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## Information and Notices

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## II

(Preparatory Acts)

## COMMISSION

**Proposal for a Council Decision adopting the second phase of the Trans-European Cooperation Scheme for Higher Education (Tempus II) (1994-1998)**

(92/C 311/01)

COM (92) 407 final

(submitted by the Commission on 1 October 1992)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 235 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 the Council adopted on 18 December 1989 Regulation (EEC) No 3906/89<sup>(1)</sup> on economic aid to the Republic of Hungary and the Polish People's Republic, as last amended by (EEC) No 3800/91 of 23 December 1991<sup>(2)</sup>, which provides for aid to support the process of economic and social reform in central and eastern European countries in areas including training;

Whereas experience gained in the management of the *Phare* programme of aid to central and eastern Europe points to the need to adapt and further diversify forms of assistance according to national needs and priorities for structural reform and to adopt where possible a multiannual approach to the programming of aid;

Whereas the countries of central and eastern Europe have recognised the importance of higher education in the

context of aid measures for their current process of economic and social reform and have accorded priority to the development of the university sector through cooperation with the European Community;

Whereas Poland, Hungary and Czechoslovakia have signed association agreements<sup>(3)</sup> with the Community which specify that the *Tempus* Scheme provides a framework for cooperation in the field of education and training;

Whereas cooperation in higher education is conducive to closer economic and cultural relations between the different peoples of Europe;

Whereas the experience and expertise gained within the Community in the areas particularly of inter-university cooperation and student exchange as well as of industry-university cooperation have been drawn on to develop cooperation and mobility between the Community and the countries of central and eastern Europe in the field of higher education as well as to promote mutually beneficial contacts in the field of education and training;

Whereas in its Decision 90/233/EEC<sup>(4)</sup>, as amended by Decision 92/240/EEC<sup>(5)</sup>, the Council established a Trans-European Mobility Scheme for University Studies

(1) OJ No L 375, 23. 12. 1989, p. 11.

(2) OJ No L 357, 28. 12. 1991, p. 10.

(3) Europe Agreements, signed 16. 12. 1991.

(4) OJ No L 131, 23. 5. 1990, p. 21.

(5) OJ No L 122, 7. 5. 1992, p. 43.

(Tempus), within a perspective of five years, for an initial pilot phase of four years beginning on 1 July 1990;

Whereas Article 11 of Decision 90/233/EEC provides that before 31 December 1992, the Commission shall submit to the Council, the European Parliament and the Economic and Social Committee an interim report, including the results of the evaluation as well as a proposal for the continuation or adaptation of *Tempus* as a whole beyond the initial pilot phase;

Whereas the results of the evaluation of the first year and a half of the pilot phase, carried out in accordance with Article 11, have confirmed that, for each country concerned, the objectives of *Tempus* should be more clearly targetted whether on the long-term reform of higher education or on the shorter term needs of economic restructuring;

Whereas the competent authorities in the countries of central and eastern Europe have expressed positive views on *Tempus* and will in future take account of the evaluation in defining their priorities for Phare assistance and their particular strategy and needs in the context of the *Tempus* Scheme;

Whereas the Council adopted on 15 July 1991 Regulation (EEC, Euratom) No 2157/91 concerning the provision of technical assistance to economic reform and recovery in the Union of Soviet Socialist Republics <sup>(1)</sup>;

Whereas the Ministers of Education of certain Republics of the former Soviet Union have expressed their wish to participate in *Tempus* as an appropriate instrument for the transformation of their higher education systems in the context of economic reform and recovery and that the first three years of the implementation of the *Tempus* Scheme have generated appropriate experience and insight into the problems of higher education transformation which are directly relevant for these Republics;

Whereas there exist in the Community and in third countries regional and/or national, public and/or private facilities which can be called upon to assist in the effective provision of financial support in the area of training at higher education level;

Whereas the Treaty does not provide, for the action concerned, powers other than those of Article 235,

HAS DECIDED AS FOLLOWS:

#### Article 1

##### Duration of Tempus II

The second phase of the Trans-European Cooperation Scheme for Higher Education (hereinafter referred to as 'Tempus II') is hereby adopted for a period of four years as of 1 July 1994.

#### Article 2

##### Eligible countries

*Tempus II* shall concern the countries of central and eastern Europe designated as eligible for economic aid by Regulation (EEC) No 3906/89 and the Republics of the former Soviet Union as defined in Regulation (EEC, Euratom) No 2157/91. These countries shall be referred to hereinafter as 'the eligible countries'. Participation shall be decided by the national authorities in agreement with the Commission in the context of the national programming of Community assistance for economic reform.

#### Article 3

##### Definitions

In the context of *Tempus II*:

- a) the term 'university' shall be used to cover all types of post-secondary educational and vocational training establishments which offer, where appropriate within the framework of advanced education and training, qualifications or diplomas of that level, whatever such establishments may be called;
- b) the terms 'industry' and 'enterprise' shall be used to indicate all types of economic activity, whatever their legal status, public and local authorities, independent economic organizations, chambers of commerce and industry and/or their equivalents, professional associations, organizations representing employers or employees, as well as private training bodies of the above mentioned institutions and organizations.

#### Article 4

##### Objectives

In the broader context of economic and social reform, the objectives of *Tempus II* are the following:

- a) to promote the structural development and to facilitate the adaptation of higher education systems in the eligible countries, in particular through cooperation and interaction with partners in the Member States of

(1) OJ No L 201, 24. 7. 1991, p. 2.

- the European Community taking into consideration the priorities laid down by each of the eligible countries;
- b) to help address specific manpower and skill shortages during economic reform and
  - c) to promote exchanges of young people between the Community and the eligible countries.

In realising the objectives of the *Tempus II* Scheme the Commission shall ensure respect of the Community's general policy on equal opportunity for men and women. The same shall apply for disadvantaged groups, such as handicapped. In addition, account shall be taken of the need to ensure that as many regions as possible are able to participate in the Scheme.

#### Article 5

##### Committee

1. The Commission shall implement the *Tempus II* Scheme according to the national strategy and choice of objectives worked out with the competent authorities in each participating country on the basis of the provisions of the Annex and on the basis of detailed guidelines to be adopted annually.

2. In the performance of that task, the Commission shall be assisted by an advisory committee composed of two representatives appointed by each Member State and at least one of whom shall be drawn from the academic community. The committee shall be chaired by the Commission representative. The members of the committee may be assisted by experts or advisers.

The committee shall, in particular, assist the Commission in the implementation of the scheme having regard to the objectives set out in Article 4 and shall coordinate work with that of other committees covering the same field as *Tempus II*.

3. The Commission representative shall submit to the committee drafts of measures concerning:

- a) the general guidelines governing *Tempus II*;
- b) the general guidelines on the financial assistance to be provided by the Community (amounts, duration and recipients of assistance);
- c) questions relating to the overall balance of *Tempus II*, including the breakdown between the various actions;
- d) questions relating to the priority areas for support;
- e) arrangements for the monitoring and evaluation of *Tempus II*.

4. The committee shall deliver its opinion on these draft measures 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.

5. 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 6

##### Cooperation with the relevant agencies

1. The Commission shall cooperate with appropriate agencies in each of the eligible countries, designated or set up to coordinate the links and structures necessary for the effective implementation of *Tempus II*, including the allocation of funds made available by the eligible countries themselves.

2. The Commission shall also cooperate closely in the implementation of *Tempus II* with the relevant national bodies designated by the Member States.

#### Article 7

##### Links with other Community actions

The Commission, in accordance with the procedure set out in Article 5 paragraph 3 of this Decision, and, where appropriate, with the procedure set out in Article 9 of Regulation (EEC) No 3906/89, shall ensure consistency and, where necessary, complementarity between *Tempus II* and other actions at Community level, both within the Community and in assistance to the eligible countries, with particular reference to the activities of the European Training Foundations.

#### Article 8

##### Coordination with actions of third countries

1. The Commission shall ensure the appropriate coordination with actions developed by countries which are not members of the Community or by universities and enterprises or other institutions or bodies in these countries which relate to the same field of action as *Tempus II*, including, where appropriate, participation in *Tempus II* projects.

2. Such involvement can take various forms, including one or more of the following:

- participation in *Tempus II* projects via co-financing,
- use of *Tempus II* facilities for the channelling of bilaterally-funded exchange actions,

- coordination with *Tempus II* of those nationally-based initiatives which are related to the same aims but which are financed and run separately,
- reciprocal exchange of information on all relevant initiatives in this field,
- provision of funds at national level for *Tempus II* participation.

*Article 9*

**Annual report**

An annual report on the functioning of *Tempus II* shall be submitted by the Commission to the European Parliament, the Council, and the Economic and Social Committee.

*Article 10*

**Monitoring and evaluation arrangements — reports**

The Commission shall, in accordance with the procedure set out in Article 5, paragraph 3, establish arrangements for the monitoring and evaluation of the experience acquired in the implementation of *Tempus II*, taking into account the particular objectives set out in Article 4.

It shall submit an interim report, including the results of the evaluation, before 30 April 1996, as well as possibly a proposal for the continuation or adaptation of *Tempus* for the period beginning from 1 July 1998.

A final report shall be presented by the Commission by 30 June 1999.

## ANNEX

**Joint European Projects**

1. The Community will provide support for Joint European Projects of maximum three years' duration linking universities and/or enterprises in eligible countries with partners in the Community.

Joint European Projects will comprise at least one university from an eligible country, one university from a Member State and one partner institution (university or enterprise) from another Member State.

Such projects may be linked, as appropriate, to existing networks, notably those funded in the framework of the Erasmus, Comett and Lingua programmes, or to the other assistance programmes focused on related aspects of economic and social reform.

2. Joint European Project grants may be awarded for a wide range of activities according to the specific needs of the institutions concerned and according to the priorities laid down, including:
  - i) cooperative education and training actions, notably curricular development and overhaul, the development of universities' capacities to provide continuing education and retraining, the provision of short, intensive courses and the development of open and distance learning capability;
  - ii) the structural reform and development of higher education, notably via the restructuring of existing higher education institutions, the upgrading of facilities, and, where appropriate, the provision of technical and financial assistance to education authorities;
  - iii) the promotion of university/industry cooperation in the eligible states via the development of universities' capacities to cooperate with industry and cooperative university/industry training actions;
  - iv) equipment necessary for the implementation of a Joint European Project;
  - v) the development of student and staff mobility within the framework of Joint European Projects;
  - vi) regional activities involving two or more eligible countries;
  - vii) other actions answering specific needs identified in the eligible states.

3. *Mobility within Joint European Projects*

Within the framework of Joint European Projects the Community will provide support for student and staff mobility as follows:

- i) grants will be awarded to students, up to and including at doctorate level and will be available both to students from the eligible countries carrying out periods of study in the Community and to students from the Community spending study periods in the eligible countries. Grants will be normally awarded for a period of between three months and one year;
- ii) for students participating in Joint European Projects whose specific aim is to foster mobility, priority will be given to students participating in projects where the period of study spent abroad will be granted full recognition by the student's home university;
- iii) for teaching/administrative staff at universities or trainers from enterprises in Member States to carry out teaching/training assignments for periods from one week to one year in eligible countries and *vice versa*;
- iv) for teaching/administrative staff at universities in the eligible countries to undertake retraining and updating periods in the Community;
- v) support for industrial or practical placements of one month to one year for teachers, trainers, students and graduates between the end of their studies and first employment from the eligible countries to undertake a practical training period in enterprises in the Community and vice-versa;
- vi) all types of mobility grant will include support for linguistic preparation where necessary.

### Individual Grants and Complementary Activities

1. The Community will also provide support for individual grants to teachers, trainers, university administrators, senior Ministry officials, education planners and other training experts for a number of activities, notably:
  - i) short visits of one week to two months to a Member State or an eligible country designed to prepare Joint European Projects, prepare teaching materials, collect and disseminate information, exchange expert advice and increase mutual understanding of the higher education/training systems concerned;
  - ii) teaching/training assignments in universities in the Community and in the eligible states for periods of one week to one year;
  - iii) practical placements in enterprises or education authorities in the Community or in the eligible states for periods of one month to one year;
  - iv) retraining and updating for university staff from the eligible states in the Community for periods from one week to one year.
2. Grants will be made available to enable eligible countries to participate in the activities of European associations, notably university associations.
3. Support will be provided to facilitate publications and other information activities directly relevant to supporting the development and renewal of the higher education systems of the eligible countries.
4. Support will be provided for activities (in particular technical assistance, training and studies) designed to assist in the reform and development of higher education and training systems in the eligible countries.
5. Support will be provided to projects involving youth activities as well as exchanges of young people and youth organisers between Member States and eligible countries.

### Support Activities

1. The necessary technical assistance will be provided to the Commission to underpin the activities undertaken in accordance with the Decision, including the coordination of monitoring procedures.
  2. Support will be provided for appropriate evaluation of the Tempus II Scheme.
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**Proposal for a Council Regulation (EEC) establishing a Community system for fisheries and aquaculture**

(92/C 311/02)

(COM (92) 387 final)

(submitted by the Commission on October 1992)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 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 Committees,

Whereas, in accordance with Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources<sup>(1)</sup>, the Commission drafted a report on the common fisheries policy, which it sent to the Council and the European Parliament; whereas it emerged from the report and the ensuing discussions that although the existing measures for the management and conservation of resources had proved to be basically sound instruments, they had failed to prevent the current situation, marked by a deterioration in the state of the resources and by the overcapacity of the Community fleet, primarily because they were inadequate and there were shortcomings in their implementation and monitoring; whereas reinforcement of the measures is justified;

Whereas the objective should be stable, rational and responsible exploitation of all living aquatic resources while recognizing the interest of the sector in its long-term development, taking into account the biological constraints and with due respect for the environment;

Whereas globally the state of stocks is endangered as a result of mortality caused by over-fishing but whereas the situation should be assessed on a case-by-case basis, in particular for individual zones, fisheries and trades;

Whereas the intensity of fishing should be managed with a view to establishing a balance between available and accessible resources and all the parameters likely to influence fishing mortality;

Whereas for the purposes of rationalizing the means of exploiting resources, the selectivity of fishing methods and gear should be improved with a view to optimum utilization of biological potential and limitation of discards;

Whereas the implementation of the common fisheries policy is based on the principle of mutual confidence between the Community, national and regional authorities and between those authorities and the various partners in the sector; whereas, to that end, an institutionalized sharing of responsibilities for the taking, implementation and monitoring of decisions at the most appropriate levels should be ensured;

Whereas, in order to improve regulation of fishing effort, a Community system of fishing licences should be introduced, applicable to all fishing vessels operating in waters under the sovereignty or jurisdiction of the Member States and to fishing vessels flying the flag of a Member State or registered in a Community port operating in the waters of third countries or on the high seas;

Whereas, by way of derogation from Council Regulation (EEC) No 101/76<sup>(2)</sup>, special provisions should be laid down to assist inshore fishing and the local economic interests linked thereto, authorizing coastal Member States to maintain the present restrictions on access to waters under their sovereignty or jurisdiction within a maximum limit of 12 nautical miles, calculated from their baselines, as laid down on the basis of Regulation (EEC) No 170/83;

Whereas, to that end, the present arrangements concerning rules of access for fishing vessels of other Member States whose fishing activity is traditionally pursued in waters within a 12-mile limit calculated from the baselines of the coastal Member State and from ports in that geographical coastal area should be renewed until 31 December 2002;

Whereas the risks of socio-economic upheaval in inshore fisheries should be minimized; whereas, therefore, the

<sup>(1)</sup> OJ No L 24, 27. 1. 1983, p. 1.

<sup>(2)</sup> OJ No L 20, 28. 1. 1976, p. 19.



rights each Member State may exercise for the next ten years should be specified;

Whereas special arrangements concerning fishing activity have been agreed in one sensitive region and whereas they should be maintained;

Whereas with a view to effective conservation, the rates of exploitation of certain types of living aquatic resources should be limited and whereas, for the purposes of improving the existing mechanisms, rules fixing the exploitation rates applicable should be determined on a multiannual basis;

Whereas, for the types of resources for which exploitation rates are to be limited, the shares of the Member States in Community fishing opportunities should also be established in the form of fishing availabilities expressed in terms of fishing effort and/or quotas allocated; whereas the shares should be established on the basis of a reference breakdown reflecting the guidelines adopted by the Council to contribute to greater stability of fishing activity, while entrusting the management to Member States;

Whereas particular attention should be paid to the needs of the local populations particularly dependent on fisheries and related activities as decided by the Council in its Resolution of 3 November 1976, and in particular Annex VII thereto;

Whereas while observing the overall balance, it may be necessary to make adjustments to the distribution in the case of some availabilities to take account of developments with regard to biological and economic factors since 1983 and in particular mini-quotas and certain traditional trade flows between Member States;

Whereas, therefore, the objective of relative stability should be seen in those terms;

Whereas over-capacity of the Community fishing fleet should be eliminated to bring capacity back into line with available and accessible resources and whereas account should also be taken of the characteristics of each fishery;

Whereas, in order to achieve a balanced reduction of the capacity of Member States' fleets, the guidelines setting the objectives and rules for the restructuring of the Community fishing industry should therefore be laid down at Community level;

Whereas, to ensure better management and transparency of the fishing licensing system, licensing should be managed at the most appropriate levels;

Whereas, to ensure implementation of the common fisheries policy, a Community system of enforcement of the common fisheries policy should be established; whereas that system should apply to the whole of the fishing sector and should, in particular, specify the levels at which monitoring tasks are to be carried out and the Community resources required to ensure that controls are effective and transparent, and should provide for harmonized deterrent penalties and the possibility of making use of the most effective technical facilities;

Whereas provision should be made for the means of adopting emergency measures in the event of disturbances liable to jeopardize the objectives of the common fisheries policy;

Whereas, to ensure proper use of scientific, technical and also economic data for assessing the situation with regard to fisheries and foreseeable developments, a scientific and technical committee of an advisory nature should be set up;

Whereas, to facilitate the implementation of this Regulation, a procedure should be laid down establishing close cooperation between the Member States and the Commission within a management committee for fisheries and aquaculture;

Whereas, by reason of the number and complexity of the amendments to be made, the present provisions of Regulation (EEC) No 170/83 would lack the clarity which is required of all legislation; whereas that Regulation should therefore be replaced,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. The common fisheries policy shall cover all fishing activities, including farming, of living aquatic resources, as well as the processing and marketing thereof where practised on the territory of Member States or in waters under the sovereignty or jurisdiction of Member States, hereinafter referred as 'Community fishing zones' or by fishing vessels flying the flag of a Member State or registered in a Community port, hereinafter referred to as 'Community fishing vessels'.

2. For the implementation of the common fisheries policy, a Community system for the management of fishing activity shall be established with the aim of making fishing

activities sustainable in order to ensure the economic and social viability of the sector by means of the stable, rational and responsible exploitation of resources, in particular with a view to ensuring the availability of supplies at reasonable prices to consumers.

To that end, and given the current level of over-fishing, the Community system for the management of fishing activity must enable balance to be achieved as quickly as possible and on a permanent basis between resources and fishing activity, in particular by taking account of all the parameters influencing fishing mortality.

3. The purpose of this Regulation shall be to conserve and protect available and accessible living marine aquatic resources, including anadromous and catadromous species, hereinafter referred to as 'resources'. Non-commercial activities shall be covered in so far as they compete directly with commercial activities and Community action is required in order to establish a balance between resources and fishing effort.

To that end, and in order to assure each Member State of lasting stability in fishing activities, this Regulation contains a set of measures for the regulation and allocation of access, management and monitoring of fishing activity, as well as the requisite means and procedures.

## TITLE 1

### Rules of Access

#### Article 2

1. In order to rationalize the exploitation of resources, the Council, acting in accordance with the procedure laid down in Article 43 of the Treaty, shall lay down the conditions of access and of the pursuit of fishing activities, by Community provisions drawn up in the light of the available scientific, technical and economic analyses and in particular of the report drawn up by the Scientific and Technical Committee for Fisheries provided for in Article 12 below.

2. These provisions may, in particular, include measures:

- (a) establishing zones and boxes in which fishing activities are prohibited or restricted;
- (b) limiting on a multiannual basis exploitation rates within the meaning of Article 6 (3) and (4);
- (c) limiting fishing seasons;
- (d) fixing the number and type of fishing vessels authorized;

- (e) laying down technical measures regarding the type, number, size and geometry of fishing gear and its method of use;
- (f) setting a minimum size or weight of fish that may be caught;
- (g) laying down conditions relating to the fitting-out of vessels for fishing.

3. Notwithstanding the existing Community licensing systems or those required under international agreements, with effect from 1 January 1994, a Community system of fishing licences shall be introduced, to manage fishing effort. Licences under this system shall be issued and administered at the most appropriate level in the Member States.

The licensing system shall apply to all fishing vessels in the Community fishing zone and to Community vessels operating in the waters of third countries or on the high seas.

Detailed rules of application, and in particular the methods of management and conditions for the issue of fishing licences, shall be adopted in accordance with the procedure laid down in Article 14.

#### Article 3

1. Member States are authorized to restrict fishing in waters under their sovereignty or jurisdiction, situated within a maximum limit of twelve nautical miles, calculated from the base lines of the coastal Member State, to vessels which fish traditionally in those waters and which operate from ports in that geographical coastal area.

2. In addition to the activities carried out under existing neighbourhood relations between Member States, the fishing activities under the arrangements established in paragraph 1 shall be carried out until 31 December 2002, in accordance with the arrangements referred to in Annex I, fixing for each Member State the geographical zones within the coastal bands of other Member States where these activities are pursued and the species concerned.

#### Article 4

1. For fisheries involving resources which are biologically sensitive by reason of the characteristics of their exploitation, the Council, acting in accordance with the procedure laid down in Article 43 of the Treaty, may establish boxes restricting fishing activity, in accordance with Article 2 (2) (a), providing, in particular, for a system of fishing licences and laying down procedures for the transmission of entries into and exits from the box concerned to the competent monitoring authorities in real time.

2. Detailed rules for the application of measures adopted under paragraph 1 shall be adopted in accordance with the procedure laid down in Article 14.

### Article 5

1. In accordance with Article 4, in the region defined in Annex II, fishing activity by fishing vessels of a length between the perpendiculars of not less than 26 metres, for demersal species other than Norway pout and blue whiting, shall be limited in accordance with the conditions laid down in the said Annex.

2. Detailed rules of application and procedures for the establishment of systems of fishing licences and the communication of movements of fishing vessels shall be adopted in accordance with the procedure laid down in Article 14.

### Article 6

1. 'Exploitation rate' means the numerical proportion of a stock caught during a given period; the exploitation rate may be regulated by a restriction for the period concerned on fishing activity and/or the volume of catches authorized.

'Fishing effort' means the sum of the catch facilities used over a specified period in a specified area.

'Community fishing opportunity' means the fishing opportunity available for the Community in the Community fishing zone, less the total of fishing availabilities allocated to third countries, plus the total of the fishing availabilities of the Community outside the Community fishing zone.

2. Where it proves necessary to restrict the exploitation rates in a fishery in the Community fishing zone or outside that zone for Community fishing vessels, such restrictions shall be laid down in accordance with paragraphs 3, 4 and 5 in the form of a total allowable catch and/or fishing effort.

Shares in Community fishing opportunity shall be fairly divided among the Member States in the form of fishing availabilities expressed in terms of fishing effort and/or quotas allocated in such a way as to ensure relative stability of fishing activities while taking account of developments in the sector since 1983 and with due regard to the overall balance of shares.

3. Management objectives shall be set for each fishery in relation to the specific nature of the resource concerned. In each case priority objectives shall be specified in terms of the level and stability of resources, forms of production, activities and yields.

The Council shall, in addition, for each fishery, decide in favour of the definition of a total allowable catch, if necessary on a multispecific basis, and/or a direct restriction on fishing effort.

To that end, the Council shall determine the specific conditions under which fishing activities must be pursued, as well as, for each fishery or type of resource, the formula for dividing Community fishing opportunity among the Member States.

4. Management strategies shall be established on a multiannual basis for three to five years in relation to the different fisheries and resources and may on a case-by-case basis include in particular:

- the total allowable catch and/or fishing effort,
- the conditions for carrying forward fishing availabilities from one year to the next.

These strategies shall be updated, at the latest one year before the expiry of the period fixed for each fishery.

5. In compliance with the measures adopted pursuant to paragraphs 3 and 4 and in the light of scientific opinions, the Commission, acting in accordance with the procedure laid down in Article 14, shall at regular intervals set the fishing availabilities allocated to Member States and make any adjustments.

6. Member States may, after notifying the Commission, exchange all or part of the fishing availabilities allocated to them pursuant to the second subparagraph of paragraph 2.

7. Member States shall, after notifying the Commission, lay down the criteria for the distribution of and detailed rules for the use of the fishing availabilities allocated to them, in accordance with Community law and the common fisheries policy.

## TITLE II

### Management and monitoring of fishing activity

#### Article 7

Having regard to Title I, on a five-yearly basis and for the first time not later than 1 January 1994, the Council, acting in accordance with the procedure laid down in Article 43 of the Treaty, shall set the objectives and detailed rules for restructuring the Community fisheries sector with a view to achieving a balance between resources and fishing activity.

To that end, the Council shall determine, as required, the levels of reduction of fishing activity for particular fisheries or homogenous groups of fisheries and shall define the methods for adjusting parameters influencing fishing mortality.

*Article 8*

1. To ensure compliance with this Regulation, the Council, acting in accordance with the procedure laid down in Article 43 of the Treaty, shall introduce a Community monitoring system.
2. The monitoring system shall apply to the entire sector and shall, in particular:
  - define the most appropriate levels for inspection tasks and ensure coordination thereof,
  - determine the means available to persons appointed by the Commission to ensure the effectiveness and transparency of inspections by national departments, in particular guaranteeing the right to intervene without prior notice,
  - provide for the obligation of Member States to incorporate into their legislation a system of graded and deterrent penalties over and above the forfeit of the economic gain derived from the infringement,
  - permit the use of new technical resources.

## TITLE III

## General provisions

*Article 9*

1. Member States shall transmit to the Commission, in a standardized form, all information relevant to the implementation of this Regulation.

The Commission shall treat the information with the confidentiality required for the protection of individual data.

2. Detailed rules for the application of paragraph 1 shall be adopted in accordance with the procedure laid down in Article 14.

*Article 10*

1. The Commission shall report at regular intervals to the Council, the European Parliament and the Community bodies representing the sector on the implementation of measures adopted pursuant to this Regulation, and in particular Article 6 thereof.

2. By 31 December 2001, at the latest, the Commission shall present to the Council and the European Parliament a report on the fisheries situation in the Community and on the implementation of this Regulation. On the basis of that report, the Council, acting in accordance with the procedure laid down in Article 43 of the Treaty, shall decide on any adjustments to be made.

*Article 11*

1. In the event of serious upheaval liable to jeopardize the objectives of this system, the Commission, at the request of a Member State or on its own initiative, shall decide on appropriate measures, which shall be communicated to the Member States and which shall have immediate effect.
2. Where the Commission receives a request from a Member State, it shall take a decision on the matter within ten working days.
3. Member States may refer the decision taken by the Commission to the Council within ten working days of notification of the decision referred to in paragraph 2.
4. The Council, acting by a qualified majority, may take a different decision within one month.

*Article 12*

The Commission shall set up under its auspices a Scientific and Technical Committee for Fisheries. The Committee shall be consulted at regular intervals and shall draw up an annual report on the situation with regard to fishery resources and developments concerning fishing activity, with references to biological and economic factors. The Committee shall report on the work done and required in the field of scientific and technical research for the fisheries and aquaculture sector.

*Article 13*

A Management Committee for Fisheries and Aquaculture, hereinafter called 'the Committee', is hereby established, consisting of representatives of the Member States, under the chairmanship of a representative of the Commission.

*Article 14*

Where the procedure laid down in this Article is to be followed, the chairman shall refer the matter to the Committee either on his own initiative or at the request of the representative of a Member State.

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 such draft within a time limit which the chairman may lay down according to the urgency of the matter under consideration. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time laid down in the preceding precedent.

*Article 15*

1. Regulation (EEC) No 170/83 is hereby repealed.
2. References to the Regulation repealed under paragraph 1 shall be construed as references to this Regulation.

*Article 16*

This Regulation shall enter into force on 1 January 1993.

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

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## ANNEX I

## COASTAL BAND OF THE UNITED KINGDOM BETWEEN 6 AND 12 MILES

## FRANCE

Geographical area	Species	Importance or particular characteristics
<b>United Kingdom coast (6 to 12 miles)</b>		
1. Berwick-upon-Tweed east Coquet Island east	herring	unlimited
2. Flamborough Head east Spurn Head east	herring	unlimited
3. Lowestoft east Lyme Regis south	all species	unlimited
4. Lyme Regis south Eddystone south	demersal	unlimited
5. Eddystone south Longships south-west	demersal scallops lobster crawfish	unlimited unlimited unlimited unlimited
6. Longships south-west Hartland Point north-west	demersal crawfish lobster	unlimited unlimited unlimited
7. Hartland Point to a line from the north of Lundy island	demersal	unlimited
8. From a line due west Lundy Island to Cardigan Harbour	all species	unlimited
9. Point Lynas North Morecambe Light Vessel east	all species	unlimited
10. County Down	demersal	unlimited
11. Mew Island North East <sup>(1)</sup> Sanda Island south-west	all species	unlimited
12. Port Stewart north Barra Head west	all species	unlimited
13. Latitude 57°40' Butt of Lewis west	all species except shellfish	unlimited
14. St Kilda, Flannan Islands	all species	unlimited
15. West of the line from Butt of Lewis lighthouse to the point 59°30'N - 5°45'W	all species	unlimited

(<sup>1</sup>) Corrigendum, OJ No L 73, 19. 3. 1983, p. 42.

## IRELAND

Geographical area	Species	Importance or particular characteristics
<b>United Kingdom coast (6 to 12 miles)</b>		
1. Point Lynas north Mull of Galloway south	demersal nephrops	unlimited unlimited
2. Mull of Oa west Barra Head west	demersal nephrops	unlimited unlimited

## GERMANY

Geographical area	Species	Importance or particular characteristics
<b>United Kingdom coast (6 to 12 miles)</b>		
1. East of Shetlands and Fair Isle between lines drawn due south-east from Sumburgh Head lighthouse due north-east from Skroo lighthouse and due south-west from Skadan Lighthouse	herring	unlimited
2. Berwick upon Tweed east Whitby High Lighthouse east	herring	unlimited
3. North Foreland Lighthouse east Dungeness New Lighthouse south	herring	unlimited
4. Zone around St. Kilda	herring mackerel	unlimited unlimited
5. Butt of Lewis Lighthouse West to the line joining Butt of Lewis lighthouse and the point 59°30'N - 5°45'W	herring	unlimited
6. Zone around North Rona and Sulisker (Sulasgeir)	herring	unlimited

## NETHERLANDS

Geographical area	Species	Importance or particular characteristics
<b>United Kingdom coast (6 to 12 miles)</b>		
1. East of Shetlands and Fair Isle between lines drawn due south-east from Sumburgh Head lighthouse due north-east from Skroo lighthouse and due south-west from Skadan Lighthouse	herring	unlimited
2. Berwick upon Tweed east Flamborough Head east	herring	unlimited
3. North Foreland east Dungeness New lighthouse south	herring	unlimited

## BELGIUM

Geographical area	Species	Importance or particular characteristics
<b>United Kingdom coast (6 to 12 miles)</b>		
1. Berwick upon Tweed east Coguet Island east	herring	unlimited
2. Cromer north North Foreland east	demersal	unlimited
3. North Foreland east Dungeness New Lighthouse south	demersal herring	unlimited unlimited
4. Dungeness New Lighthouse south Selsey Bill south	demersal	unlimited
5. Straight Point south-east South Bishop north-west	demersal	unlimited

## COASTAL BAND OF IRELAND

## FRANCE

Geographical area	Species	Importance or particular characteristics
<b>Irish coast (6 to 12 miles)</b>		
1. Erris Head north-west Sybil Point west	demersal nephrops	unlimited unlimited
2. Mizen Head south Stags south	demersal nephrops mackerel	unlimited unlimited unlimited
3. Stags south Cork south	demersal nephrops mackerel herring	unlimited unlimited unlimited unlimited
4. Cork south Carnsore Point south	all species	unlimited
5. Carnsore Point south Haulbowline south-east	all species, except shellfish	unlimited

## UNITED KINGDOM

Geographical area	Species	Importance or particular characteristics
<b>Irish coast (6 to 12 miles)</b>		
1. Mine Head south Hook Point	demersal herring mackerel	unlimited unlimited unlimited
2. Hook Point Carlingford Lough	demersal herring mackerel nephrops scallop	unlimited unlimited unlimited unlimited unlimited

## NETHERLANDS

Geographical area	Species	Importance or particular characteristics
<b>Irish coast (6 to 12 miles)</b>		
1. Stags south Carnsore Point south	herring mackerel	Unlimited Unlimited

## GERMANY

Geographical area	Species	Importance or particular characteristics
<b>Irish coast (6 to 12 miles)</b>		
1. Old Head of Kinsale south Carnsore Point south	herring	unlimited
2. Cork south Carnsore Point south	mackerel	unlimited



## BELGIUM

Geographical area	Species	Importance or particular characteristics
<b>Irish coast (6 to 12 miles)</b>		
1. Cork south Carnsore Point south	demersal	unlimited
2. Wicklow Head east Carlingford Lough south-east	demersal	unlimited

## COASTAL BAND OF BELGIUM

Geographical area	Member State	Species	Importance or particular characteristics
3 to 12 miles	Netherlands France	all species herring	unlimited unlimited

## COASTAL BAND OF DENMARK

Geographical area	Member State	Species	Importance or particular characteristics
<b>North Sea coast</b> (Danish/German frontier to Hanstholm) (6 to 12 miles)	Germany	flatfish shrimps and prawns	unlimited unlimited
Danish/German frontier to Blåvands Huk	Netherlands	flatfish roundfish	unlimited unlimited
Blåvands Huk to Bovbjerg	Belgium	cod	} unlimited only during June and July
		haddock	} unlimited only during June and July
Thyborøn to Hanstholm	Germany	flatfish	unlimited
	Netherlands	plaice sole	unlimited unlimited
	Belgium	whiting	} Unlimited only during June and July
		plaice	} unlimited only during June and July
Germany	flatfish sprat cod saithe haddock mackerel herring whiting	unlimited unlimited unlimited unlimited unlimited unlimited unlimited	
	Netherlands	cod plaice sole	unlimited unlimited unlimited
<b>Skagerrak</b> (Hanstholm to Skagen) (4 to 12 miles)	Belgium	plaice	unlimited only during June and July



## COASTAL BAND OF FRANCE AND THE OVERSEAS DEPARTEMENTS

Geographical areal	Member State	Species	Importance or particular characteristics
<b>North-East Atlantic coast (6 to 12 miles)</b>			
Belgian/French frontier to east of Departement Manche (Vire-Grandcamp les Bains estuary 49°23'30" N - 1°2' WNNE)	Belgium	demersal scallops	unlimited
	Netherlands	all species	unlimited
Dunkerque (2°20'E) to Cap d'Antifer (0°10'E)	Germany	herring	unlimited only during Oktober to December
Belgian/French frontier to Cap d'Alprech west (50°42'30"N - 1°33'30"E)	United Kingdom	all species	unlimited
<b>Atlantic Coast (6 to 12 miles)</b>			
Spanish/French frontier to 46°08'N	Spain	anchovies	— directed fishing, unlimited only from 1 March to 30 June, — fishing for live bait from 1 July to 31 October only.
		Sardines	— unlimited only from 1 January to 28 Feb. and from 1 July to 31 December, — in addition, activities relating to the abovementioned species must be pursued in accordance with and within the limits of the activities pursued during 1984.
<b>Mediterranean coast (6 to 12 miles)</b>			
Spanish frontier Cap Leucate	Spain	all species	unlimited <sup>(1)</sup>

<sup>(1)</sup> Act of Accession of 1985.

## COASTAL BAND OF SPAIN

Geographical areal	Member State	Species	Importance or particular characteristics
<b>Atlantic coast (6 to 12 miles)</b>			
French/Spanish frontier to Cap Mayor lighthouse (3°47'W)	France	pelagic	unlimited in accordance with and within the limits of the activities pursued during 1984
<b>Mediterranean coast (6 to 12 miles)</b>			
French frontier/Cap Creus	France	all species	unlimited <sup>(1)</sup>

<sup>(1)</sup> Act of Accession of 1985.

## COASTAL BAND OF THE NETHERLANDS

Geographical areal	Member State	Species	Importance or particular characteristics
(3 to 6 miles) whole coast	Belgium Denmark	all species demersal sprat sand-eel horse-mackerel	unlimited unlimited unlimited unlimited unlimited
	Germany	cod shrimps and prawns	unlimited unlimited
(6 to 12 miles) whole coast	Belgium Denmark	all species demersal sprat sand-eel horse-mackerel	unlimited unlimited unlimited unlimited unlimited
	Germany	cod shrimps and prawns	unlimited unlimited
	France	all species	unlimited
Texel south point, west to the Netherlands/German frontier	United Kingdom	demersal	unlimited

## ANNEX II

## SHETLAND AREA

## A. Geographical limits

From the point on the west coast of Scotland in latitude 58°30' N to 58°30' N - 6°15' W  
 From 58°30' N - 6°15' W to 59°30' N - 5°45' W  
 From 59°30' N - 5°45' W to 59°30' N - 3°45' W  
 along the 12-miles line north of the Orkneys  
 From 59°30' N - 3°00' W to 61°00' N - 3°00' W  
 From 61°00' N - 3°00' W to 61°00' N - 0°00' W  
 along the 12-miles line north of the Shetlands  
 From 61°00' N - 0°00' W to 59°30' N - 0°00' W  
 From 59°30' N - 0°00' W to 59°30' N - 1°00' W  
 From 59°30' N - 1°00' W to 59°00' N - 1°00' W  
 From 59°00' N - 1°00' W to 59°00' N - 2°00' W  
 From 59°00' N - 2°00' W to 58°30' N - 2°00' W  
 From 58°30' N - 2°00' W to 58°30' N - 3°00' W  
 From 58°30' N - 3°00' W to the east coast of Scotland in latitude 58°30' N.

## B. Fishing effort authorized

Maximum number of vessels with a length between perpendiculars of not less than 26 metres <sup>(1)</sup> authorized to fish for demersal species, with the exception of Norway pout and blue whiting <sup>(2)</sup>:

Member State	Number of fishing vessels authorized
France	52
United Kingdom	62
Germany	12
Belgium	2

## C. Special monitoring measures

In accordance with Article 13 of Regulation (EEC) No 2241/87 <sup>(3)</sup> and Article 2 of Regulation (EEC) No 3094/86 <sup>(4)</sup>.

<sup>(1)</sup> OJ No L 288, 11. 10. 1986, p. 1.

<sup>(2)</sup> Length between perpendiculars as laid down by Commission Regulation (EEC) No 2930/86 (OJ No L 274, 25. 9. 1986, p. 1).

<sup>(3)</sup> Vessels fishing for Norway pout and blue whiting may be subject to specific monitoring measures concerning the keeping on board of fishing gear and species other than those referred to above.

<sup>(4)</sup> OJ No L 207, 29. 7. 1987, p. 1.

**Amended proposal for a Council Directive concerning the minimum health and safety requirements for work on board fishing vessels (individual Directive within the meaning of Article 16 of Directive 89/391/EEC) <sup>(1)</sup>**

(92/C 311/03)

COM (92) 409 final — SYN 369

(submitted by the Commission pursuant to Article 149 (3) of the EEC-Treaty on 12 October 1992)

<sup>(1)</sup> OJ No C 337, 31. 12. 1991, p. 21.

ORIGINAL COMMISSION PROPOSAL

AMENDED PROPOSAL

(Unless otherwise indicated in this column, the text is unchanged)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 118A thereof,

Having regard to the Commission proposal, drawn up after consultation with the Advisory Committee on Safety, Hygiene and Health Protection at Work,

In cooperation with the European Parliament,

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

Whereas the Commission communication in its programme concerning safety, hygiene and health at work <sup>(1)</sup> provides for measures to make safety a more integral part of the design of vessels and the definition of tasks;

Whereas the Council in its Resolution of 21 December 1987 on safety, hygiene and health at work <sup>(2)</sup> noted the Commission's intention of submitting to it minimum requirements concerning the organization of the safety and health of workers at work;

Whereas occupational health and safety measures should be introduced as part of the various Community measures for the fisheries sector;

Whereas compliance with the minimum requirements for ensuring a better level of safety and health on board fishing vessels is essential to ensure the safety and health of the workers concerned;

<sup>(1)</sup> OJ No C 28, 3. 2. 1988, p. 3.

<sup>(2)</sup> OJ No C 28, 3. 2. 1988, p. 1.

## ORIGINAL COMMISSION PROPOSAL

Whereas, because of the particularly difficult working and living conditions on board fishing vessels, the incidence of fatal accidents among workers engaged in sea fishing is very high;

Whereas this Directive is an individual Directive within the meaning of Article 16, paragraph 1 of Council Directive 89/391/EEC of 12 June 1989 <sup>(1)</sup> on the introduction of measures to encourage improvements in the safety and health of workers at work and that therefore the provisions of the latter are fully applicable to work on board fishing vessels, without prejudice to more stringent and/or specific provisions contained in the present Directive;

Whereas the individual Directive already adopted in the field of safety and health at work apply, unless otherwise specified, to sea fishing and that therefore it may in some cases be necessary to specify the particular characteristics of this activity in order to ensure that the individual Directives are correctly applied;

Whereas the Council Directive on the minimum health and safety requirements for improved medical treatment on board vessels <sup>(2)</sup> is applicable in full to the sea fishing industry;

Whereas this Directive constitutes concrete progress towards the achievement of the social dimension of the internal market,

HAS ADOPTED THIS DIRECTIVE:

### Object

#### *Article 1*

1. This Directive, which is an individual Directive within the meaning of Article 16 of Directive 89/391/EEC, lays down minimum safety and health requirements applicable to work on board fishing vessels.

<sup>(1)</sup> OJ No L 183, 29. 6. 1989, p. 1.

<sup>(2)</sup> OJ No L 183, 24. 7. 1990, p. 6.

## AMENDED PROPOSAL

(Unless otherwise indicated in this column, the text is unchanged)

Whereas, because of the specific and particularly difficult working and living conditions on board fishing vessels, the incidence of fatal accidents among workers engaged in sea fishing is very high;

Whereas, on 15 April 1988, the European Parliament adopted a resolution recognising the importance of the preventive aspects of safety at work on board fishing vessels;

Whereas, for the health and safety of the workers concerned, prominence should be given to locating fishing vessels in an emergency, particularly through the use of new technologies;

Whereas this Directive is an individual Directive within the meaning of Article 16 (1) 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 <sup>(1)</sup>; whereas the provisions of the latter are therefore fully applicable to work on board fishing vessels, without prejudice to more stringent and/or specific provisions contained in the present Directive;

Whereas Council Directive 92/29/EEC of 31 March 1992 on the minimum health and safety requirements for improved medical treatment on board vessels <sup>(2)</sup> is applicable in full to the sea fishing industry;

<sup>(1)</sup> OJ No L 183, 29. 6. 1989, p. 1.

<sup>(2)</sup> OJ No L 113, 30. 4. 1992, p. 19.

## ORIGINAL COMMISSION PROPOSAL

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(Unless otherwise indicated in this column, the text is unchanged)

2. The provisions of Directive 89/391/EEC are fully applicable to the field described in paragraph 1 without prejudice to more stringent and/or specific provisions contained in this Directive.

### Definitions

#### Article 2

For the purposes of this Directive, the following terms have the meanings hereby assigned to them:

- 'fishing vessel' (hereinafter called vessel): any vessel registered in a Member State or flying the flag of a Member State, used for catching or processing fish or other living resources from the sea, with a length between perpendiculars of 9 metres or over,
- 'fisherman': any worker within the meaning of Article 3 (a) of Directive 89/391/EEC carrying out an activity on board a fishing vessel, or any person who, in carrying out an activity on board, is subordinate to the captain of the vessel,
- 'owner': the registered owner of a vessel, unless that vessel has been chartered by demise or is managed, either wholly or in part, by a natural or legal person other than the registered owner under the terms of a management agreement; in that case the owner shall be construed as the demise charterer or natural or legal person managing the vessel, as appropriate.

### General Provisions

#### Article 3

The Member States shall take the measures necessary to ensure that:

- owners ensure that their vessels are fit for use, on the responsibility of the captain, in conditions, and in particular meteorological conditions, which do not endanger the health and safety of the fishermen,
- account is taken of any hazards faced by the rest of the crew when applying Article 8 (4) of Directive 89/391/EEC,
- any occurrences at sea which affect or could affect the health and safety of the fishermen on board are described in a detailed report to be forwarded to the relevant maritime authorities and are recorded carefully

1. The Member States shall take the measures necessary to ensure that:

- owners ensure that their vessels are being used, on the responsibility of the captain, in conditions, and in particular meteorological conditions, which do not endanger the health and safety of the fishermen,
- any occurrences at sea which affect or could affect the health and safety of the fishermen on board are described in a detailed report to be forwarded to the relevant maritime authorities and are recorded carefully



## ORIGINAL COMMISSION PROPOSAL

and in detail in the ship's log, where the national regulations or legislation in force require such a log to be kept on the type of vessel in question.

## AMENDED PROPOSAL

(Unless otherwise indicated in this column, the text is unchanged)

and in detail in the ship's log, or failing that, in a document required for this purpose.

2. The Member States shall take the measures necessary to ensure that fishing vessels covered by this Directive are subject to regular controls which may be carried out, even at sea, by authorities specifically empowered to do so.

**Vessels commissioned for the first time***Article 4*

Vessels commissioned for the first time on or after 1 January 1996 must comply with the minimum health and safety requirements laid down in Annexes I and III.

However, the minimum requirements contained in Annex I shall apply to the vessels referred to in the previous paragraph only if there are no relevant Community provisions introduced pursuant to Article 100a of the Treaty which guarantee at least an equivalent level of protection.

**Vessels already in use***Article 5*

Vessels already commissioned before 1 January 1996 must comply with the minimum health and safety requirements laid down in Annexes II and III within three years of that date.

**Alterations to vessels***Article 6*

Where vessels undergo structural alterations and/or transformations on or after 1 January 1996, such alterations and/or transformations must comply with the relevant minimum requirements laid down in Annexes I and III.

*Article 7*

For the protection of the health and safety of workers, the Member States shall take the measures necessary to ensure that owners:

- ensure that the vessels and their fittings and equipment, particularly those referred to in Annexes I and II, are

## ORIGINAL COMMISSION PROPOSAL

## AMENDED PROPOSAL

(Unless otherwise indicated in this column, the text is unchanged)

technically maintained, and that any defects found which are likely to affect the health and safety of the fishermen are rectified as quickly as possible,

- take measures to ensure that the vessels and all fittings and equipment are cleaned regularly in order to maintain an appropriate standard of hygiene,
- keep on board the vessel an adequate quantity of suitable emergency and survival equipment in good working order in accordance with the specifications given in Annex III,
- take account, when implementing the provisions of Directive 89/656/EEC <sup>(1)</sup>, of the personal protective equipment specifications given in Annex IV.

**Information for fishermen***Article 8*

Without prejudice to the provisions of Article 10 of Directive 89/391/EEC, the fishermen shall be informed of all measures to be taken regarding health and safety on board vessels.

**Training of fishermen***Article 9*

Without prejudice to Article 12 of Directive 89/391/EEC, fishermen shall be given suitable training, in particular in the form of specific instructions, on health and safety on board vessels.

The training shall cover in particular the use of emergency escape and survival equipment and, for the fishermen concerned, the use of fishing gear and hauling equipment and the use of various types of signs, including hand signals.

**Detailed training***Article 10*

Without prejudice to Article 5 (3) of the Council Directive on the minimum health and safety requirements for

Without prejudice to Article 12 of Directive 89/391/EEC, fishermen shall be given suitable training, including in particular specific and comprehensible instructions on health and safety on board vessels, including instructions on accident prevention.

The training shall be subject to the necessary updating where this is required by changes in the activities on board.

Without prejudice to Article 5 (3) of Directive 92/29/EEC, any person likely to command a vessel must

<sup>(1)</sup> OJ No L 393, 30. 12. 1989, p. 18

## ORIGINAL COMMISSION PROPOSAL

improved medical treatment on board vessels, any person likely to command a vessel shall be given detailed training on:

- the prevention of occupational accidents on board,
- vessel stability and maintenance thereof when laden and during fishing operations,
- radio navigation and communication.

### Consultation and participation of workers

#### *Article 11*

The consultation of fishermen and/or their representatives and their participation in discussions on the matters covered by this Directive and its annexes shall be in accordance with Article 11 of Directive 89/391/EEC.

### Adaptation of the Annexes

#### *Article 12*

Purely technical adaptations of the annexes to take account of:

- the adoption of directives in the field of technical harmonization and standardization concerning certain aspects of the field covered by this Directive,
- and/or:
- technical progress, changes in international regulations or specifications and new findings in the field of safety and health on board vessels,

shall be adopted in accordance with the procedure laid down in Article 17 of Directive 89/391/EEC.

### Final Provisions

#### *Article 13*

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1995 at the latest. They shall forthwith inform the Commission thereof.

Any such laws, regulations and administrative provisions adopted by the Member States shall contain a reference to

## AMENDED PROPOSAL

(Unless otherwise indicated in this column, the text is unchanged)

possess adequate linguistic knowledge enabling them to communicate with the fishermen on board and shall be given detailed training on:

- radio navigation and communication procedures.

## ORIGINAL COMMISSION PROPOSAL

this Directive, or shall be accompanied by such a reference upon official publication. The Member States shall decide on this matter.

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

3. The Member States shall report to the Commission every five years on the practical implementation of the provisions of this Directive, indicating the points of view of employers and workers.

The Commission shall inform the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health Protection at Work.

*Article 14*

This Directive is addressed to the Member States

*Annex I*

**MINIMUM SAFETY AND HELATH REQUIREMENTS FOR FISHING VESSELS COMMISSIONED FOR THE FIRST TIME, AS REFERRED TO IN ARTICLES 4, 6 AND 7 OF THE DIRECTIVE**

(...)

**5. Fire detection and fire fighting**

5.1 Depending on the dimensions and use of the vessel, the equipment it contains, the physical and chemical properties of the substances, products and materials present and the maximum potential number of people present, the crew accommodation and interior workplaces including the fish-hold, where necessary, must be equipped with appropriate fire-fighting equipment and, as necessary, with fire detectors and alarm systems.

## AMENDED PROPOSAL

(Unless otherwise indicated in this column, the text is unchanged)

3. The Member States shall report to the Commission every four years on the practival implementations of the provisions of this Directive, indicating the points of view of employers and workers.

(...)

5.1 Depending on the dimensions and use of the vessel, the equipment it contains, the physical and chemical properties of the substances, products and materials present and the maximum potential number of people present, the crew accomodation and interior workplaces including the engine-room and, where necessary, the fish-hold, must be equipped with appropriate fire-fighting equipment and, as necessary, with fire detectors and alarm systems.

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(Unless otherwise indicated in this column, the text is unchanged)

## ANNEX II

MINIMUM SAFETY AND HEALTH REQUIREMENTS FOR  
FISHING VESSELS ALREADY IN USE, AS REFERRED TO IN  
ARTICLES 5 AND 7 OF THE DIRECTIVE

(...)

(...)

## 3. Electrical installations

Electrical installations must be designed and constructed so as not to present any danger and so as to provide:

- protection for the crew and vessel from electrical hazards,
- the services necessary to maintain the vessel in normal operational and habitable conditions without having recourse to an emergency power supply, and
- the services essential for safety if the main electrical power source fails. An emergency source of electrical power must be provided outside the engine room and be so arranged as to ensure its functioning in the event of fire or other causes of failure of the main electricity supply.

An emergency source of electrical power must be provided outside or suitably separate from the engine room and be so arranged as to ensure its functioning in the event of fire or other causes of failure of the main electricity supply.

(...)

(...)

## 5. Fire detection and fire fighting

5.1 Depending on the dimensions and use of the vessel, the equipment it contains, the physical and chemical properties of the substances, products and materials present and the maximum potential number of people present, the crew accommodation and interior workplaces including the fish-hold, where necessary, must be equipped with appropriate fire-fighting equipment and, as necessary, with fire detectors and alarm systems.

5.1 Depending on the dimensions and use of the vessel, the equipment it contains, the physical and chemical properties of the substances, products and materials present and the maximum potential number of people present, the crew accommodation and interior workplaces including the engine-room and, where necessary, the fish-hold, must be equipped with appropriate fire-fighting equipment and, as necessary, with fire detectors and alarm systems.

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ORIGINAL COMMISSION PROPOSAL

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AMENDED PROPOSAL  
(Unless otherwise indicated in this column, the text is unchanged)

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*ANNEX III*

**MINIMUM SAFETY AND HEALTH REQUIREMENTS  
CONCERNING THE EMERGENCY ESCAPE AND  
SURVIVAL EQUIPMENT REFERRED TO IN ARTICLES 4, 5,  
6 AND 7**

(...)

2. Every vessel must carry sufficient life rafts or lifeboats to accommodate everyone on board, and they must be located in places from which they can be launched safely simply by dropping, without any vertical or horizontal obstacles between them and the water; it must also be possible to board them easily, quickly and safely.

(...)

2. Every vessel must carry sufficient life rafts or lifeboats to accommodate everyone on board, and they must be located in places from which they can be launched safely and quickly, without any vertical or horizontal obstacles between them and the water; it must also be possible to board them easily, quickly and safely.
-

**Amended proposal for a Council Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(1)</sup>**

(92/C 311/04)

COM (92) 422 final — SYN 287

*(submitted by the Commission on 16 October 1992, pursuant to Article 149 (3) of the EEC Treaty)*

<sup>(1)</sup> OJ No L 277, 5. 11. 1990, p. 3.

ORIGINAL PROPOSAL

AMENDED PROPOSAL

**Proposal for a Council Directive concerning the protection of individuals in relation to the processing of personal data**

**Amended proposal for a Council Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 100A and 113 thereof,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 100 a and 113 thereof,

Having regard to the proposal from the Commission,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

In cooperation with the European Parliament,

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

Having regard to the opinion of the Economic and Social Committee, <sup>(1)</sup>

(1) Whereas the objectives of the Community, as laid down in the Treaty, as amended by the single European Act, include establishing an ever closer union among the peoples of Europe, fostering closer relations between the States belonging to the Community, ensuring economic and social progress by common action to eliminate the barriers which divide Europe, encouraging the constant improvement of the living conditions of its peoples, preserving and strengthening peace and liberty and promoting democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States and in the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(1) Whereas the objectives of the Community, as laid down in the Treaty, as amended by the single European Act, include establishing an ever closer union among the peoples of Europe, fostering closer relations between the States belonging to the Community, ensuring economic and social progress by common action to eliminate the barriers which divide Europe, encouraging the constant improvement of the living conditions of its peoples, preserving and strengthening peace and liberty and promoting democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States and in the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(2) Whereas data-processing systems are designed to serve society; whereas they must respect the fundamental freedoms and rights of individuals, notably the right to privacy, and contribute to economic and social progress, trade expansion and the well-being of individuals;

<sup>(1)</sup> OJ No C 159, 17. 6. 1991, p. 38.

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(2) Whereas the establishment and the functioning of an internal market in which, in accordance with Article 8 a of the Treaty, the free movement of goods, persons, services and capital is ensured require not only that personal data should be able to flow freely, regardless of the Member States in which they are processed or requested, but also that fundamental rights should be safeguarded in view of the increasingly frequent recourse in the Community to the processing of personal data in the various spheres of economic and social activity;

(3) Whereas the internal market comprises an area without frontiers; whereas, for that reason, the national authorities in the various Member States are increasingly being called upon, by virtue of the operation of Community law, to collaborate and exchange personal data so as to be able to perform their duties or carry out tasks on behalf of an authority in another Member State;

(4) Whereas the increase in scientific and technical cooperation and the coordinated introduction of new telecommunications networks in the Community necessitate and facilitate cross-border flows of personal data;

(5) Whereas the difference in levels of protection of privacy in relation to the processing of personal data afforded in the Member States may prevent the transmission of such data from the territory of one Member State to that of another Member State; whereas this difference may therefore constitute an obstacle to the pursuit of a number of economic activities at Community level, distort competition and impede authorities in the discharge of their responsibilities under community law; whereas this

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(3) Whereas the establishment and the functioning of an internal market in which, in accordance with Article 8 a of the Treaty, the free movement of goods, persons, services and capital is ensured require not only that personal data should be able to flow freely from one Member State to another, but also that the fundamental rights of individuals should be safeguarded;

(4) Whereas increasingly frequent recourse is being had in the Community to the processing of personal data in the various spheres of economic and social activity; whereas the progress made in information technology is making the processing and exchange of such data considerably easier;

(5) Whereas the economic and social integration resulting from the establishment and functioning of the internal market within the meaning of Article 8 a of the Treaty will necessarily lead to a substantial increase in crossborder flows of personal data between all those involved in a private or public capacity in economic and social activity in the Member States; whereas the exchange of personal data between undertakings in different Member States is set to increase; whereas the national authorities in the various Member States are being called upon, by virtue of Community law, to collaborate and exchange personal data so as to be able to perform their duties or carry out tasks on behalf of an authority in another Member State within the context of the area without internal frontiers as constituted by the internal market;

(6) Whereas, furthermore, the increase in scientific and technical cooperation and the coordinated introduction of new telecommunications networks in the Community necessitate and facilitate cross-border flows of personal data;

(7) Whereas the difference in levels of protection of the rights and freedoms of individuals, notably the right to privacy, with regard to the processing of personal data afforded in the Member States may prevent the transmission of such data from the territory of one Member State to that of another Member State; whereas this difference may therefore constitute an obstacle to the pursuit of a number of economic activities at Community level, distort competition and impede authorities in the discharge of their



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difference in levels of protection is due to the existence of a wide variety of national laws, regulations and administrative provisions;

- (6) Whereas in order to remove the obstacles to flows of personal data, the level of protection of privacy in relation to the processing of such data must be equivalent in all the member States; whereas to that end it is necessary to approximate the relevant laws;
- (7) Whereas the object of the national laws on the processing of personal data is to protect fundamental rights, notably the right to privacy which is recognized both in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and in the general principles of Community laws; whereas, for that reason, the approximation of those laws must not result in any lessening of the protection they afford but must, on the contrary, seek to ensure a high level of protection in the Community;
- (22) Whereas the principles contained in this Directive give substance to and amplify those contained in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data;
- (9) Whereas the protection principles must apply to all data files where the activities of the controller of the file are governed by community law; whereas public-sector files which are not governed by Community law should, as is provided for in the resolution of the representatives of the Governments of the Member States of the European Communities meeting within the Council of ..., be subject to the

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responsibilities under Community law; whereas this difference in levels of protection is due to the existence of a wide variety of national laws, regulations and administrative provisions;

- (8) Whereas in order to remove the obstacles to flows of personal data, the level of protection of the rights and freedoms of individuals with regard to the processing of such data must be equivalent in all the member States; whereas this objective is vital to the internal market but cannot be achieved by the Member States alone, especially in view of the scale of the divergences which currently exist between the relevant laws in the Member States and the need to coordinate the laws of the Member States so as to ensure that the cross-border flow of personal data is regulated in a consistent manner that is in keeping with the objective of the internal market as provided for in Article 8 a of the Treaty; whereas Community action to approximate those laws is therefore needed;
- (9) Whereas the object of the national laws on the processing of personal data is to protect fundamental rights and freedoms, notably the right to privacy which is recognized both in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the general principles of Community laws; whereas, for that reason, the approximation of those laws must not result in any lessening of the protection they afford but must, on the contrary, seek to ensure a high level of protection in the Community;
- (10) Whereas the principles of the protection of the rights and freedom of individuals, notably the right to privacy, which are contained in this Directive, give substance to and amplify those contained in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data;
- (11) Whereas the protection principles must apply to all processing of personal data by any person whose activities are governed by Community laws; whereas processing carried out by a Member State's own authorities, organizations or other bodies in the course of activities which are not governed by Community law should, as is provided for in the Resolution of the representatives of the Governments

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same protection principles set forth in national laws; whereas, however, data files falling exclusively within the confines of the exercise of a natural person's right to privacy, such as personal address files, must be excluded;

- (10) Whereas any processing of personal data in the Community should be carried out in accordance with the law of the Member State in which the data file is located so that individuals are not deprived of the protection to which they are entitled under this Directive; whereas, in this connection, each part of a data file divided among several Member States must be considered a separate data file and transfer to a non-member country must not be a bar to such protection;

- (12) Whereas national laws may, under the conditions laid down in this Directive, specify rules on the lawfulness of processing; whereas, however such a possibility cannot serve as a basis for supervision by a Member State other than the State in which the data file is located, the obligation on the part of the latter to ensure, in accordance with this Directive, the protection of privacy in relation to the processing of personal data being sufficient, under Community law, to permit the free flow of data;

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of the Member States of the European Communities meeting within the Council of ..., be subject to the same protection principles set out in national laws; whereas processing carried out by a natural person for purely private purposes in connection, for example, with correspondence or the maintenance of lists of addresses must be excluded;

- (12) Whereas, in order to ensure that individuals are not deprived of the protection to which they are entitled under this Directive, any processing of personal data in the Community must be carried out in accordance with the law of one of the Member States; whereas, in this connection, processing carried out by a person who is established in a Member State should be governed by the law of that State; whereas, the fact that processing is carried out by a person established in a third country must not stand in the way of the protection of individuals provided for in this Directive; whereas, in that case, the processing should be governed by the law of the Member State in which the means used are located, and there should be guarantees to ensure that the rights and obligations provided for in this Directive are respected in practice;

- (13) Whereas Member States may more precisely define in the laws they enact or when bringing into force the measures taken under this Directive the general circumstances in which processing is lawful; whereas, however, more precise rules of this kind cannot serve as a basis for supervision by a Member State other than the member State of residence of the person responsible for the processing, since the obligation on the part of the latter to ensure, in accordance with this Directive, the protection of rights and freedoms with regard to the processing of personal data is sufficient, under Community law, to permit the free flow of data;

- (14) Whereas the principles of protection must be reflected, on the one hand, in the obligations imposed on persons, public authorities, enterprises or bodies carrying out processing, in particular regarding quality, technical security, notification to the supervisory authority, and the circumstances under which processing is admissible, one such possible circumstance being that the data subject has consented, and, on the other hand, in the rights conferred on individuals, the data on whom are the

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- subject of processing, to be informed that processing is taking place, to consult the data, to demand corrections and even to object to processing;
- (11) Whereas any processing of personal data must be lawful; whereas such lawfulness must be based on the consent of the data subject or on Community or national law;
- (12) Whereas, if data are to be processed, they must fulfil certain requirements; whereas the processing of data which are capable by their very nature of infringing the right to privacy must be prohibited unless the data subject gives his explicit consent; whereas, however, on important public interest grounds, notably in relation to the medical profession, derogations may be granted on the basis of a law laying down precisely and strictly the conditions governing and limits to the processing of this type of data;
- (13) Whereas as regards the media the Member States may grant derogations from the provisions of this Directive in so far as they are designed to reconcile the right to privacy with the freedom of information and the right to receive and impart information, as guaranteed, in particular, in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms;
- (14) Whereas any processing of personal data must be lawful and fair to the person concerned; whereas, in particular the data must be relevant and not excessive in relation to the purposes for which they are processed; whereas such purposes must be explicit and lawful;
- (15) Whereas, in order to be lawful, the processing of personal data must be carried out with the consent of the data subject or with a view to the conclusion or performance of a contract, binding on the data subject, or be required by Community law, by national law, by the general interest or by the interest of an individual, provided that the data subject has no legitimate grounds for objection; whereas, in particular, in order to maintain a balance between the interests involved, while guaranteeing effective competition, Member States remain free to determine the circumstances in which personal data may be disclosed to a third party for mailing purposes or research being carried out by an organization or other association or foundation, of a political nature for example, subject to the provisions allowing a data subject to object to the disclosure of data regarding him, at no cost and without having to state his reasons;
- (16) Whereas data which are capable by their nature of infringing fundamental freedoms or privacy should not be processed unless the data subject gives his written consent; whereas, however, processing of these data must be permitted if it is carried out by an association the purpose of which is to help safeguard the exercise of those freedoms; whereas, on grounds of important public interest, notably in relation to the medical profession, exemptions may be granted by law or by decision of the supervisory authority laying down the limits and suitable safeguards for the processing of these types of data;
- (17) Whereas the processing of personal data for purposes of journalism should qualify for exemption from the requirements of this Directive wherever this is necessary to reconcile the fundamental rights of individuals with freedom of information and notably the right to receive and impart information, as guaranteed in particular in Article 10 of the European Convention for the protection of Human Rights and Fundamental Freedoms;

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- (14) Whereas the data subject must, if his consent is to be valid and when data relating to him are collected from him, be given accurate and full information;
- (15) Whereas the data subject must be able to exercise the right of access in order to verify the lawfulness of the processing of data relating to him and their quality;
- (17) Whereas the protection of privacy in relation to personal data requires that appropriate security measures be taken, both at the level of design and at that of the techniques of processing, to prevent any unauthorized processing;
- (13) Whereas the procedures of notification, in respect of public- or private-sector data files, and provisions of information at the time of first communication, in respect of private-sector data files, are designed to ensure the transparency essential to the exercise by the data subject of the right of access to data relating to him;

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- (19) Whereas, if the processing of data is to be fair, the data subject must be in a position to learn of the existence of a processing operation and must be given accurate and full information where data are collected from him, and not later than the time when the data are first disclosed to a third party if the data subject was not informed at the time the data were collected;
- (20) Whereas any person must be able to exercise the right of access to data relating to him which are being processed, in order to verify the accuracy of the data and the lawfulness of the processing; whereas, therefore, any person should be entitled to object to the processing of the data on legitimate grounds;
- (21) Whereas the protection of the rights and freedoms of data subjects with regard to the processing of personal data requires that appropriate technical measures be taken, both at the time of the design of the techniques of processing and at the time of the processing itself, particularly in order to maintain security and thereby to prevent any unauthorized processing;
- (22) Whereas the notification procedures are designed to ensure disclosure of the purposes and main features of any processing operation, for the purpose of verification that the operation is in accordance with the national measures taken under this Directive; whereas, in order to avoid unsuitable administrative formalities, exemption from the obligation to notify and simplification of the notification required must be provided for by Member States in cases where processing does not adversely affect the rights and freedoms of data subjects provided that it is in accordance with a measure taken by a Member State and specifying its limits;
- (23) Whereas *ex post facto* verification by the competent authorities must, in general, be considered a sufficient measure; whereas, however, Member States must provide for checking by the supervisory authority prior to any processing which poses a particular threat to the rights and freedoms of data subjects by virtue of its nature, scope or purpose, such as processing which has as its object the exclusion of data subjects from a right, a benefit or a contract; whereas Member States should be entitled to replace such prior checking by means of a legislative measure or a decision of the supervisory authority authorizing the processing operation and specifying suitable safeguards;

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(20) Whereas, in the event of non-compliance with this Directive, liability in any action for damages must rest with the controller on the file; whereas dissuasive sanctions must be applied in order to ensure effective protection;

(21) Whereas it is also necessary that the transfer of personal data should be able to take place with third countries having an adequate level of protection; whereas, in the absence of such protection in third countries, this Directive provides, in particular, for negotiation procedures with those countries;

(19) Whereas the Member States must encourage the drawing-up, by the business circles concerned, of European codes of conduct or professional ethics relating to certain specific sectors; whereas the Commission will support such initiatives and will take them into account when it considers the appropriateness of new, specific measures in respect of certain sectors;

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(24) Whereas, if the person carrying out processing fails to respect the rights of data subjects, national legislation must provide for a judicial remedy; whereas any damage which a person may suffer as a result of unlawful processing must be compensated for by the person responsible for the processing, who may be exempted from liability only if he proves that he has taken suitable security measures; whereas dissuasive penalties must be imposed on any person, whether governed by private or public law, who fails to comply with the national measures taken under this Directive;

(25) Whereas cross-border flows of personal data are necessary to the expansion of international trade; whereas the protection of individuals guaranteed in the Community by this Directive does not stand in the way of transfers of personal data to third countries which ensure an adequate level of protection; whereas the adequacy of the level of protection afforded by a third country must be assessed in the light of all the circumstances surrounding the transfer operation or set of transfer operations;

(26) Whereas, on the other hand, the transfer of personal data to a third country which does not ensure an adequate level of protection must be prohibited; whereas provision should be made for exemptions in certain circumstances where the data subject has given his consent or has been informed or where protection of the public interest so requires; whereas particular measures may be taken to rectify the lack of protection in a third country in cases where the person responsible for the processing offers appropriate assurances; whereas, moreover, provision must be made for procedures for negotiations between the Community and such third countries;

(27) Whereas Member States may also provide for the use of codes of conduct drawn up by the business circles concerned and approved by the supervisory authority, with a view to adapting the national measures taken under this Directive to the specific characteristics of processing in certain sectors;

(28) Whereas Member States must encourage the business circles concerned to draw up Community codes of conduct so as to facilitate the application of this Directive; whereas the Commission will support such initiatives and will take them into account when it considers the appropriateness of additional specific measures in respect of certain sectors;

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- (23) Whereas the existence in each Member State of an independent supervisory authority is an essential component of the protection of individuals in relation to the processing of personal data; whereas, at Community level, a Working Party on the Protection of Personal Data, must be set up and be completely independent in the performance of its functions; whereas having regard to its specific nature it must advise the Commission and contribute to the uniform application of the national rules adopted pursuant to this Directive;
- (24) Whereas the adoption of additional measures for applying the principles set forth in this Directive calls for the conferment of rule-making powers on the Commission and the establishment of an advisory committee in accordance with the procedures laid down in Council Decision 87/373/EEC <sup>(1)</sup>;
- (8) Whereas the principles underlying the protection of privacy in relation to the processing of personal data set forth in this Directive may be supplemented or clarified, in particular as far as certain sectors are concerned, by specific rules based on those principles,

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- (29) Whereas the establishment in each Member State of an independent supervisory authority is an essential component of the protection of individuals with regard to the processing of personal data; whereas such an authority must have the necessary means to perform its duties, including powers of investigation or intervention and powers in connection with notification procedures; whereas such authority must help to ensure transparency of processing in the Member State within whose jurisdiction it falls; whereas the authorities in the different Member States will need to assist one another in performing their duties;
- (30) Whereas, at Community level, a Working Party on the Protection of Individuals with regard to the Processing of Personal Data must be set up and be completely independent in the performance of its functions; whereas, having regard to its specific nature, it must advise the Commission and, in particular, contribute to the uniform application of the national rules adopted pursuant to this Directive;
- (31) Whereas the adoption of additional measures for applying the principles set out in this Directive calls for the conferment of rule-making powers on the Commission and the establishment of an advisory committee in accordance with the procedures laid down in Council Decision 87/373/EEC <sup>(1)</sup>;
- (32) Whereas the principles set out in this Directive regarding the protection of the rights and freedoms of individuals, notably their right to privacy, with regard to the processing of personal data may be supplemented or clarified, in particular as far as certain sectors are concerned, by specific rules based on those principles;
- (33) Whereas Member States should be allowed a period of not more than three years from the entry into force of the national measures transposing this Directive in which to apply such new national rules gradually to all processing operations already under way;
- (34) Whereas this Directive does not stand in the way of a Member State's regulating market research activities aimed at consumers residing in its territory in so far as such regulation does not concern the protection of individuals with regard to the processing of personal data,

<sup>(1)</sup> OJ No L 197, 18. 7. 1987, p. 33.

<sup>(1)</sup> OJ No L 197, 18. 7. 1987, p. 33.

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HAS ADOPTED THIS REGULATION:

HAS ADOPTED THIS REGULATION:

## CHAPTER 1

## CHAPTER 1

## GENERAL PROVISIONS

## GENERAL PROVISIONS

*Article 1**Article 1***Object of the Directive****Object of the Directive**

1. The Member States shall ensure, in accordance with this Directive, the protection of the privacy of individuals in relation to the processing of personal data contained in data files.

1. In accordance with this Directive, Member States shall protect the rights and freedoms of natural persons with respect to the processing of personal data, and in particular their right of privacy.

2. The Member States shall neither restrict nor prohibit the free flow of personal data between Member States for reasons to do with the protection afforded under paragraph 1.

2. The Member States shall neither restrict nor prohibit the free flow of personal data between Member States for reasons connected with the protection afforded under paragraph 1.

*Article 2**Article 2***Definitions****Definitions**

For the purposes of this Directive:

For the purposes of this Directive:

(a) 'personal data' means any information relating to an identified or identifiable individual ('data subject'); an identifiable individual is notably an individual who can be identified by reference to an identification number or similar identifying particular;

(a) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;

Data presented in statistical form, which is of such a type that the persons concerned can no longer be reasonably identified, are not considered as personal data;

(b) 'depersonalize' means modify personal data in such a way that the information they contain can no longer be associated with a specific individual or an individual capable of being determined except at the price of an excessive effort in terms of staff, expenditure and time;

(d) 'processing' means the following operations, whether or not performed by automated means: the recording, storage or combination of data, and their alteration, use or communication, including transmission, dissemination, retrieval, blocking and erasure;

(b) 'processing of personal data' ('processing') means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

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- (c) 'personal data file' (file) means any set of personal data, whether centralized or geographically dispersed, undergoing automatic processing or which, although not undergoing automatic processing, are structured and accessible in an organized collection according to specific criteria in such a way as to facilitate their use or combination;
- (e) 'controller of the file' means the natural or legal person, public authority, agency or other body competent under Community law or the national law of a Member State to decide what will be the purpose of the file, which categories of personal data will be stored, which operations will be applied to them and which third parties may have access to them;

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- (c) 'personal data file' ('file') means any structured set of personal data, whether centralized or geographically dispersed, which is accessible according to specific criteria and whose object or effect is to facilitate the use or alignment of data relating to the data subject or subjects;
- (d) 'controller' means any natural or legal person, public authority, agency or other body who processes personal data or causes it to be processed and who decides what is the purpose and objective of the processing, which personal data are to be processed, which operations are to be performed upon them and which third parties are to have access to them;
- (e) 'processor' means any natural or legal person who processes personal data on behalf of the controller;
- (f) 'third party' means any natural or legal person other than the data subject, the controller and any person authorized to process the data under the controller's direct authority or on his behalf;

*Article 12***Informed consent**

Any giving of consent by a data subject to the processing of personal data relating to him within the meaning of this Directive shall be valid only if:

- (a) the data subject is supplied with the following information:
- the purposes of the file and the types of data stored,
  - the type of use and, where appropriate, the recipients of the personal data contained in the file,
  - the name and address of the controller of the file;
- (b) it is specific and express and specifies the types of data, forms of processing and potential recipients covered by it;
- (c) it may be withdrawn by the data subject at any time without retroactive effect;

- (g) 'the data subject's consent' means any express indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed, on condition he has available information about the purposes of the processing, the data or categories of data concerned, the recipient of the personal data, and the name and address of the controller and of his representative if any.

The data subject's consent must be freely given and specific, and may be withdrawn by the data subject at any time, but without retrospective effect.



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*(Article 2)*

- (f) 'supervisory authority' means the independent public authority or other independent body designated by each Member State in accordance with Article 26 of this Directive;
- (g) 'public sector' means all the authorities, organizations and entities of a Member State that are governed by public law, with the exception of those which carry on an industrial or commercial activity, and bodies and entities governed by private law where they take part in the exercise of official authority;
- (h) 'private sector' means any natural or legal person or association, including public sector authorities, organizations and entities in so far as they carry on an industrial or commercial activity.

*Article 3***Scope**

1. The Member States shall apply this Directive to files in the public and private sectors with the exception of files in the public sector where the activities of that sector do not fall within the scope of Community law.
2. This Directive shall not apply to files held by:
- (a) an individual solely for private and personal purposes;  
or
- (b) non-profit-making bodies, notably of a political, philosophical, religious, cultural, trade union, sporting or leisure nature, as part of their legitimate aims, on condition that they relate only to those members and corresponding members who have consented to being included therein and that they are not communicated to third parties.

*Article 4***Law applicable**

1. Each Member State shall apply this Directive to:
- (a) all files located in its territory;

*Article 3***Scope**

1. This Directive shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which forms part of a file or is intended to form part of a file.
2. This Directive shall not apply:
- to the processing of data in the course of an activity which falls outside the scope of Community law,
- to the processing of personal data by a natural person in the course of a purely private and personal activity.

*Article 4***National law applicable**

1. Each Member State shall apply the national provisions adopted under this Directive to all processing of personal data:

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(b) the controller of a file resident in its territory who uses from its territory a file located in a third country whose law does not provide an adequate level of protection, unless such use is only sporadic.

2. Each Member State shall apply Articles 5, 6, 8, 9, 10, 17, 18 and 21 of this Directive to a user consulting a file located in a third country from a terminal located in the territory of a Member State, unless such use is only sporadic.

3. Where a file is moved temporarily from one Member State to another, the latter shall place no obstacle in the way and shall not require the completion of any formalities over and above those applicable in the Member State in which the file is normally located.

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(a) of which the controller is established in its territory or is within its jurisdiction;

(b) of which the controller is not established in the territory of the Community, where for the purpose of processing personal data he makes use of means, whether or not automatic, which are located in the territory of that Member State.

2. In the circumstances referred to in paragraph 1 (b) the controller must designate a representative established in the territory of that Member State, who shall be subrogated to the controller's rights and obligations.

## CHAPTER II

GENERAL RULES ON THE LAWFULNESS OF THE  
PROCESSING OF PERSONAL DATA*Article 5*

Member States shall provide that the processing of personal data is lawful only if carried out in accordance with this Chapter.

Subject to this Chapter, Member States may more precisely determine the circumstances in which the processing of personal data is lawful.

## CHAPTER V

## Section I

## Data Quality

## Principles relating to data quality

*Article 16**Article 6*

## Principles

1. The Member States shall provide that personal data shall be:

(a) collected and processed fairly and lawfully;

1. Member States shall provide that personal data must be:

(a) processed fairly and lawfully;

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- (b) stored for specified, explicit and lawful purposes and used in a way compatible with those purposes;
  - (c) adequate, relevant and not excessive in relation to the purposes for which they are stored;
  - (d) accurate and, if necessary, kept up to date; inaccurate or incomplete data shall be erased or rectified;
  - (e) kept in a form which permits identification of the data subjects for no longer than is necessary for the purpose for which the data are stored.
2. It shall be for the controller of the file to ensure that paragraph 1 is complied with.

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- (b) collected for specified, explicit and legitimate purposes and used in a way compatible with those purposes;
  - (c) adequate, relevant and not excessive in relation to the purposes for which they are processed;
  - (d) accurate and, where necessary, kept up to date; every step must be taken to ensure that data which are inaccurate or incomplete having regard to the purposes for which they were collected are erased or rectified;
  - (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes in view; Member States may lay down appropriate safeguards for personal data stored for historical, statistical or scientific use.
2. It shall be for the controller to ensure that paragraph 1 is complied with.

## CHAPTER II

## LAWFULNESS OF PROCESSING IN THE PUBLIC SECTOR

*Article 5***Principles**

1. Subject to Article 6, the Member States shall, with respect to files in the public sector, provide in their law that:
- (a) the creation of a file and any other processing of personal data shall be lawful in so far as they are necessary for the performance of the tasks of the public authority in control of the file;
  - (b) the processing of data for a purpose other than that for which the file was created shall be lawful if:
    - the data subject consents thereto, or
    - it is effected on the basis of Community law, or of a law, or a measure taken pursuant to a law, of a Member State conforming with this Directive which authorizes it and defines the limites thereto, or
    - the legitimate interests of the data subject do not preclude such change of purpose, or

## Section II

**Principles relating to the grounds for processing data***Article 7*

- Member States shall provide that personal data may be processed only if:
- (a) the data subject has consented;
  - (b) processing is necessary for the performance of a contract with the data subject, or in order to take steps at the request of the data subject preliminary to entering into a contract;
  - (c) processing is necessary in order to comply with an obligation imposed by national law or by Community law;
  - (d) processing is necessary in order to protect the vital interests of the data subject;
  - (e) processing is necessary for the performance of a task in the public interest or carried out in the exercise of public authority vested in the controller or in a third party to whom the data are disclosed; or

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- it is necessary in order to ward off an imminent threat to public order or a serious infringement of the rights of others.

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- (f) processing is necessary in pursuit of the general interest or of the legitimate interests of the controller or of a third party to whom the data are disclosed, except where such interests are overridden by the interests of the data subject.

*Article 6***Processing in the public sector having as its object the communication of personal data**

1. The Member States shall provide in their law that the communication of personal data contained in the files of a public sector entity shall be lawful only if:

- (a) it is necessary for the performance of the tasks of the public sector entity communicating or requesting communication of the data; or
- (b) it is requested by a natural or legal person in the private sector who invokes a legitimate interest, on condition that the interest of the data subject does not prevail.

2. Without prejudice to paragraph 1, the Member States may specify the conditions under which the communication of personal data is lawful.

3. The Member States shall provide in their law that, in the circumstances referred to in paragraph 1 (b), the controller of the file shall inform data subjects of the communication of personal data. The Member States may provide for the replacing of such provision of information by prior authorization by the supervisory authority.

## CHAPTER III

## LAWFULNESS OF PROCESSING IN THE PRIVATE SECTOR

*Article 8***Principles**

1. The Member States shall provide in their law that, without the consent of the data subject, the recording in a file and any other processing of personal data shall be lawful only if it is effected in accordance with this Directive and if:

- (a) the processing is carried out under a contract, or in the context of a quasi-contractual relationship of trust, with the data subject and is necessary for its discharge; or

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(b) the data come from sources generally accessible to the public and their processing is intended solely for correspondence purposes; or

(c) the controller of the file is pursuing a legitimate interest, on condition that the interest of the data subject does not prevail.

2. The Member States shall provide in their law that it shall be for the controller of the file to ensure that no communication is incompatible with the purpose of the file or is contrary to public policy. In the event of on-line consultation, the same obligations shall be incumbent on the user.

3. Without prejudice to paragraph 1, the Member States may specify the conditions under which the processing of personal data is lawful.

## CHAPTER V

## Section III

## DATA QUALITY

## Special categories of processing

*Article 17**Article 8*

## Special categories of data

## The processing of special categories of data

1. The Member States shall prohibit the automatic processing of data revealing ethnic or racial origin, political opinions, religious or philosophical beliefs or trade union membership, and of data concerning health or sexual life, without the express and written consent, freely given, of the data subject.

1. Member States shall prohibit the processing of data revealing racial or ethnic origin, political opinions, religious beliefs, philosophical or ethical persuasion or trade-union membership, and of data concerning health or sexual life.

2. Member States shall provide that data referred to in paragraph 1 may be processed where:

(a) the data subject has given his written consent to the processing of that data, except where the laws of the Member State provide that the prohibition referred to in paragraph 1 may not be waived by the data subject giving his consent;

(b) processing is carried out by a foundation or non-profit-making association of a political, philosophical, religious or trade union character in the course of its legitimate activities and on condition that the processing relates solely to members of the foundation or association and to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to third parties without the data subjects's consent; or

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2. The Member States may, on important public interest grounds, grant derogations from paragraph 1 on the basis of a law specifying the types of data which may be stored and the persons who may have access to the file and providing suitable safeguards against abuse and unauthorized access.

3. Data concerning criminal convictions shall be held only in public sector files.

(c) the processing is performed in circumstances where there is manifestly no infringement of privacy or fundamental freedoms.

The processing of data referred to at point (b) shall not be subject to the obligation to notify imposed in Section VIII of this Chapter.

3. Member States may, on grounds of important public interest, lay down exemptions from paragraph 1 by national legislative provision or by decision of the supervisory authority, stating the types of data which may be processed, the persons to whom such data may be disclosed and the persons who may be controllers, and specifying suitable safeguards.

4. Data concerning criminal convictions may be held only by judicial and law-enforcement authorities and by the persons directly concerned with those convictions or by their representatives; Member States may, however, lay down exemptions by means of a legislative provision which shall specify suitable safeguards.

5. Member States shall determine the conditions under which a national identification number or other identifier of general application may be used.

## CHAPTER VI

## Provisions specifically relating to certain sectors

*Article 19*

The Member States may grant, in respect of the press and the audiovisual media, derogations from the provisions of this Directive in so far as they are necessary to reconcile the right to privacy with the rules governing freedom of information and of the press.

*Article 9*

## Processing of personal data and freedom of expression

With a view to reconciling the right to privacy with the rules governing freedom of expression, Member States shall prescribe exemptions from this Directive in respect of the processing of personal data solely for journalistic purposes by the press, the audio-visual media and journalists.

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## CHAPTER IV

## Section IV

## RIGHTS OF DATA SUBJECTS

## Information to be given to the data subject

*Article 14**Article 10***Additional rights of data subjects**

## The existence of a processing operation

The Member States shall grant a data subject the following rights:

3. To know of the existence of a file and to know its main purposes and the identity and habitual residence, headquarters or place of business of the controller of the file.

1. Member States shall ensure that any person is entitled, on request, to know of the existence of a processing operation, its purposes, the categories of data concerned, any third parties or categories of third party to whom the data are to be disclosed, and the name and address of the controller and of his representative, if any.

2. Member States may lay down exemptions from paragraph 1 in the circumstances referred to in Article 14 (1).

*Article 13**Article 11***Provision of information at the time of collection**

## Collection of data from the data subject

1. The Member States shall guarantee individuals from whom personal data are collected the right to be informed at least about:

- (a) the purposes of the file for which the information is intended;
- (b) the obligatory or voluntary nature of their reply to the questions to which answers are sought;
- (c) the consequences if they fail to reply;
- (d) the recipients of the information;
- (e) the existence of the right of access to and rectification of the data relating to them; and
- (f) the name and address of the controller of the file.

2. Paragraph 1 shall not apply to the collection of information where to inform the data subject would prevent the exercise of the supervision and verification functions of a public order.

1. Member States shall provide that the controller must ensure that a data subject from whom data are collected be informed at least of the following:

- (a) the purposes of the processing for which the data are intended;
- (b) the obligatory or voluntary nature of any reply to the questions to which answers are sought;
- (c) the consequences for him if he fails to reply;
- (d) the recipients or categories of recipients of the data;
- (e) the existence of a right of access to and rectification of the data relating to him; and
- (f) the name and address of the controller and of his representative if any.

2. Paragraph 1 shall not apply to the collection of data where to inform the data subject would hinder or prevent the exercise of or the cooperation with the supervision and verification functions of a public authority or the maintenance of public order.

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## CHAPTER III

## LAWFULNESS OF PROCESSING IN THE PRIVATE SECTOR

*Article 9***Obligation to inform the data subject**

1. The Member States shall, with respect to the private sector, provide in their law that at the time of first communication or of the affording of an opportunity for on-line consultation the controller of the file shall inform the data subject accordingly, indicating also the purpose of the file, the types of data stored therein and his name and address.

2. The provision of information under paragraph 1 shall not be mandatory in the circumstances referred to in Article 8 (1) (b). There shall be no obligation to inform where communication is required by law.

3. If the data subject objects to communication or any other processing, the controller of the file shall cease the processing objected to unless he is authorized by law to carry it out.

*Article 10***Special exception to the obligation to inform the data subject**

If the provision of information to the data subject provided for in Article 9 (1) proves impossible or involves a disproportionate effort, or comes up against the overriding legitimate interests of the controller of the file or a similar interest of a third party, the Member States may provide in their law that the supervisory authority may authorize a derogation.

*Article 12***Disclosure to a third party**

1. Member States shall provide that in the cases referred to in Article 7 (b), (c), (e) and (f) the controller must satisfy himself that at the appropriate time, and no later than the time when the data are first disclosed to a third party, the data subject is informed of this disclosure and of the following information at least:

- (a) the name and address of the controller and of his representative, if any;
- (b) the purposes of the processing;
- (c) the categories of data concerned;
- (d) the recipients or categories of recipients; and
- (e) the existence of rights of access, rectification and objection.

2. Paragraph 1 shall not apply where:

- the data subject has already been informed that the data are to be or may be disclosed to a third party,
- disclosure to a third party is required by a legal provision which lays down an exemption from the obligation to inform,
- or
- the data are disclosed to a third party for one of the reasons listed in Article 14 (1).

3. Where the provision of information to the data subject proves impossible or involves a disproportionate effort, or runs counter to the overriding legitimate interests of the controller or similar interests of a third party, Member States may empower the supervisory authority to authorize an exemption, laying down any suitable safeguards.



## ORIGINAL PROPOSAL

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## CHAPTER IV

## Section V

## RIGHTS OF DATA SUBJECTS

## The data subject's right of access to data

*Article 14**Article 13*

## Additional rights of data subjects

## Right of access

The Member States shall grant a data subject the following rights:

Member States shall grant all data subjects the following rights:

4. To obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in a file and communication to him of such data in an intelligible form.

1. to obtain, on request, at reasonable intervals and without excessive delay or expense, confirmation of the existence of personal data relating to him, communication to him of such data in an intelligible form, an indication of their source, and general information on their use.

The Member States may provide that the right of access to medical data may be exercised only through a doctor.

Member States may provide that the right of access to medical data may be exercised only through a medical practitioner;

5. To obtain, as the case may be, rectification, erasure or blocking of such data if they have been processed in violation of the provisions of this Directive.
7. To obtain, in the event of the application of paragraph 5 and if the data have been communicated to third parties, notification to the latter of the rectification, erasure or blocking.

2. To refuse any demand by a third party that he should exercise his right of access in order to communicate the data in question to that third party or to another party, unless the third party's request is founded on national or Community law;
3. to obtain, as the case may be, the rectification of inaccurate or incomplete data or the erasure or blocking of such data if they have been processed in breach of this Directive;
4. where point 3 applies, to be notified of the rectification, erasure or blocking to any third party to whom the data have been disclosed;
5. to be informed of the reasoning applied in a any automatic processing operations the outcome of which is invoked against him.

*Article 15**Article 14*

## Exceptions to the data subjects' right of access to public sector files

## Exceptions to the right of access

1. The Member States may limit by statute the rights provided for in points 3 and 4 of Article 14 for reasons relating to:

1. Unless obliged to do so by a provision of Community law, Member States may restrict the exercise of the rights provided for in Article 10 (1) and in point 1 of Article 13 where such restriction is necessary to safeguard:

- (a) national security;
- (b) defence;

- (a) national security;
- (b) defence;

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- (c) criminal proceedings;
- (d) public safety;
- (e) a duly established paramount economic and financial interest of a Member State or of the European Communities;
- (f) the need for the public authorities to perform monitoring or inspection functions; or
- (g) an equivalent right of another individual and the rights and freedoms of others.

2. In the circumstances referred to in paragraph 1, the supervisory authority shall be empowered to carry out, at the request of the data subject, the necessary checks on the file.

3. The Member States may place limits on the data subject's right of access to data compiled temporarily for the purpose of extracting statistical information therefrom.

*Article 14***Additional rights of data subjects**

The Member States shall grant a data subject the following rights:

1. To oppose, for legitimate reasons, the processing of personal data relating to him.
6. To obtain upon request and free of charge the erasure of data relating to him held in files used for market research or advertising purposes.

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- (c) criminal proceedings;
- (d) public safety;
- (e) a duly established paramount economic and financial interest of a Member State or of the Community;
- (f) a monitoring or inspection function performed by a public authority or an activity undertaken to assist the performance of such a function;
- (g) an equivalent right of another person and the rights and freedoms of others.

2. In the circumstances described in paragraph 1, the supervisory authority shall be empowered to carry out the necessary checks, at the data subject's request, so as to verify the lawfulness of the processing within the meaning of this Directive, respecting the interests to be protected in accordance with paragraph 1.

3. Member States may limit the right of access of the person concerned to data temporarily kept in personal form and which is intended to serve statistical ends of such a type that the persons concerned can no longer be reasonably identified.

## Section VI

**The data subject's right to object***Article 15***Objection on legitimate grounds**

1. Member States shall grant the data subject the right to object at any time on legitimate grounds to the processing of data relating to him.
2. Where there is a justified objection, the controller shall cease the processing.
3. The controller must ensure that the opportunity to have data erased without cost has been expressly offered to a data subject before personal data are disclosed to third parties or used on their behalf for the purposes of marketing by mail.

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2. Not to be subject to an administrative or private decision involving an assessment of his conduct which has as its sole basis the automatic processing of personal data defining his profile or personality.

*Article 16*  
Automated individual decisions

1. Member States shall grant the right to every person not to be subjected to an administrative or private decision adversely affecting him which is based solely on automatic processing defining a personality profile.
2. Subject to the other Articles of this Directive, Member States shall provide that a person may be subjected to a decision of the kind referred to in paragraph 1 if that decision:
- (a) is taken in the course of the entering into or performance of a contract, provided any request by the data subject has been satisfied, or that there are suitable measures to safeguard his legitimate interests, which must include arrangements allowing him to defend his point of view; or
- (b) is authorized by law which also lays down measures to safeguard the data subject's legitimate interests.

## CHAPTER V

## Section VII

## DATA QUALITY

## Security of processing

*Article 18**Article 17*

## Data security

1. The Member States shall provide in their law that the controller of a file shall take appropriate technical and organizational measures to protect personal data stored in the file against accidental or unauthorized destruction or accidental loss and against unauthorized access, modification or other processing

Such measures shall ensure, in respect of automated files, an appropriate level of security having regard to the state of the art in this field, the cost of taking the measures, the nature of the data to be protected and the assessment of the potential risks. To that end, the controller of the file shall take into consideration any recommendations on data security and network interoperability formulated by the Commission in accordance with the procedure provided for in Article 29.

1. Member States shall provide that the controller must take appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss and against unauthorized alteration or disclosure or any other unauthorized form of processing.

Such measures shall ensure, in respect of the automatic processing of data, a suitable level of security having regard to the state of the art and the nature of the data to be protected, and an evaluation of the potential risks involved. To that end, the controller shall take into consideration any recommendations on data security and network interoperability made by the Commission in accordance with the procedure referred to in Article 33.

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2. Methods guaranteeing adequate security shall be chosen for the transmission of personal data in a network.

3. In the event of on-line consultation, the hardware and software shall be designed in such a way that the consultation takes place within the limits of the authorization granted by the controller of the file.

4. The obligations referred to in paragraph 1, 2, and 3 shall also be incumbent on persons who, either *de facto* or by contract, control the operations relating to a file.

5. Any person who in the course of his work has access to information contained in files shall not communicate it to third parties without the agreement of the controller of the file.

## CHAPTER II

## LAWFULNESS OF PROCESSING IN THE PUBLIC SECTOR

## Article 7

## Obligation to notify the supervisory authority

1. The Member States shall provide in their law that the creation of a public sector file, the personal data in which might be communicated, shall be notified in advance to the supervisory authority and recorded in a register kept by that authority. The register shall be freely available for consultation.

2. The Member State shall specify the information which must be notified to the supervisory authority. That information shall include at least the name and address of the controller of the file, the purpose of the file, a description of the types of data it contains, the third parties to whom the data might be communicated and a description of the measures taken pursuant to Article 18.

3. The Member States may provide that paragraphs 1 and 2 shall apply to other public sector files and that consultation of the register may be restricted for the reasons stated in Article 15 (1).

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2. Methods ensuring an appropriate level of security shall be chosen for the transmission of personal data within a network.

3. Where an opportunity is provided for remote access, the controller shall utilize the hardware and software in such a way that the access takes place within the limits of the lawfulness of the processing.

4. The obligations referred to in paragraphs 1, 2 and 3 shall also be incumbent on persons who share responsibility for carrying out the processing, and, in particular, on the processor.

5. Any person who, in the course of his work, has access to personal data shall not disclose it to third parties without the controller's agreement, unless he is required to do so under national or Community law.

## Section VIII

## Notification

## Article 18

## Obligation to notify the supervisory authority

1. Member States shall provide that the controller or his representative, if any, must notify the supervisory authority referred to in Article 30 before carrying out any wholly or partly automatic processing or a set of processing operations of the same type intended to serve a single purpose or several related purposes.

2. Member States shall specify the information to be given in the notification. It shall include at least:

- (a) the name and address of the controller and of his representative, if any;
- (b) the purpose or purposes of the processing;
- (c) the category or categories of data subject;
- (d) a description of the data or of the categories of data to which the processing relates;
- (e) the third parties or categories of third party to whom the data might be disclosed;

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## CHAPTER III

## LAWFULNESS OF PROCESSING IN THE PRIVATE SECTOR

*Article 11***Obligation to notify the supervisory authority**

1. The Member States shall provide in their law that the controller of the file shall notify the creation of a personal data file where the data are intended to be communicated and do not come from sources generally accessible to the public. The notification shall be made to the supervisory authority of the Member State in which the file is located or, if it is not located in a Member State, to the supervisory authority of the Member State in which the controller of the file resides. The controller of the file shall notify to the competent national authorities any change in the purpose of the file or any change in his address.

2. The Member States shall specify the information which must be notified to the supervisory authority. That information shall include at least the name and address of the controller of the file, the purpose of the file, a description of the types of data it contains, the third parties to whom the data might be communicated and a description of the measures taken pursuant to Article 18.

3. The Member States may provide that paragraphs 1 and 2 shall apply to other private sector files and that the information referred to in paragraph 2 shall be accessible to the public.

(f) proposed transfers of data to third countries;

(g) a description of the measures taken pursuant to Article 17 to ensure security of processing.

3. Any change affecting the information referred to in paragraph 2 must be notified to the supervisory authority.

4. Before processing which poses specific risks to the rights and freedoms of individuals commences, the supervisory authority shall examine such processing within a period of 15 days commencing with the date of the notification at the end of which period the authority shall give its conclusions.

5. Member States may provide that some of the processing operations referred to in paragraph 4 shall be authorized beforehand either by law or by decision of the supervisory authority.

*Article 19***Simplification of and exemption from the obligation to notify**

1. Member States shall provide for the taking of measures to simplify or exempt from the obligation to notify in the case of certain categories of processing operation which do not adversely affect the rights and freedoms of data subjects. Such categories of processing include the production of correspondence or papers, the satisfaction of legal, accounting, tax or social security duties or the consultation of documentation services accessible to the public.

2. Simplification or exemption measures shall be adopted either by or after consulting the supervisory authority. Such measures shall particularly specify, for each category of processing operation:

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- the purposes of the processing,
  - a description of the data or categories of data undergoing processing,
  - the category or categories of data subject,
  - the third parties or categories of third party to whom the data are to be disclosed,
  - the length of time the data are to be stored,
  - where appropriate, the conditions under which the processing is to be carried out.
3. Simplification or exemption from the obligation to notify shall not release the controller from any of the other obligations resulting from this Directive.

*Article 20*

## Manual processing operations

Member States may lay down the conditions under which Articles 18 and 19 are to apply to non-automatic processing operations involving personal data contained in files.

*Article 21*

## Register of notified processing operations

Member States shall provide that a register of notified processing operations must be maintained by the supervisory authority. The register shall, as a minimum, in the cases provided for in Articles 18 and 19, contain the information listed in Article 18 (2) (a) to (f). It may be inspected by any person subject to such restrictions as may be imposed by Member States on the same grounds as are set out in Article 14 (1).

## CHAPTER IV

## RIGHTS OF DATA SUBJECTS

*Article 14*

## Additional rights of data subjects

The Member States shall grant a data subject the following rights:

8. to have a judicial remedy if the rights guaranteed in this Article are infringed.

## CHAPTER III

## JUDICIAL REMEDIES, LIABILITY AND PENALTIES

*Article 22*

## Judicial remedies

Member States shall provide for the right of every person to a judicial remedy for any breach of the rights guaranteed by this Directive.

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## CHAPTER VII

## LIABILITY AND SANCTIONS

*Article 21***Liability**

1. The Member States shall provide in their law that any individual whose personal data have been stored in a file and who suffers damage as a result of processing or of any act incompatible with this Directive shall be entitled to compensation from the controller of the file.

2. The Member States may provide that the controller of the file shall not be liable for any damage resulting from the loss or destruction of data or from unauthorized access if he proves that he has taken appropriate measures to fulfil the requirements of Articles 18 and 22.

*Article 22***Processing on behalf of the controller of the file**

1. The Member States shall provide in their law that the controller of the file must, where processing is carried out on his behalf, ensure that the necessary security and organizational measures are taken and choose a person or enterprise who provides sufficient guarantees in that respect.

2. Any person who collects or processes personal data on behalf of the controller of the file shall fulfil the obligations provided for in Article 16 and 18 of this Directive.

3. The contract shall be in writing and shall stipulate, in particular, that the personal data may be divulged by the person providing the service or his employees only with the agreement of the controller of the file.

*Article 23***Liability**

1. Member States shall provide that any person whose personal data are undergoing processing and who suffers damage as a result of an unlawful processing operation or of any act incompatible with the national provisions adopted pursuant to this directive is entitled to receive compensation from the controller for the damage suffered.

2. Member States may provide that the controller may be exempted, in whole or in part, from his liability for damage resulting from the loss or destruction of data or from unauthorized access if he proves that he has taken suitable steps to satisfy the requirements of Articles 17 and 24.

*Article 24***Processing on behalf of the controller**

1. Member States shall provide that the controller must, where processing is carried out on his behalf, ensure that the necessary security and organizational measures are taken and choose a processor who provides sufficient guarantees in that respect.

2. The processor shall carry out only such processing of personal data as is stipulated in his contract with the controller and shall take instructions only from the latter. He shall comply with the national provisions adopted pursuant to this Directive.

3. The contract shall be in writing and shall state, in particular, that personal data processed there under may be disclosed to a third party by the processor or his employees only with the controller's agreement.

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*Article 23***Sanctions**

Each Member State shall make provision in its law for the application of dissuasive sanctions in order to ensure compliance with the measures taken pursuant to this Directive.

## CHAPTER VIII

## TRANSFER OF PERSONAL DATA TO THIRD COUNTRIES

*Article 24***Principles**

1. The Member States shall provide in their law that the transfer to a third country, whether temporary or permanent, of personal data which are undergoing processing or which have been gathered with a view to processing may take place only if that country ensures an adequate level of protection.

2. The Member States shall inform the Commission of cases in which an importing third country does not ensure an adequate level of protection.

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*Article 24***Penalties**

Each member State shall provide for the imposition of dissuasive penalties on any person who does not comply with the national provisions adopted pursuant to this Directive.

## CHAPTER IV

## TRANSFER OF PERSONAL DATA TO THIED COUNTRIES

*Article 26***Principles**

1. Member States shall provide that the transfer, whether temporary or permanent, to a third country of personal data which are undergoing processing or which have been collected with a view to processing may take place only if the third country in question ensures an adequate level of protection.

Notwithstanding the first subparagraph, Member States shall provide that a transfer to a third country which does not ensure an adequate level of protection may take place on condition that:

- subject, where appropriate, to Article 8 (2) (a), the data subject has consented to the proposed transfer in order to take steps preliminary to entering into a contract,
  - the transfer is necessary for the performance of a contract between the data subject and the controller, on condition that the data subject has been informed of the fact that it is or might be proposed to transfer the data to a third country which does not ensure an adequate level of protection,
  - the transfer is necessary on important public interest grounds,
- or
- the transfer is necessary in order to protect the vital interests of the data subject.

2. The adequacy of the level of protection afforded by a third country shall be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular account shall be taken of the nature of the data, the purpose or purposes and duration of the proposed processing operation or operations, the legislative provisions, both general and sectoral, in force in the third country in question and the professional rules which are complied with in that country.

3. Member States shall inform the Commission of cases where they consider that a third country does not ensure an adequate level of protection.



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3. Where the Commission finds, either on the basis of information supplied by Member States or on the basis of other information, that a third country does not have an adequate level of protection and that the resulting situation is likely to harm the interests of the Community or of a member State, it may enter into negotiations with a view to remedying the situation.

4. The Commission may decide, in accordance with the procedure laid down in Article 30 (2) of this Directive, that a third country ensures an adequate level of protection by reason of the international commitments it has entered into or of its domestic law.

5. Measures taken pursuant to this Article shall be in keeping with the obligations incumbent on the Community by virtue of international agreements, both bilateral and multilateral, governing the protection of individuals in relation to the automatic processing of personal data.

*Article 25***Derogation**

1. A Member State may derogate from Article 24 (1) in respect of a given export on submission by the controller of the file of sufficient proof that an adequate level of protection will be provided. The Member State may grant a derogation only after it has informed the Commission and the Member States thereof and in the absence of notice of opposition given by a Member State or the Commission within a period of 10 days.

2. Where notice of opposition is given, the Commission shall adopt appropriate measures in accordance with the procedure laid down in Article 30 (2)

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4. Where the Commission finds, either on the basis of information supplied by Member States or on the basis of other information, that a third country does not ensure an adequate level of protection and that the resulting situation is likely to harm the interests of the Community or of a Member State, it may enter into negotiations with a view to remedying the situation.

5. The Commission may decide, in accordance with the procedure laid down in Article 34 (2) that a third country ensures an adequate level of protection by reason of the international commitments it has entered into or of its domestic law.

6. Measures taken pursuant to this Article shall be in keeping with the obligations incumbent on the Community by virtue of international agreements, both bilateral and multilateral, governing the protection of persons with regard to the automatic processing of personal data.

*Article 27***Particular measures**

1. Subject to the second subparagraph of Article 26 (1), a Member State may authorize a transfer or category of transfers of personal data to a third country which does not ensure an adequate level of protection where the controller adduces sufficient justification in particular in the form of appropriate contractual provisions guaranteeing, especially, the effective exercise of data subjects' rights.

2. The Member State shall inform the Commission and the other Member States in good time of its proposal to grant authorization.

3. If a Member State or the Commission objects before the authorization takes effect, the Commission shall take appropriate measures in accordance with the procedure laid down in Article 34 (2).

## CHAPTER V

## CODES OF CONDUCT

*Article 28***National codes**

1. Member States may provide that codes of conduct drawn up by trade associations may make additional

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provision for the specific features of particular sectors, subject to the national measures taken under this Directive.

2. The draft codes shall be reviewed by the national supervisory authority, which shall ascertain whether or not they are justified and the representativeness of the organizations which prepared them. The authority shall seek the views of data subjects or their representatives.

3. Member States shall ensure the official publication of codes which have been the subject of a favourable opinion on the part of the supervisory authority.

4. Any extension or amendment of the codes shall be subject to identical procedures.

*Article 20**Article 29*

## Community codes

1. Member States and the Commission shall encourage the trade associations concerned to participate in drawing up Community codes of conduct intended to contribute to the proper application of this Directive in the light of the specific characteristics of each sector.

2. The Commission may, for the purposes of information, publish codes of conduct in the *Official Journal of the European Communities*, together with the opinion of the working party provided for in Article 31 on the content of the codes and the representativeness at Community level of the organizations which prepared them. The working party shall seek the views of data subjects or their representatives.

## CHAPTER IX

## CHAPTER VI

SUPERVISORY AUTHORITIES AND WORKING PARTY ON  
THE PROTECTION OF PERSONAL DATASUPERVISORY AUTHORITY AND WORKING PARTY ON  
THE PROTECTION OF INDIVIDUALS WITH REGARD TO  
THE PROCESSING OF PERSONAL DATA*Article 26**Article 30*

## Supervisory authority

## Supervisory authority

1. The Member States shall ensure that an independent competent authority supervises the protection of personal data. The authority shall monitor the application of the national measures taken pursuant to this Directive and perform all the functions that are entrusted to it by this Directive.

1. Each Member State shall designate an independent public authority to supervise the protection of personal data. The authority shall be responsible for monitoring the application of the national provisions adopted pursuant to this Directive and for performing all the functions entrusted to it by this Directive. Each Member State may designate more than one supervisory authority.

## ORIGINAL PROPOSAL

2. The authority shall have investigative powers and effective powers of intervention against the creation and exploitation of files which do not conform with this Directive. To that end, it shall have *inter alia* the right of access to files covered by this Directive and shall be given the power to gather all the information necessary for the performance of its supervisory duties.

3. Complaints in connection with the protection of individuals in relation to personal data may be lodged with the authority by any individual.

*Article 27***Working party on the protection of personal data**

1. A working party on the protection of personal data is hereby set up. The working party, which shall have advisory status and shall act independently, shall be composed of representatives of the supervisory authorities provided for in Article 26 of all the Member States and shall be chaired by a representative of the Commission.

## AMENDED PROPOSAL

2. Each supervisory authority shall have:

- investigative powers including the right of access to data forming the subject-matter of processing operations covered by this Directive and the right to collect all the information necessary for the performance of its supervisory duties,
- effective powers of intervention such as ordering the blocking or erasure of data, a temporary or definitive ban on processing or the destruction of data material, or warning the controller,
- the power to bring an action before the courts where it finds that the national provisions implementing this Directive have been infringed.

3. Each supervisory authority shall hear complaints lodged by any person concerning the protection of persons with regard to the processing of personal data. The person concerned shall be informed of the outcome of the complaint.

4. Each supervisory authority shall produce an annual report. The report shall be made public.

5. Member States' authorities shall cooperate with one another to the extent necessary for the performance of their supervisory duties, *inter alia* by exchanging useful information or exercising their powers of investigation or intervention.

6. Member States shall provide that the supervisory authority, its members and its staff are to be subject to a duty of confidence.

*Article 31***Working party on the protection of individuals with regard to the processing of personal data**

1. A working party on the protection of individuals with regard to the processing of personal data, hereinafter referred to as 'the working party', is hereby set up. The working party, which shall have advisory status, shall act independently. It shall be composed of representatives of the supervisory authorities provided for in Article 30 and of a representative of the Commission. Where a Member State designates more than one supervisory authority, those authorities shall appoint joint representatives who, within the working party, shall have the same rights and obligations as the other representatives of the other authorities.

2. The working party shall elect its chairman. The chairman's term of office shall be two years. His appointment shall be renewable.

## ORIGINAL PROPOSAL

2. The secretariat of the working party on the protection of personal data shall be provided by the Commission's departments.

3. The working party on the protection of personal data shall adopt its own rules of procedure.

4. The working party on the protection of personal data shall examine questions placed on the agenda by its chairman, either on his own initiative or at the reasoned request of a representative of the supervisory authorities, concerning the application of the provisions of Community law on the protection of personal data.

*Article 28***Tasks of the working party on the protection of personal data**

1. The working party on the protection of personal data shall:

- (a) contribute to the uniform application of the national rules adopted pursuant to this Directive;
- (b) give an opinion on the level of protection in the Community and in third countries;
- (c) advise the Commission on any draft additional or specific measures to be taken to safeguard the protection of privacy.

2. If the working party on the protection of personal data finds that significant divergences are arising between the laws or practices of the Member States in relation to the protection of personal data which might affect the equivalence of protection in the Community, it shall inform the Commission accordingly.

3. The working party on the protection of personal data may formulate recommendations on any questions concerning the protection of individuals in relation to personal data in the Community. The recommendations shall be recorded in the minutes and may be transmitted to the advisory committee referred to in Article 30. The Commission shall inform the working party on the protection of personal data of the action it has taken in response to the recommendations.

## AMENDED PROPOSAL

3. The working party's secretariat shall be provided by the Commission.

4. The working party shall adopt its own rules of procedure.

5. The working party shall consider items placed on its agenda by its chairman, either on his own initiative or at the reasoned request of a representative of the supervisory authorities, or at the Commission's request.

*Article 32***Tasks of the working party**

1. The working party shall:

- (a) contribute to the uniform application of the national measures taken under this Directive;
- (b) give an opinion on the level of protection in the Community and in third countries;
- (c) advise the Commission on any proposed amendment of this Directive, on any additional or specific measures to safeguard the rights and freedoms of natural persons and on any other proposed measures affecting such rights and freedoms;
- (d) give an opinion on codes of conduct drawn up at Community level.

2. If the working party finds that serious divergences are arising between the laws or practices of Member States concerning the protection of persons with regard to the processing of personal data and that those divergences might affect the equivalence of protection in the Community, it shall inform the Commission accordingly.

3. The working party may, on its own initiative, make recommendations on all matters relating to the protection of persons with regard to the processing of personal data in the Community.

## ORIGINAL PROPOSAL

4. The working party on the protection of personal data shall draw up an annual report on the situation regarding the protection of individuals in relation to the processing or personal data in the Community and in third countries, which it shall transmit to the Commission.

## CHAPTER X

## RULE-MAKING POWERS OF THE COMMISSION

*Article 29***Exercise of rule-making powers**

The Commission shall, in accordance with the procedure laid down in Article 30 (2), adopt such technical measures as are necessary to apply this Directive to the specific characteristics of certain sectors having regard to the state of the art in this field and to the codes of conduct.

*Article 30***Advisory Committee**

1. The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by a representative of the Commission.

2. The representative of the Commission shall submit to the committee of 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 taken 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.

## AMENDED PROPOSAL

4. The working party's opinions and recommendations shall be recorded in its minutes and shall be transmitted to the Commission; they may also be transmitted to the advisory committee referred to in Article 34.

5. The Commission shall inform the working party of the action it has taken in response to its opinions and recommendations. It shall do so in a report which shall also be transmitted to the European Parliament and to the Council. The report shall be made public.

6. The working party shall draw up an annual report on the situation regarding the protection of natural persons with regard to the processing of personal data in the Community and in third countries, which it shall transmit to the Commission, the European Parliament and the Council. The report shall be made public.

## CHAPTER VII

## RULE-MAKING POWERS OF THE COMMISSION

*Article 33***Exercise of rule-making powers**

The Commission shall, in accordance with the procedure laid down in Article 34 (2), adopt such technical measures as are necessary to apply this Directive to the specific characteristics of particular sectors or classes of processing, and the measures necessary to ensure the consistent application of this Directive.

*Article 34***Advisory Committee**

1. The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by a representative of the Commission.

2. 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.

## ORIGINAL PROPOSAL

## AMENDED PROPOSAL

## FINAL PROVISIONS

## FINAL PROVISIONS

*Article 31*

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 1 January 1993.

The provisions adopted pursuant to the first subparagraph shall make express reference to this Directive.

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

*Article 32*

The Commission shall report to the Council and the European Parliament at regular intervals on the implementation of this Directive, attaching to its report, if necessary, suitable proposals for amendments.

*Article 33*

This Directive is addressed to the Member States.

*Article 35*

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 1994.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall set a date after which processing operations which began before 1 July 1994 must be compatible with the national provisions adopted pursuant to this Directive; the date set may be no later than 30 June 1997.

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

*Article 36*

The Commission shall report to the Council and the European Parliament at regular intervals on the implementation of this Directive, attaching to its report, if necessary, suitable proposals for amendments. The report shall be made public.

*Article 37*

This Directive is addressed to the Member States.

**Proposal for a Council Decision extending a Community guarantee to the European Investment Bank in case of losses on loans in Estonia, Latvia and Lithuania**

(92/C 311/05)

COM(92) 401 final

*(Submitted by the Commission on 23 October 1992)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Community,

Having regard to the opinion of the European Parliament,

Whereas the peoples of Estonia, Latvia and Lithuania (hereinafter referred to as 'the three countries') have close historic relationships with the peoples of the Community; whereas these relations have been strengthened by the recent trade and cooperation agreements; whereas these three countries are undertaking major political and social reforms;

Whereas the three countries have embarked upon a fundamental economic reform; and whereas the ministers of the Group of 24 welcomed this at their meeting of 11 November 1991 and decided to extend G-24 coordinated economic assistance to them;

Whereas these economic reforms will significantly contribute to a strong development of mutually beneficial economic and commercial relationships between the three countries and the Community;

Whereas there is a great need for capital investment in the three countries; whereas this capital investment requires external finance; whereas the Community has agreed to cooperate with a view to aiding the three countries; whereas the European Investment Bank (hereinafter called 'the Bank') could make an important contribution;

Whereas the Council has invited the Bank, and the Bank has agreed, to make loans for capital investment projects carried out in the three countries under the guarantee provided in this Decision;

Whereas the Bank and the Commission should fix the terms on which this guarantee is to be given,

HAS DECIDED AS FOLLOWS:

*Sole Article*

The Community shall fully guarantee the European Investment Bank in case the Bank does not receive the payments due under any loan granted in accordance with its usual criteria in Estonia, Latvia and Lithuania. An overall limit of ECU 200 million shall be set for a three-year period.

To this end, the Bank and the Commission shall fix the terms on which the guarantee shall be given.

**Amendment to the proposal for a Council Directive on the charging of transport infrastructure costs to heavy goods vehicles**

(92/C 311/06)

COM(92) 405 final

*(Submitted by the Commission on 26 October 1992)*

The Commission proposal of 8 January 1988 (COM(87) 716 final)<sup>(1)</sup>, as amended by the Commission proposal of 8 February 1991 (COM(90) 540 final)<sup>(2)</sup> shall be amended as follows:

<sup>(1)</sup> OJ No C 79, 26. 3. 1988, p. 8.

<sup>(2)</sup> OJ No C 75, 20. 3. 1991, p. 1.

INITIAL COMMISSION PROPOSAL

AMENDED PROPOSAL

(When nothing appears in this column the text is to be taken as unchanged)

**Proposal for a Council Directive on the charging of transport infrastructure costs to heavy goods vehicles**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 75 and 99 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 national vehicle taxation systems for the use or possession of heavy goods vehicles should be progressively adjusted; whereas this covers the structures of these taxes as well as their effective rate levels;

Whereas the need to develop the common transport policy and ensure the unity of the internal market, by eliminating distortion of competition and discrimination between Community carriers on the basis of their place of establishment, entails the adoption of common standards in order to harmonize conditions for applying the various taxes directly affecting road transport;

Whereas national systems for levying taxes or duties on the use or possession of heavy goods vehicles should be progressively adjusted as the markets are liberalized; whereas this should apply not only to the charges payable for use of the road infrastructure but also to vehicle tax rates;

Whereas elimination of distortion of competition between transport undertakings in the various Member States calls



## INITIAL COMMISSION PROPOSAL

## AMENDED PROPOSAL

Whereas a harmonized structure of the tax systems, on the basis of their maximum permissible gross laden weights within categories classified according to the number and configuration of their axles, is needed for the implementation of a Community-wide road cost allocation system without creating distortions of competitions;

Whereas tax rates should be determined in such a way as to reflect the costs caused to the road infrastructures by these vehicles; whereas for this purpose the taxation on any vehicle, taking account of the excise on diesel fuel at its harmonized level should cover at least the traffic-related cost of using the infrastructure by that vehicle; whereas the net payment of vehicle taxes should reflect the payment of tolls for the use of certain road infrastructure in certain Member States;

for both the harmonization of taxation systems — vehicle taxes, excise duty on fuels or charges for the use of a facility — and the establishment of a fair mechanism for charging infrastructure costs to carriers;

Whereas a fair system for charging infrastructure costs must take account, in proportions to be determined:

- of the direct costs of building and maintaining transport infrastructure,
- of the external or social costs arising from the use of such infrastructure, as for instance costs relating to the environment;

Whereas distortion of competition between the transport undertakings of the various Member States and the undue transfer of costs from one such State to another must be reduced without delay, and whereas it is therefore necessary for the phase of assessing and charging costs to be preceded by a transitional phase of harmonizing existing charges and taking certain measures in preparation for the final phase;

Whereas this harmonization process should as far as possible be accompanied by the development of the kind of taxation mechanisms best suited to a system of charging on a territorial rather than a national basis costs such as fuel excise duty and charges or fees for the use of a particular infrastructure;

Whereas, since it is particularly well suited to implementing the principle of territoriality, excise duty on fuels could, at least for the time being, be used as the main instrument for charging road transport costs;

deleted

Whereas the tax rates and the levels of charges should tend to reflect the wider cost of such vehicles, in particular the road infrastructure costs and the external costs, including environmental costs;

## INITIAL COMMISSION PROPOSAL

Whereas it is advisable initially to limit the adjustment of national taxation systems to diesel-powered commercial vehicles of more than a certain threshold tonnage liable to be used for intra-Community transport of goods;

Whereas an accurate allocation of road infrastructure costs and external costs should ideally be based on relevant cost figures in each of the Member States; whereas, failing the general availability of such figures at this moment, a temporary system, based on minimum vehicle tax rates to be observed by all Member States, should be introduced;

Whereas the longer-run objective is the implementation for vehicle taxation purposes of a Community-wide system following the principle of territoriality;

Whereas a strict time schedule for the implementation of the different steps should be followed;

Whereas it is necessary for the Commission to negotiate agreements with third countries with a view to ensuring the proper functioning of the Community road taxation system, to reducing differences in the taxation systems of the parties concerned and to assuring the free flow of road transport;

## AMENDED PROPOSAL

Whereas it is advisable initially to limit the adjustment of national taxation systems to commercial vehicles of more than a certain threshold tonnage liable to be used for intra-Community transport of goods;

Whereas for this purpose minimum rates should be set for the vehicle taxes currently applied by the Member States and any which might succeed them; whereas any Member State may adjust, and, if necessary, reduce such taxes on condition that the minimum rates are observed;

Whereas distortion of competition results *inter alia* from differences in national taxation systems and in particular from the fact that in some Member States road tolls are levied and in others not; whereas such distortion cannot be eliminated solely by harmonizing taxes or excise duties and whereas until technically and economically more appropriate forms of taxation are in place such distortion may be temporarily attenuated by the introduction of motorway user charges provided that these are not discriminatory and do not entail excessive formalities or create obstacles at borders; whereas these user charges should take infrastructure and external costs, including environmental costs, into account;

Whereas, in order to ensure that user charges and tolls are applied according to the principle of covering infrastructure costs, rules for their application should be laid down;

Whereas an accurate allocation of road infrastructure costs and external costs should ideally be based on a model to be decided and on figures compiled by using a single standard method in all the Member States; whereas no such model or figures are available anywhere at present and a temporary system, based on minimum vehicle tax rates to be observed by all Member States, should therefore be introduced;

no change except: Whereas the longer-term objective ... for vehicle tax purposes ...

Whereas a strict timetable should be set for adapting the rules to changes in the situation and implementing the definitive form of the Community taxation system;

deleted

## INITIAL COMMISSION PROPOSAL

## AMENDED PROPOSAL

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Member States shall adjust their systems of taxation of the use or possession of heavy goods vehicles in accordance with this Directive.

This Directive shall not apply to the non-European territories of the Member States.

It shall also not apply to the Canary Islands, Ceuta and Melilla, Azores or Madeira.

*Article 2*

1. For the purpose of this Directive, heavy goods vehicles means rigid lorries, road trains and articulated vehicles, registered in a Member State or, if not registered, belonging to undertakings established in a Member State or to residents of a Member State or used within a Member State by these undertakings or these residents provided that:

- their tractive power is provided by a diesel engine,
- they are used for the transport of goods by road,
- their maximum permissible gross laden weight is not less than 12 tonnes.

2. Member States shall have the right to exclude from the scope of this Directive vehicles of the armed forces and the police and vehicles belonging to or registered in the name of a public, regional or local authority.

*Article 1*

Member States shall adjust their systems of levying taxes or charges on the use or possession of heavy goods vehicles in accordance with the provisions of this Directive.

no change

no change except:

... the Azores ...

*Article 2*

1. For the purpose of this Directive:

- 'motorway' means a road specially designed and built for motor traffic, which does not serve properties bordering on it, and which:
  - (i) is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other either by a dividing strip not intended for traffic or, exceptionally, by other means;
  - (ii) does not cross at grade with any road, railway or tramway track or footpath; and
  - (iii) is specially signposted as a motorway,
- 'toll' means payment charged for travelling the distance between two points on the infrastructure referred to in Article 4 (2) (c), the amount of which shall, in respect of motorways, be based on the distance travelled,
- 'user charges' mean payment conferring the right to use motorways for a given period,
- 'heavy goods vehicles' mean rigid lorries, road trains and articulated vehicles registered in a Member State or, if not registered, put into circulation and belonging to undertakings established in a Member State or used within a Member State by these undertakings or these residents provided that:
  - the vehicles are used for the carriage of goods by road,
  - the maximum permissible gross laden weight of the vehicles is not less than 12 tonnes.

no change.

## INITIAL COMMISSION PROPOSAL

## AMENDED PROPOSAL

*Article 3*

Without prejudice to the provisions of Article 5, the adjustment of taxation systems referred to in Article 1 shall apply to the following taxes:

- Belgium:  
taxe de circulation sur les véhicules automobiles/verkeersbelasting op de autovoertuigen
- Denmark:  
vægtafgift af motorkøretøjer m.v.
- Germany:  
Kraftfahrzeugsteuer
- Greece:  
Τέλη κυκλοφορίας
- Spain:  
(a) impuesto sobre vehículos de tracción mecánica  
(b) impuesto sobre actividades económicas
- France:  
(a) taxe spéciale sur certains véhicules routiers  
(b) taxe différentielle sur les véhicules à moteur
- Ireland:  
Vehicle excise duties
- Italy:  
(a) tassa di circolazione sugli autoveicoli  
(b) addizionale dei 5% sulla tassa di circolazione
- Luxembourg:  
taxe sur les véhicules automoteurs
- Netherlands:  
motorrijtuigenbelasting
- Portugal:  
(a) imposto de camionagem  
(b) imposto de circulação
- United Kingdom:  
vehicle excise duties.

*Article 4*

1. Member States shall not levy taxes or charges on the use or possession of heavy goods vehicles other than the taxes referred to in Article 3.

*Article 3*

1. Without prejudice to the provisions of Articles 4 and 5, the adjustment of the taxation systems referred to in Article 1 shall apply to the following taxes:

no change.

2. If a Member State replaces any tax listed in paragraph 1 with another tax of the same kind, it shall notify the Commission, which shall take steps to amend the paragraph accordingly.

*Article 4*

no change except: ... taxes on the use ...

## INITIAL COMMISSION PROPOSAL

2. Paragraph 1 shall not prevent Member States from introducing or retaining:

- (a) Minor specific taxes or dues, such as the vehicle registration taxes levied in some Member States or the dues on vehicles or loads of abnormal weights or dimensions;
- (b) Parking fees and urban traffic charges, tolls on bridges, tunnels and mountain passes;
- (c) Subject to the conditions set out in Article 5, charges (road tolls) for the use of road infrastructures.

*Article 5*

1. Road tolls for heavy goods vehicles shall be subject to the following conditions:

- (a) tolls shall be charged without direct or indirect discrimination on the grounds of nationality and without discrimination on grounds of the origin or destination of the traffic;
- (b) tolls shall be related to the cost of constructing and operating the infrastructure concerned as well as the costs of its use;
- (c) collection of the tolls is organized in such a way as to hinder the free movement of traffic as little as possible. To this end Member States shall adapt their methods of collection to the most efficient technological developments.

2. For the purpose of this Directive tolls shall be permitted only on specific motorways, or motorway networks or parts thereof.

## AMENDED PROPOSAL

2. Notwithstanding paragraph 1. Member States may introduce or retain:

- (a) minor specific taxes or charges levied upon registration of the vehicle or imposed on vehicles or loads of abnormal weights or dimensions;
- (b) parking fees and specific urban traffic charges;
- (c) subject to the conditions set out in Article 5, charges for the use of the road infrastructure, such as tolls or other levies in respect of motorways, bridges, tunnels and mountain pass roads.

*Article 5*

1. Road tolls or charges payable in respect of heavy goods vehicles for the use of the road infrastructure shall be governed by the following conditions, it being understood that a single road section may not be subject to both forms of charging at the same time:

- (a) tolls and user charges shall be applied without direct or indirect discrimination on the grounds of nationality and without discrimination on grounds of the origin or destination of the traffic;
- (b) tolls and user charges shall be related to the cost of constructing and operating the infrastructure concerned as well as the costs of its use;
- (c) tolls and user charges shall be applied and collected and their payment monitored in such a way as to cause as little hindrance as possible to the free flow of traffic and avoid any mandatory stops or checks at the Community's internal borders. To this end, Member States shall cooperate to adapt their methods of collection in line with the most efficient technological developments, set up joint systems for collecting tolls at internal borders, and, in the case of user charges, establish methods of paying such charges in other Member States;
- (d) the rate of user charges shall be proportional to the duration of the use made of the motorway infrastructure. The daily, weekly and monthly rates shall be 1/260, 1/52 and 1/12 respectively of the annual user charge rate. These rates may be increased by a small percentage to cover genuine administrative costs; this percentage may not be set at a level likely to deter users.

2. Tolls and user charges shall be permitted on the entire motorway network or on specific motorways, specific motorway networks or specific parts thereof.

## INITIAL COMMISSION PROPOSAL

'Motorway' means a road specially designed and built for motor traffic, which does not serve properties bordering on it, and which:

- (i) is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other either by a dividing strip not intended for traffic or, exceptionally, by other means;
- (ii) does not cross at level with any road, railway or tramway track, or footpath; and
- (iii) is specially signposted as a motorway.

*Article 6*

1. For taxation purposes heavy goods vehicles shall be classified by categories according to the number and configuration of their axles.

2. Within each category or sub-category the basis of taxation shall be the maximum permissible gross laden weight of the heavy goods vehicles.

3. Differentiation of maximum permissible gross laden weight shall be implemented on the basis of the classification given in Annex I.

*Article 7*

1. Procedures for the levying and collection of taxes shall be determined by each Member State.

*Article 8*

1. Heavy goods vehicles shall be exempted, in Member States other than the Member State under whose jurisdiction they fall, from the taxes mentioned in Article 3. These vehicles shall be subject to those taxes as if they were used exclusively in the Member State under whose jurisdiction they fall.

2. Without prejudice to the provisions of Article 8 of Council Directive 75/130/EEC of 17 February 1975 on the establishment of common rules for certain types of combined transport of goods between Member States<sup>(1)</sup>, as amended by Council Directive 82/603/EEC of 28 July 1982<sup>(2)</sup>, Member States may not grant heavy goods vehicles any exemption from or reduction in the taxes mentioned in Article 3 and in particular:

## AMENDED PROPOSAL

deleted

3. Each year member States shall report to the Commission on the rates they set; the report shall also include enough information to show that the conditions laid down in paragraphs (1) and (2) are being met.

deleted

*Article 6*

1. Procedure for levying and collecting the taxes referred to in Article 3 shall be determined by each Member State.

*Article 7*

1. Heavy goods vehicles shall be exempted, in Member States other than the Member States under whose jurisdiction they fall, from the taxes referred to in Article 3.

2. Without prejudice to the provisions of Article 10 and Article 8 of Council Directive 75/130/EEC<sup>(1)</sup>, Member States may not grant heavy goods vehicles any exemption from or reduction in the taxes referred to in Article 3, particularly on the grounds of:

<sup>(1)</sup> OJ No L 48, 22. 2. 1975, p. 31.

<sup>(2)</sup> OJ No L 247, 23. 8. 1982, p. 6.

<sup>(1)</sup> OJ No L 48, 22. 2. 1975, p. 31.

## INITIAL COMMISSION PROPOSAL

- (a) on the grounds of their being in the territory of other Member States;
- (b) on the grounds of certain quantitative characteristics of heavy goods vehicles (e.g. age of vehicles, number of vehicles in a single enterprise, etc.).

3. Member States may not grant any refund of vehicle tax on the basis of excise duty on diesel fuel which may be paid in respect of its vehicles for the period during which they are on the territory of other Member States.

4. However, Member States may grant exemptions from or reduction in tax in respect of the time the vehicles referred to in Article 2 spend in the territory of third countries, if the vehicles concerned are required to pay vehicle taxes similar to the tax resulting from this Directive.

*Article 9*

Provisionally, the Member States shall apply the minimum vehicle taxation rates calculated following the method described in Annex II. These will enter into force on 1 January 1992 and will be valid until 31 December 1994, the date after which the rates established on the basis of Article 10 shall apply.

*Article 10*

1. From 1 January 1995, Member States shall apply minimum vehicle tax rates established on the basis of the following paragraphs. The Council shall decide on those rates not later than 31 December 1993 on the basis of a proposal from the Commission put forward not later than 1 March 1983.

## AMENDED PROPOSAL

- (a) no change except: their being in ...
- (b) no change except: certain quantitative ... (e.g. age of vehicle ...).

3. no change except: ... in respect of their vehicles...

4. Member States may grant tax exemptions or reductions in proportion to the time the vehicles referred to in Article 2 spend in the territory of third countries, if the vehicles concerned are required to pay vehicle taxes similar to the taxes referred to in Article 3.

*Article 8*

1. Without prejudice to the structure of the taxes referred to in Article 3, Member States shall set the rates so as to ensure that the tax rate for each vehicle category or sub-category referred to in Annex I is not lower than the minimum laid down in that Annex.

2. Until 31 December 1996 Greece and Portugal shall be authorized to apply rates that are lower than, but not less than 50 % of, those laid down in Annex I.

3. Every two years, the first such period ending by 31 December 1995, the Council shall examine the minimum rates on the basis of a report from the Commission, the aim being to ensure the effective operation of the internal market and avoid distortion of competition. Acting on a proposal from the Commission, the Council shall, if appropriate, amend such minimum rates.

4. The rates for converting minimum vehicle tax rates into national currencies shall be corrected if, in the preceding calendar year, the average exchange rate between the ECU and a national currency rises or falls by more than 5 % around the average.

*Article 9*

1. In the interests of the internal market and the common transport policy, the Council shall adopt as soon as possible appropriate measures aimed at introducing a harmonized system of road charging which shall include vehicle taxes, excise duty on fuel and charges (user charges and tolls) for the use of certain types of road infrastructure and shall take infrastructure and external costs, including environmental costs, into account.

## INITIAL COMMISSION PROPOSAL

2. For each of the vehicle categories which are specified in Article 6, Member States shall communicate to the Commission the corresponding road infrastructure costs, following the scheme given in Annex III, not later than 1 June 1992.

3. On the basis of the information on road infrastructure costs received from the Member States paragraph 2, the Commission shall determine average road infrastructure costs for each of the respective vehicle categories.

4. Using the information submitted by Member States, the Commission will calculate minimum vehicle tax rates for each of the vehicle categories, by taking into account the level of road infrastructure costs obtained under paragraphs 2 and 3 after having subtracted foreseeable tax revenue from diesel excise duty for the different vehicle categories, following the method given in Annex IV.

5. Vehicle tax rates shall be expressed in ecu.

6. Member States not complying with the time limits for transmitting the information as described in paragraphs 1 and 2 shall not be included in the calculations. The Community road infrastructure costs and the resulting tax rates shall then be calculated on the basis of the information sent by the other Member States only.  
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7. In so far as at least seven of the Member States would not be in a position to provide the Commission with the suitable data on road infrastructure costs of Annex III the Commission shall be authorized to increase at a maximum 10 % annually the rates provided for in Article 9.

8. The procedure set out in paragraphs 2 to 6 shall be repeated annually. On these occasions the Commission shall also take into account the need to establish a gradual increase of the coverage of road infrastructure costs so that at least total road infrastructure costs are covered, not later than 31 December 1999.

9. The Council shall decide before 31 December 1993 on a proposal from the Commission on the procedure to be followed for the implementation of paragraph 8.

## AMENDED PROPOSAL

2. For this purpose Member States shall communicate to the Commission the requisite data of the type specified in Annex II that are available to the national administrations without the latter incurring excessive costs.

3. In the light of the information referred to in paragraph 2, of experience gained in the intervening period and of an evaluation of the operation of the transport market, the Commission shall submit to the Council, before 1 January 1998, a report and proposals aimed at achieving the objective set out in paragraph 1. Acting on the proposals, the Council shall, by 31 December 1998, adopt a harmonized system which shall enter into force as of 30 June 1999 at the latest.

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## INITIAL COMMISSION PROPOSAL

*Article 11*

1. As from 1 January 1992, national authorities may reimburse vehicle taxes paid to them on the basis of the number of vehicle km driven on toll motorways in the Community. Reimbursement shall take place on a yearly basis by application of the following formula:

$$\frac{\text{vehicle-km driven on toll motorways} \times \text{nominal annual vehicle tax}}{100\,000}$$

100 000

## AMENDED PROPOSAL

*Article 10*

1. National authorities may refund vehicle taxes paid to them on the basis of:

(a) the number of vehicle-kilometres driven on toll motorways in the Community, refunds being paid annually in accordance with the following formula:

$$\frac{\text{vehicle-km driven on toll motorways} \times \text{nominal annual vehicle tax}}{100\,000}$$

100 000

and/or

(b) the number of days in respect of which charges for the use of motorways in the Community have been paid, refunds being paid annually in accordance with the following formula:

$$\frac{\text{total period (in days) for which user charges have been paid} \times \text{annual vehicle tax}}{365}$$

365

2. The distance in kilometres covered by rail, inland waterway and sea as part of an intermodal transport system may create an entitlement to a refund of vehicle tax, subject to the conditions of paragraph (1), for the distance travelled on roads on which a toll or user charge applies.

3. The refunds provided for in paragraphs (1) and (2) shall in no case result in the collected tax being lower than the minimum rates referred to in Article 8 (1) and (2).

*Article 12*

Member States shall implement the laws, regulations and administrative provisions necessary to comply with this Directive as from 1 January 1992. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

*Article 13*

This Directive is addressed to the Member States.

*Article 11*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1994. They shall immediately inform the Commission thereof.

no change

*Article 12*

no change

## ANNEX I

## MINIMUM RATES OF TAX TO BE APPLIED TO HEAVY GOODS VEHICLES

according to category of heavy goods vehicle (maximum permissible gross laden weight, in tonnes)

## RIGID LORRIES

More than	Not more than	Minimum tax (in ECU/year) (new rates)	Minimum tax (in ECU/year) (old rates)
<i>2 axles</i>			
7.5	12	0	0
12	13	31	71
13	14	86	204
14	15	121	286
15	18	274	645
<i>3 axles</i>			
15	17	54	127
17	19	111	262
19	21	144	339
21	23	222	523
23	25	345	814
25	26	345	814
<i>4 axles</i>			
23	25	146	343
25	27	228	537
27	29	362	853
29	31	537	1 267
31	32	537	1 267

*Note:*

Vehicles equipped with a drive axle with air suspension or an equivalent system shall be taxed on the basis of the rate applicable to the vehicle category immediately below. For example, a rigid lorry with 3 axles and a maximum permissible gross laden weight of 23 tonnes shall be taxed at ECU 144 instead of ECU 222.

## LORRIES (articulated vehicles)

More than	Not more than	Minimum tax (in ECU/year) (new rates)	Minimum tax (in ECU/year) (old rates)
<i>2 + 1 axles</i>			
12	14	0	0
14	16	0	0
16	18	14	32
18	20	32	76
20	22	75	175
22	23	97	229
23	25	175	414
25	28	307	723

More than	Not more than	Minimum tax (in ECU/year) (new rates)	Minimum tax (in ECU/year) (old rates)
<i>2 + 2 axles</i>			
23	25	70	165
25	26	115	271
26	28	169	398
28	29	204	482
29	31	335	790
31	33	465	1 097
33	36	706	1 666
36	38	706	1 666
<i>2 + 3 axles</i>			
36	38	515	1 216
38	40	700	1 652
<i>3 + 2 axles</i>			
36	38	454	1 072
38	40	628	1 481
40	44	929	2 191
<i>3 + 3 axles</i>			
36	38	225	532
38	40	336	791
40	44	535	1 262

*Note:*

Vehicles equipped with a drive axles with air suspension or an equivalent system shall be taxed on the basis of the rate applicable to the vehicle category immediately below. For example, an articulated vehicle with 3 axles and a maximum permissible gross laden weight of 23 tonnes shall be taxed at ECU 75 instead of ECU 97.

## ANNEX II

INFORMATION TO BE PROVIDED BY EACH MEMBER STATE PURSUANT  
TO ARTICLES 5 (3) AND 9 (2)

By 30 June of each year Member States shall provide the Commission, for each vehicle category covered by this Directive, with the following information relating to their infrastructure costs for the preceding year <sup>(1)</sup>.

For purposes of comparison, Commission departments require a detailed explanation of the method used to break down costs between vehicle categories. Each member State may choose its own cost allocation method.

**Information to be provided:**

1. Investment costs (calculated on the basis of an average of the last ten years):
  - relating to construction and extension, and
  - renewal and repairfor:
  - the entire network, and
  - that part of the network on which tolls or user charges are levied,with a breakdown by vehicle category.
2. Operating costs:
  - running costs (calculated on the basis of the average of the last three years),
  - overheads,
  - police costsfor:
  - the entire network, and
  - that part of the network on which tolls or user charges are levied,with a breakdown by vehicle category.
3. Vehicle taxes for each vehicle category referred to in Annex I.
4. Tolls and user charges for each vehicle category referred to in Annex I.
5. Length of network on which tolls or user charges are levied.
6. Number of vehicles in each category referred to in Annex I which are in circulation in the Member State in question (domestic and foreign vehicles) and number of vehicle-kilometres travelled by these vehicles (total, on motorways on which tolls or charges are levied).
7. Sum of the following taxes and/or charges:
  - excise duty on diesel,
  - vehicle taxes,
  - tolls and/or user charges for the vehicles covered by this Directive.
8. the external costs, including environmental costs, taken into account by the Member State concerned.

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<sup>(1)</sup> Expressed in national currencies.

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