

English edition

Information and Notices

<u>Notice No</u>	Contents	Page
	I Information	
	Council	
94/C 379/01	Council Resolution of 19 December 1994 on radioactive-waste management	1
94/C 379/02	Council Resolution of 19 December 1994 on the European contribution to the development of a Global Navigation Satellite System (GNSS)	2
94/C 379/03	Council Resolution of 22 December 1994 on the principles and timetable for the liberalization of telecommunications infrastructures	4
94/C 379/04	Council Resolution of 22 December 1994 on further development of the Community's satellite communications policy, especially with regard to the provision of, and access to, space segment capacity	5
94/C 379/05	Council Resolution of 22 December 1994 on the safety of roll-on/roll-off passenger ferries	8
	Commission	
94/C 379/06	Recapitulation of current tenders, published in the <i>Supplement to the Official Journal of the European Communities</i> , financed by the European Community under the European Development Fund (EDF) or the European Communities budget (week: 27 to 31 December 1994)	10
94/C 379/07	Appointment of members of the Scientific Committee on Cosmetology (1)	10
94/C 379/08	List of documents forwarded by the Commission to the Council during the period 19 to 22. 12. 1994	11
94/C 379/09	List of documents forwarded by the Commission to the Council during the period 26 to 30. 12. 1994	15

<u>Notice No</u>	Contents (continued)	Page
94/C 379/10	Communication pursuant to Article 5 of Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements ⁽¹⁾	16
94/C 379/11	Non-opposition to a notified concentration (Case No IV/M.534 — Bayer/Hoechst — JV textile dyestuff) ⁽¹⁾	34
94/C 379/12	Opinion of the Advisory Committee on concentrations given at the 20th and 22nd meetings on 27 May and 20 June 1994 concerning a revised preliminary draft decision relating to Case IV/M.430 — Procter & Gamble/VP Schickedanz (II) ⁽¹⁾	34
94/C 379/13	Opinion of the Advisory Committee on Concentrations given during its 25th session, on 25 October 1994, on a preliminary draft decision concerning case IV/M.469 — MSG Media Service.....	35
94/C 379/14	Commission communication concerning the withdrawal of the quarterly guidelines relating to production and deliveries of steel products	36

⁽¹⁾ Text with EEA relevance

I

(Information)

COUNCIL

COUNCIL RESOLUTION

of 19 December 1994

on radioactive-waste management

(94/C 379/01)

THE COUNCIL OF THE EUROPEAN UNION,

Recalling the Commission communication on a Community strategy for radioactive-waste management,

And the Council Resolution of 15 June 1992 on the renewal of the Community Plan of Action in the field of radioactive waste ⁽¹⁾, Council Directive 92/3/Euratom of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community ⁽²⁾, Council Directive 80/836/Euratom of 15 July 1980 amending the Directives laying down the basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation ⁽³⁾ and the Council Resolution of 1 February 1993 on a Community programme of policy and action in relation to the environment and sustainable development ⁽⁴⁾,

Believes that, in the interests of protecting citizens of the European Union against the dangers of ionizing radiation and also of protecting the environment, comprehensive policies covering, *inter alia*, all stages of the nuclear fuel cycle, for the management of radioactive waste are needed,

While such policies will dovetail smoothly with the Community's general waste policy as set out in the Council Resolution of 7 May 1990 ⁽⁵⁾,

Notes that all Member States produce radioactive waste to varying degrees; and that significant quantities of radioactive waste have already built up in the Community, awaiting disposal;

1. WELCOMES the fact that the Commission has put forward a communication proposing elements of a Community strategy in implementation of the Community plan of action in the field of radioactive waste;
 2. TAKES THE VIEW that each Member State is responsible for ensuring that the radioactive waste produced on its territory is properly managed and NOTES that, in this context, the possibility of a mutually agreed cooperation between Member States exists;
 3. CONSIDERS that the recycling and reuse of materials and equipment with, *inter alia*, a low level of radioactive contamination is an option to be explored further, where residual radioactivity is at too low a level to pose a threat to human health or the environment, in accordance with radiological protection requirements;
- therefore CALLS ON the Commission to continue its work in order to help determine the conditions for recycling and reuse permitting the clearance of such materials under the same conditions throughout the Community, subject to compliance with the basic safety standards for health protection against the dangers of ionizing radiation;
4. REAFFIRMS the importance of pressing on with efforts to reduce the volume and radiotoxicity of radioactive waste;

⁽¹⁾ OJ No C 158, 25. 6. 1992, p. 3.

⁽²⁾ OJ No L 35, 12. 2. 1992, p. 24.

⁽³⁾ OJ No L 246, 17. 9. 1980, p. 1. Directive as amended by Directive 84/467/Euratom (OJ No L 265, 5. 10. 1984, p. 4).

⁽⁴⁾ OJ No C 138, 17. 5. 1993, p. 1.

⁽⁵⁾ OJ No C 122, 18. 3. 1990, p. 2.

5. TAKES THE VIEW that Community research programmes including the Joint Research Centre programme should be given appropriate priority and that cooperation in research and development among Member States should be intensified in order to contribute to improved solutions for the management of radioactive waste;
6. EMPHASIZES that the establishment of suitable facilities for the treatment, conditioning, storage and final disposal of radioactive waste makes a necessary and important contribution to the creation of a safe waste-management infrastructure in general;
- CONSIDERS that optimum use should be made of facilities at national level and, where practicable and appropriate, between Member States, bearing in mind the political aspects of the matter and that further consideration should be given to the various approaches available, which might result, among other things, in a minimization of transport of radioactive waste;
7. CONSIDERS that the management of radioactive waste should continue to take into account the risks of long-term toxicity;
8. REAFFIRMS that shipments of radioactive waste between Member States and into and out of the Community must continue to be subject to appropriate controls;
9. EMPHASIZES the need for the public to be objectively informed regarding the management of radioactive waste, and INVITES Member States and the Commission to continue and, where appropriate, intensify their efforts to that end;
10. CONSIDERS that, among others, financial and economic instruments at the disposal of Member States could play a useful role in the implementation of effective waste-management strategies;
11. ENCOURAGES continued cooperation with various international bodies, in particular the NEA of the OECD and the IAEA, to provide international guidance and standards for the safe management of radioactive waste and to encourage the adoption of the best available techniques and best environmental practice;
12. CALLS ON the Commission to continue its work in the framework of this Resolution, with the assistance of the Consultative Committee set up for the plan of action in the field of radioactive waste and to submit to the Council in four years time a report on progress achieved.

COUNCIL RESOLUTION

of 19 December 1994

on the European contribution to the development of a Global Navigation Satellite System (GNSS)

(94/C 379/02)

THE COUNCIL OF THE EUROPEAN UNION,

Whereas the setting-up of a Global Navigation Satellite System for civil use will contribute to the attainment of important Community objectives, such as the completion of the internal market and the strengthening of economic and social cohesion;

Whereas the setting-up and development of a satellite navigation system are also aimed at improving the long-term and sustainable mobility of people and goods throughout Europe and transport safety;

Whereas the White Paper on Growth, Competitiveness and Employment envisages the need for European action in the field of satellite positioning and navigation;

Whereas the European Community contributes to setting-up and developing trans-European networks in the fields of transport, telecommunications and energy infrastructure in accordance with Article 129 (b) of the Treaty establishing the European Community;

Whereas the European Council, at its Corfu meeting, expressed the view that it is primarily up to the private sector to respond to the challenges in the field of information technology and to take the necessary initiatives, in particular as regards financing; whereas the

European Union and its Member States are called upon to give political impetus, and to provide a clear and sound regulatory framework, and to promote by appropriate means transport projects within the framework of the information society;

Whereas, in order to attain these objectives, Community guidance is necessary, while complying with the principle of subsidiarity,

In the expectation that action by the European Union will make it possible to raise European industry to a level of competitiveness enabling it to participate in the deployment of a Global Navigation Satellite System (GNSS) and in the market for user devices,

WELCOMES the fact that the Commission has submitted a communication on the European contribution to the development of a Global Navigation Satellite System and the setting-up of a high-level coordinating group composed of representatives of national governments, users, telecommunications operators, the relevant international organizations, particularly the European Space Agency, ICAO and Eurocontrol, and industry, with the task of ensuring that activities undertaken in Europe in the satellite navigation field tend towards the same end and, in particular, to assist the Commission in the tasks defined below;

RECALLS

- its Resolution on the situation of European civil aviation ⁽¹⁾,
- its Resolution on telematics in the transport sector ⁽²⁾,
- its conclusions, drawn up on 28 September 1994, on 'Europe's way to the Information Society — an Action Plan',
- that the Community, within its specific research programmes, could contribute to the development of a Global Navigation Satellite System in accordance with Article 130f of the Treaty;

INVITES the Commission

1. to define the requirements of all potential users and describe the resulting possibilities;
2. to initiate or support work on the development and implementation of a European complement to existing systems using Inmarsat III satellites and any other augmentation technology required (GNSS 1);

3. to initiate and support, in parallel with GNSS 1 activities, the preparatory work needed for the design and organization of a global navigation satellite system (GNSS 2) for civil use, which should be compatible with GNSS 1 and should be operated according to international guidelines on an independent and, if possible, private-enterprise basis, in order to make it possible to use the results of GNSS 1 research and development work immediately;

4. to examine the possibilities of contributing to the necessary resources and to examine the potential for private-sector financing of these activities, taking into account a thorough cost-benefit evaluation;

5. to submit a draft programme indicating the different stages, taking into account national programmes, for the introduction of a Global Navigation Satellite System for civil use;

6. to take account of current developments in Europe including the pending determination of a plan for the implementation of the CNS/ATM concept of ICAO, in the context of its activities and to seek a concerted approach, in order to avoid duplication of effort in relation to ICAO and IMO and allow a European component of the Global Navigation Satellite System to be contributed without delay;

7. in respect of all the abovementioned actions, to cooperate closely with all relevant organizations, in particular with ICAO, IMO, Eurocontrol, the European Space Agency, the telecommunications operators and Eumetsat;

8. to update its programme regularly if necessary and to keep the Council informed of its activities concerning the schedule for proposals to be submitted to the Council, taking into consideration the development of the Global Navigation Satellite System as an ongoing process which will have to be adapted periodically, and therefore undertakes to return to the subject regularly;

INVITES the Member States to take appropriate measures for participation in the European contribution to satellite navigation systems, and to adopt, where possible and appropriate, a common approach, particularly within international organizations and in relation to non-Member States.

⁽¹⁾ OJ No C 309, 5. 11. 1994, p. 2.

⁽²⁾ OJ No C 309, 5. 11. 1994, p. 1.

COUNCIL RESOLUTION

of 22 December 1994

on the principles and timetable for the liberalization of telecommunications infrastructures

(94/C 379/03)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Commission communication of 28 October 1994 entitled 'Green Paper on the liberalization of telecommunications infrastructure and cable television networks — Part One: principles and timetable',

Having regard to the conclusions of the Presidency at the European Council held in Corfu on 24 and 25 June 1994,

Having regard to the Council resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market⁽¹⁾, and the Council resolution of 7 February 1994 on universal service principles in the telecommunications sector⁽²⁾,

Whereas the European Council considers it essential that the basic principles of the internal market should be extended to those areas such as energy and telecommunications which are still only partly covered by it, while ensuring that the town and country and public service requirements in these sectors are also safeguarded;

Whereas the European Council has called for the creation of a clear and stable regulatory framework for information infrastructures, notably as regards access to markets and compatibility of networks, and for the establishment of this regulatory framework as soon as possible at Community level;

Whereas satellite communications have already been liberalized by Commission Directive 94/46/EC of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications⁽³⁾ and whereas the liberalization of mobile and personal communications is in progress;

Whereas the basic principles of the single market up to now have not been extended to telecommunications infrastructures throughout the Community and whereas the relevant safeguards taking the public interest into account have not yet been defined;

Whereas the joint Industry/Telecommunications Council meeting on 28 September 1994 concluded that a first part of the Green Paper on the liberalization of telecommunications infrastructures, to be submitted by the Commission before 1 November 1994, should enable the Council to examine and, if possible, to decide on, the principles of liberalization and to fix a clear timetable,

1. WELCOMES the submission, by the Commission, of Part One of the Green Paper on the liberalization of telecommunications infrastructures;

2. NOTES in particular:

— the Commission's conclusions on the principles of, the procedures and the timetable for, the liberalization of telecommunications infrastructures,

— the subjects to be addressed by the Commission in Part Two of the Green Paper;

3. RECOGNIZES the general principle that the provision of telecommunications infrastructures should be liberalized by 1 January 1998.

To enable them to proceed with the necessary structural adjustments, the Member States which use the transitional period provided for voice telephony in the aforementioned Council resolution of 22 July 1993 shall be eligible for an additional transitional period of a maximum of five years. Very small networks may, where justified, be granted a period of up to two years;

4. AGREES that the general principle outlined in point 3 will be implemented by means of the following main measures:

— the necessary regulatory framework in order to ensure effective liberalization of the provision of telecommunications infrastructure will be set up by 1 January 1998,

⁽¹⁾ OJ No C 213, 6. 8. 1993, p. 1

⁽²⁾ OJ No C 48, 16. 2. 1994, p. 1.

⁽³⁾ OJ No L 268, 19. 10. 1994, p. 15.

- the regulatory framework, including the necessary safeguards, shall set up common principles ensuring, *inter alia*:
 - the provision and the financing of universal service,
 - the establishment of interconnection rules,
 - the setting up of licensing procedures and conditions,
 - comparable and effective market access including in third countries, notably through discussion in the appropriate framework,
 - fair competition;
5. REAFFIRMS the necessity that conditions governing the definition of the future Community policy on telecommunications infrastructures should be the result of a political agreement building on the compromise of December 1989 and notes the Commission's support for this approach;
6. NOTES the intention of the Commission to submit, by 1 January 1995, the second part of the Green Paper addressing in particular the regulatory framework including the safeguards to be established for the liberalization of telecommunications infrastructures;
7. WELCOMES that the Commission provides for a wide consultation of all interested parties of the Green Paper and in particular on its second part;
8. REQUESTS the Commission:
- to report to the European Parliament and the Council on the results of this consultation in order to allow for the determination of the necessary safeguards,
 - to prepare and to propose to the European Parliament and the Council, before 1 January 1996, the amendments which should be made to the Community regulatory framework;
9. INVITES the Commission and the Member States to continue consultation, in particular within the framework of the *ad hoc* high-level Committee of National Regulators referred to in the Council resolution of 17 December 1992 on the assessment of the situation in the Community telecommunications sector ⁽¹⁾.
- ⁽¹⁾ OJ No C 2, 6. 1. 1993, p. 5.

COUNCIL RESOLUTION

of 22 December 1994

on further development of the Community's satellite communications policy, especially with regard to the provision of, and access to, space segment capacity

(94/C 379/04)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Commission Directive 94/46/EC of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications ⁽¹⁾,

Having regard to the Treaty establishing the European Community,

Having regard to the Council resolution of 19 December 1991 on the development of the common market for satellite communications services and equipment ⁽²⁾,

Having regard to the Commission communication of 10 June 1994 on satellite communications: the provision of, and access to, space segment capacity,

⁽¹⁾ OJ No L 268, 19. 10. 1994, p. 15.

⁽²⁾ OJ No C 8, 14. 1. 1992, p. 1.

Whereas in its resolution of 19 December 1991, the Council gave its support to the general goals of the Commission's Green Paper on a common approach in the field of satellite communications in the European Community;

Whereas in its resolution of 6 May 1994 on the Community and space ⁽¹⁾, the European Parliament addresses the importance of a reinforcement of efforts to assist in the development of, *inter alia*, a competitive European satellite communications sector through a series of policy initiatives and actions, and proposes the firm establishment of a longer term Community satellite communications policy, taking full account of both the telecommunications and the space issues affecting the future of the sector;

Whereas efforts should be undertaken to ensure the future of this strategically important sector;

Whereas successful European participation in the global satellite communications market is, *inter alia*, dependent on the creation of a competitive satellite sector in a liberalized environment, on comparable and effective access to third country markets, on the availability of suitable technology, and on attracting substantial private investment;

Whereas these factors are, *inter alia*, essential elements to be taken into account to enable the satellite sector to make an appropriate contribution to the development of trans-European telecommunications networks and the development of a global information society;

Whereas the Community aims are to develop a common market for satellite communications services and to foster the competitiveness of the European satellite services sector; whereas these aims shall be achieved, *inter alia*, by the introduction and stimulation of competition among satellite communications service providers;

Whereas in an increasingly competitive environment, the availability of suitable, transparent and non-discriminatory, access arrangements to space segment resources is essential;

Whereas the effective management by the Member States of orbital and related frequency resources is closely connected with these arrangements;

Whereas space segment capacity is available from inter-government satellite organizations — in particular from Intelsat, Inmarsat and Eutelsat —, from public satellite operators, and from private satellite operators;

Whereas in general national telecommunications operators, either as signatories in the framework of intergovernmental systems or as owners of national systems, control access to a majority share of the space segment capacity; whereas these national operators are also in competition with other service providers in the provision of satellite services;

1. RECALLING that the Council resolution of 19 December 1991 on the development of the common market for satellite services and equipment:

— considered as a major goal improved access to the space segment and access to the space capacity of the intergovernmental organizations operating satellite systems and effective and accelerated procedures for the establishment of and access to separate satellite systems,

— expressed the need to keep carefully in mind industrial aspects, including the need for an internationally competitive European industry in the field of satellite communications;

2. RECOGNIZING:

2.1. in relation to the Community satellite communications sector:

(a) that this sector is a high technology sector of strategic importance, which has to be taken into account when further developing the Community's communications policy;

(b) that the consolidation and growth of a competitive Community satellite communications sector is dependent on, *inter alia*, the full reflection of its potential in the consideration of the satellite communications policy, research and development policy, external relations policy and industrial policy;

2.2. in relation to intergovernmental satellite organizations such as Intelsat, Inmarsat and in particular Eutelsat:

(a) that these organizations are of considerable importance in the supply of space segment capacity and that this capacity at present is supplied to signatories on a universal basis and under non-discriminatory conditions;

⁽¹⁾ OJ No C 205, 25. 7. 1994, p. 467.

- (b) that presently a review of the institutional and economic basis of these organizations is in progress;
- (c) that Member States pursuant to the rules of the Treaty shall take all appropriate steps to ensure that signatories exercise their functions with regard to the allocation of space capacity in a non-discriminatory manner in accordance with Directive 94/46/EC;
- 2.3. that a balanced approach by Member States with regard to effective management of orbital and related frequency resources, ensuring effective representation of their interests, is essential in order to assure equitable, non-discriminatory access by providers of space segment capacity, taking due account of the new competitive and commercial environment;
- 2.4. that satellite-based networks, services, and applications may contribute to the fast development of trans-European networks and that this may also contribute to the global information society;
3. IDENTIFIES AS BASIC GOALS for the further development of the satellite communications policy:
- 3.1. non-discriminatory access, for all providers and users of satellite services throughout the Community, to space segment capacity, including in particular space segment capacity provided by inter-governmental satellite organizations;
- 3.2. urgent adjustment of the intergovernmental satellite organizations such as Intelsat, Inmarsat and in particular Eutelsat in the light of the Community regulatory framework and the market requirements in accordance with the Treaty obligations and with the interest of the Community satellite communications sector, taking into account, *inter alia*, the following principles:
- (a) strict separation of all regulatory and operational aspects;
- (b) separation or more flexibility in the linkage of investment shares and usage;
- (c) non-discrimination and transparency, if both space segment capacity and satellite services are provided;
- 3.3. comparable and effective access to third country markets, in parallel with the Community market liberalization;
- 3.4. effective management of orbit and frequency resources within the framework of the International Telecommunications Union, building on the cooperation in CEPT and taking full account of Member States' sovereign rights, with the aim of improving the economic benefits and efficiency, and the market orientation of the current approach;
4. NOTES the intention of the Commission, to use, where necessary, the means available through the application of the Treaty provisions, in particular the competition rules to remove restrictions within the Community on access to space segment capacity;
5. INVITES the Member States:
- to assist each other, where necessary, and to cooperate closely, where appropriate, in implementing the basic goals mentioned above with regard to the reform of the intergovernmental satellite organizations such as Intelsat, Inmarsat and in particular Eutelsat, and with regard to the effective management of orbit and frequency resources,
- to apply the constituent instruments of these organizations at national level in line with the Treaty obligations, in particular with the competition rules, and with Community law,
- to provide for non-discriminatory access to space segment capacity at national level taking account of the relevant provisions of this resolution;
6. INVITES the Commission:
- to monitor the access arrangements in third country markets with a view to ensuring comparable and effective market access to third countries, in line with the GATT framework and other international obligations of Member States,
- to take due account, *inter alia*, of advantages offered by satellite-based applications in its development of a coherent strategy for Trans-European Networks;
7. REQUESTS the Commission to report on the progress in the implementation of the basic goals and the implementation of Community measures such as Directive 94/46/EC to the European Parliament and the Council.

COUNCIL RESOLUTION

of 22 December 1994

on the safety of roll-on/roll-off passenger ferries

(94/C 379/05)

THE COUNCIL OF THE EUROPEAN UNION,

Recalling the Commission communication on 'A common policy on safe seas' and the related Council resolution of 8 June 1993 ⁽¹⁾,

Deeply concerned by the disastrous accident involving the Estonian roll-on/roll-off passenger ferry 'Estonia' which capsized in stormy seas during her voyage from Tallinn to Stockholm on 28 September 1994 with the tragic loss of more than 900 lives,

Also aware of the fact that similar accidents with roll-on/roll-off passenger ferries have occurred in European waters in recent years,

Convinced that in the light of these casualties the operation of roll-on/roll-off passenger ferries in European waters and, in particular, the design and equipment, the quality of the crews and the responsibility of the owners and operators of this type of ship, must be reviewed and improved,

Referring to Council Directive 94/58/EC of 22 November 1994 on the minimum level of training of seafarers ⁽²⁾, and in particular to Article 8 (1) and (2) thereof, which *inter alia* establishes specific requirements for communication on board passenger ships,

I

1. WELCOMES the International Maritime Organization (IMO) initiative of an *ad hoc* panel of maritime experts to recommend improvements in the safety of roll-on/roll-off passenger ferries;
2. CALLS upon the Member States and the Commission to fully support the IMO initiative and to cooperate in such a way that the panel of experts can present its conclusions and recommendations by May 1995; calls upon the Member States and the Commission to cooperate in ensuring that the panel addresses not only the technical elements but also the wider human element;
3. INVITES the Member States and the Commission to submit or support proposals that the IMO should undertake:

- (a) an urgent and thorough review of the intact and damage stability requirements applied to roll-on/roll-off passenger ferries with the aim of significantly enhancing the survivability of such vessels;
- (b) a review of the evacuation procedures applying to roll-on/roll-off passenger ferries including the procedures, equipment and crew training requirements for rapid evacuation, effective and understandable communication of safety information and for giving evacuation instructions to passengers on board;
- (c) a review of the requirements for qualified medical personnel on board roll-on/roll-off passenger ferries undertaking long voyages;
- (d) preparatory work for the amendment of the Solas Convention or the preparation of a free-standing Convention to provide for the investigation of marine casualties and cooperation between States in the investigation of such casualties;
- (e) an examination of the necessary technical specifications for the mandatory fitting out of roll-on/roll-off passenger ferries with voyage recorders as an aid to accident investigation following a marine casualty;
- (f) the necessary steps to allow application of the standards set out in the 'Agreement concerning the stability of existing ro-ro passenger ships operating services to or from ports within a designated sea area of north west Europe' as a 'regional' standard and to enable Member States to apply these standards to all roll-on/roll-off passenger ferries operating to and from all ports of this specific region;
- (g) improved focusing and acceleration of the work of the Subcommittee on Flag State Implementation (FSI) of the IMO;
- (h) consideration of the need to prepare operational guidelines for use in adverse weather conditions given the size/type of ro-ro ships concerned and their area of operation;

⁽¹⁾ OJ No C 271, 7. 10. 1993, p.1.

⁽²⁾ OJ No L 319, 12. 12. 1994, p.28.

4. INVITES the Member States and the Commission to strive within the framework of the Paris Memorandum to apply as soon as possible but by 1 January 1995 at the latest the provisions related to expanded inspection embodied in the draft Directive on port-State control;

II

INVITES the Commission to submit proposals for Council decisions concerning:

1. the advance mandatory application of the International Safety Management Code (IMO Resolution A.741(18)) by 1 July 1996 to all regular roll-on/roll-off passenger ferry services operating to or from European ports, in compliance with international law;
2. a mandatory requirement that all regular roll-on/roll-off vessels carrying passengers to or from ports of the European Union on voyages lasting a number of hours yet to be determined, be equipped with a system indicating accurately the number and names, and on voyages of short duration the number only, of passengers and crews on board the vessel at any time except in case of specific derogation for voyages of very short duration. Such information should be communicated to the shore before the vessel leaves its berth for a place to which the relevant authorities have immediate access;
3. an expanded mandatory survey regime, including operational inspections etc., for all roll-on/roll-off passenger ferries operating to or from ports of the European Union prior to the start of a new service and subsequently at regular intervals;
4. a regime compatible with international law and the need to avoid arbitrary interference with the freedom to trade, for the control by Member States of the safety of all roll-on/roll-off passenger ferries serving European Union ports including the right of investigation of marine casualties as mentioned in the relevant IMO Resolutions;

III

1. TAKES NOTE of the Commission's intention to submit as soon as possible the proposals mentioned in its action programme and requested by the Council and which could favourably affect the safety of roll-on/roll-off passenger ferries, notably those relating to:

- the application of appropriate working hours and working conditions ensuring safety on board such passenger ships,
- common safety rules for marine equipment used on board commercial and passenger vessels, including rescue facilities, in particular on board vessels with high sides,
- mandatory application of the relevant provisions of certain IMO Assembly Resolutions,
- safety rules for passenger vessels engaged in domestic trade;

2. INVITES the Commission to investigate the effect of competition upon the safe operation of ferries and to report to the Council;
3. INVITES the Commission to report, one year after the implementation by the Member States of Council Directive 94/58/EC, on the effectiveness of the communication arrangements for passengers provided for in that Directive;

IV

1. URGES Member States to inform the Commission of any difficulty they encounter in the implementation of their Global Maritime Distress and Safety System (GMDSS) obligations;
2. URGES Member States to ensure that their requirements for the application of the guidelines for securing arrangements for the transport of road vehicles on board roll-on/roll-off ferries, and in particular those regarding lashings (IMO Resolution A.581(14)), are correctly fulfilled by roll-on/roll-off passenger ferry operators;
3. URGES all classification societies and in particular those who are European Members of the International Association of Classification Societies (IACS) to assess and tighten up their rules governing the structural elements of roll-on/roll-off ferries. Special consideration should be given to the construction and means of securing the doors of roll-on/roll-off passenger ferries which allow vehicle access to vehicle decks;
4. UNDERLINES the need to ensure that adequate search and rescue facilities are available;

V

DECIDES to keep the matter of ferry safety on its agenda.

COMMISSION

Recapitulation of current tenders, published in the *Supplement to the Official Journal of the European Communities*, financed by the European Community under the European Development Fund (EDF) or the European Communities budget

(week: 27 to 31 December 1994)

(94/C 379/06)

Invitation to tender No	Number and date of 'S' Journal	Country	Subject	Final date for submission of bids
3941	S 249, 28. 12. 1994	Belgium	B-Brussels: preselection of specialized companies, joint ventures or groupings	8. 2. 1995
3952	S 249, 28. 12. 1994	Barbados	BB-St. Michael: furniture and kitchen equipment	21. 3. 1995

Appointment of members of the Scientific Committee on Cosmetology

(94/C 379/07)

(Text with EEA relevance)

The Scientific Committee on Cosmetology was established by Commission Decision No 78/45/EEC ⁽¹⁾.

The Commission has decided to appoint, from 1 January 1995 until 20 October 1996, the following members, specialists in toxicology, dermatology, medicine, pharmacy, biology or other similar disciplines:

Mrs E.-L. SAINO, Mrs M. TAMMELA ⁽²⁾.

⁽¹⁾ OJ No L 13, 17. 1. 1978, p. 24.

⁽²⁾ Austria has not yet put forward a candidate.

**LIST OF DOCUMENTS FORWARDED BY THE COMMISSION TO THE COUNCIL
DURING THE PERIOD 19 TO 22. 12. 1994**

(94/C 379/08)

*These documents may be obtained from the Sales Offices, the addresses of which are given on the
back cover*

Code	Catalogue No	Title	Date adopted by the Commission	Date forwarded to the Council	Number of pages
COM(94) 558	CB-CO-94-602-EN-C	Proposal for a European Parliament and Council directive amending Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution from emissions from motor vehicles (?) (?)	16. 12. 1994	19. 12. 1994	12
COM(94) 559	CB-CO-94-603-EN-C	Proposal for a European Parliament and Council Directive amending Directive 88/77/EEC on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from diesel engines for use in vehicles (?) (?)	16. 12. 1994	19. 12. 1994	23
COM(94) 593	CB-CO-94-619-EN-C	Proposal for a Council Regulation (EC) on the European system of national and regional accounts in the European Community (1) (?)	16. 12. 1994	19. 12. 1994	586
COM(94) 595	CB-CO-94-682-EN-C	The Demographic Situation of the European Union 1994 Report	13. 12. 1994	19. 12. 1994	90
COM(94) 626	CB-CO-94-654-EN-C	Proposal for a European Parliament and Council Directive amending Directive 93/16/EEC which facilitates the free movement of doctors and provides for the mutual recognition of their diplomas, certificates and other evidence of formal qualifications, and conferring implementing powers on the Commission for the updating of certain articles thereof (?) (?)	16. 12. 1994	19. 12. 1994	8
COM(94) 628	CB-CO-94-653-EN-C	Proposal for a Council Decision on the conclusion of an Agreement in the form of an exchange of letters between the European Community of the one part and the Government of Denmark and the Home Government of the Faroe Islands of the other part, amending the tables of the Annex to Protocol 1 of the Agreement of 2 December 1991 between the European Economic Community of the one part and the Government of Denmark and the Home Government of the Faroe Islands of the other part	15. 12. 1994	19. 12. 1994	11
COM(94) 635	CB-CO-94-660-EN-C	Proposal for a Council Regulation (EC) amending Regulation (EEC) No 4007/87 extending the period referred to in Articles 90 (1) and 257 (1) of the Act of Accession of Spain and Portugal (?)	15. 12. 1994	19. 12. 1994	7

Code	Catalogue No	Title	Date adopted by the Commission	Date forwarded to the Council	Number of pages
COM(94) 639	CB-CO-94-669-EN-C	Proposal for a Council and Commission Decision on the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, signed at Brussels on 16 December 1991, with regard to the adoption of the necessary rules for the implementation of Article 62 (1) (i), (1) (ii) and (2) of the Europe Agreement	15. 12. 1994	19. 12. 1994	10
COM(94) 640	CB-CO-94-664-EN-C	Proposal for a Council Regulation (EC) allocating, for the period until 31 March 1995, certain catch quotas between Member States for vessels fishing in the Norwegian exclusive economic zone and the fishing zone around Jan Mayen (?)	16. 12. 1994	19. 12. 1994	7
COM(94) 642	CB-CO-94-665-EN-C	Proposal for a Council Regulation (EC) laying down for the period until 31 March 1995 certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Norway (?)	16. 12. 1994	19. 12. 1994	14
COM(94) 643	CB-CO-94-666-EN-C	Proposal for a Council Regulation (EC) amending Council Regulation (EEC) No 3013/89 on the common organization of the market in sheepmeat and goatmeat Proposal for a Council Regulation (EC) amending Regulation (EEC) No 3901/89 defining lambs fattened as heavy carcasses	16. 12. 1994	19. 12. 1994	14
COM(94) 680	CB-CO-94-701-EN-C	Proposal for a Council Regulation (EC) on certain procedures for applying the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part Proposal for a Council Regulation (EC) on certain procedures for applying the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part Commission Communication request for Council assent and consultation of the ECSC Committee, pursuant to Article 95 of the ECSC Treaty, concerning a draft: Commission Decision on certain procedures for applying the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part	16. 12. 1994	19. 12. 1994	48

Code	Catalogue No	Title	Date adopted by the Commission	Date forwarded to the Council	Number of pages
		<p>Commission Decision on certain procedures for applying the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part</p> <p>Commission Decision on certain procedures for applying the Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community of the one part, and the Republic of Estonia, of the other part</p> <p>Commission Decision on certain procedures for applying the Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community of the one part, and the Republic of Latvia, of the other part</p> <p>Commission Decision on certain procedures for applying the Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community of the one part, and the Republic of Lithuania, of the other part</p> <p>Commission Decision on certain procedures for applying the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part</p> <p>Commission Decision on certain procedures for applying the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part</p>			
COM(94) 600	CB-CO-94-625-EN-C	Proposal for a European Parliament and Council Directive amending Directive 89/398/EEC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses (*) (*)	16. 12. 1994	20. 12. 1994	6
COM(94) 641	CB-CO-94-670-EN-C	Proposal for a Council Regulation (EC) opening and providing for the administration of Community tariff quotas and ceilings and establishing Community surveillance for certain fish and fishery products originating in the Faroe Islands and establishing the detailed provisions for adapting these quotas (*)	19. 12. 1994	20. 12. 1994	18
COM(94) 648	CB-CO-94-676-EN-C	Proposal for a Council Regulation (EC) opening and providing for the administration of Community tariff quotas for certain agricultural and fishery products originating in Norway (*)	19. 12. 1994	20. 12. 1994	9

Code	Catalogue No	Title	Date adopted by the Commission	Date forwarded to the Council	Number of pages
COM(94) 538	CB-CO-94-565-EN-C	Commission Communication on the mid-term review of the Association of the overseas countries and territories with the European Community	21. 12. 1994	21. 12. 1994	56
COM(94) 644	CB-CO-94-667-EN-C	Opinion of the Commission pursuant to Article 189 b (2) (d) of the EC Treaty, on the European Parliament's amendment to the Council's common position regarding the proposal for a European Parliament and Council Decision concerning extension of the 'Europe against AIDS' programme (?)	21. 12. 1994	21. 12. 1994	4
COM(94) 652	CB-CO-94-680-EN-C	Commission Communication on blood safety and self-sufficiency in the European Community (?)	21. 12. 1994	21. 12. 1994	28
COM(94) 668	CB-CO-94-696-EN-C	Amended proposal for a Council Regulation (EC) concerning the arrangements applicable to imports into the Community of products originating in the Republics of Bosnia-Herzegovina, Croatia and Slovenia and the former Yugoslav Republic of Macedonia (?) Amended proposal for a Council Regulation (EC) establishing ceilings and Community surveillance for imports of certain products originating in the Republics of Bosnia-Herzegovina, Croatia and Slovenia and the former Yugoslav Republic of Macedonia (1995) (?)	21. 12. 1994	21. 12. 1994	61
COM(94) 672	CB-CO-94-707-EN-C	Proposal for a Council Regulation (EC) amending Regulation (EEC) No 337/75 establishing a European Centre for the Development of Vocational Training (?)	21. 12. 1994	21. 12. 1994	4
COM(94) 675	CB-CO-94-699-EN-C	Proposal for a Council Regulation (EC) extending the provisional anti-dumping duty on imports of tungsten ores and concentrates, tungstic oxide, tungstic acid, tungsten carbide and fused tungsten carbide originating in the People's Republic of China	21. 12. 1994	21. 12. 1994	5
COM(94) 650	CB-CO-94-678-EN-C	Amended proposal for a Council Regulation (EC) in the field of employment creation and support to small and micro-enterprises in the Maghreb countries (?)	22. 12. 1994	22. 12. 1994	5
COM(94) 669	CB-CO-94-705-EN-C	Commission Communication to the Council and the European Parliament — The European Union's priorities for the World Summit for Social Development (Copenhagen, March 1995) (?)	21. 12. 1994	22. 12. 1994	8

Code	Catalogue No	Title	Date adopted by the Commission	Date forwarded to the Council	Number of pages
COM(94) 670	CB-CO-94-706-EN-C	Commission Communication to the Council and the European Parliament — Directions for the European Union on environmental indicators and green national accountings. The integration of environmental and economic information systems (*)	22. 12. 1994	22. 12. 1994	15
COM(94) 683	CB-CO-94-709-EN-C	Proposal for a Council Regulation (EC) imposing a definitive anti-dumping duty on imports of furfuraldehyde originating in the People's Republic of China	22. 12. 1994	22. 12. 1994	15

(*) This document contains an impact assessment on business, and in particular on SME's.

(†) This document will be published in the *Official Journal of the European Communities*.

(‡) Text with EEA relevance.

NB: COM documents are available by subscription, either for all editions or for specific subject areas, and by single copy, in which case the price is based pro rata on the number of pages.

**LIST OF DOCUMENTS FORWARDED BY THE COMMISSION TO THE COUNCIL
DURING THE PERIOD 26 TO 30. 12. 1994**

(94/C 379/09)

These documents may be obtained from the Sales Offices, the addresses of which are given on the back cover

Code	Catalogue No	Title	Date adopted by the Commission	Date forwarded to the Council	Number of pages
COM(94) 688	CB-CO-95-002-EN-C	Proposal for a Council Regulation (EC) extending the provisional anti-dumping duty on imports of colour television receivers originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand	21. 12. 1994	27. 12. 1994	5

(*) This document contains an impact assessment on business, and in particular on SME's.

(†) This document will be published in the *Official Journal of the European Communities*.

(‡) Text with EEA relevance.

NB: COM documents are available by subscription, either for all editions or for specific subject areas, and by single copy, in which case the price is based pro rata on the number of pages.

Communication pursuant to Article 5 of Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements

(94/C 379/10)

(Text with EEA relevance)

The Commission invites all interested parties to send their comments on the following draft Commission Regulation (EC) on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements. These comments should reach the Commission on or later than 28 February 1995 at the following address:

Commission of the European Communities,
Directorate-General for Competition,
Directorate for General Competition Policy and Coordination,
150, Avenue de Cortenberg,
B-1049 Brussels.

Commission regulation on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Community,

Having regard to Council Regulation No 19/65/EEC of
2 March 1965 on the application of Article 85 (3) of the
Treaty to certain categories of agreements and concerted
practices⁽¹⁾ as last amended by the Act of Accession
of . . . ,

Having published a draft of this Regulation,

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

Whereas:

- (1) Pursuant to Regulation No 19/65/EEC the
Commission is empowered to declare by means of

a Regulation that Article 85 (3) of the Treaty applies to certain categories of agreements falling within Article 85 (1) to which only two undertakings are party and by which one party agrees with the other to supply only to that undertaking certain other goods for resale within a defined territory of the common market. The experience gained in dealing with many motor vehicle distribution and servicing agreements allows a category of agreements to be defined which can generally be regarded as satisfying the conditions laid down in Article 85 (3). These are agreements, for a definite or an indefinite period, by which the supplying party entrusts to the reselling party the task of promoting the distribution and servicing of certain products of the motor vehicle industry in a defined area and by which the supplier undertakes to supply contract goods for resale only to the dealer, or only to a limited number of undertakings within the distribution network besides the dealer, within the contract territory.

(¹) OJ No 36, 6. 3. 1965, p. 533/65.

A list of definitions for the purpose of this Regulation is set out in Article 10.

- (2) Notwithstanding that the obligations imposed by distribution and servicing agreements which are listed in Articles 1, 2 and 3 of this Regulation normally have as their object or effect the prevention, restriction or distortion of competition within the common market and are normally apt to affect trade between Member States, the prohibition Article 85 (1) of the Treaty may nevertheless be declared inapplicable to these agreements by virtue of Article 85 (3), albeit only under certain restrictive conditions.
- belong to the same distribution system (Article 3, point 10 (a)), or
 - purchase spare parts for their own use in effecting repairs or maintenance (Article 3, point 10 (b)).
- (3) The applicability of Article 85 (1) of the Treaty to distribution and servicing agreements in the motor vehicle industry stems in particular from the fact that restrictions on competition and the obligations connected with the distribution system listed in Articles 1 to 4 of this Regulation are regularly imposed in the same or similar form throughout the common market for the products supplied within the distribution system of a particular manufacturer. The motor vehicle manufacturers cover the whole common market or substantial parts of it by means of a cluster of agreements involving similar restrictions on competition and affect in this way not only distribution and servicing within Member States but also trade between them.
- (4) The exclusive and selective distribution clauses can be regarded as indispensable measures of rationalization in the motor vehicle industry because motor vehicles are consumer durables which at both regular and irregular intervals require expert maintenance and repair, not always in the same place. Motor vehicle manufacturers cooperate with the selected dealers and repairers in order to provide specialized servicing for the product. On grounds of capacity and efficiency alone, such a form of cooperation cannot be extended to an unlimited number of dealers and repairers. The linking of servicing and distribution must be regarded as more efficient than a separation between a distribution organization for new vehicles on the one hand and a servicing organization which would also distribute spare parts on the other, particularly as, before a new vehicle is delivered to the final consumer, the undertaking within the distribution system must give it a technical inspection according to the manufacturer's specification.
- (5) However, obligatory recourse to the authorized network is not in all respects indispensable for efficient distribution. It should therefore be provided that the supply of contract goods to resellers may not be prohibited where they:
- Measures taken by a manufacturer or by undertakings within the distribution system with the object of protecting the selective distribution system are compatible with the exemption under this Regulation. This applies in particular to a dealer's obligation to sell vehicles to a final consumer using the services of an intermediary only where that consumer has authorized that intermediary to act as his agent (Article 3, point 11).
- (6) It should be possible to bar wholesalers not belonging to the distribution system from reselling parts originating from motor vehicle manufacturers. It may be supposed that the system of rapid availability of spare parts across the whole contract programme, including those with a low turnover, which is beneficial to the consumer, could not be maintained without obligatory recourse to the authorized network.
- (7) The ban on dealing in competing products may be exempted in so far as it does not inhibit the dealer from also distributing vehicles of other makes in a manner which avoids all confusion between makes and sales premises (Article 3, point 3). The obligation to restrain from selling competing products other than in separate sales premises, under separate management, linked to the general obligation to avoid confusion between different makes and the place of sale, guarantees exclusivity of distribution for each make in each place of sale. This last obligation has to be implemented in good faith by the distributor so that the promotion, sale and aftersales service cannot, in any manner, cause confusion in the eyes of the consumer or result in unfair practices on the part of the distributor with regard to suppliers of competing makes. In order to maintain the competitiveness of competing products the separate management of different undertakings engaged in distribution has to be carried out by distinct legal entities. However, this does not prevent the same distributor having interests in different distribution undertakings. Such an obligation provides an incentive for the dealer to develop sales and servicing of contract goods and thus promotes competition in the supply of those products as well as between those products and competing products. The same

arguments justify exempting the requirement that the dealer should not deal in other vehicles at premises used for the distribution of contract goods (Article 3, point 5).

- (8) However, bans on dealing in competing products cannot be regarded as indispensable in all circumstances to efficient distribution. Dealers must be free to obtain from third parties supplies of parts which match the quality of those offered by the manufacturer, for example where the parts are produced by a sub-contract manufacturer who also supplies the motor vehicle manufacturer, and to use and sell them. They must also keep their freedom to choose parts which are usable in motor vehicles within the contract programme and which match or exceed the quality standard. Such a limit on the ban on dealing in competing products takes account of the importance of vehicle safety and of the maintenance of effective competition (Article 3, point 4 and Article 4 (1), points 6 and 7).
- (9) The restrictions imposed on the dealer's activities outside the allotted area lead to more intensive distribution and servicing efforts in an easily supervised contract territory, to knowledge of the market based on closer contact with consumers, and to more demand-orientated supply (Article 3, points 8 and 9). However, demand for contract goods must remain flexible and should not be limited on a regional basis. Dealers must not be confined to satisfying the demand for contract goods within their contract territories, but must also be able to meet demand from persons and undertakings in other areas of the common market. Dealers' advertising in a medium which is directed to customers outside the contract territory should not be prevented, because it does not run counter to the obligation to promote sales within the contract territory. The term 'advertising' does not cover direct contacts with customers at their place of residence, by communication through the media or by visits; the initiative for the sale of a vehicle outside the territory must be taken by the customer.
- (10) So as to give firms greater legal certainty, certain obligations imposed on the dealer that do not stand in the way of exemption should be specified regarding the observation of minimum distribution and servicing standards (Article 4 (1), point 1), regularity of orders (Article 4 (1), point 2), the achievement of quantitative sales or stock targets agreed by the parties or determined by means of arbitration in the event of disagreement (Article 4 (1), points 3 to 5) and the arrangements for after-sales service (Article 4 (1), points 6 to 9). Such obligations are directly related to the obligations in Articles 1, 2 and 3 and influence their restrictive effect. They may therefore be exempted for the same reasons as the latter where they fall in individual cases under the prohibition contained in Article 85 (1) of the EC Treaty (Article 4 (2)).
- (11) Pursuant to Regulation No 19/65/EEC, the conditions which must be satisfied if the declaration of inapplicability is to take effect must be specified.
- (12) Under Article 5 (1), points 1 (a) and (b) it is a condition of exemption that the undertaking should honour the guarantee and provide free servicing and vehicle recall work, and repair and maintenance services necessary for the safe and reliable functioning of the vehicle, irrespective of where in the common market the vehicle was purchased. These provisions are intended to prevent the consumer's freedom to buy anywhere in the common market from being limited.
- (13) Article 5 (1), point 2 (a) is intended to allow the manufacturer to build up a coordinated distribution system, but without hindering the relationship of confidence between dealers and sub-dealers. Accordingly, if the supplier reserves the right to approve appointments of sub-dealers by the dealer, he must not be allowed to withhold approval arbitrarily.
- (14) Article 5 (1), point 2 (b) obliges the supplier not to impose on a dealer within the distribution system requirements, as defined in Article 4 (1), which are discriminatory or inequitable.
- (15) Article 5 (1), point 2 (c) is intended to counter the concentration of the dealer's demand on the supplier which might follow from cumulation of discounts. The purpose of this provision is to allow spare-parts suppliers which do not offer as wide a range of goods as the manufacturer to compete on equal terms.
- (16) Article 5 (1), point 2 (d) makes exemption subject to the condition that the dealer must be able to purchase for customers in the common market volume-produced passenger cars with the specifications appropriate for their place of residence or where the vehicle is to be registered, in so far as

the corresponding model is also supplied by the manufacturer through undertakings within the distribution system in that place (Article 10, point 10). This provision obviates the danger that the manufacturer and undertakings within the distribution network might make use of product differentiation as between parts of the common market to partition the market.

- (17) Article 5 (2) makes the exemption of the ban on dealing in other makes of vehicle subject to further threshold conditions. This is to prevent the dealer from becoming economically over-dependent on the supplier because of such obligations, and abandoning the competitive activity which is nominally open to him, because to pursue it would be against the interests of the manufacturer or other undertakings within the distribution network.
- (18) Under Article 5 (2), point 1, the dealer may, where there are exceptional reasons, oppose application of excessive obligations covered by Article 3, point 5.
- (19) Article 5 (2), points 2 and 3, (3) and (4) lay down minimum requirements for exemption which concern the duration and termination of the distribution and servicing agreement; the combined effect of a no-competition clause or a ban on dealing in other makes of vehicle, the investments the dealer makes in order to improve the distribution and servicing of contract goods and a short-term agreement or one terminable at short notice is greatly to increase the dealer's dependence on the supplier. A system of arbitration has been established to take account of this situation. A supplementary possibility for termination at short notice is available to the supplier where the dealer makes use of its right to distribute competing products in accordance with Article 3 point 3. This termination has to be founded on objective criteria. Amongst the justifications which can be put forward by the supplier are in particular those concerning the protection of its investment in its network. It is appropriate to specify a period of one year's notice of termination and to provide for arbitration in case of disagreement between the parties, without prejudice to the parties rights of access to competent courts in accordance with the provision of applicable national law (Article 5 (4), first indent).
- (20) Pursuant to Regulation No 19/65/EEC, the restrictions or provisions which must not be contained in the agreements if the declaration of inapplicability of Article 85 (1) under this Regulation is to take effect are to be specified.
- (21) Agreements under which one motor vehicle manufacturer entrusts the distribution of its products to another must be excluded from the block exemption under this Regulation because of their far-reaching impact on competition (Article 6, point 1).
- (22) So as to ensure that the parties remain within the limits of the Regulation, any agreements whose object goes beyond the products or services referred to in Article 1 or which stipulate restrictions of competition not exempted by this Regulation should also be excluded from the exemption (Article 6 (1), points 2 and 3).
- (23) The exemption similarly does not apply where the parties agree between themselves obligations concerning goods covered by this Regulation which would be acceptable in the combination of obligations which is exempted by Commission Regulations (EEC) No 1983/83 ⁽¹⁾ or (EEC) No 1984/83 ⁽²⁾ on the application of Article 85 (3) of the Treaty to categories of exclusive distribution agreements and exclusive purchasing agreements respectively, but which go beyond the scope of the obligations exempted by this Regulation (Article 6, point 4).
- (24) So as to protect dealers' investments and prevent any circumvention by suppliers of the rules governing the termination of agreements, it should be confirmed that the exemption does not apply where the supplier reserves the right to amend unilaterally during the period covered by the contract the terms of the exclusive territorial dealership granted to the dealer (Article 6 (1), point 5).
- (25) So as to maintain effective competition at the distribution stage, it is necessary to provide that the manufacturer or supplier will lose the benefit of exemption where he restricts the dealer's freedom to develop his own policy on resale prices (Article 6 (1), point 6).
- (26) The principle of a single market requires that consumers should be able to purchase motor vehicles wherever in the Community prices or terms are most favourable. The benefits of this

⁽¹⁾ OJ No L 173, 30. 6. 1983, p. 1.

⁽²⁾ OJ No L 173, 30. 6. 1983, p. 5.

Regulation cannot therefore be accorded to manufacturers or suppliers who impede parallel imports or exports through measures taken in respect of consumers, intermediaries or undertakings within the network (Article 6 (1), points 7 to 8).

- (27) So as to ensure, in the interest of consumers, effective competition on the maintenance and repair markets, the exemption must also be withheld from manufacturers or suppliers who impede independent spare-part producers' and distributors' access to the markets or restrict the freedom of resellers or repairers, whether or not they belong to the network, to purchase and use such spare parts where they match the quality of the original spare parts. The supply by the distributor of spare parts having equivalent quality from third undertakings of its choice and the corresponding right for these undertakings to furnish spare parts to resellers of their choice, as well as their freedom to affix their trade mark or logo, is provided for subject to compliance with industrial property rights applicable to these spare parts (Article 6 (1), points 9 to 11).
- (28) In order to give to final consumers realistic possibilities of choice as between repairers of the network and independent repairers, it is appropriate to impose upon manufacturers the obligation to give to third parties, which are not part of the network, the technical information necessary for the repair and maintenance of their makes of car (Article 6 (1) point 12).
- (29) For reasons of clarity, the legal effects arising from inapplicability of the exemption in the various situations referred to in the Regulation should be defined (Article 6 (2) and (3)).
- (30) Distribution and servicing agreements can be exempted, subject to the conditions laid down in Articles 5 and 6, so long as the application of obligations covered by Articles 1 to 4 of this Regulation brings about an improvement in distribution and servicing to the benefit of the consumer and effective competition exists, not only between manufacturers' distribution systems but also to a certain extent within each system within the common market. As regards the categories of products set out in Article 1 of this Regulation, the conditions necessary for effective competition, including competition in trade between Member States, may be taken to exist at present, so that European consumers may be considered in general

to take an equitable share in the benefit from the operation of such competition.

- (31) Transitional arrangements must be established for agreements existing on the date of entry into force of this Regulation which satisfy the exemption conditions laid down by Regulation (EEC) No 123/85 (Article 7). The Commission's powers to withdraw the benefit of exemption or to alter its scope in individual cases should in addition be spelled out and several important examples of such cases listed. Where the Commission makes use of its power of withdrawal, as provided for in Article 8 point 2, it has in its appreciation to take into account those price differentials which do not principally result from the imposition of national fiscal measures or currency fluctuations between the Member States (Article 8).
- (32) In accordance with Regulation No 19/65/EEC, the exemption must be made applicable for a definite period. A period extending until 30 June 2005 is appropriate, because overall distribution schemes in the motor vehicle sector must be planned several years in advance. However, the Commission will proceed to evaluate on a regular basis the application of the Regulation by drawing up a report by 31 December 2000 (Articles 11 and 12).
- (33) Agreements which fulfil the conditions set out in this Regulation need not be notified.
- (34) This Regulation does not affect the application of Commission Regulations (EEC) Nos 1983/83 and 1984/83 or of Commission Regulations (EEC) Nos 417/85 and 418/85 of 19 December 1984 on the application of Article 85 (3) of the Treaty to categories of specialization agreements and to categories of research and development agreements⁽¹⁾, as last amended by the Act of Accession of . . . , or the right to request a Commission decision in an individual case pursuant to Council Regulation No 17. It is without prejudice to laws and administrative measures of the Member States by which the latter, having regard to particular circumstances, prohibit or declare unenforceable particular restrictive obligations contained in an agreement exempted under this Regulation; the foregoing cannot, however, affect the primacy of Community law,

⁽¹⁾ OJ No L 53, 22. 2. 1985, pp. 1 and 5.

OLD VERSION

NEW VERSION

HAS ADOPTED THIS REGULATION

HAS ADOPTED THIS REGULATION:

Article 1

Pursuant to Article 85 (3) of the Treaty it is hereby declared that subject to the conditions laid down in this Regulation Article 85 (1) shall not apply to agreements to which only two undertakings are party and in which one contracting party agrees to supply within a defined territory of the common market

- only to the other party, or
- only to the other party and to a specified number of other undertakings within the distribution system,

for the purpose of resale certain motor vehicles intended for use on public roads and having three or more road wheels, together with spare parts therefor.

Article 1

Pursuant to Article 85 (3) of the Treaty it is hereby declared that subject to the conditions laid down in this Regulation Article 85 (1) shall not apply to agreements to which only two undertakings are party and in which one contracting party agrees to supply within a defined territory of the common market

- only to the other party, or
- only to the other party and to a specified number of other undertakings within the distribution system,

for the purpose of resale certain motor vehicles intended for use on public roads and having three or more road wheels, together with spare parts therefor.

Article 2

The exemption under Article 85 (3) of the Treaty shall also apply where the obligation referred to in Article 1 is combined with an obligation on the supplier neither to sell contract goods to final consumers nor to provide them with servicing for contract goods in the contract territory.

Article 2

The exemption shall also apply where the obligation referred to in Article 1 is combined with an obligation on the supplier neither to sell contract goods to final consumers nor to provide them with servicing for contract goods in the contract territory.

Article 3

The exemption under Article 85 (3) of the Treaty shall also apply where the obligation referred to in Article 1 is combined with an obligation on the dealer:

1. not, without the supplier's consent, to modify contract goods or corresponding goods, unless such modification is the subject of a contract with a final consumer and concerns a particular motor vehicle within the contract programme purchased by that final consumer;
2. not to manufacture products which compete with contract goods;
3. neither to sell new motor vehicles which compete with contract goods nor to sell, at the premises used for the distribution of contract goods, new motor vehicles other than those offered for supply by the manufacturer;

Article 3

The exemption shall also apply where the obligation referred to in Article 1 is combined with an obligation on the dealer:

1. not, without the supplier's consent, to modify contract goods or corresponding goods, unless such modification is the subject of a contract with a final consumer and concerns a particular motor vehicle within the contract programme purchased by that final consumer;
2. not to manufacture products which compete with contract goods;
3. not to sell new motor vehicles which compete with contract goods except in separate sales premises, under separate management, in the form of a distinct legal entity and in a manner which avoids confusion between makes and sales premises and avoids unfair trading practices towards different suppliers;

OLD VERSION

4. neither to sell spare parts which compete with contract goods and do not match the quality of contract goods nor to use them for repair or maintenance of contract goods or corresponding goods;
5. not to conclude with third parties distribution or servicing agreements for goods which compete with contract goods;
6. without the supplier's consent, neither to conclude distribution or servicing agreements with undertakings operating in the contract territory for contract goods or corresponding goods nor to alter or terminate such agreements;
7. to impose upon undertakings with which the dealer has concluded agreements in accordance with point 6 obligations corresponding to those which the dealer has accepted in relation to the supplier and which are covered by Articles 1 to 4 and are in conformity with Articles 5 and 6;
8. outside the contract territory
 - (a) not to maintain branches or depots for the distribution of contract goods or corresponding goods,
 - (b) not to seek customers for contract goods or corresponding goods;
9. not to entrust third parties with the distribution or servicing of contract goods or corresponding goods outside the contract territory;
10. to supply to a reseller:
 - (a) contract goods or corresponding goods only where the reseller is an undertaking within the distribution system, or
 - (b) spare parts within the contract programme only where they are for the purposes of repair or maintenance of a motor vehicle by the reseller;
11. to sell motor vehicles within the contract programme or corresponding goods to final consumers using the services of an intermediary only if that intermediary has prior written authority to purchase a specified motor vehicle and, as the case may be, to accept delivery thereof on their behalf;

NEW VERSION

4. neither to sell spare parts which compete with contract goods and do not match the quality of contract goods nor to use them for repair or maintenance of contract goods or corresponding goods;
5. not to sell, at sales premises used for the distribution of contract goods, new motor vehicles other than those offered for supply by the manufacturer;
6. without the supplier's consent, neither to conclude distribution or servicing agreements with undertakings operating in the contract territory for contract goods or corresponding goods nor to alter or terminate such agreements;
7. to impose upon undertakings with which the dealer has concluded agreements in accordance with point 6 obligations corresponding to those which the dealer has accepted in relation to the supplier and which are covered by Articles 1 to 4 and are in conformity with Articles 5 and 6;
8. outside the contract territory
 - (a) not to maintain branches or depots for the distribution of contract goods or corresponding goods,
 - (b) not to seek customers for contract goods or corresponding goods using means other than advertising;
9. not to entrust third parties with the distribution or servicing of contract goods or corresponding goods outside the contract territory;
10. to supply to a reseller:
 - (a) contract goods or corresponding goods only where the reseller is an undertaking within the distribution system, or
 - (b) spare parts within the contract programme only where they are for the purposes of repair or maintenance of a motor vehicle by the reseller;
11. to sell motor vehicles within the contract programme or corresponding goods to final consumers using the services of an intermediary only if that intermediary has prior written authority to purchase a specified motor vehicle and, as the case may be, to accept delivery thereof on their behalf.

OLD VERSION

12. to observe the obligations referred to in points 1 and 6 to 11 for a maximum period of one year after termination or expiry of the agreement.

Article 4

1. Articles 1, 2 and 3 shall apply notwithstanding any obligation imposed on the dealer to:

- (1) observe, for distribution and servicing, minimum standards which relate in particular to:
 - (a) the equipment of the business premises and of the technical facilities for servicing;
 - (b) the specialized and technical training of staff;
 - (c) advertising;
 - (d) the collection, storage and delivery to customers of contract goods or corresponding goods and servicing relating to them;
 - (e) the repair and maintenance of contract goods and corresponding goods, particularly as concerns the safe and reliable functioning of motor vehicles;
- (2) order contract goods from the supplier only at certain times or within certain periods, provided that the interval between ordering dates does not exceed three months;
- (3) endeavour to sell, within the contract territory and within a specified period, such minimum quantity of contract goods as may be determined by agreement between the parties or, in the absence of such agreement, by the supplier on the basis of estimates of the dealer's potential sales;
- (4) keep in stock such quantity of contract goods as may be determined by agreement between the parties or, in the absence of such agreement, by the supplier on the basis of estimates of the dealer's potential sales of contract goods within the contract territory and within a specified period;
- (5) keep such demonstration vehicles within the contract programme, or such number thereof, as may be determined by agreement between the parties or, in the absence of such agreement, by the supplier on the basis of estimates of the dealer's potential sales of motor vehicles within the contract programme;

NEW VERSION

1. The exemption shall apply notwithstanding any obligation imposed on the dealer to:

- (1) observe, for distribution and servicing, minimum standards which relate in particular to:
 - (a) the equipment of the business premises and of the technical facilities for servicing;
 - (b) the specialized and technical training of staff;
 - (c) advertising;
 - (d) the collection, storage and delivery to customers of contract goods or corresponding goods and servicing relating to them;
 - (e) the repair and maintenance of contract goods and corresponding goods, particularly as concerns the safe and reliable functioning of motor vehicles;
- (2) order contract goods from the supplier only at certain times or within certain periods, provided that the interval between ordering dates does not exceed three months;
- (3) endeavour to sell, within the contract territory and within a specified period, a minimum quantity of contract goods, determined by the parties acting in common accord or by means of arbitration in the event of disagreement between the parties, in particular taking into account sales previously achieved in the territory as well as forecast sales estimates for the territory and at national level;
- (4) keep in stock such quantity of contract goods as may be determined in accordance with the procedure provided for in point 3;
- (5) keep such demonstration vehicles within the contract programme, or such number thereof, as may be determined in accordance with the procedure provided for in point 3;

OLD VERSION

- (6) perform guarantee work, free servicing and vehicle recall work for contract goods and corresponding goods;
- (7) use only spare parts within the contract programme or corresponding goods for guarantee work, free servicing and vehicle recall work in respect of contract goods or corresponding goods;
- (8) inform customers, in a general manner, of the extent to which spare parts from other sources might be used for the repair or maintenance of contract goods or corresponding goods;
- (9) inform customers whenever spare parts from other sources have been used for the repair or maintenance of contract goods or corresponding goods for which spare parts within the contract programme or corresponding goods, bearing a mark of the manufacturer, were also available.

2. The exemption under Article 85 (3) of the Treaty shall also apply where the obligation referred to in Article 1 is combined with obligations referred to in paragraph 1 above and such obligations fall in individual cases under the prohibition contained in Article 85 (1).

Article 5

1. Articles 1, 2 and 3 and Article 4 (2) shall apply provided that:

- (1) the dealer undertakes
 - (a) in respect of motor vehicles within the contract programme or corresponding thereto which have been supplied in the common market by another undertaking within the distribution network, to honour guarantees and to perform free servicing and vehicle recall work to an extent which corresponds to the dealer's obligation covered by point 6 of Article 4 (1) but which need not exceed that imposed upon the undertaking within the distribution system or accepted by the manufacturer when supplying such motor vehicles;
 - (b) to impose upon the undertakings operating within the contract territory with which the dealer has concluded distribution and servicing agreements as provided for in point 6 of Article 3 an obligation to honour guarantees and to perform free servicing and vehicle recall work at least to the extent to which the dealer himself is so obliged;

NEW VERSION

- (6) perform guarantee work, free servicing and vehicle recall work for contract goods and corresponding goods;
- (7) use only spare parts within the contract programme or corresponding goods for guarantee work, free servicing and vehicle recall work in respect of contract goods or corresponding goods;
- (8) inform customers, in a general manner, of the extent to which spare parts from other sources might be used for the repair or maintenance of contract goods or corresponding goods;
- (9) inform customers whenever spare parts from other sources have been used for the repair or maintenance of contract goods or corresponding goods.

2. The exemption shall also apply to the obligations referred to in paragraph 1 above where such obligations fall in individual cases under the prohibition contained in Article 85 (1).

Article 5

1. In all cases, the exemption shall apply only if:

- (1) the dealer undertakes:
 - (a) in respect of motor vehicles within the contract programme or corresponding thereto which have been supplied in the common market by another undertaking within the distribution network, to honour:
 - guarantees and to perform free servicing and vehicle recall work to an extent which corresponds to the dealer's obligation covered by point 6 of Article 4 (1),
 - repair and maintenance in accordance with point 1 (e) of Article 4 (1);
 - (b) to impose upon the undertakings operating within the contract territory with which the dealer has concluded distribution and servicing agreements as provided for in point 7 of Article 3 an obligation to honour guarantees and to perform free servicing and vehicle recall work at least to the extent to which the dealer himself is so obliged;

OLD VERSION

NEW VERSION

(2) the supplier

(a) shall not without objectively valid reasons withhold consent to conclude, alter or terminate sub-agreements referred to in Article 3, point 6;

(b) shall not apply, in relation to the dealer's obligations referred to in Article 4 (1), minimum requirements or criteria for estimates such that the dealer is subject to discrimination without objectively valid reasons or is treated inequitably;

(c) shall, in any scheme for aggregating quantities or values of goods obtained by the dealer from the supplier and from connected undertakings within a specified period for the purpose of calculating discounts, at least distinguish between supplies of

— motor vehicles within the contract programme,

— spare parts within the contract programme, for supplies of which the dealer is dependent on undertakings within the distribution network, and

— other goods;

(d) shall also supply to the dealer, for the purpose of performance of a contract of sale concluded between the dealer and a final customer in the common market, any passenger car which corresponds to a model within the contract programme and which is marketed by the manufacturer or with the manufacturer's consent in the Member State in which the vehicle is to be registered.

2. In so far as the dealer has, in accordance with Article 5 (1), assumed obligations for the improvement of distribution and servicing structures, the exemption referred to in Article 3, points 3 and 5 shall apply to the obligation not to sell new motor vehicles other than those within the contract programme or not to make such vehicles the subject of a distribution and servicing agreement, provided that:

(1) the parties

(a) agree that the supplier shall release the dealer from the obligations referred to in Article 3, points 3 and 5 where the dealer shows that there are objectively valid reasons for doing so;

(2) the supplier

(a) does not without objectively valid reasons withhold consent to conclude, alter or terminate sub-agreements referred to in Article 3, point 6;

(b) does not apply, in relation to the dealer's obligations referred to in Article 4 (1), minimum requirements or criteria for estimates such that the dealer is subject to discrimination without objectively valid reasons or is treated inequitably;

(c) distinguishes, in any scheme for aggregating quantities or values of goods obtained by the dealer from the supplier and from connected undertakings within a specified period for the purpose of calculating discounts, at least between supplies of

— motor vehicles within the contract programme,

— spare parts within the contract programme, for supplies of which the dealer is dependent on undertakings within the distribution network, and

— other goods;

(d) also supplies to the dealer, for the purpose of performance of a contract of sale concluded between the dealer and a final customer in the common market, any passenger car which corresponds to a model within the contract programme and which is marketed by the manufacturer or with the manufacturer's consent in the Member State in which the vehicle is to be registered.

2. In so far as the dealer has, in accordance with Article 4 (1), assumed obligations for the improvement of distribution and servicing structures, the exemption shall apply provided that:

(1) the supplier releases the dealer from the obligations referred to in Article 3, point 5 where the dealer shows that there are objectively valid reasons for doing so;

OLD VERSION

NEW VERSION

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>b) agree that the supplier reserves the right to conclude distribution and servicing agreements for contract goods with specified further undertakings operating within the contract territory or to alter the contract territory only where the supplier shows that there are objectively valid reasons for doing so;</p> <p>(2) the agreement is for a period of at least four years or, if for an indefinite period, the period of notice for regular termination of the agreement is at least one year for both parties, unless</p> <ul style="list-style-type: none"> — the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or — the dealer is a new entrant to the distribution system and the period of the agreement, or the period of notice for regular termination of the agreement, is the first agreed by that dealer. <p>(3) each party undertakes to give the other at least six months' prior notice of intention not to renew an agreement concluded for a definite period.</p> <p>3. A party may only invoke particular objectively valid grounds within the meaning of this Article which have been exemplified in the agreement if such grounds are applied without discrimination to undertakings within the distribution system in comparable cases.</p> <p>4. The conditions for exemption laid down in this Article shall not affect the right of a party to terminate the agreement for cause.</p> | <p>(2) the agreement is for a period of at least five years or, if for an indefinite period, the period of notice for regular termination of the agreement is at least two years for both parties; this period is reduced to at least one year where:</p> <ul style="list-style-type: none"> — the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or — the dealer is a new entrant to the distribution system and the period of the agreement, or the period of notice for regular termination of the agreement, is the first agreed by that dealer; <p>(3) each party undertakes to give the other at least six months' prior notice of intention not to renew an agreement concluded for a definite period.</p> <p>3. A party may invoke particular objectively valid grounds within the meaning of this Article only if they have been exemplified in the agreement and if such grounds are applied without discrimination to undertakings within the distribution system in comparable cases.</p> <p>4. The conditions for exemption laid down in this Article shall not affect:</p> <ul style="list-style-type: none"> — the right of the supplier to terminate the agreement subject to at least one year's notice dating from the notification by the dealer of his intention to sell new motor vehicles which compete with the contract goods in accordance with Article 3 point 3; the supplier must justify the termination by objective reasons, particularly for the protection of its investment in its network related to sales and aftersales service, offering the possibility of arbitration in the event of disagreement between the parties, |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

OLD VERSION

NEW VERSION

- the right of the supplier to terminate the agreement subject to at least six months' notice where there is an urgent need to reorganize the network by offering the possibility of arbitration in the event of disagreement between the parties,
- the right of one party to terminate the agreement for cause where the other party fails to perform one of its basic obligations subject to the possibility of arbitration in the event of disagreement.

Article 6

1. Articles 1, 2 and 3 and Article 4 (2) shall not apply where:

- (1) both parties to the agreement or their connected undertakings are motor vehicle manufacturers; or
- (2) the manufacturer, the supplier or another undertaking within the distribution system obliges the dealer not to resell contract goods or corresponding goods below stated prices or not to exceed stated rates of trade discount; or
- (3) the parties make agreements or engage in concerted practices concerning motor vehicles having three or more road wheels or spare parts therefor which are exempted from the prohibition in Article 85 (1) of the Treaty under Regulations (EEC) No 1983/83, or (EEC) No 1984/83 to an extent exceeding the scope of this Regulation.

Article 6

1. The exemption shall not apply where:

- (1) both parties to the agreement or their connected undertakings are motor vehicle manufacturers; or
- (2) the parties link their agreement or apply its provisions to stipulations concerning products or services other than those referred to in this Regulation; or
- (3) in respect of motor vehicles having three or more road wheels, spare parts or services therefor, the parties agree restrictions of competition that are not expressly exempted by this Regulation; or
- (4) in respect of motor vehicles having three or more road wheels or spare parts therefor, the parties make agreements or engage in concerted practices which are exempted from the prohibition in Article 85 (1) of the Treaty under Regulations (EEC) No 1983/83 or (EEC) No 1984/83 to an extent exceeding the scope of this Regulation; or
- (5) without prejudice to the first indent of Article 5 (4), the parties agree that the supplier reserves the right to conclude distribution and servicing agreements for contract goods with specified further undertakings operating within the contract territory or to alter the contract territory; or
- (6) the manufacturer, the supplier or another undertaking directly or indirectly restricts the dealer's freedom to determine prices and discounts in reselling contract goods or corresponding goods; or

OLD VERSION

NEW VERSION

-
- (7) the manufacturer directly or indirectly restricts the freedom of intermediaries, final consumers or other undertakings within the distribution system to obtain from an undertaking of their choice within the distribution system contract goods or corresponding goods, or to obtain servicing for such goods, within the common market; or
- (8) the supplier without objective reasons grants dealers remunerations calculated on the basis of the place of destination of the motor vehicles resold or the place of residence of the purchaser; or
- (9) the supplier restricts the dealer's freedom, provided for in Article 3, point 4, to obtain from a third undertaking of his choice spare parts which compete with contract goods and which match their quality; or
10. the manufacturer directly or indirectly restricts the freedom of spare-part manufacturers or distributors to supply such products to resellers of their choice, including those which are undertakings within the distribution system, in so far as such spare parts match the quality of contract goods; or
- (11) the manufacturer directly or indirectly restricts the freedom of spare-part manufacturers to place effectively and in an easily visible manner their trade mark or logo on parts supplied for the initial assembly or for the repair or maintenance of contract goods or corresponding goods; or
- (12) the manufacturer systematically refuses to make accessible, where appropriate upon payment, to third parties who are not undertakings within the distribution system, the technical information required for the repair or maintenance of the contractual or corresponding goods or for the implementing of environmental protection measures, provided that the information is not covered by industrial property rights or does not constitute secret know-how.
2. In the cases specified in points 1 to 5 of paragraph 1, the inapplicability of the exemption shall apply to all the restrictive clauses contained in the agreement concerned; in the cases specified in points 6 to 12 of paragraph 1, it shall apply only to the restrictive clauses agreed respectively on behalf of the manufacturer and the supplier.

OLD VERSION

NEW VERSION

Article 7

1. As regards agreements existing on 13 March 1962 and notified before 1 February 1963 and agreements, whether notified or not, falling under Article 4 (2), point 1 of Regulation No 17, the declaration of inapplicability of Article 85 (1) of the Treaty contained in this Regulation shall apply with retroactive effect from the time at which the conditions of this Regulation were fulfilled.

2. As regards all other agreements notified before this Regulation entered into force, the declaration of inapplicability of Article 85 (1) of the Treaty contained in this Regulation shall apply from the time at which the conditions of this Regulation were fulfilled, or from the date of notification, whichever is the later.

Article 8

If agreements existing on 13 March 1962 and notified before 1 February 1963 or agreements to which Article 4 (2), point 1 of Regulation No 17 applies and which were notified before 1 January 1967 are amended before 1 October 1985 so as to fulfil the conditions for application of this Regulation, and if the amendment is communicated to the Commission before 31 December 1985, the prohibition in Article 85 (1) of the Treaty shall not apply in respect of the period prior to the amendment. The communication shall take effect from the time of its receipt by the Commission. Where the communication is sent by registered post, it shall take effect from the date shown on the postmark of the place of posting.

Article 9

1. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of the United Kingdom, Ireland and Denmark, Articles 7 and 8 shall apply except that the relevant dates shall be 1 January 1973 instead of 13 March 1962 and 1 July 1973 instead of 1 February 1963 and 1 January 1967.

Article 7

3. In the cases specified in paragraph 1, points 6 to 12, the inapplicability of the exemption shall only apply to the clauses restrictive of competition agreed in favour of the manufacturer or the supplier which appear in all the distribution and servicing agreements concluded for a geographic area within the common market in which the objectionable practice distorts competition, and only for the duration of the objectionable practice.

The prohibition laid down in Article 85 (1) of the Treaty shall not apply during the period from 1 July 1995 to 31 December 1995 to agreements already in force on 1 July 1995 which satisfy the exemption conditions provided for in Regulation (EEC) No 123/85.

OLD VERSION

2. As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Greece, Articles 7 and 8 shall apply except that the relevant dates shall be 1 January 1981 instead of 13 March 1962 and 1 July 1981 instead of 1 February 1963 and 1 January 1967.

Article 10

The Commission may withdraw the benefit of the application of this Regulation, pursuant to Article 7 of Regulation No 19/65/EEC, where it finds that in an individual case an agreement which falls within the scope of this Regulation nevertheless has effects which are incompatible with the provisions of Article 85 (3) of the Treaty, and in particular:

- (1) where, in the common market or a substantial part thereof, contract goods or corresponding goods are not subject to competition from products considered by consumers as similar by reason of their characteristics, price and intended use;
- (2) where the manufacturer or an undertaking within the distribution system continuously or systematically, and by means not exempted by this Regulation, makes it difficult for final consumers or other undertakings within the distribution system to obtain contract goods or corresponding goods, or to obtain servicing for such goods, within the common market;
- (3) where, over a considerable period, prices or conditions of supply for contract goods or for corresponding goods are applied which differ substantially as between Member States, and such substantial differences are chiefly due to obligations exempted by this Regulation;
- (4) where, in agreements concerning the supply to the dealer of passenger cars which correspond to a model within the contract programme, prices or conditions which are not objectively justifiable are applied, with the object or the effect of partitioning the common market.

Article 11

The provisions of this Regulation shall also apply in so far as the obligations referred to in Articles 1 to 4 apply to undertakings which are connected with a party to an agreement.

NEW VERSION

Article 8

The Commission may withdraw the benefit of the application of this Regulation, pursuant to Article 7 of Regulation No 19/65/EEC, where it finds that in an individual case an agreement which falls within the scope of this Regulation nevertheless has effects which are incompatible with the provisions of Article 85 (3) of the Treaty, and in particular:

- (1) where, in the common market or a substantial part thereof, contract goods or corresponding goods are not subject to competition from products considered by consumers as similar by reason of their characteristics, price and intended use;
- (2) where, over a considerable period, prices or conditions of supply for contract goods or for corresponding goods are applied which differ substantially as between Member States, and such substantial differences are chiefly due to obligations exempted by this Regulation;
- (3) where the manufacturer or an undertaking within the distribution system in supplying the distributors with contract goods or corresponding goods apply discriminatory prices or conditions.

OLD VERSION

Article 12

This Regulation shall apply *mutatis mutandis* to concerted practices of the types defined in Articles 1 to 4.

Article 13

For the purposes of this Regulation the following terms shall have the following meanings.

- (1) 'Distribution and servicing agreements' are framework agreements between two undertakings, for a definite or indefinite period, whereby the party supplying goods entrusts to the other the distribution and servicing of those goods.
- (2) 'Parties' are the undertakings which are party to an agreement within the meaning of Article 1: 'the supplier' being the undertaking which supplies the contract goods, and 'the dealer', the undertaking entrusted by the supplier with the distribution and servicing of contract goods.
- (3) The 'contract territory' is the defined territory of the common market to which the obligation of exclusive supply in the meaning of Article 1 applies.
- (4) 'Contract goods' are motor vehicles intended for use on public roads and having three or more road wheels, and spare parts therefor, which are the subject of an agreement within the meaning of Article 1.
- (5) The 'contract programme' refers to the totality of the contract goods.
- (6) 'Spare parts' are parts which are to be installed in or upon a motor vehicle so as to replace components of that vehicle. They are to be distinguished from other parts and accessories according to customary usage in the trade.
- (7) The 'manufacturer' is the undertaking
 - (a) which manufactures or procures the manufacture of the motor vehicles in the contract programme, or
 - (b) which is connected with an undertaking described at (a).

NEW VERSION

Article 9

This Regulation shall apply *mutatis mutandis* to concerted practices of the types defined by this Regulation.

Article 10

For the purposes of this Regulation the following terms shall have the following meanings.

- (1) 'Distribution and servicing agreements' are framework agreements between two undertakings, for a definite or indefinite period, whereby the party supplying goods entrusts to the other the distribution and servicing of those goods.
- (2) 'Parties' are the undertakings which are party to an agreement within the meaning of Article 1: 'the supplier' being the undertaking which supplies the contract goods, and 'the dealer', the undertaking entrusted by the supplier with the distribution and servicing of contract goods.
- (3) The 'contract territory' is the defined territory of the common market to which the obligation of exclusive supply in the meaning of Article 1 applies.
- (4) 'Contract goods' are motor vehicles intended for use on public roads and having three or more road wheels, and spare parts therefor, which are the subject of an agreement within the meaning of Article 1.
- (5) The 'contract programme' refers to the totality of the contract goods.
6. 'Spare parts' are parts which are to be installed in or upon a motor vehicle so as to replace components of that vehicle. They are to be distinguished from other parts and accessories according to customary usage in the trade.
- (7) The 'manufacturer' is the undertaking
 - (a) which manufactures or procures the manufacture of the motor vehicles in the contract programme, or
 - (b) which is connected with an undertaking described at (a).

OLD VERSION

NEW VERSION

(8) 'Connected undertakings' are:

(a) undertakings one of which directly or indirectly

- holds more than half of the capital or business assets of the other, or
- has the power to exercise more than half the voting rights in the other, or
- has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the other, or
- has the right to manage the affairs of the other;

(b) undertakings in relation to which a third undertaking is able directly or indirectly to exercise such rights or powers as are mentioned in (a) above.

(9) 'Undertakings within the distribution system' are, besides the parties to the agreement the manufacturer and undertakings which are entrusted by the manufacturer or with the manufacturer's consent with the distribution or servicing of contract goods or corresponding goods.

(10) A 'passenger car which corresponds to a model within the contract programme' is a passenger car

- manufactured or assembled in volume by the manufacturer, and
- identical as to body style, drive-line, chassis, and type of motor with a passenger car within the contract programme.

(11) 'Corresponding goods', 'corresponding motor vehicles' and 'corresponding parts' are those which are similar in kind to those in the contract programme, are distributed by the manufacturer or with the manufacturer's consent, and are the subject of a distribution or servicing agreement with an undertaking within the distribution system.

(8) 'Connected undertakings' are:

(a) undertakings one of which directly or indirectly

- holds more than half of the capital or business assets of the other, or
- has the power to exercise more than half the voting rights in the other, or
- has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the other, or
- has the right to manage the affairs of the other;

(b) undertakings in relation to which a third undertaking is able directly or indirectly to exercise such rights or powers as are mentioned in (a) above.

(9) 'Undertakings within the distribution system' are, besides the parties to the agreement, the manufacturer and undertakings which are entrusted by the manufacturer or with the manufacturer's consent with the distribution or servicing of contract goods or corresponding goods.

(10) A 'passenger car which corresponds to a model within the contract programme' is a passenger car

- manufactured or assembled in volume by the manufacturer, and
- identical as to body style, drive-line, chassis, and type of motor with a passenger car within the contract programme.

(11) 'Corresponding goods' 'corresponding motor vehicles' and 'corresponding parts' are those which are similar in kind to those in the contract programme, are distributed by the manufacturer or with the manufacturer's consent, and are the subject of a distribution or servicing agreement with an undertaking within the distribution system.

OLD VERSION

NEW VERSION

(12) 'Distribute' and 'sell' include other forms of supply such as leasing.

(12) 'Resale' includes all transactions by which a physical or legal person — 'the reseller' — acquires a vehicle for his own account with the objective of selling same as new, irrespective of the legal description or format of the transaction which effects such resale. The term resale shall in particular include all leasing contracts which provide for a transfer of ownership or an option to purchase prior to the expiry of the contract.

13. 'Distribute' and 'sell' include other forms of supply by the dealer such as leasing.

(14) 'Arbitration' is a procedure for resolving disputes between parties by arbitrators of their choice, as provided for by legislation or convention.

Article 11

1. The Commission will evaluate on a regular basis the application of this Regulation, particularly as regards the impact of the exempted system of distribution on price differentials of contract goods between the different Member States and on the quality of service to final users.

2. The Commission will collate the opinions of associations and experts representative of the various interested parties, particularly consumer organisations.

3. The Commission will draw up a report on the evaluation of this Regulation on or before 31 December 2000, particularly taking into account the criteria provided for in paragraph 1 of this Article.

Article 14

This Regulation shall enter into force on 1 July 1985.

It shall remain in force until 30 June 1995.

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

Article 12

This Regulation shall enter into force on 1 July 1995.

It shall remain in force until 30 June 2005.

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

Non-opposition to a notified concentration**(Case No IV/M.534 — Bayer/Hoechst — JV textile dyestuff)**

(94/C 379/11)

(Text with EEA relevance)

On 21 December 1994, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6 (1) (b) of Council Regulation (EEC) No 4064/89 ⁽¹⁾. Third parties showing a sufficient interest can obtain a copy of the decision by making a written request to:

Commission of the European Communities,
Directorate-General for Competition (DG IV),
Merger Task Force,
150, Avenue de Cortenberg,
B-1049 Brussels,
fax number: (32 2) 296 43 01.

⁽¹⁾ OJ No L 395, 30. 12. 1989. Corrigendum: OJ No L 257, 21. 9. 1990, p. 13.

OPINION

of the Advisory Committee on concentrations given at the 20th and 22nd meetings on 27 May and 20 June 1994 concerning a revised preliminary draft decision relating to Case IV/M.430 — Procter & Gamble/VP Schickedanz (II)

(94/C 379/12)

(Text with EEA relevance)

1. The Committee considers that the notified operation, comprising the acquisition by Procter & Gamble of VP Schickedanz as well as of other subsidiaries of the GGS group, is a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation and the corresponding provisions of Annex XIV of the EEA Agreement and that it is of Community dimension according to the criteria set out by Article 1 of the Merger Regulation, and of EEA dimension in accordance with the EEA Agreement.
2. The majority of the Committee agrees with the analysis of the Commission that the relevant product market is that for sanitary towels. A minority, whilst agreeing with the Commission's analysis, considers that in some Member States substitutability between different feminine protection products may not be as limited in the future.
3. The Committee agrees with the Commission that for the foreseeable future the relevant geographic markets are national in scope. A minority expresses a reserve that while it agrees on the definition of a German market, the Commission's evaluation has not taken the dynamic nature of the Spanish market sufficiently into account.
4. The majority of the Committee agrees with the Commission that the appropriate method of calculation of the market shares is in terms of value. A minority considers that it would be more satisfactory, when analysing market power, to take into consideration both volume and value shares.
5. The Committee agrees with the Commission that, should the concentration take place as notified, it will give rise to the creation of a dominant position for Procter & Gamble (P & G) on the German market which will significantly impede competition on that market. In respect of the Spanish market, a majority agrees with the Commission that P & G's dominant position will be reinforced whilst a minority does not share this conclusion.
6. The majority of the Committee agrees with the Commission that, even were Western Europe to be considered the relevant geographic market, the proposed operation would give rise to a dominant position for P & G on this market. A minority does not share this conclusion.
7. The Advisory Committee agrees with the Commission that the notified operation should be declared incompatible with the Common Market under Article 8 (3) of the Merger Regulation and with the functioning of the EEA Agreement.
8. The Committee furthermore considers that behavioural undertakings such as those offered by Procter & Gamble in their letter of 17 May 1994 are inappropriate and unacceptable.
9. The Committee, having taken into account the information received from the Commission on the remedies proposed by Procter & Gamble in its letter of 15 June 1994 to solve the competition problems raised by the proposed concentration, agrees with the Commission in finding the concentration compatible with the Common Market and with the functioning of the EEA Agreement subject to the divestiture of the Camelia-branded feminine hygiene products business.

10. The majority of the Committee considers that the said remedies suffice to ensure the compatibility of the transaction with the Common Market and with the functioning of the EEA Agreement if the following conditions are respected:
- (a) the nomination of an independent trustee by Procter & Gamble to carry out the divestiture of the Camelia-branded feminine hygiene products business and its management independent from Procter & Gamble until the said divestiture has been carried out;
 - (b) the setting of a short deadline for carrying out the divestiture;
 - (c) the potential purchaser should have the financial resources and proven expertise in consumer product markets to allow it to maintain and to develop actively the Camelia-branded feminine hygiene products business in competition with Procter & Gamble;
 - (d) the Camelia-branded feminine hygiene products business should be maintained independent from Procter & Gamble until its divestiture;
 - (e) the Commission should have the right to examine in advance the profile of the potential purchasers notwithstanding Procter & Gamble's right to choose the final purchaser;
 - (f) the Commission should maintain sufficient power of control and of decision to ensure the correct fulfilment of the undertakings.
11. Furthermore, a minority of the Committee considers that Procter & Gamble should be obliged to divest the secondary and private label brands of VP Schickedanz.
12. Yet another minority considers that the resale of the Camelia-branded feminine hygiene products business should be a pre-condition to the authorization of the transaction by the Commission.
13. The Committee recommends the publication of this opinion.

OPINION

of the Advisory Committee on Concentrations given during its 25th session, on 25 October 1994, on a preliminary draft decision concerning case IV/M.469 — MSG Media Service

(94/C 379/13)

1. The majority of the Advisory Committee considers that the creation of the company MSG Media Service constitutes a concentration within the meaning of Regulation (EEC) No 4064/89, in particular within the meaning of Article 3 (2) concerning concentrative joint ventures.

However, a minority considers that the operation constitutes a cooperative joint venture, as far as MSG does not perform all the functions of an autonomous economic entity and gives rise to coordination of the competition behaviour of the founding companies.

2. The majority of the Advisory Committee agrees with the definition of three product markets proposed by the Commission, i.e. the market for administrative and technical services offered to suppliers of pay-TV and other TV services financed through subscription, the market for pay-TV and the market for cable network.

A minority considers, however, that a certain competitive link exists between pay-TV and free TV, financed through advertising.

A minority considers that one cannot leave out of account a certain competitive interaction between the market for cable network and the market for satellite distribution, even if, in this case, this link is insufficient in Germany to define only one market.

3. The Member States approve the geographic market definition.

However, some consider that the reference to the sole German market can appear too restrictive for the markets for administrative and technical services and for pay-TV: a minority considers that the geographic market is not limited to the German territory, but covers the German speaking area; moreover, a minority considers that the supply of services is not necessarily restricted to a linguistic zone.

4. The Advisory Committee considers, like the Commission, that the proposed concentration will give MSG a dominant position with the meaning of Article 2 (3) of Regulation (EEC) No 4064/89 on the market for technical and administrative service for pay-TV, and will give rise to a durable foreclosure of this market.

5. The Advisory Committee considers, like the Commission, that the dominant position of MSG on the market for technical and administrative services for pay-TV is likely to give Bertelsmann and Kirch a durable dominant position on the pay-TV market or to reinforce such a position, within the meaning of Article 2 (3) of Regulation (EEC) No 4064/89.
6. The Advisory Committee considers, like the Commission, that the creation of MSG in its present shareholding structure will reinforce the dominant position of Deutsche Bundespost Telekom on the market for cable networks within the meaning of Article 2 (3) of Regulation (EEC) No 4064/89.
7. The Advisory Committee estimates, like the Commission, that the creation of MSG does not give rise to technical and economical progress within the meaning of Article 2 (1) (b) of Regulation (EEC) No 4064/89, because it will have as an effect the elimination of competition on the relevant markets.
8. The Advisory Committee considers, like the Commission, that the concentration proposed by Bertelsmann AG, Deutsche Bundespost Telekom and Taurus Beteiligungs GmbH & Co. KG will create or reinforce a dominant position with the meaning of Article 2 (3) of Regulation (EEC) No 4064/89 on the three markets for administrative and technical services for pay-TV, for pay-TV and cable networks.
9. The Advisory Committee estimates, like the Commission, that the undertakings proposed by the parties by letter dated 20 October 1994 are not likely to modify the analysis of the effects of the operation.
10. As a consequence, the Advisory Committee considers that the concentration by way of the creation of a joint venture notified by Bertelsmann AG, Deutsche Bundespost Telekom and Taurus Beteiligungs GmbH & Co. KG must be declared incompatible with the common market and the functioning of the EEA Agreement.
11. The Advisory Committee recommends the publication of its opinion.

Commission communication concerning the withdrawal of the quarterly guidelines relating to production and deliveries of steel products

(94/C 379/14)

1. On 25 February 1993, on a proposal from the Commission, the Council approved a package of measures in support of the steel sector restructuring plan. These measures included the publication of quarterly guidelines drawn up pursuant to Article 46 (1) of the ECSC Treaty relating to production and deliveries on the Community market of the main categories of steel products.
2. The Commission informed interested parties of the introduction of these guidelines in a communication published in the *Official Journal of the European Communities* on 24 March 1993 ⁽¹⁾. Each quarter the guidelines were published in the Official Journal ⁽²⁾ and each undertaking was sent the guidelines for the products in its production range.
3. The Commission had noted that the situation on the steel market has been improving since the beginning of 1994 and is expected to improve further in 1995. Although the restructuring programme has been partly successful, the target of a minimum level of capacity reductions of 19 million tonnes has not been achieved. In its communication 'Restructuring the Community steel industry: final assessment and conclusions' ⁽³⁾ the Commission accordingly decided to withdraw this measure, as provided for in paragraph 6 of its communication of 24 March 1993. The Council noted this decision at its meeting on 8 November 1994.
4. The Commission will continue to follow the situation on the steel market closely, in particular by consulting the various interested parties when drawing up the Forward Programme for Steel, which is published twice a year.

However, the Commission would remind undertakings and their associations of their obligations under the ECSC Treaty, and particular Article 65 (1) thereof, whereby they must not replace the flanking measures introduced so far by the Commission by a similar or equivalent private information-exchange system.

⁽¹⁾ OJ No C 83, 24. 3. 1993, p. 6.

⁽²⁾ OJ No C 111, 21. 4. 1993; OJ No C 173, 24. 6. 1993; OJ No C 269, 5. 10. 1993; OJ No C 341, 18. 12. 1993; OJ No C 93, 30. 3. 1994; OJ No C 178, 30. 6. 1994; OJ No C 286, 14. 10. 1994.

⁽³⁾ COM(94) 466 final, 25. 10. 1994.