty requires environmental protection requirements to be integrated into the definition and implementation of the Community policies and actions.

(4) The promotion of electricity from renewable energy sources is a high Community priority as outlined in the White Paper on Renewable Energy Sources ('the White Paper') (2) for reasons of security and diversification of energy supply, for reasons of environmental protection and for reasons of social and economic cohesion. That was endorsed by the Council in its Resolution of 8 June 1998 on renewable sources of energy (3), and by the European Parliament in its Resolution on the White Paper (4).

(5) In particular the Council in its Resolution of 8 June 1998 endorsed the objective of 12 % of the gross inland consumption comprising electricity, heat and biofuels from renewable energy sources for the Community as a whole by 2010, as suggested in the White Paper, and called for increased efforts at Community level as well as in Member States, bearing in mind the need to reflect different national circumstances.

(6) In the White paper the indicative objective of 12 % was translated into a specific share of consumption of electricity produced from renewable energy sources. Taking into account an updated scenario for electricity consumption as explained in this Directive, that indicative objective of 12 % results in a 22,1 % share of electricity produced from renewable energy sources.

(7) A harmonised framework on electricity from renewable energy sources forms part of the Action Plan outlined in the White Paper.

(8) The increased use of electricity from renewable energy sources constitutes an essential part of the package of measures needed to comply with the Kyoto Protocol, and in any policy package to meet further commitments. The net environmental effects of different renewable energy sources should be taken into account when implementing different measures.

(9) The increased use of electricity from renewable energy sources is not only necessary to reduce greenhouse gases but also to reduce other harmful emissions such as emissions of SO₂ and NOₓ.

(10) The Council in its conclusion of 11 May 1999 (5) and the European Parliament in its Resolution of 26 May 1998 on electricity from renewable energy sources (6) have invited the Commission to submit a concrete proposal for a Community framework on access for electricity from renewable energy sources (7) have invited the Commission to submit a concrete proposal for a Community framework on access for electricity from renewable energy sources to the internal market. Furthermore, the European Parliament in its Resolution of 30 March 2000 on Electricity from renewable energy sources and the internal electricity market (8), underlined that binding and ambitious renewables targets at the national level are essential to results and to achieving the Community targets.

(2) COM(97) 599 final.
(4) A4-0207/98.
(5) 8013/99.
(6) A4-0199/98.
(11) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, general principles providing for a framework and objectives must be established at Community level, but their detailed implementation should be left to Member States, thus allowing each Member State to choose the regime which corresponds best to its particular situation. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(12) Electricity generated by large hydroelectric plants, while currently the most important form of electricity generated from renewable energy sources, is generally competitive with electricity produced from conventional sources and should therefore be excluded from the scope of this Directive, except with regard to the provisions on national targets and certification of origin.

(13) To ensure increased market penetration of electricity from renewable energy sources in the medium term, it is necessary to require all Member States to set national targets for the consumption of electricity from renewable sources as well as detailed plans for the achievement of those targets.

(14) It is necessary that the national targets, individually and collectively, are consistent with the objectives of doubling the share of renewable energy sources in the gross domestic energy consumption in the Community by 2010 as outlined in the White Paper and the Climate Change commitments accepted by the Community at Kyoto, and with any national climate change commitments accepted within this context. A framework based on well-established and transparent methodologies should be laid down for the setting of such national targets.

(15) The Commission should evaluate Member States' national targets and policies and in particular their compliance with the White Paper and the Climate Change commitments accepted by the Community at Kyoto and, if necessary, present proposals to the European Parliament and to the Council with regard to individual and mandatory national targets with a view to achieving such compliance.

(16) Increased possibilities of trade and competition would help increase the share of electricity from renewable energy sources in the Community by bringing down costs and facilitating the full exploitation of the potential for development of renewable energy sources in the Community, depending inter alia on geographical circumstances.

(17) To facilitate trade in electricity from renewable energy sources and to increase transparency for the consumer's choice between conventionally produced electricity and electricity from renewable energy sources, certification of the guarantee of origin of such electricity is necessary. It is important that all forms of electricity generated from renewable energy sources are covered by such guarantees of origin. Consequently, the provisions on the guarantee of origin should apply to large hydroelectric plants.

(18) Public support for electricity from renewable energy sources is based on the assumption that, in the long run, it can compete with conventionally produced electricity. Such support will be necessary to reach the Community's objectives with regard to its expansion, in particular as long as electricity prices in the internal market do not reflect the full social and environmental costs and benefits of energy sources used. The need for public support in favour of renewable energy sources is thus recognised in the Community Guidelines for State aid for environmental protection (1). The rules of the Treaty, and in particular Articles 87 and 88 thereof, will continue to apply to such public support however.

(19) Member States operate different mechanisms of support for renewable energy sources at the national level, including investment aid, tax exemptions or reductions, tax refunds and direct price support schemes.

(20) It is too early to decide on a Community-wide framework regarding support schemes, in view of the limited experience with national schemes and the current relatively low share of price supported renewable electricity in the Community.

(21) It is however necessary to adapt, in the medium term, support schemes to the principles of the developing internal electricity market. It is therefore appropriate that the Commission monitor the situation and present a report on experience gained with the application of national schemes. If necessary in the light of the conclusions of this report, the Commission should make a proposal for a Community framework with regard to support schemes for electricity from renewable energy sources. That proposal should be compatible with the principles of the internal electricity market, take into account the characteristics of the different technologies, be efficient and simple, and include sufficient transitional regimes to maintain investors' confidence and avoid stranded costs.

(22) When favouring the development of a market for renewable energy, it is necessary to take into account the positive impact on employment and social cohesion.

(23) Increased market penetration of electricity from renewable energy sources will allow for economies of scale, thereby reducing costs.

(1) OJ C 72, 10.3.1994, p. 3.
Small and medium-sized undertakings and independent power producers play an important role in the production of electricity from renewable energy sources, and their access to the market for renewable electricity should be encouraged, thus improving the employment opportunities for companies in this sector.

The specific structure of the renewables sector, which includes many small and medium-sized enterprises, should be taken into account, especially when reviewing the administrative procedures for obtaining permission to construct plants producing electricity from renewable energy sources.

The costs of connecting new producers of electricity from renewable energy sources should be transparent and non-discriminatory and due account should be taken of the benefit embedded generators bring to the grid.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

The purpose of this Directive is to create a common framework in order to promote an increase of the contribution of renewable energy sources to electricity production in the internal market for electricity.

Article 2

For the purposes of this Directive, the definitions in Directive 96/92/EC shall apply.

The following definitions shall also apply:

1. 'renewable energy sources' shall mean renewable non-fossil sources (wind, solar, geothermal, wave, tidal, hydroelectric installations with a capacity below 10 MW and biomass, which means products from agriculture and forestry, vegetable waste from agriculture, forestry and from the food production industry, untreated wood waste and cork waste);

2. 'electricity from renewable energy sources' shall mean electricity generated by plants using only renewable energy sources, including the part of electricity produced from renewable energy sources in hybrid plants using conventional sources of energy, in particular for back-up purposes;

3. 'support scheme' shall mean a mechanism according to which a generator of electricity, on the basis of State regulation, receives, directly or indirectly, public support, including in particular, direct price support, paid as a subsidy per kWh provided and sold (e.g. quota systems providing for tendering or green certificates, fixed feed-in prices and fixed premium schemes), investment aid and tax exemptions.

4. 'consumption of electricity' shall mean domestic electricity production, plus imports, minus exports (gross consumption).

CHAPTER II

NATIONAL TARGETS FOR CONSUMPTION OF ELECTRICITY FROM RENEWABLE SOURCES OF ENERGY

Article 3

1. Member States shall take the necessary steps to ensure that the consumption of electricity from renewable energy sources develops in conformity with the established objectives referred to in paragraph 2. For the application of this Article, hydroelectric installations with a capacity above 10 MW shall be considered as a renewable energy source.

2. No later than one year after the entry into force of this Directive and every five years thereafter, Member States shall adopt and publish a report setting national targets for future consumption of electricity from renewable energy sources. Such targets shall identify the national objective for future levels of consumption of electricity from renewable energy sources, in terms of kWh consumed or as a percentage of electricity consumption, on a year-by-year basis for the next 10 years. They shall be compatible with the objective of 12 % of the gross domestic energy consumption by 2010 set in the White Paper on Renewable Energy Sources and in particular with the 22.1 % share of electricity from renewable energy sources in the total Community electricity consumption by 2010 as referred to in the Annex to this Directive. They shall further be compatible with any national commitments accepted in the context of the Climate Change commitments accepted by the Community in Kyoto and subsequently. The report shall also outline the measures taken and to be taken, at national level, to achieve these objectives.

Each year, the Member States shall publish a report which includes an analysis of success in meeting the previous year's national targets and shall indicate to which extent the measures taken are consistent with the national climate change commitment.

3. Each year, the Commission shall, on the basis of the Member States' reports referred to in paragraph 2, assess the extent to which the national targets, individually and collectively, are consistent with the established objectives referred to in paragraph 2 and publish its conclusions in a report.

4. The Commission shall, if the report referred to in paragraph 3 concludes that the national targets are liable to be inconsistent with the established objectives referred to in paragraph 2, present proposals to the European Parliament and to the Council with respect to individual and mandatory national targets.
CHAPTER III
ACCESS OF ELECTRICITY FROM RENEWABLE ENERGY SOURCES TO THE INTERNAL MARKET OF ELECTRICITY

Article 4
Support schemes

The Commission shall monitor the application of support schemes in Member States and shall, no later than five years after the entry into force of this Directive, present a report on experience gained with the application and the co-existence of different support schemes in Member States. In the light of the conclusions of that report, the Commission will, if necessary, make a proposal for a Community framework with regard to support schemes for electricity from renewable energy sources. That proposal shall:

(a) be compatible with the principles of the internal electricity market;

(b) take into account the characteristics of the different renewable energy technologies;

(c) be efficient and simple;

(d) include sufficient transitional regimes to maintain investors' confidence.

The rules of the Treaty, and in particular Articles 87 and 88 thereof, apply to the support schemes.

Article 5
Guarantee of origin of electricity from renewable energy sources

1. Member States shall, within two years following the entry into force of this Directive, ensure that the origin of electricity generated from renewable energy sources can be guaranteed as such within the meaning of this Directive according to objective and non-discriminatory criteria laid down by each of the Member States. They shall issue guarantee certificates to this effect. For the application of this Article, hydroelectric installations with a capacity above 10 MW shall be considered as a renewable energy source. The certificates shall specify the energy source from which the electricity is generated and in the case of hydroelectric installations, whether the capacity is above or under 10 MW.

2. Guarantee certification shall serve to enable producers of electricity from renewable energy sources to demonstrate that the electricity they sell is electricity from renewable energy sources within the meaning of this Directive. Such certificates shall be mutually recognised by the Member States for this purpose. Any refusal to recognise certificates, in particular for reasons relating to the prevention of fraud, must be based on objective, transparent and non-discriminatory criteria. Any disputes shall be settled by the Commission.

3. Member States shall designate a competent body, independent from generation and distribution activities, to issue such guarantee certificates within one year following the entry into force of this Directive.

4. Member States shall put into place appropriate mechanisms to ensure that certification is both accurate and reliable and they shall outline in the report referred to in the second subparagraph of Article 3(2) the measures taken to ensure the reliability of the certification system.

5. After having consulted national experts, the Commission shall in the report referred to in Article 8 consider the form and modalities that Member States should follow in the certification of electricity generated from renewable energy sources. If necessary, the Commission shall propose to the European Parliament and the Council the adoption of common rules in this respect.

CHAPTER IV
ADMINISTRATIVE PROCEDURES

Article 6

1. Member States shall review the existing legislative and regulatory framework with regard to authorisation procedures applicable to installations of generation plants for electricity from renewable energy sources, with a view to streamlining and expediting procedures at the appropriate administrative level, and ensuring that the rules are objective, transparent and non-discriminatory, and take fully into account the particularities of the various renewable technologies.

2. Member States shall publish not later than two years after the entry into force of this Directive a report on the review referred to in paragraph 1 setting out the action which must be taken to reduce regulatory and non-regulatory barriers to increasing production of electricity from renewable energy sources. The report shall cover, in particular, the following issues:

(a) coordination between the different administrative bodies concerned with the procedure for authorisation of generation plants producing electricity from renewable energy sources;

(b) reasonable deadlines for dealing with applications for authorisation;

(c) the establishment of a fast-track planning procedure for producers of electricity from renewable energy sources;

(d) where applicable, the possibility of establishing mechanisms under which the absence of reply by the competent bodies on an application for authorisation within a certain period of time automatically results in an authorisation;

(e) establishment of single reception points, at the appropriate administrative level, for applications of authorisations for the installation of generation plants for electricity from renewable energy sources;

(f) the identification at the national, regional or local level of sites suitable for establishing new capacity for generating electricity from renewable energy sources;
(g) specific planning guidelines for projects for electricity from renewable energy sources;

(h) the designation of an authority (a public or a private body) to act as mediator in disputes between authorities responsible for the granting of authorisations and applicants for authorisations;

(i) the introduction of comprehensive information and training programmes on technologies concerning the utilisation of renewable energy sources for personnel responsible for the authorisation procedures.

3. The Commission shall, in the report mentioned in Article 8 and on the basis of the Member States’ reports referred to in paragraph 2 of this Article, assess best practice with respect to removing regulatory and non-regulatory barriers with a view to promoting the penetration of electricity from renewable energy sources.

CHAPTER V
GRID SYSTEM ISSUES

Article 7

1. Member States shall take the necessary measures to ensure that transmission system operators and distribution system operators in their territory grant priority access to the transmission and distribution of electricity from renewable energy sources.

2. Member States shall require transmission system operators and distribution system operators to set up and publish standard rules relating to the bearing of costs of technical adaptations, such as grid connections and grid reinforcements which are necessary in order to integrate a new producer feeding electricity from renewable energy sources into the interconnected grid.

These rules shall be based on objective, transparent and non-discriminatory criteria taking particular account of all the future system costs and benefits generated by renewable energy installations.

3. Transmission and distribution system operators shall be required to provide to a new generator wishing to be connected a comprehensive and detailed estimate of the costs associated with the connection.

4. Member States shall require transmission system operators and distribution system operators to set up and publish standard rules relating to the sharing of costs of system installations, such as grid connections and reinforcements, between all generators benefiting from them.

The sharing shall be enforced by an appropriate compensation mechanism and shall be based on objective, transparent and non-discriminatory criteria taking into account the benefits initially and subsequently connected generators as well as transmission system operators and distribution system operators derive from the connections.

5. Member States shall in the report referred to in Article 6(2) also consider the measures to be taken to facilitate access to the grid system of electricity from renewable energy sources. In particular, that report shall examine the necessity to introduce two-way metering.

CHAPTER VI
FINAL PROVISIONS

Article 8

The Commission shall, if necessary, two years after the entry into force of this Directive and in any event no later than 31 December 2004, taking into account, inter alia, progress made in the Community by 1 January 2004 pursuant to Directive 96/92/EC, as well as progress made in meeting climate change commitments, and the reports produced by Member States pursuant to Article 3(2) and Article 6(2), present to the European Parliament and the Council an interim report on the implementation of this Directive.

A final report shall be produced by the Commission no later than 1 January 2009.

Those reports shall consider the progress made in reflecting the external costs of electricity not generated from renewable energy sources and the impact of State aid granted to electricity not generated from renewable energy sources.

The final report shall, in particular, take into account the possibility for Member States to meet the objectives established in the framework of Article 3 and the existence of discrimination between different energy sources.

If appropriate, the Commission shall submit with the reports further proposals to the European Parliament and the Council.

Article 9

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 May 2001 at the latest. They shall forthwith inform the Commission thereof.

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

Article 10

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

Article 11

This Directive is addressed to the Member States.
ANNEX

INDICATIVE FIGURES FOR MEMBER STATE TARGETS

This Annex provides an indication for setting national targets for electricity from renewable energy sources (RES-E), as referred to in Article 3(2).

1. Analytical basis

The following elements have been used for the analysis and calculation of the figures contained in the table in section 3:

— Update of the Best Practice Scenario of the TERES II study (1) taking into account recent developments in renewable energy sources (RES).

— Official Eurostat 1997 data for RES consumption per Member State.

— Gross electricity consumption per Member State, from the baseline scenario provided in 'Energy in Europe — European Union Energy Outlook to 2020', published in November 1999 (2).

— Action plans, strategies, White Papers, etc published by Member States, as well as various sectoral studies and recent reports analysing potentials and trends in renewable energy have been used as an important input for the analysis.

2. Methodology

The calculation of indicative Member State targets for RES-E is based upon the principle that the targets should collectively be compatible with the White Paper objective of doubling the contribution of RES to 12% of gross inland energy consumption by 2010 and that this should be reached by a joint effort based on technological and economic potentials in each Member State.

In the White paper this 12% share of total renewable energy sources in the gross inland energy consumption has been translated into a specific share for consumption of electricity produced from renewable energy sources. In other words, the White Paper contains projections for the development of RES-E needed to achieve the overall 12% objective. The results of these projections require a doubling of RES-E from 337 TWh (14.3%) in 1995 to 675 TWh (23.5%) in 2010. These projections have been used as the starting point of the analysis.

By examining existing Member State targets, it appears that they are not sufficiently ambitious to reach collectively the overall 12% objective, or the specific RES-E share projected in the White Paper.

In order to establish a set of indicative Member State targets which are compatible with the objective of the White Paper, an updated version of the energy model used for the preparation of the White Paper has been employed as the principal analytical basis, taking into account the latest available figures (Eurostat figures from 1997 together with figures for gross electricity consumption from the baseline scenario (3) have been used in the modelling process; furthermore, recent technological developments, such as progress in wind energy technologies, market penetration curves etc. have been included in the calculation).

The energy model used is SAFIRE (Strategic Assessment Framework for the Implementation of Rational Energy), which was used already in the TERES II study and was originally developed under the Joule II programme (4).

(1) TERES II — The European Renewable Energy Study, European Commission, 1997. Through different scenarios, TERES II analyses the degree of political action necessary to meet Community objectives for the development of RES. TERES II was prepared for the European Commission within the framework of the ALTENER programme and was used as the main analytical basis for the drafting of the White Paper.


(3) See footnote 14.

SAFIRE is a highly sophisticated database and computer model that contains, among others, country-specific databases with information on energy demand by sector, energy prices, technology costs and renewable energy resources available. For this exercise, SAFIRE has been run on a country by country basis for the 15 EU countries, using the best Practice scenario of the TERES II study which is the scenario that lies behind the 12 % objective of the White paper.

The latest existing Member States targets and policies have been used as references to validate the results of the calculations of the TERES II update and to check for possible compliance between model projections and current targets in Member States.

3. Indicative figures for Member State targets

Percentages and amounts of TWh per Member State set out in the table below are the result of the analysis described above. The indicative Member State targets are collectively compatible with the White Paper objective, leading in the updated analysis to a total RES-E share of total EU electricity consumption of 22 % by 2010 (1). The indicative targets per Member State are expressed as a percentage of gross electricity consumption by 2010 (2). The figures in TWh are put as a reference.

Figures relating to each country’s gross electricity consumption are taken from the baseline scenario of ‘Energy in Europe’. This baseline scenario predicts an increase in final energy demand of 1,2 % annually between 1995-2010. If Member States achieve a lower gross electricity consumption than in the baseline scenario, the same percentage target would lead to a smaller consumption of RES-E in TWh.

**Indicative figures for Member State targets for contribution of RES-E to gross electricity consumption by 2010**

<table>
<thead>
<tr>
<th>Member State</th>
<th>Percentage (*)</th>
<th>TWh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>78,1</td>
<td>55,3</td>
</tr>
<tr>
<td>Belgium</td>
<td>6,0</td>
<td>6,3</td>
</tr>
<tr>
<td>Denmark</td>
<td>29,0</td>
<td>12,9</td>
</tr>
<tr>
<td>Finland</td>
<td>35,0</td>
<td>33,7</td>
</tr>
<tr>
<td>France</td>
<td>21,0</td>
<td>112,9</td>
</tr>
<tr>
<td>Germany</td>
<td>12,5</td>
<td>76,4</td>
</tr>
<tr>
<td>Greece</td>
<td>20,1</td>
<td>14,5</td>
</tr>
<tr>
<td>Ireland</td>
<td>13,2</td>
<td>4,5</td>
</tr>
<tr>
<td>Italy</td>
<td>25,0</td>
<td>89,6</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>5,7</td>
<td>0,5</td>
</tr>
<tr>
<td>Netherlands</td>
<td>12,0</td>
<td>15,9</td>
</tr>
<tr>
<td>Portugal</td>
<td>45,6</td>
<td>28,3</td>
</tr>
<tr>
<td>Spain</td>
<td>29,4</td>
<td>76,6</td>
</tr>
<tr>
<td>Sweden</td>
<td>60,0</td>
<td>97,5</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>10,0</td>
<td>50,0</td>
</tr>
<tr>
<td><strong>European Union</strong></td>
<td><strong>22,1 %</strong></td>
<td><strong>674,9</strong></td>
</tr>
</tbody>
</table>

(*) RES-E consumption as % of total gross electricity consumption of 3 058 TWh as forecasted in the baseline scenario.

(1) The projections of the White Paper were based on an older scenario for electricity consumption. For the purpose of this calculation, the new 1999 electricity consumption scenario has been used, transforming the 23,5 % RES-E share of electricity consumption of the White Paper to a 22,1 % share. Therefore, a consumption of 675 TWh as projected in the White Paper in order to contribute to the 12 % objective for all RES will result in a 22,1 % share of electricity.

(2) For the purpose of this Directive, Article 2 has defined ‘consumption of electricity’ as domestic electricity production, plus imports, minus exports (gross consumption).
### 4. Member States 1997 official Eurostat RES-E compared with indicative targets in 2010

<table>
<thead>
<tr>
<th>Country</th>
<th>RES-E % 1997</th>
<th>RES-E % 2010</th>
<th>RES-E % 1997 without large hydro</th>
<th>RES-E % 2010 without large hydro</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>72.7</td>
<td>78.1</td>
<td>10.7</td>
<td>21.1</td>
</tr>
<tr>
<td>Belgium</td>
<td>1.1</td>
<td>6.0</td>
<td>0.9</td>
<td>5.8</td>
</tr>
<tr>
<td>Denmark</td>
<td>8.7</td>
<td>29.0</td>
<td>8.7</td>
<td>29.0</td>
</tr>
<tr>
<td>Finland</td>
<td>24.7</td>
<td>35.0</td>
<td>10.4</td>
<td>21.7</td>
</tr>
<tr>
<td>France</td>
<td>15.0</td>
<td>21.0</td>
<td>2.2</td>
<td>8.9</td>
</tr>
<tr>
<td>Germany</td>
<td>4.5</td>
<td>12.5</td>
<td>2.4</td>
<td>10.3</td>
</tr>
<tr>
<td>Greece</td>
<td>8.6</td>
<td>20.1</td>
<td>0.4</td>
<td>14.5</td>
</tr>
<tr>
<td>Ireland</td>
<td>3.6</td>
<td>13.2</td>
<td>1.1</td>
<td>11.7</td>
</tr>
<tr>
<td>Italy</td>
<td>16.0</td>
<td>25.0</td>
<td>4.5</td>
<td>14.9</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>2.1</td>
<td>5.7</td>
<td>2.1</td>
<td>5.7</td>
</tr>
<tr>
<td>Netherlands</td>
<td>3.5</td>
<td>12.0</td>
<td>3.5</td>
<td>12.0</td>
</tr>
<tr>
<td>Portugal</td>
<td>38.5</td>
<td>45.6</td>
<td>4.8</td>
<td>21.5</td>
</tr>
<tr>
<td>Spain</td>
<td>19.9</td>
<td>29.4</td>
<td>3.6</td>
<td>17.5</td>
</tr>
<tr>
<td>Sweden</td>
<td>49.1</td>
<td>60.0</td>
<td>5.1</td>
<td>13.7</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>1.7</td>
<td>10.0</td>
<td>0.9</td>
<td>9.3</td>
</tr>
<tr>
<td><strong>European Union</strong></td>
<td><strong>13.9 %</strong></td>
<td><strong>22.1 %</strong></td>
<td><strong>3.2 %</strong></td>
<td><strong>12.5 %</strong></td>
</tr>
</tbody>
</table>

The possibilities of using large hydro are to a large extent dependent upon geographical conditions. In order to adjust for this, the above comparisons are presented both including and excluding large hydro. The differences in the country figures with regard to the current penetration of RES-E without large hydro indicate to some extent whether promotional RES policies have been successfully implemented.

It should be noted that developments after 1997, for which no official Eurostat RES-E figures are yet available, indicate positive developments and strong promotional policies in several countries.
Proposal for a Council Regulation amending the Financial Regulation and separating the internal audit function from the \textit{ex ante} financial control function (Article 24, paragraph 5, of the Financial Regulation)

(2000/C 311 E/23)


(Submitted by the Commission on 31 May 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 279 thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 78h thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Court of Auditors,

Whereas:

(1) The accumulation of the internal audit function and the control \textit{ex-ante} by the Financial Controller under Article 24, paragraph 5, second sentence of the Financial Regulation may give rise to a dispersal of the two functions without necessarily ensuring the right balance between the two.

(2) Pending the adoption of the Financial Regulation, the internal audit function should be separated from the Financial Controller’s other functions as soon as possible. The result of this would be that the Financial Controller will continue to fulfil his present functions, including \textit{ex ante} control, but not that of internal audit, which will be performed by an Internal Auditor independent of the Financial Controller.

(3) The Internal Auditor will enjoy the same benefits and prerogatives as those granted to the Financial Controller in Article 24 of the Financial Regulation,

HAS ADOPTED THIS REGULATION:

\textbf{Article 1}

Paragraph 5 of Article 24 of the Financial Regulation shall be replaced by the following:

‘Monitoring shall be carried out by that official by means of inspection of the files relating to expenditure and revenue and, if necessary, on the spot.’

\textbf{Article 2}

An Article 24a is added:

‘Article 24a

The internal audit function of the institution shall be performed by an Internal Auditor who is independent of the Financial Controller. He shall be appointed in each institution in the same way as the Financial Controller and, in order to be able to exercise his duties, shall have access to the same information as the Financial Controller and, in order to maintain his independence, shall be subject to the same rules and specific measures as are applicable to the Financial Controller under paragraphs 8 and 9 of Article 24.

The internal audit shall include an evaluation of the effectiveness of the management and control systems and verification of the regularity of operations. These duties shall be exercised in accordance with the implementing rules provided for in Article 139.’

\textbf{Article 3}

This Regulation shall enter into force on the seventh day following its publication in the \textit{Official Journal of the European Communities}.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Proposal for a Council Decision amending Decision 2000/24/EC so as to extend the Community guarantee granted to the European Investment Bank to cover loans for projects in Croatia

(2000/C 311 E/24)


(Submitted by the Commission on 6 June 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) On 6 March 1995, the General Affairs Council adopted negotiation directives for the conclusion of an economic and trade agreement including a financial protocol with Croatia. The financial protocol consisted of a special EUR 230 million European Investment Bank (EIB) loan facility for Croatia covering a five-year period. On 4 August 1995, the presidency of the Council announced the suspension of the negotiations with Croatia on the economic and trade agreement due to the start of military operations in Krajina.

(2) Recent developments, following the results of the parliamentary and the presidential elections in early 2000, have fundamentally changed the political scenario in Croatia. The new Croatian government is fully committed to implementing a political and economic reform programme in line with the conditions of the European Union Stabilisation and Association process for the countries of South-Eastern Europe.

(3) The General Affairs Council of 24 January 2000 adopted a specific statement on Croatia and re-iterated its readiness to help Croatia meeting the challenges it faces in developing a closer relationship with the European Union.


(5) It is crucial to demonstrate the European Union’s support to Croatia at this moment in implementing a political and economic reform programme elaborated after the elections of early 2000 in line with the European Union Stabilisation and Association process, by supporting Croatia’s investment activities in infrastructure and private sector development.

(6) It is therefore appropriate to provide a guarantee mandate to the EIB to allow it to sign loan operations in Croatia. The EIB has indicated its ability and willingness to extend loans from its own resources in Croatia, in accordance with its Statute.


(8) Council Decision 2000/24/EC (3) grants the EIB a Community guarantee against losses under loans for projects outside the Community (Central and Eastern Europe, Mediterranean countries, Latin America and Asia and the Republic of South Africa).

(9) That global guarantee covering the general EIB external lending mandate laid down in Decision 2000/24/EC should be extended to Croatia. The loan ceilings should be increased in order to allow for the extension of corresponding loan facilities to Croatia. Decision 2000/24/EC should therefore be amended accordingly.

(10) The Treaty does not provide, for the adoption of this Decision, powers other than those under Article 308,

HAS DECIDED AS FOLLOWS:

Article 1

Article 1 of Decision 2000/24/EC is hereby amended as follows:

1. The second sentence of the second subparagraph of paragraph 1 shall be amended as follows:

(a) in the introductory part, ‘EUR 18 410 million’ shall be replaced by ‘EUR 18 660 million’;

(b) in the first indent ‘EUR 8 680 million’ shall be replaced by ‘EUR 8 930 million’.

2. In the first indent of paragraph 2, ‘Croatia’ shall be inserted after ‘Bulgaria’.

Article 2

This Decision shall take effect on the day of its publication in the Official Journal of the European Communities.

Proposal for a Council Regulation on the common organisation of the market in rice

(2000/C 311 E/25)


(Submitted by the Commission on 13 June 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas:

(1) The operation and development of the common market for agricultural products must be accompanied by the establishment of a common agricultural policy to include, in particular, a common organisation of agricultural markets which may take various forms depending on the product.

(2) The European rice market is in serious unbalance; the volume of rice stored in public intervention is very large, equivalent to about one fifth of Community output, and increasing significantly each year. The imbalance is caused by increases in both domestic output and imports and by the restrictions on exports with refunds in accordance with the Agriculture Agreement.

(3) This problem must be solved by revising the common market organisation for rice, in such a way as to take control of output, improve the equilibrium and fluidity of the market and enhance the competitiveness of Community agriculture, while pursuing the other aims of Article 33 of the Treaty, including maintaining suitable income support for producers.

(4) After careful consideration of all aspects of the situation, it appears that the most suitable solution is to integrate rice into the scheme to support the incomes of producers of certain arable crops, governed by Council Regulation (EC) No 1251/1999 (1), amended by Regulation (EC) No 2704/1999 (2), while discontinuing the intervention price arrangements. This integration is achieved by means of Regulation (EC) No . . . ./2000 (3).

(5) The application to imports of the Common Customs Tariff, combined with increased market fluidity, will restore equilibrium in the sector and enhance the competitiveness of Community production. The income support system will compensate producers for the discontinuation of the intervention arrangements.

(6) However, provision should be made for private storage aid, and for measures to be taken when distortion or the risk of distortion on the Community market endangers the prospect of achieving the aims of Article 33 of the Treaty.

(7) There should be a production refund for rice starch and derived products by analogy with the refund laid down for the products referred to in Article 7 of Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals (4), last amended by Regulation (EC) No 1253/1999 (5), with which they compete.

(8) The creation of a single Community market for rice involves the introduction of a trading system at the external frontiers of the Community. A trading system including import duties and export refunds should, in principle, stabilise the Community market. The trading system should be based on the undertakings accepted under the Uruguay Round of multilateral negotiations.

(9) In order to be able constantly to monitor trade movements, provision should be made for an import and export licence scheme with the lodging of a security to ensure that the transactions for which such licences are requested are effected.

(10) In order to prevent or eliminate adverse effects on the Community market which could result from imports of certain products, imports of one or more such products may be subject to payment of an additional import duty, if certain conditions are fulfilled.

(11) It is appropriate to confer on the Commission the power to open and administer tariff quotas resulting from international agreements concluded in accordance with the Treaty or from other acts of the Council.

(3) See p. . . . of this Official Journal.
The achievement of a single market would be jeopardised by the grant of certain types of aid. The Treaty provisions governing the appraisal of aid granted by Member States and the prohibition of aid incompatible with the common market should be applied to the rice sector.

As the common market in rice develops, the Member States and the Commission must keep each other supplied with the information necessary for applying this Regulation.

To facilitate implementation of this Regulation, provision should be made for a procedure instituting close cooperation between the Member States and the Commission. The measures required for the implementation hereof will be adopted under Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1).

Expenditure incurred by the Member States as a result of the obligations arising out of the application of this Regulation should be financed by the Community in accordance with Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (2).

The common organisation of the market in the rice sector must take proper and simultaneous account of the objectives set out in Articles 33 and 131 of the Treaty.

The common organisation of the market in rice laid down by Council Regulation (EC) No 3072/95 (3), as last amended by Regulation (EC) No 2072/98 (4), has been amended a number of times. By reason of their number, their complexity and their dispersal among several Official Journals, these texts are difficult to use and lack the clarity that should be an essential feature of all legislation. Under these circumstances, they should be consolidated in a new Regulation and the aforementioned Regulation (EEC) No 3072/95 should be repealed. Similarly, in view of the discontinuation of the intervention price arrangements, Council Regulation (EC) No 3073/95 of 22 December 1995 determining the standard quality of rice (5) which laid down rules for fixing the intervention price, should be repealed.

The change from the arrangements in Regulation (EC) No 3072/95 to those in this Regulation could raise problems that are not foreseen here. In order to deal with that eventuality, provision should be made for the Commission to adopt the necessary transitional measures. In order to ensure the correct operation of the scheme, it is also appropriate to authorise the Commission to resolve individual and specific problems on a temporary and exceptional basis.

Footnotes:

Provision should be made for the application of the new common market organisation from 1 July 2001.

HAS ADOPTED THIS REGULATION:

Article 1

1. The common organisation of the market in rice shall comprise a scheme for an internal market and trade with third countries, and cover the following products:

<table>
<thead>
<tr>
<th>CN-Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) 1006 10 21 to 1006 10 98</td>
<td>Rice in the husk (paddy or rough)</td>
</tr>
<tr>
<td>1006 20</td>
<td>Husked rice (cargo rice or brown rice)</td>
</tr>
<tr>
<td>1006 30</td>
<td>Semi-milled or wholly milled rice, including polished or glazed rice</td>
</tr>
<tr>
<td>(b) 1006 40 00</td>
<td>Broken rice</td>
</tr>
<tr>
<td>(c) 1102 30 00</td>
<td>Rice meal</td>
</tr>
<tr>
<td>1103 14 00</td>
<td>Rice groats and meal</td>
</tr>
<tr>
<td>1103 29 50</td>
<td>Pellets of rice</td>
</tr>
<tr>
<td>1104 19 91</td>
<td>Rolled or flaked grains of rice</td>
</tr>
<tr>
<td>1108 19 10</td>
<td>Rice starch</td>
</tr>
</tbody>
</table>

2. For the purposes of this Regulation, the terms ‘paddy rice’, ‘husked rice’, ‘semi-milled rice’, ‘wholly milled rice’, ‘round grain rice’, ‘medium grain rice’, ‘long grain rice’ and ‘broken rice’ are defined in part I of Annex A.

Part II of Annex A provides definitions of grains and broken grains which are not of unimpaired quality.

The Commission, acting in accordance with the procedure laid down in Article 19(2):

— shall fix the conversion rates for rice at various states of processing, the processing costs and the value of by-products,

— may change the definitions referred to in paragraph 2.

Article 2

This Regulation shall apply without prejudice to the measures provided for by Regulation (EC) No 1251/1999 on support for certain arable crop producers.

TITLE I

INTERNAL MARKET

Article 3

1. A production refund may be granted for starch and certain derived products, obtained from rice and broken rice, used in the manufacture of certain products.

The refund shall be fixed periodically.

2. The Commission, acting in accordance with the procedure laid down in Article 19(2):

(a) shall determine the products for which the refund is granted;

(b) shall fix the amount of the refund;

(c) shall adopt detailed rules for the application of this Article.

Article 4

1. A subsidy may be fixed for consignments to the French overseas department of Réunion, intended for consumption there, of products falling within CN code 1006 (excluding code 1006 10 10) which come from the Member States and are in one of the situations referred to in Article 23(2) of the Treaty.

That subsidy shall be fixed, taking into account the supply requirements of the Réunion market, on the basis of the difference between the quotations or prices of the relevant products on the world market and the quotations or prices of those products on the Community market, and, if necessary, the price of those products delivered to Réunion.

2. The amount of the subsidy shall be fixed periodically. However, where the need arises, the Commission may, in the interval, at the request of a Member State or on its own initiative, alter the amount.

The amount of the subsidy may be fixed by a tendering procedure.

3. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 19(2).

The amount of the subsidy shall be fixed according to the same procedure.

Article 5

When a substantial rise or fall in prices is recorded on the Community market and this situation is likely to continue, thereby disturbing or threatening to disturb the market, the necessary measures may be taken in accordance with the procedure laid down in Article 19(2). In particular, these measures may consist in private storage aid.

Article 6

Each year, the producer Member States shall provide the Commission, under arrangements to be determined in accordance with the procedure laid down in Article 19(2), with detailed information, broken down by variety, on the areas given over to rice, on output, on yields and on stocks held by producers and processors. Such information must be based on a system providing for compulsory declarations by producers and processors set up, administered and monitored by the Member State.
TITLE II

TRADE WITH THIRD COUNTRIES

Article 7

1. Imports into the Community, or exports therefrom, of any of the products listed in Article 1 shall be subject to presentation of a licence.

Licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Article 10.

Import and export licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported or exported during the term of validity of the licence; except in cases of force majeure, the security shall be forfeit in whole or in part if import or export is not carried out, or is carried out only partially, within that period.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 19(2).

Section I

Provisions applicable to imports

Article 8

1. Unless this Regulation provides otherwise, the rates of duty in the Common Customs Tariff shall apply to the products listed in Article 1.

2. Notwithstanding paragraph 1, rates of duty on imports of the following products into the French overseas department of Réunion, intended for consumption there, shall be as follows:

(a) no customs duty shall be levied on products falling within CN code 1006 10 and CN codes 1006 20 and 1006 40 00;

(b) the duty to be charged on imports of products falling within CN code 1006 30 shall be multiplied by a coefficient of 0,30.

3. The Commission shall adopt any detailed rules required for implementing this Article in accordance with the procedure laid down in Article 19(2), and in particular shall include the possibility, if appropriate, in specific cases, of enabling operators to know the charge which will be applied prior to dispatch of the consignments concerned.

Article 9

1. In order to counteract or sanction adverse effects on the market in the Community which may result from imports of certain products listed in Article 1, imports of one or more of such products at the rate of duty laid down in Article 8 shall be subject to the payment of an additional import duty if the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 300 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional duty may be imposed shall be those forwarded by the Community to the World Trade Organisation.

The trigger volumes above which an additional import duty may be imposed shall be determined in particular on the basis of imports into the Community in the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or are likely to arise.

3. The import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment under consideration.

Cif import prices shall be checked to that end against the representative prices for the product on the world market or on the Community import market for that product.

4. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 19(2). Such detailed rules shall specify in particular:

(a) the products to which additional import duties may be applied under the terms of Article 5 of the Agreement on Agriculture;

(b) the other criteria necessary for application of paragraph 1 in accordance with Article 5 of the said Agreement on Agriculture.

Article 10

1. Tariff quotas for imports of the products listed in Article 1 resulting from agreements concluded in accordance with Article 300 of the Treaty or from any other act of the Council shall be opened and administered by the Commission in accordance with detailed rules adopted in accordance with the procedure laid down in Article 19(2).

2. Quotas may be administered using one of the following methods or a combination thereof:

— a method based on the chronological order in which applications are lodged (on a ‘first come, first served’ basis),

— a method of distribution in proportion to the quantities requested when the applications were lodged (using the ‘simultaneous examination’ method),
— a method taking traditional trade patterns into account (using the ‘traditional importers/new arrivals’ method).

Other methods may be used.

Any method used shall avoid unjustified discrimination between the operators involved.

3. Where necessary, the method of administration shall take account of the supply needs of the Community market, and of the need to preserve its equilibrium, without prejudice to rights arising under the agreements concluded as part of the Uruguay Round.

4. The detailed rules shall provide for annual tariff quotas, suitably phased over the year, and shall, if necessary, determine the administrative method to be used and, where appropriate, shall include:

(a) guarantees covering the nature, provenance and origin of the product, and

(b) recognition of the document used for verifying the guarantees referred to in (a),

and

(c) the conditions under which import licences are issued and their term of validity.

Section II

Provisions applicable to exports

Article 11

1. To the extent necessary to enable the products listed in Article 1 to be exported without further processing or in the form of goods listed in Annex B on the basis of quotations or prices for those products on the world market and within the limits resulting from agreements concluded in accordance with Article 300 of the Treaty, the difference between those quotations or prices and prices in the Community may be covered by export refunds.

Export refunds on the products listed in Article 1 in the form of goods listed in Annex B may not be higher than those applicable to such products exported without further processing.

2. The method to be adopted for the allocation of the quantities which may be exported with a refund shall be the method which:

(a) is most suited to the nature of the product and the situation on the market in question, allowing the most efficient possible use of the resources available, account being taken of the efficiency and structure of Community exports without, however, creating discrimination between large and small operators;

(b) is least cumbersome administratively for operators, account being taken of administration requirements;

(c) precludes discrimination between the operators concerned.

3. Refunds shall be the same for the whole Community.

They may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.

Refunds shall be fixed by the Commission in accordance with the procedure laid down in Article 19(2). Refunds may be fixed:

(a) at regular intervals;

(b) by invitation to tender for products for which that procedure is appropriate.

Refunds fixed at regular intervals, may, if necessary, be amended in the interval by the Commission at the request of a Member State or on its own initiative.

Refunds fixed at regular intervals shall be fixed at least once a month.

4. The following shall be taken into account when refunds are being fixed:

(a) the existing situation and future trends with regard to:

— prices and availability of rice and broken rice on the Community market,

— prices of rice and broken rice on the world market;

(b) the aims of the common organisation of the market in rice, which are to ensure equilibrium and the natural development of prices and trade on this market;

(c) limits resulting from agreements concluded in accordance with Article 300 of the Treaty;

(d) the importance of avoiding disturbances on the Community market;

(e) the economic aspects of the proposed exports.
5. Refunds for products listed in Article 1(1)(a) and (b) shall be fixed in accordance with the following specific criteria:

— prices ruling on the representative Community markets,
— prices obtaining for exports,
— marketing costs and the most favourable transport charges from the Community markets referred to in the first indent to ports or other points of export in the Community serving these markets, as well as costs incurred in placing the goods on the world market.

When prices in international trade listed in paragraph 1 are being determined account shall be taken of:

— the prices on third-country markets,
— the most favourable prices in third countries of destination for third-country imports,
— free-at-Community-frontier offer prices.

Article 12

1. Refunds on products exported without further processing shall only be granted on application and on presentation of an export licence.

2. The refund applicable to products exported without further processing shall be that applicable on the day of application for the licence and, in the case of a differentiated refund, that applicable on the same day:

(a) for the destination indicated on the licence

or

(b) for the actual destination if it differs from the destination indicated on the licence. In that case the amount applicable may not exceed the amount applicable to the destination indicated on the licence.

Appropriate measures may be taken to prevent abuse of the flexibility provided for in this paragraph.

3. The scope of paragraphs 1 and 2 may be extended to apply to products exported in the form of goods listed in Annex B in accordance with the procedure laid down in Article 16 of Council Regulation (EEC) No 3448/93 (1).

4. Paragraphs 1 and 2 may be waived in the case of products on which refunds are paid under food-aid operations, in accordance with the procedure laid down in Article 19(2).

5. Export refunds on the products listed in Article 1 in the form of goods listed in Annex B may be adjusted as a function of prices on the Community market, to be established in accordance with the procedure laid down in Article 19(2). The Commission may, where necessary, alter the corrective amounts.

6. The refund on the products referred to in Article 1(a) and (b) shall be paid upon proof that:

— the products were wholly obtained in the Community within the meaning of Article 23 of Regulation (EEC) No 2913/92, except where paragraph 6 applies,
— the products have been exported from the Community,

and

— in the case of a differentiated refund, have reached the destination indicated on the licence or another destination for which a refund was fixed, without prejudice to point (b) of paragraph 2. However, exceptions may be made to this rule in accordance with the procedure laid down in Article 19(2), provided that conditions are laid down which offer equivalent guarantees.

Additional provisions may be adopted in accordance with the same procedure.

7. No export refund shall be granted on rice imported from third countries and re-exported to third countries, unless the exporter proves that:

— the product to be exported and the product previously imported are one and the same,

and

— the levy was collected when the goods were released for free circulation.

In such cases the refund on each product shall be equal to the duties collected on importation where the latter are lower than the refund applicable; where the duties collected on importation are higher than that refund, the latter shall apply.

8. Observance of the volume limits resulting from the agreements concluded in accordance with Article 300 of the Treaty shall be ensured on the basis of the export licences issued for the reference periods provided for which apply to the products concerned. With regard to compliance with the obligations arising under the Agreement on Agriculture, the ending of a reference period shall not affect the validity of export licences.

**Article 13**

1. Detailed rules for the application of Articles 11 and 12, including provisions on the redistribution of exportable quantities which have not been allocated or utilised, shall be adopted by the Commission in accordance with the procedure laid down in Article 19(2). These detailed rules may include provisions governing the quality of the products eligible for an export refund.

Annex B shall be amended in accordance with the same procedure.

2. Detailed rules for the application of Article 11(1) to products exported in the form of goods referred to in Annex B shall be adopted in accordance with the procedure laid down in Article 16 of Regulation (EC) No 3448/93.

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**Section III**

**Common provisions**

**Article 14**

1. To the extent necessary for the proper working of the common organisation of the market in rice, the Council, acting by a qualified majority, on a proposal from the Commission, may, in special cases, prohibit in whole or in part the use of inward or outward processing arrangements in respect of products listed in Article 1.

2. However, by way of derogation from paragraph 1, if the situation referred to in paragraph 1 arises with exceptional urgency and the Community market is disturbed or is liable to be disturbed by the inward or outward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative, decide on the necessary measures; the Council and the Member States shall be notified of such measures, which shall be valid for no more than six months and shall be immediately applicable. If the Commission receives a request from a Member State, it shall make a decision thereon within a week following receipt of the request.

3. Measures decided on by the Commission may be referred to the Council by any Member State within a week of the day on which they were notified. The Council, acting by a qualified majority, may confirm, amend or repeal the Commission’s decision. If the Council has not reached a decision within three months, the Commission's decision shall be deemed to have been repealed.

**Article 15**

1. The general rules for the interpretation of the Combined Nomenclature and the detailed rules for its application shall apply to the tariff classification of products covered by this Regulation. The tariff nomenclature resulting from the application of this Regulation, including the definitions listed in part I of Annex A, shall be incorporated in the Common Customs Tariff.

2. Save as otherwise provided for in this Regulation or in provisions adopted pursuant thereto, the following shall be prohibited in trade with third countries:

   — the levying of any charge having equivalent effect to a customs duty,

   — the application of any quantitative restriction or measure having equivalent effect.

**Article 16**

1. If, by reason of imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardise the achievement of the objectives set out in Article 33 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

The Council, acting by a qualified majority, on a proposal from the Commission, shall adopt general rules for the application of this paragraph and shall define the circumstances and limits within which Member States may adopt protective measures.

2. If the situation mentioned in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the measures shall be communicated to the Member States and shall be immediately applicable. If the Commission receives a request from a Member State, it shall make a decision thereon within three working days following receipt of the request.

3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or repeal the measure in question within one month following the day on which it was referred to the Council.

4. Provisions adopted under this Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 300(2) of the Treaty.

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**Title III**

**GENERAL PROVISIONS**

**Article 17**

Articles 87, 88 and 89 of the Treaty shall apply to production of and trade in the products referred to in Article 1.
Article 18

Member States and the Commission shall send each other any information necessary for the application of this Regulation. The information to be communicated shall be determined in accordance with the procedure laid down in Article 19(2). Detailed rules for the communication and distribution of such information shall be adopted in accordance with the same procedure.

Article 19

1. The Commission shall be assisted by the Management Committee for Cereals set up under Article 23 of Regulation (EEC) No 1766/92.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, in compliance with Article 8 thereof.

3. The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

Article 20

The Committee may consider any question referred to it by its chairman either on his own initiative or at the request of the representative of a Member State.

Article 21

Regulation (EC) No 1258/1999 and the provisions adopted in implementation thereof shall apply to the products listed in Article 1.

Article 22

This Regulation shall be so applied that appropriate account is taken at the same time of the objectives set out in Articles 33 and 131 of the Treaty.

TITLE IV

TRANSITIONAL AND FINAL RULES

Article 23

The Commission shall adopt, in accordance with the procedure laid down in Article 19(2):

(a) the measures required to facilitate the transition from the arrangements provided in Regulation (EEC) No 3072/95 to those established by this Regulation, in particular, those measures shall cover the disposal of products bought in to intervention pursuant to that Regulation;

(b) the measures required to resolve specific practical problems. Such measures — if duly justified — may derogate from certain parts of this Regulation.

Article 24

1. Regulations (EC) No 3072/95 and (EC) No 3073/95 are hereby repealed.

2. References to Regulation (EC) No 3072/95 shall be construed as references to this Regulation and should be read in accordance with the correlation table in Annex C.

Article 25

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities.

It shall apply from 1 July 2001.

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

I. DEFINITIONS

1. (a) Paddy rice: rice which has retained its husk after threshing.

(b) Husked rice: paddy rice from which only the husk has been removed. Examples of rice falling within this definition are those with the commercial descriptions ‘brown rice’, ‘cargo rice’, ‘loonzain’ and ‘riso sbramato’.

(c) Semi-milled rice: paddy rice from which the husk, part of the germ and the whole or part of the outer layers of the pericarp but not the inner layers have been removed.

(d) Wholly milled rice: paddy rice from which the husk, the whole of the outer and inner layers of the pericarp, the whole of the germ in the case of long grain or medium grain rice and at least part thereof in the case of round grain rice have been removed, but in which longitudinal white striations may remain on not more than 10 % of the grains.

2. (a) Round grain rice: rice, the grains of which are of a length not exceeding 5.2 mm and of a length/width ratio of less than 2.

(b) Medium grain rice: rice, the grains of which are of a length exceeding 5.2 mm but not exceeding 6.0 mm and of a length/width ratio no greater than 3.

(c) Long grain rice:

(i) rice, the grains of which are of a length exceeding 6.0 mm and of which the length/width ratio is greater than 2 but less than 3;

(ii) rice, the grains of which are of a length exceeding 6.0 mm and of which the length/width ratio is equal to or greater than 3.

(d) Measurements of the grains: grain measurements are taken on wholly milled rice by the following method:

(i) take a sample representative of the batch;

(ii) sieve the sample so as to retain only whole grains, including immature grains;

(iii) carry out two measurements of 100 grains each and work out the average;

(iv) express the result in millimetres, rounded off to one decimal place.

3. Broken rice: grain fragments the length of which does not exceed three quarters of the average length of the whole grain.

II. DEFINITION OF GRAINS AND BROKEN GRAINS WHICH ARE NOT OF UNIMPAIRED QUALITY

A. Whole grains

Grains from which only part of the end has been removed, irrespective of characteristics produced at each stage of milling.

B. Clipped grains

Grains from which the entire end has been removed.

C. Broken grains or fragments

Grains from which a part of the volume greater than the end has been removed; broken grains include:

— large broken grains (pieces of grain of a length not less than half that of a grain, but not constituting a complete grain),

— medium broken grains (pieces of grain of a length not less than a quarter of the length of a grain but which are smaller than the minimum size of ‘large broken grains’),

— fine broken grains (pieces of grain less than a quarter of the size of a grain but too large to pass through a sieve with a mesh of 1.4 mm),

— fragments (small pieces or particles of grain which can pass through a sieve with a mesh of 1.4 mm); split grains (pieces produced by a longitudinal split in the grain) come under this definition.
D. **Green grains**

Grains which are not fully ripened.

E. **Grains showing natural malformation**

Natural malformation means malformation, whether or not of hereditary origin, as compared with the morphological characteristics typical of the variety.

F. **Chalky grains**

Grains at least three-quarters of the surface of which looks opaque and chalky.

G. **Grains striated with red**

Grains showing longitudinal red striations of differing intensity and shades, due to residues from the pericarp.

H. **Spotted grains**

Grains showing a well-defined small circle of dark colour of more or less regular shape; spotted grains also include those which show slight black striations on the surface only; the striations and spots must not show a yellow or dark aureole.

I. **Stained grains**

Grains which have undergone, on a small area of their surface, an obvious change in their natural colour; the stains may be of different colours (blackish, reddish, brown); deep black striations are also to be regarded as stains. If the colour of the stains is sufficiently marked (black, pink, reddish-brown) to be immediately visible and if they cover an area not less than half that of the grain, the grains must be considered to be yellow grains.

J. **Yellow grains**

Grains which have undergone, totally or partially, otherwise than by drying, a change in their natural colour and have taken on a lemon or orange-yellow tone.

K. **Amber grains**

Grains which have undergone, otherwise than by drying, a slight uniform change in colour over the whole surface; this change alters the colour of the grains to a light amber-yellow.

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**ANNEX B**

<table>
<thead>
<tr>
<th>CN code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0403</td>
<td>Buttermilk, curdled milk and cream, yoghurt, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit or cocoa</td>
</tr>
<tr>
<td>ex 1704</td>
<td>Sugar confectionery (including white chocolate), not containing cocoa:</td>
</tr>
<tr>
<td>1704 90 51 to 1704 90 99</td>
<td>— — Other</td>
</tr>
<tr>
<td>ex 1806</td>
<td>Chocolate and other food preparations containing cocoa, except those coming under subheadings 1806 10, 1806 20 70, 1806 90 60, 1806 90 70 and 1806 90 90</td>
</tr>
<tr>
<td>1901</td>
<td>Malt extract; food preparations of flour, meal, starch or malt extract, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of products under headings 0401 to 0404, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included;</td>
</tr>
<tr>
<td>CN code</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>ex 1902</td>
<td>Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:</td>
</tr>
<tr>
<td>1902 20 91</td>
<td>Cooked</td>
</tr>
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<td>Other</td>
</tr>
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<td>Other pasta</td>
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<tr>
<td>1902 40 90</td>
<td>Other</td>
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<tr>
<td>1904</td>
<td>Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals (other than maize (corn)) in grain form or in the form of flakes or other worked grains (except flour and meal), pre-cooked, or otherwise prepared, not elsewhere specified or included</td>
</tr>
<tr>
<td>ex 1905</td>
<td>Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:</td>
</tr>
<tr>
<td>1905 90 20</td>
<td>Communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:</td>
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<tr>
<td>ex 2004</td>
<td>Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen: other than products of heading No 2006</td>
</tr>
<tr>
<td>2004 10 91</td>
<td>potatoes in the form of flour, meal or flakes</td>
</tr>
<tr>
<td>ex 2005</td>
<td>Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen: other than products of heading No 2006</td>
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<tr>
<td>2005 20 10</td>
<td>potatoes in the form of flour, meal or flakes</td>
</tr>
<tr>
<td>ex 2008</td>
<td>Fruit, nuts and other edible parts of plants otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:</td>
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<tr>
<td>2008 11 10</td>
<td>Peanut butter</td>
</tr>
<tr>
<td>ex 2101</td>
<td>Extracts, essences and concentrates, of coffee, tea or maté preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates, thereof:</td>
</tr>
<tr>
<td>2101 12</td>
<td>Preparations with a basis of these extracts, essences or concentrates of coffee</td>
</tr>
<tr>
<td>2101 20 92</td>
<td>Preparations with a basis of these extracts, essences or concentrates of tea or maté</td>
</tr>
<tr>
<td>2101 20 98</td>
<td>Preparations with a basis of these extracts, essences or concentrates of tea or maté</td>
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<td>2105 00</td>
<td>Ice cream and other edible ice, whether or not containing cocoa</td>
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<tr>
<td>2106</td>
<td>Food preparations not elsewhere specified or included:</td>
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<tr>
<td>ex 3505</td>
<td>Dextrins and other modified starches (for example, pregelatinised or esterified starches); except esterified or etherified starches under sub-heading 3505 10 50; glues based on starches or on dextrins or other modified starches</td>
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<tr>
<td>ex 3809</td>
<td>Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included</td>
</tr>
<tr>
<td>ex 3809 10</td>
<td>with a basis of amylaceous substances</td>
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## ANNEX C

**CORRELATION TABLE**

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<td>Article 8(3)</td>
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<td>Annex C</td>
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Proposal for a Council Regulation amending Regulation (EC) No 1251/1999 establishing a support system for producers of certain arable crops, in order to include rice

(2000/C 311 E/26)

COM(2000) 278 final — 2000/0152(CNS)

(Submitted by the Commission on 13 June 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Having regard to the opinion of the Committee of the Regions,

Whereas:

(1) The common agricultural policy aims to attain the objectives referred to in Article 33 of the Treaty, taking account of the market situation.

(2) The European rice market is in serious unbalance; the volume of rice stored in public intervention is very large, equivalent to about one fifth of Community output, and increasing significantly each year. The imbalance is caused by increases in both domestic output and imports as well as by the restrictions on exports with refunds in accordance with the general agreement on agriculture.

(3) If the price support system provided for in Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice (1) were maintained, the difficulty of finding outlets for intervention stocks of rice would cause those stocks to increase steadily, with a considerable impact on budget expenditure.

(4) This problem must be solved by revising the common market organisation for rice, in such a way as to take control of output, improve the equilibrium and fluidity of the market and enhance the competitiveness of Community agriculture, while pursuing the other aims of Article 33 of the Treaty, including maintaining suitable income support for producers. This amendment is achieved by means of Regulation (EC) No 3072/1995.

(5) After careful consideration of all aspects of the situation, it appears that the most suitable solution is to integrate rice into the support arrangements for the producers of certain arable crops, governed by Council Regulation (EC) No 1251/1999 (2), amended by Regulation (EC) No 2704/1999 (3), and by Regulation (EC) No 3072/1995 to include fibre flax and hemp, while discontinuing the intervention price arrangements.

(6) As rice has a different yield from other cereals, the Member States should be given the possibility of using a specific yield for rice.

(7) In some Member States, the effect of including rice in the support scheme for certain arable crop producers is to change average yields; consequently, the data on average yields in the Regulation should be adapted.

(8) In view of the discontinuation of intervention prices, the single base amount defined for all arable crops should be applied to rice from the first marketing year.


HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1251/1999 is amended as follows:

1. The second subparagraph of Article 3(3) is replaced by the following:

The irrigated base area shall be equal to the average area irrigated from 1989 to 1991 with a view to harvesting arable crops including the increases made pursuant to Article 3(1), fourth subparagraph, last sentence of Regulation (EEC) No 1765/92. Areas to take into consideration for rice in the framework of this separate area shall be those provided for in Article 6(4) of Regulation (EC) No 3072/95.

The irrigated base area in Portugal shall be progressively increased by 60,000 hectares, for those areas where it has been established that investment in irrigation began after 1 August 1992. This increase may be added partially or totally to the irrigated maize base area as referred to in Article 3(2).

2. In Article 3, the following paragraph 3a is added:

‘3a In their regionalisation plans, Member States may apply a specific yield figure for rice, for each production region concerned. These specific yields shall be set at such a level that their weighted average amounts to 6.04 for Italy, 6.35 for Spain, 7.48 for Greece, 6.05 for Portugal and 5.86 for France. In this case, a base area as referred to in Article 2(2) must be established separately for rice.’

3. In Article 3(6) the following subparagraph is added:

‘Any revision of the regionalisation plans to incorporate data concerning rice shall be presented by the Member States to the Commission at the latest on 1 August 2000.’

4. The first subparagraph of Article 3(7) is replaced by the following:

‘Should a Member State, pursuant to paragraph 1, choose to establish production regions the demarcation of which does not correspond to that of regional base areas, it shall send the Commission a summary statement of payment applications and the yields pertaining to these. If it emerges from this information that, in a Member State, the average yield resulting from the regionalisation plan applied in 1993 or, in the case of Austria, Finland and Sweden, the average yield resulting from the plan applied in 1995 or, in the case of Italy, Spain, Greece, Portugal and France, the yield fixed respectively at 4,00 tonnes per hectare, 2,95 tonnes per hectare, 3,48 tonnes per hectare, 3,00 tonnes per hectare and 6,02 tonnes per hectare, is exceeded, all payments to be made in that Member State for the following marketing year shall be reduced in proportion to the overrun which has been recorded. However, this provision shall not apply where the quantity for which applications were made, expressed in tonnes of cereals, does not exceed that resulting from the product of the total base areas of the Member State by the aforementioned average yield.’

5. In Article 4, paragraph 2 is replaced by the following:

‘The calculation mentioned in paragraph 1 shall be made using the average cereals yield for all arable crops. Where a Member State chooses to apply a specific yield as provided for in Article 3(3a), that yield shall be used for rice, and the average cereals yield shall be used for arable crops other than rice.

Where maize is treated separately, the “maize” yield shall be used for maize, and the “cereals other than maize” yield shall be used for cereals, oilseeds, rice, linseed and flax and hemp grown for fibre.’

6. The following words are added to the first subparagraph of Article 4(3):

‘for rice:
— EUR 63.00/t from the 2001/02 marketing year onwards.’

7. In Article 6(2) the following subparagraph is added:

‘By 31 December 2003, the producer Member States shall send the Commission a report on the environmental situation of rice production with special reference to the development in traditional zones and the effect of any national measures taken to safeguard the environmental interest of rice-growing areas set aside.’

8. Article 9 is amended as follows:

(a) the introductory sentence is replaced by the following:

‘Detailed rules for the application of this Chapter shall be adopted in accordance with the procedure laid down in Article 9a(2), and in particular:
(b) in the first subparagraph, the following indent is inserted after the fifth indent:

‘— those relating to rice, and where applicable to the fixing of the specific base area taking account of the areas provided for in Article 6(4) of Regulation (EC) No 3072/95:’

(c) in the first indent of the second subparagraph, point (ii) is replaced by the following:

‘(ii) certified seed in the case of durum wheat, rice and flax and hemp grown for fibre.’

9. The following Article 9a is inserted:

‘Article 9a
1. The Commission shall be assisted by the Management Committee for Cereals set up under Article 23 of Regulation (EEC) No 1766/92.
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, in compliance with Article 8 thereof.
3. The period referred to in Article 4(3) of Decision 1999/468/EC shall be set at one month.’

10. In the last subparagraph of Article 10(3) and in Article 12, references to Article 23 of Regulation (EEC) No 1766/92 are replaced by references to Article 9a(2).
11. In Annex I, the following point VI is added:

<table>
<thead>
<tr>
<th>CN code</th>
<th>Description</th>
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<tbody>
<tr>
<td>VI. RICE</td>
<td>Rice</td>
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</table>

| Article 2 |

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

It shall apply from the 2001/02 marketing year.

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