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Information and Notices

<u>Notice No</u>	<u>Contents</u>	<u>Page</u>
	<i>I Information</i>	
	Commission	
85/C 23/01	ECU.....	1
85/C 23/02	Commission communication pursuant to Article 115 of the EEC Treaty	2
85/C 23/03	Uniform application of the nomenclature of the Common Customs Tariff (CCT) (Classification of goods)	2
	<i>II Preparatory Acts</i>	
	Commission	
85/C 23/04	Amended proposal for a Council Regulation amending Regulation (EEC) No 337/79 on the common organization of the market in wine	3
85/C 23/05	Amended proposal for a Council Regulation amending Regulation (EEC) No 338/79 laying down special provisions relating to quality wines produced in specified regions	3
85/C 23/06	Amendments to the proposal for a Council Decision adopting a multiannual research action programme of the European Economic Community in the field of biotechnology (January 1985 to December 1989)	4
85/C 23/07	Third amendment to the proposal for a Council Regulation amending Regulation (EEC) No 337/79 on the common organization of the market in wine	8
85/C 23/08	Proposal for a Tenth Council Directive based on Article 54 (3) (g) of the Treaty concerning cross-border mergers of public limited companies	11

I

(Information)

COMMISSION

ECU (*)

24 January 1985

(85/C 23/01)

Currency amount for one unit:

Belgian and Luxembourg franc con.	44,4129	United States dollar	0,700160
Belgian and Luxembourg franc fin.	44,6037	Swiss franc	1,86768
German mark	2,22091	Spanish peseta	122,773
Dutch guilder	2,50937	Swedish krona	6,34590
Pound sterling	0,628228	Norwegian krone	6,42572
Danish krone	7,92302	Canadian dollar	0,926732
French franc	6,79226	Portuguese escudo	120,778
Italian lira	1367,24	Austrian schilling	15,5786
Irish pound	0,713721	Finnish markka	4,65747
Greek drachma	90,6288	Japanese yen	177,841
		Australian dollar	0,859937
		New Zealand dollar	1,49288

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day.

Users of the service should do as follows:

- call telex number Brussels 23789;
- give their own telex code;
- type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ECU;
- the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

Note: The Commission also has an automatic telex answering service (No 21791) providing daily data on calculation of monetary compensatory amounts for the purposes of the common agricultural policy.

(*) Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as amended by Regulation (EEC) No 2626/84 (OJ No L 247, 16. 9. 1984, p. 1).
 Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).
 Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).
 Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).
 Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).
 Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

Commission communication pursuant to Article 115 of the EEC Treaty

(85/C 23/02)

By Decision dated 22 January 1985 the Commission has authorized the French Republic not to apply Community treatment to woven fabrics of synthetic fibres (discontinuous or waste), falling within subheading 56.07 A of the Common Customs Tariff (category 3), originating in Romania and in free circulation in the other Member States.

The said Decision is applicable from 4 January to 31 August 1985.

**UNIFORM APPLICATION OF THE NOMENCLATURE OF THE COMMON
CUSTOMS TARIFF (CCT)**

(Classification of goods)

85/C 23/03)

Publication made in accordance with Article 3b (2) of Council Regulation (EEC) No 97/69 (OJ No L 14, 21. 1. 1969), as last amended by Regulation (EEC) No 2055/84 of 16 July 1984 (OJ No L 191, 19. 7. 1984), on measures to be taken for uniform application of the nomenclature of the Common Customs Tariff

The measures indicated below are in accordance with the opinion of the Committee on Common Customs Tariff Nomenclature given at the 418th meeting:

I. Tariff classification

...

II. Explanatory Notes to the Common Customs Tariff

...

III. Agreements on the classification of goods to be recorded in the minutes of the meeting

Description of goods

CCT heading or subheading

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 1. Lightweight knitted garments (100 % cotton) designed to cover the upper part of the body, reaching down to below the waist. Short, loose-fitting sleeves, hemmed at the sleeve ends and base of the garment, with a ribbed band sewn on to the rounded close-fitting neckline. | 60.05 A II b) 4 ll) 44 |
| 2. Lightweight woven garment (100 % cotton) designed to cover the upper part of the body and extending to below the waist. Without sleeves or collar, this garment has a partial front opening, fastening left over right. Part of the inside of the back of the garment at the neckline and the inside of the front opening are reinforced with a knitted mesh fabric. The garment is hemmed at the lower edge and has two small side slits. | 61.03 C II |
| 3. Garment of knitted cotton fabric (straight additional weft inlay on inner surface) intended to cover the upper part of the body with a length of 57 cm and width of 60 cm. With three-quarter length sleeves, hemmed at the sleeve ends and at the base of the garment. With sewn-on woven fabric panels at the top half of the front and back of the garment. | 60.05 A II b) 4 ll) 44. |

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Regulation amending Regulation (EEC) No 337/79 on the common organization of the market in wine ⁽¹⁾

COM(84) 714 final

(Submitted by the Commission to the Council pursuant to the second paragraph of Article 149 of the EEC Treaty on 10 December 1984)

(85/C 23/04)

1. The following is added after the last recital:

'Whereas the northern parts of wine-growing zone A have experienced exceptionally adverse weather in 1984; whereas these production areas have seen very high rainfall and a considerable reduction in sunshine hours; whereas, as a result, some of the wines produced have such a high level of acidity that the methods of deacidification currently permitted by Community rules are not adequate if these wines are to be converted into harmonious table wines matching market requirements; whereas increasing the alcoholic strength of these wines by adding sucrose in aqueous solution would help to reduce their acid taste considerably; whereas, in view of the exceptional circumstances outlined above, the period during which the addition of sucrose in aqueous solution is permitted should be extended by one year,'

2. The following is added after Article 1 (4):

'4a. In the second subparagraph of Article 33 (3), "15 March 1984" is replaced by "15 March 1985".'

⁽¹⁾ OJ No C 259, 27. 9. 1984, p. 5.

Amended proposal for a Council Regulation amending Regulation (EEC) No 338/79 laying down special provisions relating to quality wines produced in specified regions ⁽¹⁾

COM(84) 714 final

(Submitted by the Commission to the Council pursuant to the second paragraph of Article 149 of the EEC Treaty on 10 December 1984)

(85/C 23/05)

1. The following is added after the first recital:

'Whereas the northern parts of wine-growing zone A have experienced exceptionally adverse weather in 1984; whereas these production areas have seen very high rainfall

⁽¹⁾ OJ No C 259, 27. 9. 1984, p. 7.

and a considerable reduction in sunshine hours; whereas, as a result, some of the wines produced have such a high level of acidity that the methods of deacidification currently permitted by Community rules are not adequate if these wines are to be converted into harmonious quality wines per matching market requirements; whereas increasing the alcoholic strength of these wines by adding sucrose in aqueous solution would help to reduce their acid taste considerably; whereas, in view of the exceptional circumstances outlined above, the period during which the addition of sucrose in aqueous solution is permitted should be extended by one year,'

2. The following is added after Article 1 (3):

'3a. In the fifth subparagraph of Article 8 (2), "15 March 1984" is replaced by "15 March 1985".'

Amendments to the proposal for a Council Decision adopting a multiannual research action programme of the European Economic Community in the field of biotechnology (January 1985 to December 1989) (1)

COM(84) 765 final

(Submitted by the Commission to the Council pursuant to the second paragraph of Article 149 of the EEC Treaty on 19 December 1984)

(85/C 23/06)

ORIGINAL TEXT

AMENDED TEXT

Preamble and recitals 1 to 6 unchanged

Recital 7

Recital 7

Whereas a Community research action programme is necessary for the development of biotechnology in the Community and particularly for:

- the establishment of new methods for the synthesis of compounds with high added value,
- more efficient land use through the design of new crops which can provide important feedstocks for the European industries,

Whereas a Community research action programme is necessary for the development of biotechnology in the Community and particularly for:

- the establishment of new methods for the synthesis of compounds with high added value **and for lowering production costs,**
- unchanged
- **application of biotechnology to environmental protection,**

(1) OJ No C 182, 9. 7. 1984, p. 7.

ORIGINAL TEXT

AMENDED TEXT

- acceptability of the products of modern biotechnology through the use of new testing methods which render possible a more efficient and less costly evaluation of toxicity and biological activity,
- new approaches in the detection, prevention and treatment of costly diseases,
- protection of health and environment against risks which may be associated to new developments in modern biotechnology;

- unchanged
- replacement of animal experiments with tests on cell cultures,
- new approaches in the detection, prevention and treatment of diseases
- protection of health and environment against risks which may be associated with new developments in and the application of biotechnology;

Recital 8 unchanged

Recital 9

Whereas it is necessary to monitor developments in biotechnology, with a view to assess their strategic significance for Europe, and to promote effective concertation between the Community and its Member States in matters affecting the development of biotechnology;

Recital 9

unchanged

such monitoring is also needed to ensure that problems of a social, ethical and ecological nature, inherent in the application of this technology, may be recognized in good time and their adverse consequences prevented;

Rest of preamble unchanged

Article 1 (1) and (2) unchanged

3. Encouragement and priority shall be given to contracts bringing together the technological resources of firms and institutions from different Member States, where possible.

Article 2 unchanged

Article 3

The Commission will report to the Council and the European Parliament at the end of the third year of the programme and will propose, where appropriate, any amendments necessary. These amendments may

Article 3

At the beginning of the third year the Commission shall submit to the Council an interim report on the results of the programme. On the basis of this report, the programme shall be evaluated before the end of

ORIGINAL TEXT

lead to a revision of the programme in the course of the fourth year in accordance with the appropriate procedures.

AMENDED TEXT

the third year. This evaluation shall be carried out by experts not involved in the Committee referred to in Article 5 and who have themselves not received any appropriations under the research programme. A report on this evaluation shall be sent to the Council and to the European Parliament.

This evaluation may lead to the submission by the Commission of a proposal for a revision of the programme in accordance with the appropriate procedures.

Articles 4 to 6 unchanged

Article 7

1. In accordance with Article 228 of the Treaty the Community may conclude Agreements with non-member States participating in European Cooperation in the field of Scientific and Technical research (COST) with a view to ensuring cooperation between the Community concerted action projects referred to in the Annex and the relevant programmes of such States.

2. The Commission is hereby authorized to negotiate the Agreements referred to in paragraph 1.

Article 7

1. In accordance with Article 228 of the Treaty the Community may conclude Agreements with non-member States participating in European Cooperation in the field of Scientific and Technical research (COST) **or international organizations** with a view to ensuring cooperation between the Community concerted action projects referred to in the Annex and the relevant programmes of such States **or international organizations**.

2. unchanged

ANNEX

ACTION I

Sub-programme 1

Bio-informatics

Third indent

— computer modelling of biological structures and systems,

Third indent

— computer modelling of biological structures, systems **and processes**,

Sub-programme 2

Second paragraph

First indent

— development and evaluation of bio-reactors (and particularly those which are multienzymatic, multiphasic or co-factor requiring) for industrial applications, depollution and detoxification,

First indent

— development and evaluation of bio-reactors (and particularly those which are multienzymatic, multiphasic or co-factor requiring) for industrial **and medical** applications, depollution and detoxification,

Second indent unchanged

Third paragraph: 'Genetic engineering'

First to third indents unchanged

ORIGINAL TEXT

AMENDED TEXT

Fourth indent

- production of vaccines, proteins and hormones for human medicine.

Fourth paragraph unchanged

Fifth paragraph, first to fourth indents unchanged

Fifth indent

- study of cell biology applied to the prevention, detection and treatment of a few selected diseases which are particularly important from a socio-economic point of view.

Fifth indent

- study of cell biology applied to the prevention, detection and treatment of a few selected diseases.

Rest of sub-programme 2 unchanged

ACTION II

CONCERTATION

First to seventh indents unchanged

Eighth indent

- disseminating knowledge and increasing public awareness of the nature and potential of biotechnology and the life sciences, to raise the quality of public debate;

Eighth indent

- disseminating knowledge and increasing public awareness of the nature, potential **and risks** of biotechnology and the life sciences, to raise the quality of public debate;

Rest unchanged

**Third amendment to the proposal for a Council Regulation amending Regulation (EEC)
No 337/79 on the common organization of the market in wine ⁽¹⁾**

COM(84) 775 final

*(Submitted by the Commission to the Council pursuant to the second paragraph of Article
149 of the EEC Treaty on 21 December 1984)*

(85/C 23/07)

1. The following recital is added after the second recital:

'Whereas the vineyards in wine-growing zone A and the German part of wine-growing zone B are solely intended for the production of quality wines produced in specified regions; whereas, however, some of the wine produced, in particular when yield per hectare exceeds a given level, may not be recognized as quality wine and may be marketed as table wine; whereas, to prevent surplus quantities of such wine being offered for intervention and thus augmenting intervention expenditure to an excessive extent, it is necessary to limit the quantities eligible for certain types of distillation in these zones;'

2. The seventh recital is replaced by the following:

'Whereas, to enable products used in winemaking to be enriched in the foreseeable future with wine products instead of sucrose, a very thorough knowledge going beyond that afforded by the studies already made of certain points is required of all the scientific, technical and economic aspects of the problem; whereas the Commission should therefore make an exhaustive study of the question, followed by a report to the Council and suitable proposals;'

3. The following recitals are added after the last recital:

'Whereas the trend of the table wine market in recent years calls for measures to allow more direct control over production; whereas, furthermore, surpluses are absorbed primarily through compulsory distillation; whereas provision must be made for such distillation to be instituted as soon as it is clear that the market is in a state of grave imbalance and whereas precise criteria must be defined for the assessment of such imbalance;

Whereas, because of the weather and the impact of structural measures, the trend of production may differ between the regions of the Community;

whereas, to take fair account of this, the total quantity of wine for compulsory distillation should be shared between the regions on the basis of the disparity between their respective levels of production for the year and a reference level calculated on the basis of previous years and regarded as compatible with normal consumption of table wine; whereas the reference level is at present 85 % of average production in the preceding three years;

Whereas, to ensure that this measure is effective, the wine-growing regions should be grouped by Member State, each being entrusted with supervision of and responsibility for the implementation of the measure;

Whereas it is fair to share the obligations between producers on the basis of their yield per hectare in relation to average yield in the production area, and to ensure that producers with very low yields are not penalized; whereas differences between wine-growing regions warrant the application of differing rates to producers in the various regions;

Whereas wine production should not be encouraged in the absence of commercial outlets; whereas it therefore appears advisable to lower the buying-in price of wine delivered for compulsory distillation, as its present level seems sufficiently attractive if not to encourage the creation of new vineyards at least to enable old vineyards to survive in the absence of any sales possibilities;'

4. Article 1 is amended as follows:

- (a) The following paragraph 3a is inserted:

'3a: The following Article 15a is inserted:

"Article 15a

With effect from 1988/89, the quantity of table wine produced in wine-growing zone A and the German part of wine-growing zone B

(¹) OJ No C 259, 27. 9. 1984, p. 5.

which for a given year is eligible for distillation under Articles 11, 12a and 15, shall be restricted to 1 million hectolitres.

In years where, because of the weather or the market situation, this restriction is liable to cause serious disturbance of the market, the Council, acting by a qualified majority on a proposal from the Commission, may increase the quantity specified in the first paragraph for the year in question.”

(b) Paragraph 6 is replaced by the following text:

‘6. Article 33a is inserted:

“Article 33a

1. The Commission shall make a thorough study of the question of how to increase natural alcoholic strength. The study shall cover the oenological aspects of the permitted methods, and the economic aspects of the use of rectified concentrated grape must instead of sucrose.

2. Before the end of 1989/90, the Commission shall present to the Council a report on the conclusions of the study referred to in paragraph 1, together with any appropriate proposals.

3. The study referred to in paragraph 1 shall be paid for by the Community. The appropriation shall be fixed under the budget procedure. The cost is estimated at 2 million ECU.”

(c) Paragraph 7 is replaced by the following:

‘7. Article 41 is replaced by the following:

“Article 41

1. Where, in respect of a given wine year, the table wine market is in a state of grave imbalance, compulsory distillation of table wine shall be instituted:

A state of grave imbalance shall be deemed to exist where:

- (a) foreseeable end-of-year stocks exceed a level corresponding to four months of normal utilization;
- (b) production exceeds the level of normal utilization by more than 9 %;
- (c) representative prices for table wines of type AI or type RI remain, for a period to be determined, below 82 % of the guide price.

2. The Commission shall fix the quantities that are to be delivered for compulsory

distillation to absorb production surpluses and thus restore a normal market situation, in particular normal stock levels and prices.

3. The total quantity to be distilled, determined in accordance with paragraph 2, shall be shared, before 31 December, between the wine-growing regions of the Community.

The quantity for distillation in each wine-growing region shall be proportional to the difference between:

- table wine production in the region in the year in question;
- a percentage of the average quantity of table wine produced in the region in three reference years.

Until the end of 1989/90:

- the percentage shall be 85;
- the reference years shall be 1981/82, 1982/83 and 1983/84.

From 1989/90 onwards, the percentage and reference years shall be determined by the Commission.

The Commission shall determine:

- the percentage on the basis of the quantities that must be distilled in accordance with paragraph 2 in order to absorb production surplus for the year in question;
- the reference years on the basis of the trend of production, and, in particular, the effects of grubbing-up measures.

4. The quantity for distillation in each production area, determined in accordance with paragraph 3, shall be shared between table wine producers in the region concerned.

The quantity for distillation for producers subject to compulsory distillation shall be equal to a percentage of their production of table wine. This percentage shall be fixed according to the yield per hectare of each producer in relation to the average yield obtained in the wine-growing area. It may vary between regions according to yields obtained in the past. It may be nil for producers whose yields per hectare are less than 40 % of the average yield in the wine-growing region concerned.

The quantity of table wine to be delivered for distillation by each producer shall be equal to that determined in accordance with the third subparagraph, minus the quantity of table wine or wine suitable for yielding table wine delivered for distillation as referred to in Article 11.

5. The buying-in price for the table wines to be delivered for compulsory distillation in excess of the quantities delivered for distillation as referred to in Article 11 shall be as follows for 1985/86, 1986/87 and 1987/88:

- 50 % of the guide price for each type of table wine for the first 10 million hectolitres;
- 40 % of the guide price for quantities exceeding the quantity referred to in the first indent.

The buying-in price referred to in the first indent shall also apply to wines in a close economic relationship with each of the types of table wines. The price paid by the distiller may not be lower than the buying-in price.

6. Under the distillation operation referred to in this Article, the distiller may:

- either receive aid in respect of the product to be distilled, provided that the product obtained from distillation has an alcoholic strength of at least 52 % vol;
- or deliver the product obtained from distillation to the intervention agency, provided that it has an alcoholic strength of at least 92 % vol.

However:

- the Member States may stipulate that their intervention agencies will not buy in the product referred to in the second indent of the first subparagraph;
- if the table wine has been processed into wine fortified for distillation before delivery for distillation, the aid referred to in the first indent of the first subparagraph shall be paid to the manufacturer of the wine fortified for distillation and the product of the distillation may not be delivered to the intervention agency.

A buying-in price of the other products of distillation which can be taken over by the intervention agency shall be fixed on the basis of the buying-in price referred to in the third subparagraph but varied to take account, in particular, of the costs necessarily entailed in processing the relevant products into neutral spirits.

7. The Council, acting by a qualified majority on a proposal from the Commission, shall adopt general rules for the application of this Article. These rules shall include:

- the conditions under which distillation is to be carried out;
- the criteria for determining the amount of aid which will enable the products obtained to be disposed of;
- the criteria for fixing the buying-in prices of the products of distillation which can be taken over by the intervention agencies.

8. The following shall be adopted in accordance with the procedure laid down in Article 67:

- the decision to carry out the distillation referred to in paragraph 1;
- the total quantity to be distilled, as referred to in paragraph 2;
- the determination of production regions, the fixing of the percentage and the reference years, and the regional allocation of the quantities to be distilled, as referred to in paragraph 3, grouped by Member State;
- the yield per hectare and the percentages referred to in paragraph 4;
- the prices and the amount of the aids referred to in paragraph 6 and other detailed rules for the application of this Article.

The same procedure shall be followed, in particular so as to alleviate the administrative burden arising from the application of this Article, for the adoption of measures granting total or partial exemption from the obligation referred to in paragraph 4 in the case of producers who have obtained, or are to deliver, in the course of the wine year in question, a quantity of wine which is less than a quantity to be determined.

9. Before the end of the 1989/90 wine year, the Commission shall submit to the Council a report outlining, in particular, the effect of the structural measures applicable in the wine sector and, where appropriate, proposals to repeal or replace the provisions of this Article by other measures designed to maintain the balance of the wine market.”

Proposal for a Tenth Council Directive based on Article 54 (3) (g) of the Treaty concerning cross-border mergers of public limited companies

COM(84) 727 final

(Submitted by the Commission to the Council on 14 January 1985)

(85/C 23/08)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) 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, although mergers between public limited liability companies have been coordinated by Council Directive 78/855/EEC⁽¹⁾, such coordination extends only to mergers involving companies which are governed by the law of the same Member State; whereas, in the interests of the common market, provision should be made particularly of mergers involving companies which are governed by the laws of different Member States;

Whereas Article 220 of the Treaty which provides for Member States, where necessary, to enter into negotiations with each other with a view to ensuring that cross-frontier mergers are possible, does not prevent the matter from being harmonized by directive;

Whereas that approach offers the advantage that in the numerous cases where the arrangements governing national and cross-border mergers coincide, reference can be made in the present Directive to the corresponding provisions of Directive 78/855/EEC, thereby ensuring at the same time a more uniform implementation and interpretation of both sets of rules than would be possible with two completely separate legal instruments;

Whereas this Directive is therefore limited to additional requirements or to those aspects of cross-border mergers which differ from national mergers;

Whereas the scope of this Directive is essentially the same as that of Directive 78/855/EEC; whereas, however, a Member State should also be empowered not to apply this Directive to companies which, under its law, are governed by provisions concerning employee participation in the composition of the organs of those companies; whereas this exception appears necessary at any rate until the Council has decided on the Commission's amended proposal for a Fifth Directive based on Article 54 (3) (g) of the Treaty concerning the structure of public limited companies and the powers and obligations of their organs⁽²⁾; whereas in other respects the protection of employees in the event of either cross-border or national mergers is guaranteed by Council Directive 77/187/EEC⁽³⁾;

Whereas, for the purpose of defining cross-border mergers, reference may be made to the definition of national mergers in Directive 78/855/EEC, with the sole exception that two or more of the companies involved must be governed by the laws of different Member States;

Whereas, although Directive 78/855/EEC permits Member States to choose whether or not to apply certain provisions of that Directive in the case of national mergers, they may exercise those options in the case of cross-border mergers only for those companies involved in the operation which are governed by their law;

Whereas although Directive 78/855/EEC permits certain exceptions for operations treated as mergers, Member States may make use of those exceptions in the case of cross-border mergers only if the other Member States whose law governs the other companies involved have also done so;

Whereas although Directive 78/855/EEC provides in the case of national mergers that it is sufficient for the draft terms of a merger to be drawn up in writing,

⁽¹⁾ OJ No L 295, 20. 10. 1978, p. 36.

⁽²⁾ OJ No C 240, 9. 9. 1983, p. 2.

⁽³⁾ OJ No L 61, 5. 3. 1977, p. 26.

the draft terms of a cross-border merger need to be drawn up and certified in due legal form if the law of a Member State governing one of the companies involved so provides;

Whereas, following their filing in the register, the draft terms of a national merger may be published in the national gazette in accordance with Council Directive 68/151/EEC (*) simply by means of reference to their filing in the register; whereas, in the case of cross-border mergers, additional details appear necessary in order to provide third parties, and particularly creditors of companies being acquired, with better information on their rights;

Whereas stricter requirements should not be imposed in respect of a general meeting's decision concerning a cross-border merger than in respect of a general meeting's decision concerning a national merger;

Whereas the creditors of companies involved in a cross-border merger should benefit from the same system of protection as creditors in the case of a national merger;

Whereas in the case of cross-border mergers the judicial or administrative preventive supervision or, where appropriate, the drawing up and certification of documents in due legal form, must be synchronized for all the companies involved;

Whereas a cross-border merger may not take effect until the necessary supervision or formalities have been completed for all the companies involved;

Whereas the publication of a cross-border merger must take place for the acquired company before it takes place for the acquiring company;

Whereas the grounds of nullity of cross-border mergers should be limited as far as possible,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The coordination measures laid down by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:

- (a) *Germany:*
Aktiengesellschaft;

- (b) *Belgium:*
société anonyme / naamloze vennootschap;
- (c) *Denmark:*
aktieselskaber;
- (d) *France:*
société anonyme;
- (e) *Greece:*
ανώνυμη εταιρία;
- (f) *Ireland:*
public companies limited by shares or by guarantee;
- (g) *Italy:*
società per azioni;
- (h) *Luxembourg:*
société anonyme;
- (i) *The Netherlands:*
naamloze vennootschap;
- (j) *United Kingdom:*
public companies limited by shares or by guarantee.

2. Where a Member State applies Article 1 (2) or (3) of Directive 78/855/EEC in respect of a company governed by its law which is involved in a cross-border merger, this Directive shall not apply.

3. - Pending subsequent coordination, a Member State need not apply the provisions of this Directive to a cross-border merger where an undertaking, whether or not it was involved, would as a result no longer meet the conditions required for employee representation in that undertaking's organs.

4. Protection of the rights of the employees of each of the companies involved in a cross-border merger shall be regulated in accordance with Directive 77/187/EEC.

Article 2

1. Except where this Directive provides otherwise, the Member States shall provide for cross-border mergers by the acquisition of one or more companies by another and for cross-border mergers by the creation of a new company in accordance with Directive 78/855/EEC in respect of companies governed by their law.

2. Articles 17 and 22 (1) (b) of Directive 78/855/EEC shall not apply.

(*) OJ No L 65, 14. 3. 1968, p. 8.

3. A Member State may apply Articles 3 (2), 4 (2), 8, 11 (2) second subparagraph, 22 (1) and (2), 23 (4) and 25 to 29 of Directive 78/855/EEC only in respect of those companies involved in a cross-border merger which are governed by its law.

4. A Member State may apply Articles 30 and 31 of Directive 78/855/EEC to those companies involved in a cross-border merger which are governed by its law only if the Member States by whose law the other companies involved in the operation are governed have also done so.

Article 3

For the purposes of this Directive, 'cross-border merger by acquisition' means the operation referred to in Article 3 (1) of Directive 78/855/EEC, with the exception that two or more of the companies involved must be governed by the laws of different Member States.

Article 4

For the purposes of this Directive, 'cross-border merger by the formation of a new company' means the operation referred to in Article 4 (1) of Directive 78/855/EEC, with the exception that two or more of the companies involved must be governed by the laws of different Member States.

Article 5

1. Article 5 of Directive 78/855/EEC shall apply to the drawing up of the draft terms of a cross-border merger. No further details than those listed in paragraph 2 of the abovementioned Article may be required.

2. The draft terms of a cross-border merger shall be drawn up and certified in due legal form if this is prescribed by the law of a Member State by which one or more of the companies involved in the cross-border merger is governed.

3. The law of the Member State requiring that the draft terms be drawn up and certified in due legal form shall determine the person or authority competent so to do. Where the laws of several Member States by which companies involved in the cross-border merger are governed require that the draft terms be drawn up and certified in due legal form, this may be done by any person or authority competent under the law of one of those Member States.

Article 6

1. Article 6 of Directive 78/855/EEC and Article 3 of Directive 68/151/EEC shall apply to the publication of the draft terms of a cross-border merger for each of the merging companies.

2. However, when the draft terms referred to in paragraph 2 are disclosed as provided for in Article 3 (4) of Directive 68/151/EEC for each of the merging companies the following information shall be specified:

- (a) the type, name and registered office of each of the merging companies;
- (b) the register in which a file as referred to in Article 3 (2) of Directive 68/151/EEC has been opened for each of the merging companies and the number of the entry in that register;
- (c) the conditions which, in accordance with Article 11, determine the date on which the cross-border merger takes effect.

3. The disclosure shall also specify for the acquired company or companies the details of the exercise of the rights of the creditors of those companies in accordance with Articles 13, 14 and 15 of Directive 78/855/EEC and Article 9 of this Directive.

Article 7

Article 7 of Directive 78/855/EEC relating to rules for approval by the general meeting shall apply to each of the merging companies. However the Member States may not require a larger majority than they require for a merger in which all the companies involved are governed by their law.

Article 8

1. Article 10 of Directive 78/855/EEC relating to the drawing up of the report of the expert or experts shall apply.

2. The experts shall be appointed or approved by a judicial or administrative authority of the Member State whose law governs the company for whose shareholders the report is drawn up.

3. Where all the laws of the Member States by which the companies involved in a cross-border merger are governed apply the second sentence of Article 10 (1) of Directive 78/855/EEC, the appointment of one or more experts for all the merging companies may be made at the joint request

of those companies by a judicial or administrative authority of any of those Member States. In such cases, the content of the expert's report shall be determined by the law governing that judicial or administrative authority in accordance with Article 10 (2) of Directive 78/855/EEC.

Article 9

1. Articles 13 and 14 of Directive 78/855/EEC relating to the system of protection of the interests of creditors shall apply to cross-border mergers.

2. The protective system shall not be different from that which applies to the creditors of merging companies which are all governed by the law of the Member States concerned.

3. Article 15 of Directive 78/855/EEC shall apply to cross-border mergers subject to the proviso that:

- (a) the law governing the company being acquired shall determine whether a meeting of holders of the securities referred to may approve an alteration in their rights in that company;
- (b) the law governing the acquiring company shall determine whether the holders of the securities referred to are entitled to have them repurchased by the acquiring company.

Article 10

1. Where the law of a Member State governing one or more of the companies involved in a cross-frontier merger provides for judicial or administrative preventive supervision of the legality of that merger, that law shall apply to those companies.

2. Where the law of a Member State governing one or more of the companies involved in a cross-frontier merger does not provide for judicial or administrative preventive supervision or where such supervision does not extend to all the legal acts required for the merger, Article 16 of Directive 78/855/EEC shall apply to the company or companies concerned. Where that law provides for a merger contract to be concluded following the decisions of the general meetings held concerning the cross-border merger, that contract shall be concluded by all the companies involved in the operation. Article 5 (3) shall apply.

3. Where both the law governing the acquiring company and the law governing the company or

companies being acquired provides for judicial or administrative preventive supervision of the legality of the cross-border merger, that supervision shall be carried out first in respect of the acquiring company. It may not be carried out in respect of a company being acquired until proof is furnished that it has already been carried out in respect of the acquiring company.

4. Where the law governing one or more of the companies involved provides for judicial or administrative preventive supervision while the law governing one or more of the other companies involved does not, that supervision must be carried out simply on the basis of the documents drawn up and certified in due legal form referred to in Article 16 of Directive 78/855/EEC.

Article 11

The law of the Member State governing the acquiring company shall determine the date on which a cross-border merger takes effect. That date must be after the supervision has been carried out and, where appropriate, the documents certified in due legal form referred to in Article 10 have been drawn up for all the companies involved.

Article 12

Article 18 of Directive 78/855/EEC shall apply. However the publication of a cross-border merger must take place for the company or companies being acquired before publication for the acquiring company.

Article 13

Article 19 (3) of Directive 78/855/EEC shall apply subject to the proviso that the law of the Member State governing a company being acquired shall determine whether in order to be effective against third parties, the transfer of certain assets, rights and obligations by that company requires the completion of special formalities.

Article 14

The civil liability of the members of the administrative or management bodies and of the experts of an acquired company shall be determined, in accordance with Articles 20 and 21 of Directive 78/855/EEC, by the law of the Member State governing that company.

However, in the case referred to in Article 8 (3), the civil liability of the experts shall be determined by the law of the Member State governing the judicial or administrative authority which appointed them.

Article 15

1. Article 22 (1) of Directive 78/855/EEC shall apply subject to the proviso in paragraph 1 (b) of the said Article that a cross-border merger which has taken effect pursuant to Article 11 of this Directive may be declared void only if there has been no judicial or administrative preventive supervision of its legality or if it has not been drawn up and certified in due legal form, where such supervision or certification is laid down by the law of the Member State governing the relevant company. However where the law governing the acquiring company does not provide for the nullity of the merger where there has been no judicial or administrative preventive supervision of its legality or where it has not been drawn up and certified in due legal form, it may not be declared void.

2. The law of a Member State may not provide for grounds of nullity for cross-border mergers which it has not provided for mergers involving companies all of which are governed by that law.

3. Article 22 (1) (f) of Directive 78/855/EEC shall apply where the laws of a Member State where a judgment has declared a cross-border merger void permit a third party to challenge such a judgment.

Article 16

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1988. They shall forthwith inform the Commission thereof.

2. The Member States need not apply this Directive to cross-border mergers or to operations treated as cross-border mergers for the preparation or execution of which a prescribed act or formality has already been completed when the provisions referred to in paragraph 1 enter into force.

3. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the fields covered by this Directive.

Article 17

This Directive is addressed to the Member States.

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