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I

(Information)

COUNCIL

COMMON POSITION (EC) No 41/96

adopted by the Council on 27 June 1996

with a view to adopting Council Regulation (EC) No .../96 of ... amending Regulation (EEC) No 1101/89 on structural improvements in inland waterway transport

(96/C 264/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission⁽¹⁾,Having regard to the opinion of the Economic and Social Committee⁽²⁾,Acting in accordance with the procedure laid down in Article 189c of the Treaty⁽³⁾,

Whereas Regulation (EEC) No 1101/89⁽⁴⁾ introduced measures for structural improvements in the inland waterway sector; whereas that Regulation sets out to reduce structural overcapacity in inland waterway transport by providing for vessel-scrapping schemes coordinated at Community level; whereas that Regulation provides for the possibility of a Community financial contribution to the scrapping funds for 1995;

Whereas the system of structural improvements currently in force is in principle to be financed primarily by the operators in the sector by means of annual contributions;

Whereas public contributions must be granted annually, in line with the contributions made by the trade; whereas measures are scheduled for a period of three years, namely 1996, 1997 and 1998 and whereas they must be assessed annually;

Whereas provision for a financial contribution from the Community should be envisaged for the year 1996 only;

Whereas the financial contributions from the Member States in question must be calculated against the size of their fleets for the years 1996, 1997 and 1998,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 4 (a) of Regulation (EEC) No 1101/89:

1. — 'and the year 1996,' shall be inserted after '1995' in paragraph 1,
— 'and 1996' shall be inserted after '1995' in paragraph 2;
2. the following paragraphs shall be added:

'3. The Member States in question shall jointly make available from their funds sufficient amounts to achieve, along with the Community contribution fixed for the year 1996 only, the structural improvement objectives for the years 1996, 1997 and 1998. The proportionate share of each Member State concerned shall be calculated against the size of its active fleet as compared with that of the Member

⁽¹⁾ OJ No C 318, 29. 11. 1995, p. 11.

⁽²⁾ OJ No C 39, 12. 2. 1996, p. 96.

⁽³⁾ Opinion of the European Parliament of 13 February 1996 (OJ No C 65, 4. 3. 1996, p. 29), common position of the Council of 27 June 1996 (not yet published in the Official Journal) and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ No L 116, 28. 4. 1989, p. 25. Regulation as last amended by Regulation (EC) No 2819/95 (OJ No L 292, 7. 12. 1995, p. 7).

States' total fleet. These amounts shall be determined by the Commission in conjunction with the authorities of the various scrapping funds.

4. At the beginning of each year during the scrapping operations for 1996, 1997 and 1998, the Commission shall lay down, as part of this Regulation, the procedures for scrapping for the year

in progress as a function of available finances, market developments and liberalization measures taken.'

Article 2

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

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

Done at Luxembourg, ...

For the Council
The President

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 15 September 1995 the Commission submitted to the Council a proposal for a Regulation, based on Article 75 of the EC Treaty, amending Regulation (EEC) No 1101/89 on structural improvements in inland waterway transport⁽¹⁾.

The European Parliament delivered its opinion on 13 February 1996⁽²⁾. The Economic and Social Committee delivered its opinion on 23 November 1995⁽³⁾.

In the light of those opinions, the Commission sent the Council an amended proposal on 22 April 1996⁽⁴⁾.

The Council adopted its common position, in accordance with Article 189c of the EC Treaty, on 27 June 1996.

II. OBJECTIVE OF THE PROPOSAL

The purpose of the proposal is to open up the possibility of a Community financial contribution to the national scrapping funds of the Member States concerned for 1996 as part of further extensive structural improvements over a three-year period (1996 to 1998).

This Commission proposal is to be regarded as a supporting measure for the proposal for a Directive on the organization of the inland waterway market, which is to phase out systems of chartering by rotation so as to bring about a fully liberalized market as of 1 January 2000.

III. ASSESSMENT OF THE COMMON POSITION

The common position adopted by the Council departs from the original Commission proposal in one important respect in that it confines Community financial contributions for structural improvements to 1996. The Council took the view that, while it was prepared, in a spirit of solidarity, to approve a Community contribution for 1996, the further structural improvements planned for 1996, 1997 and 1998 to cut fleet capacity by about 15 % were primarily to be funded by the Member States concerned and the trade.

The recitals and Article 1 have consequently been amended by the Council. In particular, paragraph 2 (3) has been deleted following the confining of Community contributions to 1996. The new paragraph 2 (3) (formerly 2 (4)) has had to be adjusted.

IV. EUROPEAN PARLIAMENT AMENDMENTS⁽⁵⁾1. *European Parliament amendment included by the Commission and accepted by the Council*

Amendment 14, concerning entry into force on the date of publication, has been accepted by the Council in order for the Regulation to become operational more quickly.

⁽¹⁾ OJ No C 318, 29. 11. 1995, p. 11.

⁽²⁾ OJ No C 65, 4. 3. 1996, p. 30.

⁽³⁾ OJ No C 39, 12. 2. 1996, p. 46.

⁽⁴⁾ Not yet published in the Official Journal.

⁽⁵⁾ The European Parliament delivered a single opinion on the three Commission proposals; the only amendments concerning this proposal are those numbered 11 to 16.

2. *European Parliament amendments included by the Commission but not accepted by the Council*

Amendments 11, 12 and 13 have become redundant as a result of the Council's amendment of the Commission proposal (see point III above).

3. *European Parliament amendments not included by the Commission and not accepted by the Council*

Amendments 15 and 16 concern the financial statement and not the body of the Regulation. The Council has therefore disregarded them.

COMMON POSITION (EC) No 42/96

adopted by the Council on 27 June 1996

with a view to adopting Council Regulation (EC) No . . ./96 of . . . amending Regulation (EEC) No 1107/70 on the granting of aids for transport by rail, road and inland waterway

(96/C 264/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure laid down in Article 189c of the Treaty⁽³⁾,

Whereas point 1 of Article 3 of Regulation (EEC) No 1107/70⁽⁴⁾ provides that the Member States may grant aid designed to facilitate the development of more economic transport systems and technologies for the community in general, and the development of combined transport;

Whereas the costs of loading and unloading form a significant part of the total cost of transport by inland waterway; whereas it is essential to the development of inland waterway transport for major investments to be made to render loading and unloading installations and equipment for interland waterway terminals more efficient and better suited to the current logistical requirements; whereas, to this end, it is important that aid granted by the Member States or through State resources can be made available to the undertakings concerned;

Whereas harmonized conditions should be laid down for the granting of this aid for the development of inland waterway transport and whereas the impact of the aid must be assessed at regular intervals;

⁽¹⁾ OJ No C 318, 29. 11. 1995, p. 12.

⁽²⁾ OJ No C 39, 12. 2. 1996, p. 96.

⁽³⁾ Opinion of the European Parliament of 13 February 1996 (OJ No C 65, 4. 3. 1996, p. 33), common position of the Council of 27 June 1996 (not yet published in the Official Journal) and Decision of the European Parliament of . . . (not yet published in the Official Journal).

⁽⁴⁾ OJ No L 130, 15. 6. 1970, p. 1. Regulation as last amended by Regulation (EC) No 3578/92 (OJ No L 364, 12. 12. 1992, p. 11).

Whereas this aid must be granted for a sufficiently long period for the said investment to have the time to win over the market and bring new traffic to inland waterways and whereas the Council should decide on subsequent arrangements,

HAS ADOPTED THIS REGULATION:

Sole Article

The following shall be added to point 1 of Article 3 of Regulation (EEC) No 1107/70:

(f) up to 31 December 1999, where aid is granted on a temporary basis and is designed to facilitate the development of inland waterway transport, such aid having to be either:

- investments in the infrastructure of inland waterway terminals, or
- investments in the fixed and mobile equipment needed for loading and unloading.'

The aid granted may not exceed 50% of the total amount of investment.

The purpose of the aid shall be to develop new or additional transport tonnage on the inland waterway. The beneficiaries must comply with the detailed arrangements laid down by the Member State concerned and shall be responsible for the actual carrying out of the investment.

Every two years the Commission shall submit to the European Parliament and the Council a progress report on the implementation of the measures, stating in particular the purpose of the aid, the amount and its impact on inland waterway transport. The Member States shall provide the Commission with the information needed to draw up this report.

No later than 31 July 1999 the Council shall decide, on a proposal from the Commission and under the conditions set out in the Treaty, on subsequent arrangements or, where appropriate, on the conditions for terminating the arrangements.

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

Done at Luxembourg, ...

For the Council
The President

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 15 September 1995 the Commission submitted to the Council a proposal for a Regulation, based on Article 75 (1) of the EC Treaty, amending Regulation (EEC) No 1107/70 on the granting of aids for transport by rail, road and inland waterway⁽¹⁾.

The European Parliament delivered its opinion on 13 February 1996⁽²⁾. The Economic and Social Committee delivered its opinion on 23 November 1995⁽³⁾.

In the light of those opinions, the Commission sent the Council an amended proposal on 22 April 1996⁽⁴⁾.

The Council adopted its common position, in accordance with Article 189c of the EC Treaty, on 27 June 1996.

II. OBJECTIVE OF THE PROPOSAL

The general aim of the Commission proposal is to promote the use of waterways, which in more than one way represent a mode of transport with advantages for society, being environment-friendly, showing a high standard of safety, saving energy and helping to ease congestion on the overcrowded road network in north-western Europe. However, better use of waterways often requires considerable investment in shippers' internal logistical facilities (quays and loading and unloading equipment), which may form a sizeable obstacle to the promotion of waterways. A temporary support scheme for investment in inland waterway terminals therefore needs to be introduced.

This Commission proposal also forms part of the supporting measures for the proposal for a Directive on the organization of the inland waterway market, involving the discontinuation of systems of chartering by rotation.

III. ASSESSMENT OF THE COMMON POSITION

The common position adopted by the Council is largely in line with the original Commission proposal. Nevertheless, the third subparagraph in Article 1 has been reworded so as not now explicitly to require an undertaking by aid beneficiaries to provide new or additional tonnage, failing which aid must be repaid to the competent authorities.

The Council did not see the justification for this repayment clause, particularly since there was no such provision in the other parts of Regulation (EEC) No 1107/70. On the other hand, in the new wording of the subparagraph, the Council decided to make the granting of aid subject to two conditions: the investment must actually be carried out and the detailed arrangements laid down by the Member State must be complied with.

IV. EUROPEAN PARLIAMENT AMENDMENTS⁽⁵⁾

Amendment 17, concerning the sixth recital, was not accepted by the Council, which took the view that, as the amounts of aid were to be set by Member States, it was not appropriate to include a quantitative requirement there.

⁽¹⁾ OJ No C 318, 29. 11. 1995, p. 12.

⁽²⁾ OJ No C 65, 4. 3. 1996, p. 32.

⁽³⁾ OJ No C 39, 12. 2. 1996, p. 46.

⁽⁴⁾ Not yet published in the Official Journal.

⁽⁵⁾ The European Parliament delivered a single opinion on the three Commission proposals; the only amendments concerning this proposal are those numbered 17 and 18.

Amendment 18, concerning Article 1, was also not accepted. On the first part of the Amendment, involving an explicit reference to telematics and other communications equipment, the Council considered that, inasmuch as the Regulation covered transshipment of goods by waterway, such equipment was also included. The second part of Amendment 18, concerning the third subparagraph, was made redundant by the replacement of that subparagraph by a new wording (see point III above). Lastly, on the third part of the Amendment, the Council thought it better to keep to the date 31 July 1999 rather than opting for 31 December 1999, the end date for the aid scheme, in order to allow a while for implementation of the decisions to be taken at that time. The Council did not therefore accept that aspect of Amendment 18 either.

COMMON POSITION (EC) No 43/96

adopted by the Council on 27 June 1996

with a view to adopting Council Directive 96/.../EC of ... on the systems of chartering and pricing in national and international inland waterway transport in the Community

(96/C 264/03)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission⁽¹⁾,Having regard to the opinion of the Economic and Social Committee⁽²⁾,Acting in accordance with the procedure laid down in Article 189c of the Treaty⁽³⁾,

Whereas the growing problems of road and rail saturation, transport safety, environment, energy saving and quality of life of the citizen call, in the public interest, for greater development and better use of the transport potential offered by inland waterway, in particular by improving its competitiveness;

Whereas the difference in national laws on the systems for the commercial operation of inland waterway transport does not make for the smooth functioning of the internal market in this sector; whereas, therefore, common provisions should be introduced at Community level for the whole of the inland waterways market, in accordance with the Council Resolution of 24 October 1994 on structural improvements in inland waterway transport⁽⁴⁾;

Whereas the smooth functioning of the internal market calls for an adjustment in inland waterways transport to the organization of chartering by rotation, so as to move towards greater commercial flexibility and a system of freedom of chartering and pricing;

Whereas, to this end provision should be made for a transitional period, the scope of the rotation system being gradually limited for carriers to adapt to the conditions

of a free market and, where appropriate, to set up trade groupings better suited to the logistical needs of shippers;

Whereas, in accordance with the principle of subsidiarity, it is both necessary and adequate to set a uniform timetable at Community level for the gradual liberalization of the market, while leaving with the Member States the responsibility for putting such liberalization into effect;

Whereas provisions must be adopted to allow action to be taken on the transport market in question in the event of a serious disturbance; whereas, to this end, the Commission should be given the power to take appropriate measures, in accordance with the procedure of an advisory committee,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

- (a) 'system of chartering by rotation' shall mean a system which consists of allocating in a charter exchange requests for transport operations, at previously fixed prices and under conditions made known, from customers on the basis of the order in which vessels become available after unloading. Carriers are asked, in the order of their registration on the rota, to choose in turn a load from those on offer. Those who make no choice nonetheless keep their position in the order;
- (b) 'carrier' shall mean an owner or an operator of one or more inland waterway vessels;
- (c) 'competent authority' shall mean the authority appointed by the Member State to manage and organize the system of chartering by rotation;
- (d) 'serious market disturbance' shall mean the emergence, in the inland waterway transport market, of problems specific to that market likely to cause a serious and potentially persistent excess of supply over demand, thereby posing a serious threat to the financial stability and survival of a large number of inland waterway carriers, unless the short and medium-term forecasts for the market in question indicate substantial and lasting improvements.

⁽¹⁾ OJ No C 318, 29. 11. 1995, p. 8.⁽²⁾ OJ No C 39, 12. 2. 1996, p. 96.⁽³⁾ Opinion of the European Parliament of 13 February 1996 (OJ No C 65, 4. 3. 1996, p. 32), common position of the Council of ... (not yet published in the Official Journal) and Decision of the European Parliament of ... (not yet published in the Official Journal).⁽⁴⁾ OJ No C 309, 5. 11. 1994, p. 5.

Article 2

In the field of national and international inland waterway transport in the Community, contracts shall be freely concluded between the Parties concerned and prices freely negotiated.

Article 3

Notwithstanding Article 2, Member States may, for a transitional period up to 1 January 2000, maintain a system of minimum compulsory tariffs and systems of chartering by rotation, provided that:

- there is compliance with the conditions set out in Articles 4, 5 and 6; and
- the rotation and pricing systems imposed are freely accessible under the same conditions to all Member States' carriers.

Article 4

During the transitional period referred to in Article 3, the following shall not be subject to such system of chartering by rotation:

- (a) oil and gas, liquid cargo and dry bulk freight, special cargoes such as heavy and indivisible loads, container transport, transport within port areas, any kind of own-account transport and any type of transport operation already outside the systems of chartering by rotation;
- (b) loads which cannot be effectively dealt with by such systems, in particular:
 - transport requiring goods-handling equipment,
 - combined transport, namely intermodal transport where the routes are principally by inland waterway and the initial and/or terminal legs (as short as possible) are by road or rail.

Article 5

During the transitional period referred to in Article 3, Member States shall take the necessary steps to maximize flexibility in the systems of chartering by rotation, in particular:

- by providing shippers with the opportunity of concluding contracts for multiple trips, i.e. a series of successive trips using the same vessel,
- by providing that single or multiple trips offered twice consecutively under the system of chartering by rotation without finding any takers shall be taken out of that system and be freely negotiated.

Article 6

Within a period of two years from the entry into force of this Directive, Member States involved in systems of chartering by rotation shall take the necessary measures to enable shippers to have a free choice between three types of contract:

- contracts on a time basis, including leasing contracts, where the carrier makes one or more vessels and crew exclusively available to a customer for a specific period for the transport of goods for that customer against payment of a given sum of money per day. The contract is freely concluded between the parties,
- tonnage contracts where the carrier undertakes to transport, for a period laid down in the contract, a given tonnage against payment of cargo rates by the tonne. The contract is freely concluded between the Parties and must involve large consignments,
- contracts for single or multiple trips.

Article 7

1. In the event of a serious disturbance in the inland waterway transport market, the Commission may, without prejudice to Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport⁽¹⁾, at the request of a Member State, take suitable measures, and in particular measures designed to prevent any new increase in the transport capacity on offer on the market in question. The decision shall be taken in accordance with the procedure laid down in Article 8 (2).

2. In the event of a request from a Member State for suitable measures, a decision shall be taken within a period of three months from receipt of the request.

3. The request from a Member State for suitable measures to be taken must be accompanied by all the information needed to assess the economic situation in the sector in question, in particular:

- indication of the average costs and prices for the different types of transport,
- the rate of utilization of the hold,
- forecast demand.

This information may be used only for statistical purposes. It may not be used for tax purposes or communicated to third Parties.

⁽¹⁾ OJ No L 116, 28. 4. 1989, p. 25. Regulation as last amended by Regulation (EC) No ... (see p. 1 of this Official Journal).

4. Decisions taken pursuant to this Article, which may not exceed the duration of the disturbance in the market, shall be notified immediately to the Member States.

Article 8

1. The Commission shall be assisted by the Committee established by Directive 91/672/EEC⁽¹⁾.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, where necessary by vote, within a time limit which the chairman may lay down according to the urgency of the matter.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 9

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to

comply with this Directive before 1 January 1997. They shall forthwith inform the Commission thereof.

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

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

Article 10

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

Article 11

This Directive is addressed to the Member States.

Done at Luxembourg, ...

For the Council
The President

⁽¹⁾ OJ No L 373, 31. 12. 1991, p. 29. Directive as last amended by the 1994 Act of Accession.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 15 September 1995 the Commission forwarded to the Council a proposal for a Directive, based on Article 75 of the EC Treaty, on the systems of chartering and pricing in national and international inland waterway transport in the Community⁽¹⁾.

The European Parliament delivered its opinion on 13 February 1996⁽²⁾ and the Economic and Social Committee on 23 November 1995⁽³⁾.

In the light of those opinions, the Commission forwarded an amended proposal⁽⁴⁾ to the Council on 22 April 1996.

The Council adopted its common position in accordance with Article 189c of the EC Treaty on 27 June 1996.

II. OBJECTIVE OF THE PROPOSAL

The Commission proposal is designed to bring about progressive liberalization of the inland waterway market by abolishing the rotation systems which still exist for some types of transport in Belgium, France and the Netherlands. For the sake of smoother functioning of the internal market, the liberalization measures adopted must be harmonized and synchronized. There is provision for a transitional period lasting until 1 January 2000 during which rotation may continue for certain types of transport. The proposal for a Directive is just one element of a package which includes supporting measures to reduce structural overcapacity by means of a new Community scrapping programme and to encourage investment in inland waterway terminals.

III. ANALYSIS OF THE COMMON POSITION

The common position adopted by the Council broadly follows the Commission proposal, although it diverges from it on certain points. The amendments made by the Council are described below:

Article 1

Article 1 (b) has been reworded to ensure that the Directive covers vessel operators as well as owners. The Council thought it unnecessary for the definition of 'carrier' to list all the possible variations.

Article 2

The Council thought that the reference to charter exchanges was unnecessary and deleted it.

Article 4

The Council preferred to combine Articles 4 and 5 of the Commission proposal in a single Article covering all transport not subject to chartering by rotation. In addition, it decided to

⁽¹⁾ OJ No C 318, 29. 11. 1995, p. 8.

⁽²⁾ OJ No C 65, 4. 3. 1996, p. 26.

⁽³⁾ OJ No C 39, 12. 2. 1996, p. 96.

⁽⁴⁾ Not yet published in the Official Journal.

delete 'new types of transport' from the third indent of the former Article 5 on the grounds that the definition was unclear and that in any case point (b) covered such forms of transport.

Article 6 (formerly Article 7)

The Council amended the wording of the first paragraph to make it clear that only Member States practising rotation were concerned by the Article.

Article 7 (formerly Article 8)

The Council agreed that paragraph 1 should make it clear that Regulation (EEC) No 1101/89 continued to apply whether or not there was a serious disturbance in the inland waterway market. It also decided that the Commission should be able to take the measures concerned solely at the request of a Member State, not on its own initiative.

Article 9 (formerly Article 10)

The Council decided that the date in paragraph 1 should be 1 January 1997 as proposed by the European Parliament (amendment 9).

IV. EUROPEAN PARLIAMENT AMENDMENTS

1. *European Parliament amendment accepted by the Commission and adopted by the Council*

The Council followed the Commission's suggestion and entered in Article 9 (formerly Article 10) the date of 1 January 1997 proposed in Amendment 9.

2. *European Parliament amendment accepted by the Commission but rejected by the Council*

The Council did not accept Amendment 1 concerning the inclusion of a new recital 4a, on the grounds that it had no counterpart in the enacting terms of the Directive and already appeared in Regulation (EEC) No 1101/89.

3. *European Parliament amendments rejected by both the Commission and the Council*

The Council did not include the European Parliament amendments which had been rejected by the Commission.

As regards Amendment 2, the Council considered that there was no reason to resist market forces and therefore rejected the Amendment. Similarly, it refused Amendment 3, which is closely linked to Amendment 2.

On Amendment 4, the Council could not agree with the European Parliament that the rotation system should have been terminated earlier, and it therefore disregarded the Amendment. The Council did not consider Amendment 5 appropriate as the Commission proposal reproduced the definition of serious disturbance contained in Council Regulation (EEC) No 3916/90 on measures to be taken in the event of a crisis in the market in the carriage of goods by road.

Amendment 6 failed to gain the Council's agreement as the date of 1 January 2000 in the Commission proposal was more realistic and at the same time closer to the dates set by the legislation of some Member States.

The Council did not adopt Amendment 7 as the Regulation in force (Regulation (EEC) No 1101/89) dealing with the two aspects raised in the Amendment, i.e. the 'old for

new' scheme and scrapping, allowed a further three years for submission of a proposal for amendments. In the Council's view it would therefore be premature to include in this Directive an obligation to submit such a proposal before 1 January 1998.

The Council did not accept Amendment 8. The Committee to be set up under Article 8 is the traditional type of Committee as provided for in, *inter alia*, Council Regulation (EEC) No 3916/90 on the measures to be taken in the event of a crisis in the market in the carriage of goods by road.

On Amendment 10, the Council considered that it was inappropriate to include in a Directive addressed to the Member States — by means of an amendment — a list of obligations for the Commission to fulfil.

COMMON POSITION (EC) No 44/96

adopted by the Council on 27 June 1996

with a view to adopting Council Regulation (EC) No .../96 of ... on operations to aid uprooted people in Asian and Latin American developing countries

(96/C 264/04)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130w thereof,

Having regard to the proposal from the Commission⁽¹⁾,Acting in accordance with the procedure referred to in Article 189c of the Treaty⁽²⁾,

(1) Having regard to the Convention relating to the Status of Refugees adopted on 28 July 1951 by the United Nations Conference on the Status of Refugees and Stateless Persons, as well as the New York Protocol adopted on 31 January 1967 and other resolutions adopted by the United Nations on refugee policy;

(5) Having regard to the Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, the Convention on the Elimination of all Forms of Discrimination against Women of 1979 and the Convention on the Rights of the Child of 1989;

(3) Having regard to the Resolution of the European Parliament of 16 December 1993 on assistance to refugees in developing countries and its subsequent resolutions;

(4) Whereas both the European Parliament and the Council have called for greater effort on the part of the Community in this field;

(5) Whereas the effectiveness of aid programmes for uprooted people (refugees, displaced persons, returnees and demobilized soldiers) is dependent on the coordination of aid at European level and with other aid donors, non-governmental organizations (NGOs) and United Nations agencies;

(6) Whereas there is a need to step up efforts to prevent conflict and to promote peaceful solutions to political conflicts or wars that cause population displacements;

(7) Whereas specialized bodies and agencies and NGOs implementing such operations have gained considerable experience in providing assistance to uprooted people;

(8) Whereas the Community wishes aid for uprooted people to be provided in such a way as to help them move from subsistence to self-sufficiency, namely to make them less dependent, help them reintegrate or re-settle by means of operations to develop self-sufficiency through farming, livestock-rearing, fish-farming, the setting-up of credit systems, basic education and vocational training and decent standards of health and hygiene;

(9) Whereas this type of aid is a prerequisite for development and thus makes a major contribution towards achieving the Community's cooperation policy objectives under Article 130u of the Treaty;

(10) Whereas the budget authority has entered in the budget a heading intended to finance operations to aid uprooted people (refugees, displaced persons, returnees and demobilized soldiers) in developing countries;

(11) Whereas a financial reference amount, within the meaning of point 2 of the Declaration of the European Parliament, the Council and the Commission of 6 March 1995⁽³⁾, is entered in this Regulation for the period from 1996 to 1999, without affecting the powers of the budgetary authority defined by the Treaty;

(12) Whereas administrative rules and procedures applicable to cooperation operations to contribute

⁽¹⁾ OJ No C 237, 12. 9. 1995, p. 19.

⁽²⁾ Opinion of the European Parliament of 6 February 1996 (OJ No C 65, 4. 3. 1996, p. 215), Council common position of ... (not yet published in the Official Journal) and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽³⁾ OJ No C 102, 4. 4. 1996, p. 4.

to the self-sufficiency of uprooted people (refugees, displaced persons, returnees and demobilized soldiers) should be laid down,

HAS ADOPTED THIS REGULATION:

Article 1

The Community shall implement a programme of support and assistance to uprooted people referred to in Article 4 to contribute to the urgent requirements not covered by humanitarian aid and for the longer term realization of projects and action programmes aimed at the self-sufficiency and integration or reintegration of such people.

Article 2

In this context, the Community shall implement viable projects for subsistence, self-sufficiency and reinsertion into the socio-economic fabric of refugees and displaced persons, returnees and demobilized soldiers. To this end, operations shall cover *inter alia* mine clearance, combating sexual violence, support to local host communities and areas to which refugees return to facilitate acceptance and integration of uprooted people and support for their return and settlement in the countries of origin or in third countries and, where appropriate, shall support reconciliation.

Article 3

Operations carried out under this Regulation shall be complementary to those provided for by other Community instruments governing development cooperation.

Article 4

1. The final beneficiaries of the operations mentioned in Article 2 shall be uprooted people (refugees, displaced persons, returnees and demobilized soldiers) in the developing countries of Asia and Latin America and persons from one of these countries provisionally settled in another developing country and in duly justified, exceptional cases, in another third country:

- (a) refugees as defined in the Convention relating to the Status of Refugees adopted on 28 July 1951 by the United Nations Conference on the Status of Refugees and Stateless Persons;
- (b) 'displaced persons': persons who were forced to seek refuge outside their region of origin owing to conflict

situations but who do not enjoy refugee status as defined by the 1951 Convention;

- (c) 'returnees': persons who were formerly refugees or displaced persons who have returned to their country or region of origin.

2. Aid shall also be available for:

- (a) the local population of the host territories particularly affected, whose economic and administrative resources contribute to receiving and assisting refugees and displaced persons and to carrying out longer-term projects designed to bring about their self-sufficiency and integration or reintegration;
- (b) former soldiers of regular armies and demobilized armed opposition movements, plus their families and, where appropriate, their local communities.

Article 5

Partners in cooperation who may obtain financial support under this Regulation shall be regional and international organizations, including United Nations agencies, non-governmental organizations, national, provincial and local administrations and official bodies, community-based organizations, public or private institutes and operators.

Article 6

1. Community financing of the operations referred to in Article 1 shall cover a period of four years (1996 to 1999).

The financial reference amount for the implementation of this programme for the period 1996 to 1999 shall be ECU 240 million.

Annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

2. The budget authority shall determine the appropriations available for each financial year taking account of the principles of sound financial management referred to in Article 2 of the Financial Regulation applicable to the general budget of the European Communities.

Article 7

1. The means deployed in implementing operations referred to in Article 1 shall include studies, technical assistance, training and other services, supplies, works, and audits and evaluation and monitoring missions.

2. Community financing may also cover investment expenditure, excluding the purchase of real estate, and, in duly justified cases and taking into account the fact that the project must, as far as possible, aim at medium-term viability, recurring expenditure (which includes administrative expenditure, maintenance and running costs) so that maximum use is made of the investments mentioned in paragraph 1, the operation of which temporarily represents a burden for the person associated.

3. A financial contribution from the partners defined in Article 5 shall be sought for each cooperation operation. This contribution will be requested within the limits of the possibilities available to the partners concerned and depending on the nature of the operation. In specific cases and where the partner is either an NGO or a community-based organization, the contribution may be made in kind.

4. Opportunities may be sought for co-financing with other fund providers, and especially with Member States.

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

6. In order to achieve the objectives of consistency and complementarity referred to in the Treaty and with the aim of guaranteeing optimum effectiveness of all these operations, the Commission may take all the necessary coordination measures, including in particular:

- a) the establishment of a system for the systematic exchange and analysis of information on the operations financed and those which the Community and the Member States propose to finance;
- (b) on-the-spot coordination of the implementation of operations through regular meetings and exchange of information between representatives of the Commission and of the Member States in the beneficiary country.

7. The Commission, in liaison with the Member States, may take any initiative necessary for ensuring proper coordination with the other providers of funds concerned, in particular those forming part of the United Nations system, including the High Commissioner for Refugees.

Article 8

Financial aid under this Regulation shall take the form of grants.

Article 9

1. The Commission shall be responsible for appraising, deciding and administering the operations covered by this Regulation in accordance with the budgetary and other procedures in force, in particular those laid down by the

Financial Regulation applicable to the general budget of the European Communities.

2. Project and programme appraisal shall take into account the following factors:

- effectiveness and viability of operations,
- cultural, social, gender and environment aspects,
- institutional development necessary to achieve project goals,
- experience gained from operations of the same kind.

3. Decisions relating to grants of more than ECU 2 million for individual operations financed under this Regulation shall be adopted in accordance with the procedure laid down in Article 10.

The Commission shall inform the Committee referred to in Article 10 succinctly of the financing decisions which it intends to take with regard to projects and programmes of less than ECU 2 million in value. This information shall be made available not later than one week before the decision is taken.

4. The Commission shall be authorized to approve, without recourse to the opinion of the Committee provided for in Article 10, any supplementary commitments needed for covering expected or real cost overruns in connection with the operations, where the overrun or additional requirement is less than or equal to 20% of the initial commitment laid down by the financing decision.

Where the supplementary commitment referred to in the first subparagraph is less than ECU 4 million, the Committee shall be informed of the decision taken by the Commission. Where the supplementary commitment referred to in the first subparagraph is greater than ECU 4 million but less than 20%, the Committee will be asked to give its opinion.

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

6. Where operations are the subject of financing agreements between the Community and the recipient countries or countries of origin, such agreements shall stipulate that the payment of taxes, duties and other charges is not to be covered by the Community.

7. Participation in invitations to tender and the award of contracts shall be open on equal terms to all natural and legal persons of the Member States and of the recipient country. It may be extended to other developing countries and, in duly justified exceptional cases, to other third countries.

8. Supplies shall originate in the Member States, the recipient country, or other developing countries. In duly justified exceptional cases supplies may originate elsewhere.

Article 10

1. The Commission shall be assisted by the Committee set up under Article 15 of Council Regulation No 443/92/EEC of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America⁽¹⁾.

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

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If on the expiry of a period of one month from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 11

An exchange of views shall take place once a year on the basis of a presentation by the representative of the

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

Done at Luxembourg, ...

Commission on the general guidelines for the operations to be carried out in the year ahead, within the framework of the Committee mentioned in Article 10 (1).

Article 12

After each budget year, the Commission shall submit an annual report to the European Parliament and to the Council, summarizing the operations financed in the course of that year and evaluating the implementation of this Regulation over that period.

The summary shall in particular provide information about those with whom contracts have been concluded.

The report shall also summarize any independent evaluations of specific operations.

The Commission shall inform the Member States, within one month at the latest after taking its decision, of operations and projects approved, with information as to the amounts, nature, recipient countries and partners.

Article 13

The Commission shall regularly assess operations financed by the Community with a view to establishing whether the objectives aimed at by such operations have been achieved and to provide guidelines for improving the effectiveness of future operations. The Commission shall submit to the Committee a summary of the assessments made which, if appropriate, may be examined by the Committee. The assessment reports shall be available to any Member States requesting them.

Article 14

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

It shall apply until 31 December 1999.

For the Council
The President

⁽¹⁾ OJ No L 52, 27. 2. 1992, p. 1.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. By letter dated 4 September 1995 the Commission sent the Council a proposal for a Regulation, based on Article 130w of the EC Treaty, on operations to aid uprooted people (refugees, displaced persons and returnees) in ALA developing countries⁽¹⁾.
2. On 16 February 1996 the European Parliament delivered its opinion on the proposal in first reading⁽²⁾.
3. On 27 June 1996 the Council adopted its common position in accordance with Article 189c of the Treaty.

II. PURPOSE OF THE COMMISSION PROPOSAL

The Regulation lays down the detailed arrangements and rules for managing aid financed from the Community budget directed towards implementing a programme of support and assistance for uprooted people.

III. AMENDMENTS MADE BY THE COUNCIL TO THE COMMISSION PROPOSAL

While some technical or editorial amendments and details were introduced, in order in particular to achieve the objectives of coherence and complementarity set out in the Treaty and to ensure the maximum efficiency and durability set out in the Treaty and to ensure the maximum efficiency and durability of operations, the common position reproduces the essential part of the Commission proposal as regards the nature of the operations to be financed.

However, the Council was unable to agree with the Commission on the following aspects:

(a) *Nature of the Committee required to issue an opinion on proposed operations*

The Council agreed that the Committee required to deliver an opinion on operations proposed would be the ALA Committee set up under Article 15 of Regulation (EEC) No 443/92 adopted on 25 February 1992 by the Council acting in accordance with the type-III (a) procedure laid down in the Council Decision of 13 July 1987⁽³⁾, which procedure applies for the ALA developing-countries Committee.

(b) *Duration of the Regulation*

In order to ensure maximum coherence of support and assistance operations for uprooted people in the ALA developing countries, the Council feels that in future such operations should form part of geographic cooperation programmes with the ALA developing countries.

For that reason the Council is unable to agree with the Commission, which proposed a Regulation with an indefinite duration.

⁽¹⁾ OJ No C 237, 12. 9. 1995, p. 19.

⁽²⁾ OJ No C 65, 4. 3. 1996, p. 196.

⁽³⁾ OJ No L 197, 13. 7. 1987, p. 33.

It should also be noted that the Council decided, as in other similar cases, to add a new Article 13 concerning the evaluation of operations financed by the Community in order to provide guidelines for improving the efficiency of future operations.

IV. EUROPEAN PARLIAMENT AMENDMENTS

The Council incorporated part of the European Parliament amendments in its common position. However, the Council, while approving all or part of the substance of certain amendments, placed them elsewhere in the text or re-drafted them.

The Council took into consideration in particular Amendments 1 (first recital), 2 (first recital, 1a), 3 (third recital), 4 (fifth recital), 12 (Article 1), 14 (Article 2), 15 (Article 3), 16 (Article 3), 17 (Article 4) and 21 (Article 9).

On the other hand the Council rejected Amendments 5, 6, 7, 8, 9, 10, 11, 13, 18, 19, 20 and 22a.

COMMON POSITION (EC) No 45/96

adopted by the Council on 27 June 1996

with a view to adopting Council Regulation (EC) No .../96 of ... on HIV/AIDS-related operations in developing countries

(96/C 264/05)

THE COUNCIL OF THE EUROPEAN UNION,

strengthening health systems and combating discrimination and social exclusion;

Having regard to the Treaty establishing the European Community, and in particular Article 130w thereof,

Whereas the European Parliament and the EC-ACP Joint Assembly, in their respective Resolutions adopted on 14 April 1986 and 15 February 1993, also underlined the need to take greater account of causes and factors such as poverty in the spread of the epidemic, and of the economic and social consequences of HIV/AIDS, notably through measures designed to enhance the status of women and help local communities care for families and individuals affected by the pandemic;

Having regard to the proposal from the Commission⁽¹⁾,Acting in accordance with the procedure referred to in Article 189c of the Treaty⁽²⁾,

Whereas both the European Parliament and the Council have called for increased Community involvement in this field;

Whereas the budgetary authority decided, in the framework of the 1988 budget, to create a budget heading designed to support the fight against the HIV/AIDS epidemic;

Whereas the effectiveness of programmes to support national strategies to combat HIV/AIDS depends on improved coordination of aid both at European level and with other donors and UN agencies, in particular Unaid, and on the use of flexible procedures tailored to the specific nature of the activities and the partners concerned; whereas the European Parliament and Council Resolutions call for efforts in that direction;

Whereas the Commission, in its communication of 7 January 1994 to the Council and the European Parliament on HIV/AIDS in the developing countries, outlined the policy principles and strategic priorities needed to enhance the effectiveness of action by the Community and the Member States in that field;

Whereas administrative rules and procedures should be established for cooperation in the field of HIV/AIDS,

Whereas HIV/AIDS is no longer an emerging epidemic, but has become a pandemic spread throughout the whole world, and is evolving with different social and political implications, depending on the regions and/or countries in question, and thus requires an appropriate structural and multisectoral response which is beyond the financial and human resources of most developing countries;

Whereas a financial reference amount within the meaning of point 2 of the Declaration by the European Parliament, the Council and the Commission of 6 March 1995⁽³⁾ is included in this Regulation for the period 1997 to 1999 without thereby affecting the powers of the budgetary authority as they are defined by the Treaty,

Whereas the Council, in its Resolution of 6 May 1994, emphasized the gravity of the HIV/AIDS epidemic and the need to step up efforts to give more support to the developing countries' national strategies; whereas it identified, as priorities for such support, strategies aimed at more effective prevention of transmission based on education, the promotion of sexual and reproductive health and transfusion safety, along with strategies to help the HIV-positive and the sick, in particular by

HAS ADOPTED THIS REGULATION:

Article 1

1. The Community shall implement a programme to assist the developing countries (hereinafter 'the programme') in their efforts to minimize the spread of

⁽¹⁾ OJ No C 252, 28. 9. 1995, p. 4.⁽²⁾ Opinion of the European Parliament of 9 May 1996 (not yet published in the Official Journal), Council common position of ... (not yet published in the Official Journal) and Decision of the European Parliament of ... (not yet published in the Official Journal).⁽³⁾ OJ No C 102, 4. 4. 1996, p. 4.

the HIV/AIDS epidemic and help them cope with its impact on health and social and economic development.

The programme shall be directed primarily at the poorest and least developed countries and the most disadvantaged sections of the population of developing countries.

The Community shall give priority to pursuing the following aims:

- a) reducing the transmission of HIV/AIDS and the spread of other diseases capable of being transmitted sexually or perinatally;
 - (b) reinforcing health and social services so that they can cope with the growing demands of the spreading epidemic;
 - (c) helping governments and communities to assess the epidemic's impact on different economic sectors and social groups, and to define and implement strategies to cope with it;
 - (d) developing scientific understanding of the epidemic and of the impact of measures, with a view to improving their quality, while excluding basic research;
 - (e) combating discrimination against, and the social and economic exclusion of, persons infected with HIV/AIDS.
2. To attain the objectives referred to in paragraph 1, the Community shall support a series of measures which shall take into account the following fundamental policy principles, namely, they shall:
- a) be adapted to the risk arising from the socio-economic environment and to the requirements of vulnerable groups as determined by individual behaviour and socio-economic and demographic factors;
 - (b) be gender-specific;
 - (c) be based on respect for the rights of the individual and provide social training for the persons concerned;
 - (d) increase the motivation of individuals and communities and enable them to assume their responsibilities and become more self-reliant;
 - (e) be integrated into health, education and other policies;
 - (f) be adapted to the various stages of development of the epidemic;
 - (g) encourage both political and financial commitment by governments to respond to HIV/AIDS.

Article 2

The measures to be taken to achieve the priority objectives mentioned in Article 1 shall support strategies developed at international, regional and national level with the beneficiary countries and shall include, as regards each objective:

1. reducing the transmission of HIV/AIDS and the spread of other diseases capable of being transmitted sexually or perinatally through:
 - (a) information and education on sexual and reproductive health and rights as regards reproduction; special attention shall be given to making the measures specially adapted and accessible to the target groups, notably people in high-risk environments and the most socially and economically vulnerable individuals and communities, in particular women and young people;
 - (b) greater efficiency in reducing the transmission of HIV and sexually transmitted diseases (STD), including through better screening methods and the treatment of sexually transmitted diseases;
 - (c) improved availability and use of different means and methods of protection, including the safety of blood transfusions and other forms of injection;
 - (d) support for the HIV/AIDS problem to be taken into account in development policies and strategies;
 - (e) supporting measures that aim to emancipate women and enable them to encourage the widespread use of different means and methods of protection against HIV/STD infection and transmission and protect the health of unborn children;
2. reinforcing health and social services so that they can cope with the growing demands of the spreading epidemic through:
 - (a) strengthening health services, particularly primary health services, by taking steps to increase national, regional and local capacities to develop preventive activities and care and to improve access for the most vulnerable;
 - (b) strengthening capacities with regard to blood transfusion and nosocomial safety;
 - (c) improved training for medical and paramedical personnel;

- (d) improved notification and statistical systems for epidemiological monitoring;
3. helping governments and communities to access the epidemic's impact on different economic sectors and social groups and to define and implement strategies to cope with it through:
- (a) technical back-up to help governments analyse the social and economic impact of the epidemic and develop and implement suitable strategies in the sectors concerned;
- (b) technical and financial support to enable non-governmental organizations (NGOs) and local communities to optimize their contribution to prevention and care, notably through help with the formation of networks intended to improve the effectiveness of efforts and to reinforce the information, coordination and collaboration of all protagonists;
- (c) encouragement of participation by local communities in developing local strategies for information, sexual education programmes and funding;
4. developing scientific understanding of the epidemic and of the impact of measures, with a view to improving their quality, while excluding basic research, through:
- (a) the development of scientific training through better monitoring of programmes based on relevant indicators, and the strengthening of applied medical, sociological, and anthropological research;
- (b) support for the exchange of information on experience gained;
5. combating discrimination against, and the social and economic exclusion of, persons infected with HIV/AIDS through:
- (a) the promotion of respect for the rights of the individual and in particular rights as regards reproduction;
- (b) the encouragement of freedom from discrimination and for combating the stigma attaching to those living with the virus, in particular by setting up an appropriate legislative framework.
- local authorities and other decentralized bodies, including traditional social structures,
- regional organizations and international organizations,
- research institutes and universities,
- local communities and the private sector, including NGOs, women's groups and grassroots associations able to contribute whatever expertise they have to the design, implementation and monitoring of the priority strategies in the HIV/AIDS field described in Article 2.

Article 4

1. The instruments to be employed in the course of the activities referred to in Article 2 shall include studies, technical assistance, training or other services, supplies and works, as well as audits and evaluation and monitoring missions. Priority shall be given to enhancing national capacities, particularly through training with a view to long-term viability.

2. Community financing may cover both investment expenditure, excluding the purchase of real estate, and, since the project must, as far as possible, aim at medium-term viability, recurring expenditure (which includes administrative expenditure, maintenance and running costs).

3. A financial contribution from the partners defined in Article 3 shall be sought for each cooperation operation. Their contribution will be requested within the limits of the possibilities available to the parties concerned and depending on the nature of the operation concerned.

4. Opportunities may be sought for cofinancing with other fund providers, and especially with Member States.

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

6. In order to achieve the objectives of consistency and complementarity referred to in the Treaty and with the aim of guaranteeing optimum effectiveness of all these operations, the Commission may take all necessary coordination measures, including in particular:

- a) the establishment of a system for the systematic exchange and analysis of information on operations financed and those which the Community and the Member States propose to finance;

Article 3

The agents of cooperation eligible for financial support under this Regulation include:

- national, regional and local government departments and agencies,

(b) on-the-spot coordination of the implementation of operations through regular meetings and exchange of information between representatives of the Commission and of the Member States in the beneficiary country.

7. In order to obtain the greatest possible impact globally and nationally, the Commission, in liaison with the Member States, shall take any initiative necessary for ensuring proper coordination and close collaboration with the beneficiary countries and the providers of funds and other international agencies involved, in particular those forming part of the United Nations system, and more specifically Un aids.

Article 5

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

Article 6

The financial reference amount for the implementation of this programme during the period 1997 to 1999 shall be ECU 45 million.

Annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

Article 7

1. The Commission shall be responsible for appraising, deciding and administering the operations covered by this Regulation in accordance with the budgetary and other procedures in force, in particular those laid down in the Financial Regulation applicable to the general budget of the European Communities.

2. Decisions relating to grants of more than ECU 2 million for individual operations financed under this Regulation shall be adopted in accordance with the procedure laid down in Article 8.

The Commission shall inform the Committee referred to in Article 8 succinctly of the financing decisions which it intends to take with regard to projects and programmes of less than ECU 2 million in value. The information shall be made available not later than one week before the decision is taken.

3. The Commission shall be authorized to approve, without recourse to the opinion of the Committee provided for in Article 8, any supplementary commitments needed for covering expected or real cost overruns in connection with the operations, where the overrun or additional requirement is less than or equal to 20% of the initial commitment fixed by the financing decision.

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

5. Where operations are the subject of financing agreements between the Community and the recipient countries, such agreements shall stipulate that the payment of taxes, duties or any other charges is not to be covered by the Community.

6. Participation in invitations to tender and the award of contracts shall be open on equal terms to all natural and legal persons of the Member States and of the recipient country. It may be extended to other developing countries and, in fully justified exceptional cases, to other third countries.

7. Supplies shall originate in the Member States, the recipient country or other developing countries. In duly justified exceptional cases supplies may originate elsewhere.

8. Particular attention will be given to:

- the pursuit of cost-effectiveness and sustainable impact in project design,
- the clear definition and monitoring of objectives and indicators of achievement for all projects.

9. The assistance provided under this Regulation shall complement and reinforce assistance provided under other instruments of development cooperation.

Article 8

1. The Commission shall be assisted by the geographically-determined Committee competent for development.

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

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 9

An exchange of views shall take place once a year on the basis of a presentation by the representative of the Commission of the general guidelines for the operations to be carried out in the year ahead, in the framework of a joint meeting of the committees referred to in Article 8 (1).

Article 10

1. After each budget year, the Commission shall submit an annual report to the European Parliament and the Council, summarizing the operations financed in the course of that year and evaluating the implementation of this Regulation over that period.

The summary shall in particular provide information about those with whom contracts have been concluded.

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

Done at Luxembourg, ...

2. The Commission shall regularly assess operations financed by the Community with a view to establishing whether the objectives aimed at by such operations have been achieved and to provide guidelines for improving the effectiveness of future operations. The Commission shall submit to the Committee referred to in Article 8 a summary of the assessments made which, if appropriate, may be determined by the Committee. The assessment reports shall be made available to any Member States requesting them.

3. The Commission shall inform the Member States, at the latest one month after its decision, of the operations and projects approved, stating their cost and nature, the recipient country and partners.

Article 11

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

Article 12

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

For the Council
The President

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. By letter dated 11 July 1995 the Commission sent the Council a proposal⁽¹⁾ for a Regulation, based on Article 130w of the EC Treaty, on HIV/AIDS-related operations in developing countries.
2. On 9 May 1996 the European Parliament delivered its opinion on the proposal in first reading⁽²⁾.
3. On 27 June 1996 the Council adopted its common position in accordance with Article 189c of the Treaty⁽²⁾.

II. PURPOSE OF THE COMMISSION PROPOSAL

The purpose of the proposal is to create a legal basis for implementing appropriations entered in the budget for the financing of HIV/AIDS-related operations in developing countries.

III. ANALYSIS OF THE COMMON POSITION

(i) *Amendments made by the Council to the Commission proposal*

While some technical or editorial amendments and details were introduced, in order in particular to achieve the objectives of coherence and complementarity referred to in the Treaty and to ensure the maximum efficiency, the common position reproduces the bulk of the Commission proposal as regards the nature of the measures to be financed.

However, as regards the nature of the Committee required to give an opinion on proposed measures, the Council agreed, on the grounds of coherence and efficiency, that the Committee required to deliver an opinion on measures proposed would be the relevant geographical committee acting in accordance with the type-III (a) procedure laid down in the Council Decision of 13 July 1987⁽³⁾. In addition, once a year there will be an exchange of views in a joint meeting of geographical committees on the general guidelines for measures to be carried out the following year.

It should also be noted that the Council decided, as in other similar cases, to add to Article 10 a reference to the evaluation of operations financed by the Community in order to provide guidelines for improving the efficiency of future measures.

(ii) *European Parliament amendments*

The Council incorporated part of the European Parliament amendments in its common position. However, taking into account the Commission's opinion, the Council, while approving all or part of the substance of certain amendments, placed them elsewhere in the text or re-drafted them.

The Council took into consideration in particular Amendments 3 (third recital), 16 (Article 2 (1) (c)), 17 (Article 2 (1) (b)), 20 (Article 2 (3) (b)), 21 (Article 2 (3) (c)), 24 (Article 2 (2) (d)), 28 (Article 3) and 29 (Article 4 (1)).

⁽¹⁾ OJ No C 252, 28. 9. 1995, p. 4.

⁽²⁾ OJ No C 152, 27. 5. 1996, p. 13.

⁽³⁾ OJ No L 197, 13. 7. 1987, p. 33.

The Council did not feel it would be appropriate to incorporate Amendments 1, 2, 4 and 12 in the text.

The other amendments not approved by the Commission were rejected.

COMMON POSITION (EC) No 46/96

adopted by the Council on 27 June 1996

with a view to adopting Council Regulation (EC) No .../96 of ... on environmental measures in developing countries in the context of sustainable development

(96/C 264/06)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 130s and 130w thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure referred to in Article 189c of the Treaty⁽³⁾,

- (1) Whereas it is necessary to implement sustainable development by contributing to the genuine integration of an environmental dimension into the development process,
- (2) Whereas the creation of suitable instruments and the implementation of experimental schemes will be the cornerstones of that integration in all the fields concerned;
- (3) Whereas the European Parliament adopted a resolution on 14 May 1992 on the environment and development cooperation;
- (4) Whereas the Community and its Member States were signatories to the Rio Declaration and the Agenda 21 action programme;
- (5) Whereas the Community and its Member States ratified the Conventions on Biological Diversity and on Climate Change, and have signed the Convention on Desertification; whereas they are thus committed to take into account the common but differing responsibilities of developed parties and developing parties on the subject;
- (6) Whereas the resolution of the Council and the Representatives of the Governments of the Member

States of 1 February 1993 is concerned with a Community policy and action programme on the environment and sustainable development;

- (7) Whereas, since resources are limited, information campaigns and pilot projects conducted in close cooperation with local experts are likely to have the maximum multiplier effect;
- (8) Whereas it is important to integrate the internal and external aspects of the European Community's environment policy in order to have a coherent answer to the problems set out by the United Nations Conference on Environment and Development (UnCED), in particular as regards the effects of global environmental changes on the state of the environment within the Community;
- (9) Whereas it is necessary, in the project management cycle, for any proposal for a development cooperation project to be evaluated for its environmental impact by specific, appropriate procedures;
- (10) Whereas, in particular where climate change and the conservation of biological and genetic diversity and resources (including the seas, coasts and soils) are concerned, local effects have undeniable consequences for the whole earth and for future generations and consequently for the well-being, health and security of the citizens of the Community, notably as far as access to genetic resources is concerned;
- (11) Whereas the financial instruments available to the Community for conservation and sustainable development could be usefully supplemented;
- (12) Whereas measures need to be taken to finance the activities covered by this Regulation;
- (13) Whereas detailed rules for implementation, and in particular the form of action, the recipients of the aid and the decision-making procedure should be laid down;
- (14) Whereas a financial reference amount, within the meaning of point 2 of the declaration by the European Parliament, the Council and the

⁽¹⁾ OJ No C 20, 24. 1. 1996, p. 4.

⁽²⁾ OJ No C 82, 19. 3. 1996, p. 18.

⁽³⁾ Opinion of the European Parliament of 9 May 1996 (not yet published in the Official Journal), Council common position of 27 June 1996 (not yet published in the Official Journal) and Decision of the European Parliament of ... (not yet published in the Official Journal).

Commission of 6 March 1995⁽¹⁾, is included in this Regulation for the entire duration of the programme, without thereby affecting the powers of the regulatory authority as they are defined by the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Community shall provide financial assistance and technical expertise for activities aimed at facilitating the integration of an environmental dimension into the sustainable development process in the developing countries.

2. The assistance provided pursuant to this Regulation shall complement and reinforce assistance provided pursuant to other instruments of development cooperation with a view to taking fully into account environmental considerations in Community programmes.

Article 2

1. The activities to be carried out pursuant to this Regulation shall centre on:

- assisting developing countries in designing and implementing national strategies for sustainable and equitable development, including global environmental issues and strategies arising from international conventions,
- improving policies and practices for management and conservation of ecosystems, sustainable use of renewable natural resources and for environmentally sensitive use of non-renewable natural resources,
- preserving biological diversity:
 - by the promotion and the development of methods designed to ensure sustainable and equitable use of biodiversity resources,
 - through the conservation of the ecosystems and habitats necessary for maintaining species diversity and for the survival of endangered species,
 - by identifying and assessing biodiversity resources,
- preserving areas of high environmental pressure and/or transregional ecosystems such as marine ecosystems and coastal areas, watersheds, river/lake basins, underground water and supporting initiatives for their sustainable management,

- improving practices for soil conservation and management in agriculture, livestock farming, forestry and the fight against desertification,
- improving the environment, especially the urban environment, through management plans for waste, waste water and air pollution in the context of regional planning which takes into account the conservation of the ecosystems concerned,
- applying and transferring technologies adapted to local environmental constraints and needs,
- facilitating the adaptation of production processes in developing countries, *inter alia* through market-based incentives, and making economic operators aware of the environmental constraints that may have an impact on trade (for example, standards, labels, certification).

2. Projects eligible for financing include:

- pilot schemes in the field likely to contribute to sustainable development, environmental protection and long-term management of natural resources,
- establishment of guidelines and instruments aimed at promoting sustainable development and environmental integration, particularly in the form of plans and integrated management programmes and economic instruments,
- environmental impact studies on sustainable development projects, programmes, strategies and policies, and assessment of their repercussions on social and economic development,
- inventory and statistical work, in order to improve environmental data and indicators.

3. Particular attention will be given to:

- schemes to build up the institutions of developing countries at national, regional and local level, with the support also of non-governmental organizations (NGOs),
- providing information, raising awareness and involving people in identifying, planning and implementing projects, taking into account, in particular, the role and specific situation of women.

Article 3

Aid recipients and cooperation partners shall include not only States and regions but also decentralized departments, regional bodies, public agencies, traditional

⁽¹⁾ OJ No C 102, 4. 4. 1996, p. 4.

and local communities, private operators and industries, including cooperatives and NGOs and associations representing local people.

Article 4

1. The instruments to be employed in the course of the activities referred to in Article 2 shall include studies, technical assistance, training or other services, supplies and works, as well as audits and evaluation and monitoring missions. Priority shall be given to enhancing national capacities, particularly through training with a view to long-term viability.

2. Community financing may cover both investment, with the exception of the purchase of buildings, and, since the project must, if possible, aim at medium-term viability, recurring expenditure (including administrative, maintenance and operating expenditure).

3. A contribution from the partners defined in Article 3 shall be sought for each cooperation operation. Their contribution shall be requested according to their means and the nature of the operation concerned.

4. Opportunities may be sought for co-financing with other providers of funds, especially with Member States and the international organizations concerned, such as the Global Environmental Facility.

5. The necessary measures shall be taken to emphasize the Community character of the aid provided pursuant to this Regulation.

6. In order to attain the objectives of consistency and complementarity laid down in the Treaty and with the aim of guaranteeing optimum efficiency for the totality of these operations, the Commission may take all coordination measures necessary, including in particular:

- (a) the establishment of a system for the systematic exchange and analysis of information on operations financed or being considered for financing by the Community and the Member States;
- (b) on-the-spot coordination of these operations by means of regular meetings and exchange of information between the representatives of the Commission and Member States in the beneficiary country.

7. In order to obtain the greatest possible impact globally and nationally, the Commission, in liaison with the Member States, shall take any initiative necessary for ensuring proper coordination and close collaboration with the beneficiary countries and the providers of funds

and other international agencies involved, in particular those forming part of the United Nations system.

Article 5

Financial support pursuant to this Regulation shall take the form of grants.

Article 6

The financial reference amount for the implementation of this programme for the period 1997 to 1999 shall be ECU 45 million.

Annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

Article 7

1. The Commission shall be responsible for appraising, deciding and administering operations covered by this Regulation according to the budgetary and other procedures in force, and in particular those laid down in the Financial Regulation applicable to the general budget of the Communities.

2. Decisions relating to grants of more than ECU 2 million for individual operations financed pursuant to this Regulation shall be adopted under the procedure laid down in Article 7.

The Commission shall inform the Committee referred to in Article 7 succinctly of any financing decisions it intends to take with regard to projects and programmes of less than ECU 2 million in value. The information shall be made available not later than one week before the decision is taken.

3. The Commission shall be authorized to approve, without seeking the opinion of the Committee referred to in Article 7, any extra commitments needed for covering any expected or real cost overruns in connection with the operations, provided that the overrun or additional requirement is less than or equal to 20% of the initial commitment fixed by the financing decision.

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

5. Where operations are the subject of financing agreements between the Community and the recipient

country, such agreements shall stipulate that the payment of taxes, duties or any other charges is not to be covered by the Community.

6. Participation in invitations to tender and the award of contracts shall be open on equal terms to all natural and legal persons of the Member States and of the recipient country. It may be extended to other developing countries.

7. Supplies shall originate in the Member States, the recipient country or other developing countries. In exceptional cases, where circumstances warrant, supplies may originate elsewhere.

8. Particular attention will be given to:

- the pursuit of cost-effectiveness and sustainable impact in project design,
- the clear definition and monitoring of objectives and indicators of achievement for all projects.

Article 8

1. The representative of the Commission shall be assisted by the geographically-determined Committee competent for development.

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

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

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

Done at Luxembourg, ...

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 9

An exchange of views shall take place once a year on the basis of a presentation by the representative of the Commission of the general guidelines for the operations to be carried out in the year ahead, in the framework of a joint meeting of the Committee referred to in Article 8 (1).

Article 10

1. After each budget year, the Commission shall submit an annual report to the European Parliament and the Council summarizing the operations financed in the course of that year and evaluating the implementation of this Regulation over that period.

The summary shall in particular provide information about those with whom contracts have been concluded.

2. The Commission shall regularly assess operations financed by the Community with a view to establishing whether the objectives aimed at by those operations have been achieved and to providing guidelines for improving the effectiveness of future operations. The Commission shall submit to the Committee referred to in Article 8 a summary of the assessments made which, if appropriate, may be examined by the Committee. The assessment reports shall be available to any Member States requesting them.

3. The Commission shall inform the Member States, at the latest one month after its decision, of the operations and projects that have been approved, stating their cost and nature, the recipient country and partners.

Article 11

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

It shall be applicable until 31 December 1999.

For the Council
The President

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. By letter dated 28 June 1995 the Commission sent the Council a proposal for a Regulation on environmental measures in developing countries in the context of sustainable development⁽¹⁾. The proposal is based on Articles 130s and 130w of the EC Treaty.
2. On 20 December 1995 the Economic and Social Committee delivered its opinion on the proposal⁽²⁾.
3. On 9 May 1996 the European Parliament delivered its opinion in first reading⁽³⁾.
4. On 27 June 1996 the Council adopted its common position in accordance with Article 189c of the Treaty⁽³⁾.

II. PURPOSE OF THE COMMISSION PROPOSAL

The purpose of the proposal is to create a legal basis for implementing appropriations entered in the budget for the financing of environmental measures in the developing countries in the context of sustainable development.

III. ANALYSIS OF THE COMMON POSITION

(i) Amendments made by the Council to the Commission proposal

While some technical or editorial amendments and details were introduced, in order in particular to achieve the objectives of coherence and complementarity referred to in the Treaty and to ensure the maximum efficiency, the common position reproduces the bulk of the Commission proposal as regards the nature of the measures to be financed.

However, as regards the nature of the Committee required to give an opinion on proposed measures, the Council agreed, on the grounds of coherence and efficiency, that the Committee required to deliver an opinion on measures proposed would be the relevant geographical Committee acting in accordance with the type-III (a) procedure laid down in the Council Decision of 13 July 1987⁽⁴⁾. In addition, once a year there will be an exchange of views in a joint meeting of geographical Committees on the general guidelines for measures to be carried out the following year.

It should also be noted that the Council decided, as in other similar cases, to add to Article 10 a reference to the evaluation of operations financed by the Community in order to provide guidelines for improving the efficiency of future measures.

Furthermore, owing to the nature of eligible measures (pilot projects, preparation of guidelines, environmental impact assessments, compilation and statistical work) and to the fact that it would be preferable in future to implement such measures within the framework of geographical development programmes, the Council laid down a limited duration for the Regulation (1997 to 1999) and a financial reference amount for that period (ECU 45 million).

⁽¹⁾ OJ No C 20, 24. 1. 1995, p. 4.

⁽²⁾ OJ No C 82, 19. 3. 1996, p. 18.

⁽³⁾ OJ No C 152, 27. 5. 1996, p. 14.

⁽⁴⁾ OJ No L 197, 13. 7. 1987, p. 33.

(ii) *European Parliament amendments*

The Council incorporated European Parliament Amendment 1 and part of Amendments 25 and 32 into its common position.

Bearing in mind the limited amounts entered in the budget for financing such measures, it felt that it was inappropriate to widen the scope of the Regulation by including measures which might in any event be financed under geographical development programmes. For that reason it was unable to agree to the other European Parliament amendments.

COMMON POSITION (EC) No 47/96

adopted by the Council on 27 June 1996

with a view to adopting Decision No .../96/EC of the European Parliament and of the Council establishing a support programme in the field of books and reading (Ariane)

(96/C 264/07)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 128 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Committee of the
Regions⁽²⁾,

Acting in accordance with the procedure referred to in
Article 189b of the Treaty⁽³⁾,

(1) Whereas, in the age of the information society,
books and reading are still one of the most suitable
methods of disseminating knowledge, and the
complementary relationship between books and
audiovisual technology, and multimedia, must be
taken into account;

(2) Whereas any Community programme in the field of
books needs to take account of their dual function
as economic and cultural objects;

(3) Whereas reading as a leisure pursuit of particular
importance can be encouraged by Community
programmes, in particular in the field of education
and culture;

(4) Whereas it is important to distinguish, in the book
production chain, between creation, publishing,
translation and dissemination; whereas this
programme (Ariane) may be viewed as a significant
cultural measure to promote books;

(5) Whereas the Treaty entrusts the Community with
the task of:

- contributing to the flowering of the cultures of
the Member States, while respecting their
national and regional diversity,

- encouraging cooperation between Member
States and, if necessary, supporting and
supplementing their action, particularly as
regards artistic and literary creation,

- fostering cooperation with third countries and
the competent international organizations in the
sphere of culture, in particular the Council of
Europe;

(6) Whereas the promotion of translation and support
for targeted initiatives carried out in partnership,
particularly between specialist operators in the
European books and reading sector, contribute to:

- knowledge and dissemination of the culture and
history of the European peoples,

- maintaining the diversity of literary creation and
the literary heritage expressed in the various
national and regional languages,

- intercultural exchanges and exchanges of
know-how

and whereas such promotion favours the access of
citizens — including less-favoured ones — to
culture;

(7) Whereas it is necessary to contribute towards
encouraging high-quality translation and promotion
of literary works within the Community, in
particular through improvement of the skills of
literary translators as well as of other professionals
in the book sector, particularly those who are
responsible for the promotion of access by the
European citizen;

(8) Whereas European literary and translation prizes
may contribute to the dissemination of literary
works of high merit;

(9) Whereas the Community institutions have
recognized the importance of knowledge and
dissemination of literary works, by means of
translation in particular, as is apparent from:

- the European Parliament resolution of 10 July
1987 on the Commission communication to the

⁽¹⁾ OJ No C 324, 22. 11. 1994, p. 11 and OJ No C 279,
25. 10. 1995, p. 7.

⁽²⁾ OJ No C 100, 2. 4. 1996, p. 35.

⁽³⁾ Opinion of the European Parliament of 7 April 1995 (OJ No
C 109, 1. 5. 1995, p. 297), Council common position of
27 June 1996 (not yet published in the Official Journal) and
Decision of the European Parliament of ... (not yet
published in the Official Journal).

Council on the European dimension with regard to books⁽¹⁾,

- the resolution of the Council and of the Ministers responsible for Cultural Affairs meeting within the Council of 9 November 1987 on the promotion of translation of important works of European culture⁽²⁾,
 - the resolution of the Council and of the Ministers responsible for Cultural Affairs meeting within the Council of 18 May 1989 concerning the promotion of books and reading⁽³⁾,
 - the Commission communication of 3 August 1989: Books and reading — a cultural challenge for Europe,
 - the conclusions of the Ministers of Culture, meeting within the Council, of 12 November 1992 on guidelines for Community cultural action⁽⁴⁾,
 - the European Parliament resolution of 21 January 1993 on promoting books and reading in Europe⁽⁵⁾,
 - the resolution of the Council and of the Ministers of Culture, meeting within the Council, of 17 May 1993 on the promotion of the translation of contemporary European dramatic works⁽⁶⁾;
- (10) Having regard to the outcome of the European campaign to promote awareness of books and reading (1993 to 1994) organized by the Community and the Council of Europe;
- (11) Whereas the Commission communication of 27 July 1994 on 'European Community action in support of culture', which makes books and reading a priority area, sets out the framework for incentive measures to support and complement the efforts of Member States, while respecting the principle of subsidiarity;
- (12) Whereas it is important to implement Community cultural projects with third countries within and outside Europe, and to implement European cultural cooperation with the Council of Europe and other relevant international bodies, such as Unesco;
- (13) Whereas this Decision lays down, for the entire duration of this programme, a financial framework constituting the principal point of reference, within

the meaning of point 1 of the declaration by the European Parliament, the Council and the Commission of 6 March 1995, for the budgetary authority during the annual budgetary procedure;

- (14) Whereas a *modus vivendi* was concluded on 20 December 1994 between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the Treaty⁽⁷⁾,

HAVE DECIDED AS FOLLOWS:

Article 1

This Decision establishes the Ariane action programme set out in the Annex, hereinafter referred to as 'this programme', for the period 1 January 1997 to 31 December 1998, intended to increase the knowledge and dissemination of literary creation and history of the European peoples as well as access by the European citizen to these, notably through support for the translation of literary works, plays and reference works, through support for cooperation projects on books and reading carried out in partnership, as well as through the improvement of the skills of professionals working in this field.

Article 2

This programme shall encourage cooperation at European level among Member States in the field of culture. It shall support and supplement their action in accordance with the principle of subsidiarity by contributing to the flowering of their cultures while respecting their national and regional diversity.

- (a) to encourage, by means of translation:

- a wider dissemination of 20th-century literary works of merit which are representative of the culture of the Member State from which they come and which illustrate, in particular, trends in contemporary European literature in the second half of the century; in this respect, priority will be given to translations of works in less widely used languages of the European Union or translations into such languages,
- the dissemination of contemporary dramatic works in order to present to the European public a varied repertory which is representative of the cultures of the Member States,

⁽¹⁾ OJ No C 246, 14. 9. 1987, p. 136.

⁽²⁾ OJ No C 309, 19. 11. 1987, p. 3.

⁽³⁾ OJ No C 183, 20. 7. 1989, p. 1.

⁽⁴⁾ OJ No C 336, 19. 12. 1992, p. 1.

⁽⁵⁾ OJ No C 42, 15. 2. 1993, p. 182.

⁽⁶⁾ OJ No C 160, 12. 6. 1993, p. 1.

⁽⁷⁾ OJ No C 102, 4. 4. 1996, p. 1.

- the dissemination of reference works to improve the knowledge of the culture and history of the European peoples, in particular in the areas indicated in Article 128 (2) and (4) of the Treaty;
- (b) to encourage, through support for cooperation projects carried out in partnership:
- exchanges of experience and know-how on themes of common interest in the book sector between professionals at European level,
 - the development of partnership initiatives which aim to facilitate access to data relevant to the dissemination of books, and the promotion of, and access by the citizen to, reading;
- (c) to encourage high quality translation and promotion of works by providing Community support for the improvement of the skills of literary translators, as well as of other professionals in the book sector, and particularly those responsible for improving access by the citizen;
- (d) to accompany and supplement the efforts referred to in (a), (b) and (c) by providing support for innovative study and research projects submitted by networks and professional organizations.

Article 3

The measures described in the Annex shall be carried out in pursuit of the objectives set out in Article 2. They shall be implemented in accordance with the procedure set out in Article 5.

Article 4

1. This programme shall be open to participation by the associated countries of central and eastern Europe (ACCEE) in accordance with the conditions laid down in the Additional Protocols to the Association Agreements on participation in Community programmes concluded, or to be concluded, with those countries. This programme shall be open to participation by Cyprus and Malta and to cooperation with other third countries which have concluded association or cooperation agreements containing cultural clauses, on the basis of additional appropriations to be provided according to procedures to be agreed with those countries. Some general rules for such participation are provided for in Action 6 in the Annex.

2. The Community and the Member States shall promote cooperation with the Council of Europe, and with other relevant international organizations in the cultural sector (e.g. Unesco), by ensuring, with due regard for the individual identity and autonomy of each

institution and organization, that the instruments adopted are complementary.

Article 5

1. The Commission shall implement this programme in accordance with this Decision.
2. The Commission shall be assisted by a Committee composed of two representatives per Member State and chaired by the Commission representative. Members of the Committee may be assisted by experts or advisers.
3. The representative of the Commission shall submit to the Committee draft measures concerning:
 - the annual work plan,
 - the general balance between the various Actions,
 - the detailed arrangement and selection criteria for the various types of project described in the Annex (Actions 1, 2, 3, 4 and 6),
 - projects involving more than ECU 10 000 in assistance,
 - the procedures for monitoring and evaluating the programme, together with the conclusions of the reports provided for in Article 8 and any programme readjustment measures resulting therefrom.

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

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith.

In that event:

- (a) the Commission may defer application of the measures which it has decided for a period of two months from the date of such communication;
- (b) the Council, acting by a qualified majority, may take a different decision within the time limit referred to in (a).

4. The Commission may consult the Committee on any other matter concerning the implementation of this programme not covered by paragraph 3.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken.

The Committee shall deliver its opinion on this draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 6

1. The financial framework for the implementation of this programme for the period referred to in Article 1 shall be ECU 7 million.

2. The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

Article 7

The Commission, in collaboration with the Member States, shall endeavour to establish complementarity between the measures provided for under this programme and the other cultural programmes such as Kaleidoscope⁽¹⁾ and Raphael, on the one hand, and the Community action programmes, in particular concerning education, such as Socrates⁽²⁾, and training, such as Leonardo da Vinci⁽³⁾, on the other.

Article 8

One year after this programme has been in operation, and within the six months following that period, the Commission, after having consulted the Committee, shall present to the European Parliament and the Council a detailed assessment report on the results achieved, accompanied, where necessary, by appropriate proposals, including proposals for the continuation of the programme and the relevant arrangements so as to enable

the European Parliament and the Council to take a decision before the end of the period covered by this programme. This report will highlight the added value created, particularly of a cultural nature, and the socio-economic consequences brought about by the financial support granted by the Community. The report is intended to assess, both qualitatively and quantitatively, the extent to which the programme has achieved the objectives referred to in Article 2.

In the light of the evaluation report provided for in the previous subparagraph and of any proposals made by the Commission, the European Parliament and the Council will consider the possibility of adopting a new programme, worked out and developed taking full account of the fruitful experience gained from this programme.

In this context they will be able to take, where appropriate, any suitable measures to avoid interruption of this programme.

Article 9

This programme, containing practical information on procedure, liaison offices designated by the Member States to provide technical assistance to cultural projects, the closing dates for submission of applications and the documents which must accompany applications, shall be published each year in the 'C' series of the *Official Journal of the European Communities*.

Article 10

This Decision shall enter into force on 1 January 1997.

Done at Luxembourg,

For the European Parliament

The President

For the Council

The President

⁽¹⁾ OJ No L 99, 20. 4. 1996, p. 20.

⁽²⁾ OJ No L 87, 20. 4. 1995, p. 10.

⁽³⁾ OJ No L 340, 29. 12. 1994, p. 8.

ANNEX

ARIANE PROGRAMME

The measures under this programme are designed to increase the knowledge and dissemination of literary creation and history of the European peoples as well as access by the European citizen to these, notably through support for the translation of literary works, plays and reference works, through support for cooperation projects on books and reading carried out in partnership, as well as through the improvement of the skills of professionals working in this field.

ACTION 1

Translation grants

1. *Grants for the translation of works of 20th century literature of considerable merit to ensure wider dissemination through publication*

- (a) Grants are provided for the translation of works of 20th century literature of considerable merit (novels, short stories, essays, literary histories, biographies, plays, poetry) which are representative of the culture of the Member State from which they come and which illustrate, in particular, trends in contemporary European literature in the second half of the century and are likely to appeal to a broad European audience.
- (b) (i) In order to qualify, works must already have been translated and published in two European Union languages (in addition to the original language). The grant is to subsidize translation into at least one other European Union language, with priority being given to translations into less widely used European Union languages.
- (ii) Works written in one of the less widely used languages of the European Union may nevertheless be eligible for a translation grant when they have already been translated and published in a European Union language (other than the original language), or when, although they have not yet been translated and published in a European Union language, they are simultaneously proposed for translation into at least two European Union languages. Grants are intended to support translation into another European Union language. These provisions also apply to works:
- written in a widely known language, but published in a small Member State,
 - written in other languages of the Member States.
- (c) Grant applications must be sent to the Commission by one or more publishers from a Member State. The application submitted by the publisher(s) must include the agreement of the translator(s). The grant may cover up to 100 % of the translator's fee negotiated according to the usual market practice. The publisher must undertake to give clear prominence to the translator's name and the Community contribution.

The publishers must certify that they hold any rights to the publication and/or translation of the work which is the subject of the application and that, without Community support, they would not have formed a commercial judgment in favour of publishing the translated work in question.

- (d) The works will be selected twice a year.

2. *Grants for the translation of plays with a view to wider dissemination through public performance*

Grants are awarded for the translation into two European Union languages of plays that have already been performed on stage or broadcast in the audiovisual media and have already received some critical and popular acclaim.

Priority will be given to recent 20th century works.

The works nominated for translation must be supported by specific plans for their public performance.

The initial application must be submitted by managers, directors or producers from a Member State with a view to staging a public performance of the play. The application must be made simultaneously to the Commission and to the liaison offices designated by the Member States, which must issue an opinion on whether or not the works nominated qualify as priorities.

The final selection of works to be translated will be made on the basis above all of the quality of the works nominated for translation. As concerns the choice of the languages of translation, the competent body will ensure balance between the translations into widely known languages and those into less well-known languages to increase the chances of the works reaching a large and diverse audience.

The subsidy will take the form of a translation grant of up to ECU 3 500, subject to annual revision. The grant in no way affects any royalties that might be due to the authors or translators in connection with the performance, broadcast or publication of the translated work.

The liaison offices will act as the depositaries of the translations completed with the Community's assistance and shall ensure that those interested from a professional standpoint are fully briefed. They may pass the translations only to persons who have obtained the agreement of the rights-holders in accordance with existing national rules or to bodies which have obtained such agreement.

3. *Grants for the translation of reference works and studies with a view to wider dissemination of information in the cultural sector*

Grants for the translation of reference works and studies in two European Union languages are intended to:

- improve the knowledge and dissemination of the culture and history of the European peoples,
- facilitate the exchange of information and pooling of experience, thereby fostering cooperation between Member States in the areas referred to in Article 128 of the Treaty, and in particular the areas to which the Community has accorded priority in its cultural policy.

However, given the huge field which this project seeks to cover, grants for the translation of reference works (history, history of art, human sciences, social sciences, etc.) will, at least initially, be organized in the form of an experimental and selective action.

Grants will also be given for the translation of studies and reports dealing with the practices and systems which exist in other Member States in the cultural domain, helping to highlight problems of common interest falling in particular within the scope of Article 128 (2) and (4) of the Treaty.

The grant application must be accompanied by the information needed to establish the substantial contribution that the work or study to be translated would make to knowledge of the area in question, an indication of the target languages and the written agreement of the author and translator.

Nominations will be made to the Commission directly or by the competent authorities of the Member States. The works may be translated into as many languages as deemed necessary.

The Community contribution, supplied after the written agreement of the translator has been obtained, may be made in one of two ways, depending on the origin of the work:

- if the work nominated for translation was presented by a publisher, acting through the intermediary of the Member State, with a view to placing it on the European market, Community aid will be provided on terms similar to those laid down for grants to translations of works of contemporary literature (point 1),
- if the work nominated for translation through the intermediary of the Member State is not intended for commercial exploitation (e.g. it is to be translated on behalf of a university, research centre or specialist institute, etc.), Community aid will be provided in the form of a grant to help the translators carry out their work on terms similar to those set out for translation of plays (point 2).

The Commission will distribute an annual list with details of the works translated in accordance with the provisions of points 1, 2 and 3.

The resources to be committed to this Action will amount to 50 % of the overall budget allocated to this programme. The exact breakdown between the six Actions making up this programme will be determined in accordance with the procedures laid down in Article 5 (3).

ACTION 2

Support for cooperation projects carried out in partnership which aim to improve the promotion of, and access by the citizen to, books and reading

Support may be given to cooperation projects involving partners from at least three Member States, which must be presented by networks, associations or organizations of professionals (e.g. authors, translators, libraries, small and medium-sized publishing houses, bookshops), non-profit making foundations working in the field of books, or regional (or local) groups which have developed specific actions or programmes in this field.

Cooperation projects of operators other than those specified in the first subparagraph are not eligible for support in the context of this Action.

Eligible cooperation projects concern any initiative which involves a partnership between the operators mentioned in the first subparagraph (meetings, symposia, events, pilot schemes of cooperation or exchanges) and which aim in particular to promote:

- the mutual knowledge of, and access to, the literature or history of the European peoples,
- the development of partnership initiatives which aim to facilitate access to data relevant to the dissemination of books, to their promotion, to their translation and to access by the citizen to reading,
- the exchange of experience and know-how on themes of common interest between professionals at European level.

Partnership projects submitted in the context of this Action need to be of European interest and of an innovatory or exemplary nature. They must demonstrate that Community support for the project will provide real added value.

Extra support will be given to projects which include measures to disseminate the results obtained.

Community support will not cover:

- actions or events which are covered by other Community programmes (in the fields of cinema and television (Media II)⁽¹⁾, cultural heritage (Raphael) and artistic and cultural activities (Kaleidoscope)),
- cultural cooperation projects from different regions within the same Member State or which are of a purely national or bilateral character,
- the realization of material and publications for commercial purposes; however, monographs, collections, reviews, recordings, CD, video, CD-I and CD-ROMs will be considered where they are an integral part of a project,
- investment or running costs of cultural organizations which do not form an integral part of the submitted project.

The case for renewal of Community support from year to year will be assessed by independent experts, designated by the Commission acting on proposals by the Member States, on the basis of an activity report on the project submitted by the organizers. The independent experts may recommend changes to the project.

Projects must present a balanced financial plan indicating the financial contribution required for the realization of the actions presented. The financial contribution towards a project in the context of this Action may not as a general rule exceed 25 % of the total cost of the project and in no case may it exceed ECU 50 000. In the case of projects which include elements intended to further the dissemination of the results to the public or professionals, a further Community contribution may be awarded, up to 50 % of the costs corresponding to this element, but not exceeding a maximum of ECU 20 000.

Projects for which the Community contribution would be less than ECU 5 000 will not, in principle, be eligible under this programme in the context of this Action.

⁽¹⁾ OJ No L 321, 30. 12. 1995, p. 25.

Projects must be the subject of a specific application to the Community. The application must be accompanied by:

- a detailed description of the activities to be carried out, describing in particular the added value at the Community level,
- a detailed budgetary plan for the project.

ACTION 3

Improvement of the skills of professionals working towards the knowledge and dissemination of European literature

The Community will complement the efforts of the competent authorities of the Member States by providing specific support for the improvement of the skills of professionals, particularly literary translators, with a view to contributing to the improvement of the quality of translation of works, as well as other professionals in the field of books and reading covered by Action 2, with a view to contributing to the promotion of, and access by the citizen to, the different cultures of the Member States.

Community support will be provided in the form of grants and allowances to cover the costs of travel and training courses to improve skills.

Grants and other forms of Community aid provided for under this Action will be awarded for educational projects presented by networks, organizations, associations, foundations, specialists, colleges and institutes (particularly, for example, library networks, translation colleges, etc.) after consulting the competent authorities of the Member States.

ACTION 4

Support measures

A. Specific measures

1. To bring about an improvement in cultural cooperation in the field of books and reading, assistance could be granted in limited individual cases to projects involving meetings organized at European level or to studies and research in the field covered by this programme, provided that such meetings and studies have not received any Community support under the programme.
 2. Applications must offer the financial guarantees required to carry them out. The Community contribution under this Action may not in any circumstances exceed 50 % of the total cost of the meeting or the study nor exceed ECU 50 000.
- B. The Commission, in collaboration with the liaison offices, will take the necessary measures to ensure publicity and the dissemination of information on this programme so that cultural operators and networks are informed and made aware of actions relevant to them.

ACTION 5

Aristeion Prizes, synergy with translation grants

The Community makes an annual contribution for the Aristeion Prizes (European literature prize and European translation prize).

The six works nominated for the European literature prize are automatically eligible for a grant towards the cost of their translation into at least two additional languages, on similar terms to those applying to literary works (Action 1, 1 (a)), provided an application to this effect is submitted directly to the Commission by a publisher.

ACTION 6

Participation by third countries

The third countries referred to in Article 4 will take part in this programme in accordance with the conditions laid down in that Article. Participation or cooperation will take into account the following objectives:

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- wider dissemination of the literature of the Member States throughout the third countries concerned and better knowledge of the literature of the third countries concerned within the Member States,
 - promotion of schemes for improving the professional skills of professionals working to support a greater knowledge and the dissemination of European literature, notably literary translators and translators of the works under Action 1, points 2 and 3, and other professionals in the field of books and reading,
 - improvement of synergies to foster projects submitted by professional organizations of authors and translators, libraries, small and medium-sized publishing companies, bookshops and non-profit associations and foundations concerned with books and literature.
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STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 25 October 1994 the Commission submitted a proposal for a Decision, based on Article 128 of the EC Treaty, establishing the Ariane programme.
2. The European Parliament and the Committee of the Regions delivered their opinions on 6⁽¹⁾ and 20⁽²⁾ April 1995.
3. The Commission submitted a proposal amended to take account of the Parliament's opinion on 28 July 1995⁽³⁾.
4. The Council adopted its common position in accordance with Article 189b of the Treaty on 27 June 1996.

II. AIM OF THE PROPOSAL

The proposal concerns the implementation at Community level of a support programme in the field of books and reading, notably through translation in Europe.

1. GENERAL COMMENTS

In its common position the Council approved the main points of the Commission proposal while introducing amendments it considered essential.

2. SPECIFIC COMMENTS

2.1. Amendments made by the Council to the amended Commission proposal

(a) Scope of the Decision

Within the scope of the Decision the Council introduced a distinction between aid for translation under Action 1 ('Translation grants') and activities under the other Actions of the programme. In particular the Council stipulated that the resources to be committed to Action 1 would amount to 50% of the overall budget allocated to the programme. The Council also recast the original structure of the Actions in order to make the content clearer: the three Actions proposed by the Commission have become six in the common position.

(b) Committee procedure

Following the example of the Committees set up by the Socrates, Leonardo and Youth for Europe III decisions, and by the Kaleidoscope Decision, the Council opted for a committee which would act as a management committee for certain matters and as an advisory committee in the case of others.

(c) Duration of the programme and funding

Like the actions in the field covered by the Kaleidoscope programme, those under Ariane are relatively new and, as with Kaleidoscope, the Council preferred to reduce the five-year period proposed by the Commission. It therefore decided to align the duration of Ariane on that of Kaleidoscope, namely three years. However, in view of the time required for the Article 189b procedure, the Council concluded that it would be impossible to retain 1 January 1996 as the starting date for the programme, and specified 1 January

⁽¹⁾ OJ No C 109, 11. 5. 1995.

⁽²⁾ Not yet published in the Official Journal.

⁽³⁾ OJ No C 279, 25. 10. 1995.

1997 in its common position. Moreover, since ECU 2,5 million is entered in the Community budget for 1996 for Ariane-type activities, the Council took the view that 1996 could be considered as a pre-implementation year. It therefore adopted a two-year period for the programme starting from 1 January 1997. The financial appropriation is set at ECU 7 million, being the total of the amounts entered in the financial statement accompanying the Commission proposal for 1997 and 1998 (the ECU 2,5 million for 1996 referred to above being the amount entered in the financial statement for that year).

An assessment is to be made after one year of implementation of the programme and within six months following that period, and the Commission may, if appropriate, submit a proposal for a further programme for the period after 1 January 1999.

Paragraphs have been added concerning the possibility of adopting a new programme and possible measures to avoid any interruption of the programme; these paragraphs reproduce forms of words adopted in conciliation for the Kaleidoscope programme.

2.2. European Parliament amendments

2.2.1. *European Parliament amendments incorporated by the Commission*

In its amended proposal the Commission adopted, in full or in part, 32 of Parliament's 43 amendments.

(a) European Parliament amendments incorporated by the Council

The Council agreed to 28 of Parliament's amendments, in full, in part or with a different wording. These amendments are as follows:

3, 4, 5, 6, 7, 8, 10, 12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, 28, 29, 30, 31, 32, 33 (second part, see comments below), 36, 43 and 46.

(b) European Parliament amendments not incorporated by the Council

Amendment 1

Amendment of the title to read 'a support programme in the field of books and reading through translation'.

The Council considered that translation was only one of the actions to be promoted and was unable to endorse this amendment.

Amendment 2

Proposed new recital referring to the myth of Ariadne and Theseus.

The Council thought it would be legally incorrect to include such a reference in a legislative text.

Amendment 11

New recital stating that the family and schools should remain the principal places for the learning and encouragement of reading.

While it thought the idea behind this amendment was laudable, the Council felt that the amendment did not belong within the scope of the Decision.

Amendment 19

Reference in a new recital to the limited funds allocated to the promotion of books and reading at Community level.

The Council felt that the wording of the amendment was at odds with that of Amendment 12, which it accepted. It also felt there was no reason to comment on the size of funding for an action in a recital to a legislative text.

Amendment 33 (first part)

Support to be given to young authors and to small independent publishing houses.

The Council thought the first part of this amendment (support for young authors) went beyond the scope of the Ariane programme, while it was able to endorse the spirit of the idea of supporting small independent publishing houses.

Amendment 37

Creation of a database to encourage cooperation between publishers at European level.

The Council thought this amendment went beyond the aims and general framework of the programme.

Amendment 41

Compilation in the Community of semantic databases for technical and literary translators.

While it recognized the value of this amendment, the Council felt that, given the scale of the programme in particular, it would not be possible in practice to accept Parliament's proposal.

2.2.2. *European Parliament amendments not incorporated by the Commission*

Amendments 9, 14, 34, 38, 40 and 48

(Adjustment of economic rules; adoption of a statute for professional translators; support for publishing and distribution after translation; defraying the cost of promotional tours for authors selected; professional training for publishers, librarians and booksellers in new technologies; publication of braille editions for the blind).

While it was aware of the scale of these problems, the Council shared the Commission's view that they were outside the scope of the Ariane programme.

Amendments 27 and 45

Operation of the Committee.

The Council, like the Commission, considered that these amendments would be at variance with the established rules on Committee procedure, in view also of the *modus vivendi* agreement adopted by the Parliament, the Council and the Commission on 20 December 1994.

Amendment 35

Priority for publishing houses which have not previously obtained Community aid for translation.

While it understood Parliament's concern for a balanced distribution of Community aid, the Council shared the Commission's view and pointed out that works would be selected by a panel of independent experts on the basis of the quality of the works to be translated. Consequently it was unable to adopt this amendment.

CONCLUSIONS

The Council considers that, given the circumstances which long prevented progress on this matter, the common position is a balanced text appropriate to the needs of promoting activities in the area of books and reading.

COMMON POSITION (EC) No 48/96

adopted by the Council on 8 July 1996

with a view to adopting Council Decision No . . ./96/EC concerning a multi-annual programme for the promotion of energy efficiency in the Community — SAVE II

(96/C 264/08)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 130s (1) thereof,

Having regard to the proposal from the Commission⁽¹⁾,Having regard to the opinion of the Economic and Social Committee⁽²⁾,Having regard to the opinion of the Committee of the Regions⁽³⁾,Acting in accordance with the procedure laid down in Article 189c of the Treaty⁽⁴⁾,

- (1) Whereas Article 130r of the Treaty states that one objective of the Community policy on the environment shall be to ensure a prudent and rational utilization of natural resources;
- (2) Whereas at its meeting on 29 October 1990 the Council set an objective of stabilizing total CO₂ emissions by the year 2000 at the 1990 level in the Community as a whole;
- (3) Whereas Decision 93/389/EEC⁽⁵⁾ established a monitoring mechanism of Community CO₂ and other greenhouse gas emissions;
- (4) Whereas nonetheless, despite efforts made, CO₂ emissions in the Community generated by energy consumption are expected to increase by 5 to 8 % between 1995 and 2000, assuming normal economical growth; whereas, therefore, additional measures are indispensable;
- (5) Whereas the Commission, in its communication of 8 February 1990 on energy and the environment, highlighted energy efficiency as the cornerstone of future efforts to reduce the negative impact of energy on the environment;

- (6) Whereas the improvement in the management of energy is urgently needed in order to contribute to the protection of the environment, to a better security of energy supply and to sustainable development;
- (7) Whereas the Commission has communicated to the Council and the European Parliament, by means of the Green Paper of 11 January 1995 and the White Paper of 13 December 1995, its views on the future of energy policy in the Community, and the role of energy-saving and energy efficiency measures;
- (8) Whereas Article 130a of the Treaty provides that the Community should develop and pursue its actions leading to the strengthening of its economic and social cohesion, and that it should, in particular, reduce disparities between the levels of development of the various regions and the backwardness of the least-favoured regions; whereas energy should be integrated into that effort;
- (9) Whereas, by Decision 91/565/EEC⁽⁶⁾, a Community energy efficiency programme (SAVE), aimed at strengthening energy efficiency infrastructures within the Community, was adopted; whereas that programme expired on 31 December 1995;
- (10) Whereas the Community recognized the SAVE programme as an important element of the Community's CO₂ reduction strategy; whereas the communication of the Commission of 8 May 1991 on the European Community's energy programming activities at regional level, the conclusion of the Council on this communication, and the Resolution of the European Parliament of 16 July 1993⁽⁷⁾ stated that those activities should be pursued, amplified and utilized as a support for the energy strategy of the Community; whereas this initiative for regional actions should now be totally incorporated into a new SAVE II programme;

- (11) Whereas by Decision No 1110/94/EC of the European Parliament and of the Council⁽⁸⁾, a fourth framework programme for actions in

⁽¹⁾ OJ No C 346, 23. 12. 1995, p. 14.⁽²⁾ OJ No C 82, 19. 3. 1996, p. 13.⁽³⁾ OJ No C 129, 2. 5. 1996, p. 36.⁽⁴⁾ Opinion of the European Parliament of 16 April 1996 (OJ No C . . .), Council common position of 8 July 1996 (not yet published in the Official Journal) and Decision of the European Parliament of . . . (not yet published in the Official Journal).⁽⁵⁾ OJ No L 167, 9. 7. 1993, p. 31.⁽⁶⁾ OJ No L 307, 8. 11. 1991, p. 34.⁽⁷⁾ OJ No C 255, 20. 9. 1993, p. 252.⁽⁸⁾ OJ No L 126, 18. 5. 1994, p. 1.

technological research, development and demonstration was established; whereas energy efficiency policy constitutes an important instrument for the use and promotion of the new energy technologies that the framework programme will establish; whereas the SAVE II programme represents a policy instrument which complements this programme;

- (12) Whereas the SAVE II programme aims at improving energy intensity of final consumption by a further one percentage point per annum over that which would have been otherwise attained;
- (13) Whereas at its meeting on 15 and 16 December 1994 the Council stated that the target of stabilizing CO₂ emissions can only be achieved by a coordinated package of measures to improve energy efficiency and the rational use of energy which are based on supply and demand at all levels of energy production, conversion, transport and consumption and to exploit renewable energies, and that local energy management programmes are amongst these measures;
- (14) Whereas in its opinion on the Commission's Green Paper on energy policy⁽¹⁾, the European Parliament called for the formulation of objectives and a common programme for energy efficiency and savings compatible with the objectives concerning the emissions of greenhouse gases as agreed in Rio de Janeiro (1992) and Berlin (1995), called for a SAVE II programme and requested that the Commission clarify the role which it intends to play in energy savings and efficiency by creating practical projects;
- (15) Whereas improved energy efficiency will have a positive impact on both the environment and the security of energy supplies which are global in nature; whereas a high level of international cooperation is needed to produce the most positive results;
- (16) Whereas all the elements of the Community action programme for improving the efficiency of electricity use set out in Decision 89/364/EEC⁽²⁾ should be incorporated into the SAVE II programme; whereas therefore that Decision should be repealed;
- (17) Whereas between 180 and 200 MT of CO₂ emissions could be avoided by the year 2000 by an improvement of 5% in the energy intensity of final demand additional to the conventional expectations;
- (18) Whereas the SAVE II programme is an important and necessary instrument for promoting increased energy efficiency;
- (19) Whereas in order to prevent duplication and to achieve synergy, care should be taken in implementing the programme to ensure close cooperation with other Community programmes linked directly with energy efficiency promotion;
- (20) Whereas it is politically and economically desirable to open the SAVE II programme to the associated central and eastern European countries in accordance with the conclusions of the European Council meeting in Copenhagen in June 1994 and as outlined in the Commission communication to the Council on the subject in May 1994, and to the associated Mediterranean countries Cyprus and Malta;
- (21) Whereas, in order to ensure that Community aid is used efficiently, the Commission shall ensure that projects are subject to thorough prior appraisal and shall systematically monitor and evaluate the progress and results of supported projects;
- (22) Whereas a financial reference amount within the meaning of point 2 of the Declaration by the European Parliament, the Council and the Commission of 6 March 1995⁽³⁾, is included in this decision for the entire duration of the programme, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty;
- (23) Whereas, before the end of 1997, the financial reference amount for the remaining period of the programme should be reviewed, on the basis of a study carried out by the Commission on the coordination of all the relevant programmes in the energy sector;

HAS ADOPTED THIS DECISION:

Article 1

1. The Community shall support a five-year programme for the preparation and implementation of

⁽¹⁾ OJ No C 287, 30. 10. 1995, p. 34.

⁽²⁾ OJ No L 157, 9. 6. 1989, p. 32—34.

⁽³⁾ OJ No C 293, 8. 11. 1995, p. 4.

measures and actions in a cost-effective manner in order to promote energy efficiency within the Community. The general overall objectives of this programme are:

- (a) to stimulate energy efficiency measures in all sectors;
- (b) to encourage investments in energy conservation by private and public consumers and by industry;
- (c) to create the conditions for improving the energy intensity of final consumption.

2. Community financing will be given under the 'SAVE II programme to promote energy efficiency in the Community' hereafter referred to as 'the programme', for actions which fall within the objectives of this Decision.

Article 2

Under the programme, the following categories of actions and measures on energy efficiency shall be financed:

- (a) studies and other related actions aimed at the implementation and completion of Community measures (such as voluntary agreements, mandates to standardization bodies, cooperative procurements and legislation) taken to improve energy efficiency, studies concerning the effects of energy pricing on energy efficiency, and studies with a view to establishing energy efficiency as a criterion within Community programmes;
- (b) sectoral targeted pilot actions aimed at accelerating energy efficiency investment and/or improving energy use patterns, to be carried out by organizations or public and private enterprises as well as by existing Community-wide networks or temporary groupings of organizations and/or enterprises formed to accomplish the projects;
- (c) measures proposed by the Commission to foster the exchange of experience aimed at promoting better coordination between international, Community, national, regional and local activities by appropriate means for information dissemination;
- (d) measures as under (c) but proposed otherwise than by the Commission;
- (e) monitoring of energy-efficiency progress in the Community and in individual Member States and ongoing evaluation and monitoring of the actions and measures undertaken under the programme;

- (f) specific actions in favour of energy management at regional and urban level and in favour of greater cohesion between Member States and regions in the field of energy efficiency.

Article 3

1. All the costs relating to the actions and measures referred to in Article 2 (a), (c) and (e) shall be borne by the general budget of the European Communities.
2. The level of funding for the actions and measures referred to in Article 2 (b), (d) and (f) shall be set at a maximum of 50 % of their total cost.
3. The balance of the funding of the actions and measures referred to in Article 2 (b), (d) and (f) may be made up from either public or private sources or from a combination of the two.

Article 4

1. The financial reference amount for the implementation of this programme shall be ECU 45 million. The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspectives.
2. Before the end of 1997, the Council, in accordance with the relevant provisions of the Treaty, shall review the financial reference amount for the remaining period of the programme, on the basis of a communication and, if appropriate, proposals from the Commission taking into account all the relevant programmes in the energy sector.

Article 5

1. The Commission will be responsible for the financial execution and implementation of the programme. The Commission will also ensure that actions under this programme are subject to prior appraisal, monitoring and subsequent evaluation, which, on completion of the project, shall include assessment of impact, implementation and whether their original objectives have been achieved.
2. The selected beneficiaries shall submit a report to the Commission on a six-month basis and on completion.
3. The conditions and guidelines to be applied for the support of all actions and measures referred to in Article 2 shall be defined each year taking into account:

- the cost-effectiveness criteria, the savings potential and environmental impact, in particular the reduction of CO₂ emissions,
- the list of priorities referred to in Article 7,
- the cohesion of Member States in the field of energy efficiency.

The Committee referred to in Article 6 (2) will assist the Commission in defining these conditions and guidelines.

Article 6

1. In cases where the amount involved does not exceed ECU 100 000, the following shall apply:

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

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

2. In cases where the amount involved exceeds ECU 100 000, the following shall apply:

The Commission shall be assisted by a Committee composed of the representatives of the Member States and chaired by the representative of the Commission.

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

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event:

- the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication,
- the Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous indent.

Article 7

The Commission shall formulate, on an annual basis, a list of priorities for funding under the programme. This list shall take into account the complementarity between the SAVE II programme and the national programmes on the basis of annual information in a summary form supplied by each Member State. A priority shall be given to those areas where such complementarity is greatest.

The Committee referred to in Article 6 (2) will assist the Commission in defining the list of priorities.

Article 8

1. After every year of the programme, the Commission shall present to the European Parliament and to the Council a progress report together with proposals concerning modifications of guidelines, defined according to Article 5 (3), which could be necessary in the light of the results of the previous year.

2. After the third year of the programme, the Commission shall present a report to the European Parliament and to the Council on the energy efficiency measures undertaken at Community and Member State level and on the results achieved, with particular reference to the objectives outlined under Article 1. The report shall be accompanied by proposals for any amendments which may be necessary to the programme in the light of these results.

3. On expiry of the programme, the Commission shall make an overall assessment of the results obtained through the application of this Decision, and of the consistency of national and Community actions. It shall present a report thereon to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, stating, in particular, how far the objective outlined under Article 1 has been achieved.

Article 9

Decision 89/364/EEC is hereby repealed.

Article 10

The programme shall be open to the participation of associated central and eastern European countries in accordance with the conditions, including financial arrangements, agreed to in the Additional Protocols to the Association Agreements, concerning participation in Community programmes. This programme shall be open to the participation of Cyprus and Malta on the basis of additional appropriations in accordance with the same rules as apply to the EFTA countries following procedures to be agreed with the countries in question.

Article 11

This Decision shall apply from 1 January 1996 to 31 December 2000.

Article 12

This Decision is addressed to the Member States.

Done at Brussels, . . .

For the Council
The President

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 7 November 1995 the Commission sent the Council a proposal, based on Article 130s (1) of the EC Treaty, for a Council Decision concerning a multi-annual programme for the promotion of energy sufficiency in the Community — SAVE II.
2. The European Parliament delivered its opinion at first reading on 16 April 1996. The Committee of the Regions and the Economic and Social Committee delivered their opinions on 18 and 20 December 1995 respectively.

On 6 May 1996 the Commission submitted an amended proposal to the Council.

3. At its meeting on 8 July 1996, the Council adopted its common position pursuant to Article 189c of the Treaty.

II. OBJECTIVES

4. The purpose of the proposal for a Decision is to continue and extend the activities of the SAVE programme which expired on 31 December 1995. It forms part of efforts to improve energy efficiency and stabilize CO₂ emissions.

III. ANALYSIS OF THE COMMON POSITION

5. The Council reached agreement on the text of the common position, bearing in mind the importance of continuing with the programme, but also existing budgetary constraints.

In this connection, it inserted a new Article 4, together with two recitals, so that the SAVE II programme could go ahead, but providing for a review of the situation in two years time, bearing in mind all the relevant energy-sector programmes.

6. The Council adopted most of the amendments requested by the European Parliament and taken up by the Commission in its amended proposal.

It adopted, verbatim or in substance, Amendments 1, 2, 3, 6, 7, 8, 11, 12, 14, 19, 28, 32 and 33.

7. The Council did not, on the other hand, take over the following amendments which the Commission had included in its amended proposal:

— Amendment 13: the Council deleted this recital on the grounds that its subject matter was already covered in the preceding recital,

— Amendments 15, 22 and 34: the Council rearranged the text of Article 2, bringing certain points together in one paragraph. In this connection, it did not adopt Amendment 22 or Amendments 15 and 34 concerning a detailed Annex.

8. The Council followed the amended Commission proposal by not adopting Amendments 4, 5, 9, 10, 16, 17, 18, 20, 21, 23, 24, 25, 26, 27, 29, 30, 31 and 35.

With regard to Amendment 29, the Council felt the nature of the Committee should differ according to the sums involved.

COMMON POSITION (EC) No 49/96

adopted by the Council on 8 July 1996

with a view to adopting Directive 96/.../EC of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

(96/C 264/09)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57 (2) and 66 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure referred to in Article 189b of the Treaty⁽³⁾,

- (1) Whereas Council Directive 89/552/EEC⁽⁴⁾ constitutes the legal framework for television broadcasting in the internal market;
- (2) Whereas Article 26 of Directive 89/552/EEC states that the Commission shall, no later than the end of the fifth year after the date of adoption of the Directive, submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of the Directive and, if necessary, make further proposals to adapt it to developments in the field of television broadcasting;
- (3) Whereas the application of Directive 89/552/EEC and the report on its application have revealed the need to clarify certain definitions or obligations on Member States under this Directive;
- (4) Whereas the Commission, in its communication of 19 July 1994 entitled 'Europe's way to the information society: an action plan', underlined the importance of a regulatory framework applying to the content of audiovisual services which would

help to safeguard the free movement of such services in the Community and be responsive to the opportunities for growth in this sector opened up by new technologies, while at the same time taking into account the specific nature, in particular the cultural and sociological impact, of audiovisual programmes, whatever their mode of transmission;

- (5) Whereas the Council welcomed this action plan at its meeting on 28 September 1994 and stressed the need to improve the competitiveness of the European audiovisual industry;
- (6) Whereas any legislative framework concerning new audiovisual services must be compatible with the primary objective of this Directive which is to create the legal framework for the free movement of services;
- (7) Whereas the Heads of State and Government meeting at the European Council in Essen on 9 and 10 December 1994 called on the Commission to present a proposal for a revision of Directive 89/552/EEC before their next meeting;
- (8) Whereas the application of Directive 89/552/EEC has revealed the need to clarify the concept of jurisdiction as applied specifically to the audiovisual sector; whereas, in view of the case law of the Court of Justice of the European Communities, the establishment criterion should be made the principal criterion determining the jurisdiction of a particular Member State;
- (9) Whereas the concept of establishment, according to the criteria laid down by the Court of Justice in its judgment of 25 July 1991 in 'Factortame'⁽⁵⁾, involves the actual pursuit of an economic activity through a fixed establishment for an indefinite period;
- (10) Whereas the establishment of a television broadcasting organization may be determined by a

⁽¹⁾ OJ No C 185, 19. 7. 1995, p. 4.

⁽²⁾ OJ No C 301, 13. 11. 1995, p. 35.

⁽³⁾ Opinion of the European Parliament of 14 February 1996 (OJ No C 65, 4. 3. 1996, p. 113). Council common position of 8 July 1996 (not yet published in the Official Journal) and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ No L 298, 17. 10. 1989, p. 23.

⁽⁵⁾ Case C-221/89, Queen v. Secretary of State for Transport, *ex parte* Factortame, (1991) ECR I-3905, paragraph 20.

series of practical criteria such as the location of the head office of the provider of services, the place where decisions on programming policy are usually taken, the place where the programme to be broadcast to the public is finally mixed and processed, and the place where a significant proportion of the workforce required for the pursuit of the television broadcasting activity is located;

- (11) Whereas the fixing of a series of material criteria is designed to determine by an exhaustive procedure that one Member State and one only is competent for a broadcaster in connection with the pursuit of the provision of the services which this Directive addresses; nevertheless, taking into account the case law of the Court of Justice and so as to avoid cases where there is a vacuum of competence, it is appropriate to mention the criterion of establishment within the meaning of Articles 52 and following of the Treaty establishing the European Community as the final criterion determining the competence of a Member State;
- (12) Whereas the Court of Justice has constantly held⁽¹⁾ that a Member State retains the right to take measures against a television broadcasting organization that is established in another Member State but directs all or most of its activity to the territory of the first Member State if the choice of establishment was made with a view to evading the legislation that would have applied to the organization had it been established in the territory of the first Member State;
- (13) Whereas Article F (2) of the Treaty on European Union stipulates that the Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms as general principles of Community law; whereas any measure aimed at restricting the reception and/or suspending the retransmission of television broadcasts taken under Article 2a of Directive 89/552/EEC as amended by this Directive must be compatible with such principles;
- (14) Whereas it is necessary to ensure the effective application of the provisions of Directive 89/552/EEC as amended by this Directive throughout the Community in order to preserve free and fair competition between firms in the same industry;
- (15) Whereas directly affected third parties, including nationals of other Member States, must be able to assert their rights, according to national law, in the competent judicial or other authorities of the Member State with jurisdiction over the television broadcasting organization that may be failing to comply with the national provisions arising out of the application of Directive 89/552/EEC as amended by this Directive;
- (16) Whereas Member States are free to take whatever measures they deem appropriate with regard to broadcasts coming from third countries, and which do not satisfy the conditions laid down in Article 2 of Directive 89/552/EEC as amended by this Directive, provided they comply with Community law and the international obligations of the Community;
- (17) Whereas in order to eliminate the obstacles arising from differences in national legislation on the promotion of European works, Directive 89/552/EEC as amended by this Directive, contains provisions aimed at harmonizing such legislation; whereas those provisions which, in general, permit the liberalization of trade must contain provisions harmonizing the conditions of competition;
- (18) Whereas, moreover, Article 128 (4) of the Treaty establishing the European Community requires the Community to take cultural aspects into account in its action under other provisions of the Treaty;
- (19) Whereas the Green Paper on 'Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union', adopted by the Commission on 7 April 1994, puts forward inter alia measures to promote European works in order to further the development of the sector; whereas the MEDIA II programme, which seeks to promote training, development and distribution in the audiovisual sector, is also designed to enable the production of European works to be developed;
- (20) Whereas broadcasting organizations, programme makers, producers, authors and other experts should be encouraged to develop more detailed concepts and strategies aimed at developing European audiovisual fiction films that are addressed to an international audience;
- (21) Whereas, in addition to the considerations cited above, it is necessary to create conditions for improving the competitiveness of the programme industry; whereas the communication on the application of Articles 4 and 5 of Directive 89/552/EEC, adopted by the Commission on 3 March 1994 pursuant to Article 4 (3) of that Directive, draws the conclusion that measures to promote European works can contribute to such an improvement;

⁽¹⁾ See, in particular, the adjustments in Case 33/74, *Van Binsbergen v. Bestuur van de Bedrijfsvereniging*, (1974) ECR 1299 and in Case C-23/93, *TV 10 SA v. Commissariaat voor de Media*, (1994) ECR I-4795.

- (22) Whereas the proportions of European works must be achieved taking economic realities into account; whereas, therefore, a progressive system for achieving this objective is required;
- (23) Whereas the question of specific time scales for each type of television showing of cinematographic works is primarily a matter to be settled by means of agreements between the interested parties or professionals concerned; whereas, however, in the absence of such agreements a schedule for the showing of such works should be drawn up;
- (24) Whereas advertising for medical products for human use is subject to the provisions of Directive 92/28/EEC⁽¹⁾;
- (25) Whereas daily transmission time allotted to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from these, or to public service announcements and charity appeals broadcast free of charge, is not to be included in the maximum amounts of daily or hourly transmission time that may be allotted to advertising and teleshopping;
- (26) Whereas, in order to avoid distortions of competition, this derogation is limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned; whereas the term ancillary refers to products intended specifically to allow the viewing public to fully benefit from or to interact with these programmes;
- (27) Whereas in view of the development of teleshopping, an activity with an economic importance for operators as a whole and a genuine outlet for goods and services within the Community, it is essential to modify the rules on transmission time and to ensure a high level of consumer protection by putting in place appropriate standards regulating the form and content of such broadcasts;
- (28) Whereas it is important for the competent national authorities, in monitoring the implementation of the relevant provisions, to be able to distinguish, as regards channels not exclusively devoted to teleshopping, between transmission time devoted to teleshopping spots, advertising spots and other forms of advertising on the one hand and, to the other, transmission time devoted to teleshopping windows; whereas it is consequently necessary and sufficient that each window be clearly identified by optical and acoustic means at least at the beginning and the end of the window;
- (29) Whereas Directive 89/552/EEC as amended by this Directive applies to channels exclusively devoted to teleshopping or self-promotion, without conventional programme elements such as news, sports, films, documentaries and drama, for the sole purposes of these Directives and without prejudice to their inclusion in the scope of other Community instruments;
- (30) Whereas it is necessary to clarify that self-promotional activities are a particular form of advertising where the broadcaster promotes its own products, services, programmes or channels; whereas, in particular, trailers consisting of extracts from programmes should be treated as programmes; whereas self-promotion is a new and relatively unknown phenomenon and provisions concerning it may therefore be particularly subject to review in future examinations of this Directive;
- (31) Whereas it is necessary to clarify the rules for the protection of the physical, mental and moral development of minors; whereas the establishment of a clear distinction between programmes that are subject to an absolute ban and those that may be authorized subject to appropriate technical means should satisfy concern about the public interest expressed by Member States and the Community;
- (32) Whereas none of the provisions of this Directive that concern the protection of minors and public order require that the measures in question must necessarily be implemented through the prior control of television broadcasts;
- (33) Whereas an investigation by the Commission, in liaison with the competent Member State authorities, of the possible advantages and drawbacks of further measures with a view to facilitating the control exercised by parents or guardians over the programmes that minors may watch, may involve, *inter alia*:
- the requirement for new television sets to be equipped with a technical device enabling parents or guardians to filter out certain programmes,
 - the setting up of appropriate rating systems,
 - encouraging family viewing policies,
 - other educational and awareness measures,
 - appropriate feasibility studies,
 - taking into account experience gained in this field in and beyond Europe as well as the views

⁽¹⁾ OJ No L 113, 30. 4. 1992, p. 13.

of interested parties such as broadcasters, producers, educationalists, media specialists and relevant associations,

with a view to presenting, if necessary before the deadline laid down in Article 26, appropriate proposals for legislative or other measures;

(34) Whereas it is appropriate to amend Directive 89/552/EEC to allow natural or legal persons whose activities include the manufacture or the sale of medicinal products and medical treatment available only on prescription to sponsor television programmes provided that such sponsorship does not circumvent the prohibition of television advertising for medicinal products and medical treatment only available on prescription;

(35) Whereas the approach in Directive 89/552/EEC and this Directive has been adopted to achieve the essential harmonization necessary and sufficient to ensure the free movement of television broadcasts in the Community; whereas Member States remain free to apply to broadcasters under their jurisdiction more detailed or stricter rules in the fields coordinated by this Directive, including, *inter alia*, rules concerning the achievement of language policy goals and of the protection of the public interest in terms of television's role as a provider of information, education, culture and entertainment and the need to safeguard pluralism in the information industry and the media and the protection of competition with a view to avoiding the abuse of dominant positions and/or the establishment or strengthening of dominant positions; whereas such rules must be compatible with Community law;

(36) Whereas Article B of the Treaty on European Union states that one of the objectives the Union shall set itself is to maintain in full the 'acquis communautaire',

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/552/EEC is hereby amended as follows:

1. Article 1 shall be amended as follows:

(a) the following new point (b) shall be inserted:

'(b) "broadcaster" means the natural or legal person who has editorial responsibility for composition of schedules of television programmes within the meaning of (a) and

who transmits them or has them transmitted by third parties;';

(b) the former point (b) shall become point (c) and shall read as follows:

'(c) "television advertising" means any form of announcement broadcast whether in return for payment to for similar consideration or broadcast for self-promotional purposes by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;';

(c) the former points (c) and (d) shall become points (d) and (e);

(d) the following point shall be added:

'(f) "teleshopping" means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.'.

2. Article 2 shall be replaced by the following:

'Article 2

1. Each Member State shall ensure that all television broadcasts transmitted by broadcasters under its jurisdiction comply with the rules of the system of law applicable to broadcasts intended for the public in that Member State.

2. For the purpose of this Directive the broadcasters under the jurisdiction of a Member State are:

— those established in that Member State according to paragraph 3,

— those to whom paragraph 4 applies.

3. For the purpose of this Directive, a broadcaster shall be deemed to be established in a Member State in the following cases:

(a) the broadcaster has its head office in that Member State and the editorial decisions about programme schedules are taken in that Member State;

(b) if a broadcaster has its head office in one Member State but editorial decisions on programme schedules are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the television broadcasting activity operates; if a significant part of the workforce

- involved in the pursuit of the television broadcasting activity operates in each of those Member States, the broadcaster shall be deemed to be established in the Member State where it has its head office; if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in neither of those Member States, the broadcaster shall be deemed to be established in the Member State where it first began broadcasting in accordance with the system of law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;
- (c) if a broadcaster has its head office in a Member State but decisions on programme schedules are taken in a third country, or vice-versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in that Member State.
4. Broadcasters to whom the provisions of paragraph 3 are not applicable are deemed to be under the jurisdiction of a Member State in the following cases:
- (a) they use a frequency granted by that Member State;
- (b) although they do not use a frequency granted by a Member State they do use a satellite capacity appertaining to that Member State;
- (c) although they use neither a frequency granted by a Member State nor a satellite capacity appertaining to a Member State they do use a satellite up-link situated in that Member State.
5. If the question as to which Member State has jurisdiction cannot be determined according to paragraphs 3 and 4, the competent Member State shall be that in which the broadcaster is established within the meaning of Articles 52 and following of the Treaty establishing the European Community.
6. This Directive shall not apply to broadcasts intended exclusively for reception in third countries, and which are not received directly or indirectly by the public in one or more Member States.'
3. The following Article shall be inserted:
- 'Article 2a*
1. Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of television broadcasts from other Member States for reasons which fall within the fields coordinated by this Directive.
2. Member States may, provisionally, derogate from paragraph 1, if the following conditions are fulfilled:
- (a) a television broadcast coming from another Member State manifestly, seriously and gravely infringes Article 22 (1) or (2) and/or Article 22a;
- (b) during the previous 12 months, the broadcaster has infringed the provision(s) referred to in (a) on at least two prior occasions;
- (c) the Member State concerned has notified the broadcaster and the Commission in writing of the alleged infringements and of the measures it intends to take should any such infringement occur again;
- (d) consultations with the transmitting Member State and the Commission have not produced an amicable settlement within 15 days of the notification provided for in (c), and the alleged infringement persists.
- The Commission shall, within no more than two months following notification of the measures taken by the Member State, take a decision on whether the measures are compatible with Community law. If it decides that they are not, the Member State will be required to put an end to the measures in question as a matter of urgency.
3. Paragraph 2 shall be without prejudice to the application of any procedure, remedy or sanction to the infringements in question in the Member State which has jurisdiction over the broadcaster concerned.'
4. Article 3 shall be replaced by the following:
- 'Article 3*
1. Member States shall remain free to require television broadcasters under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this Directive.
2. Member States shall, by appropriate means, ensure, within the framework of their legislation, that television broadcasters under their jurisdiction effectively comply with the provisions of this Directive.
3. The measures shall include the appropriate procedures for third parties directly affected, including nationals of other Member States, to apply to the competent judicial or other authorities to seek effective compliance according to national provisions.'

5. In Article 4 (1), the words 'and teletext services' shall be replaced by the words 'teletext services and teleshopping'.
6. In Article 5, the words 'and teletext services' shall be replaced by the words 'teletext services and teleshopping'.
7. Article 6 shall be amended as follows:
- (a) paragraph 1 (a) shall be replaced by the following:
- '(a) works originating from Member States;'
- (b) in paragraph 1, the following subparagraph shall be added:
- 'Application of the provisions of (b) and (c) shall be conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned.'
- (c) paragraph 3 shall be replaced by the following:
- '3. The works referred to in paragraph 1 (c) are works made exclusively or in co-production with producers established in one or more Member States by producers established in one or more European third countries with which the Community has concluded agreements relating to the audiovisual sector, if those works are mainly made with authors and workers residing in one or more European States.'
- (d) paragraph 4 shall become paragraph 5 and the following paragraph shall be inserted:
- '4. Works that are not European works within the meaning of paragraph 1 but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the Community co-producers supply a majority share of the total cost of the production and that the production is not controlled by one or more producers established outside the territory of the Member States.'
- (e) in the new paragraph 5, the words 'paragraph 1' shall be replaced by the words 'paragraphs 1 and 4'.
8. Article 7 shall be replaced by the following:
- 'Article 7*
1. Unless otherwise agreed between rights holders and broadcasters, the latter shall not broadcast any cinematographic work until 18 months have elapsed since the work was first shown in cinemas in one of the Member States.
2. The period referred to in paragraph 1 shall be reduced to 12 months:
- (a) for pay-per-view and pay-television channels;
- (b) in the case of cinematographic works co-produced by the broadcaster.'
9. Article 8 shall be deleted.
10. Article 9 shall be replaced by the following:
- 'Article 9*
- This Chapter shall not apply to television broadcasts intended for local audiences and that do not form part of a national network.'
11. The title of Chapter IV shall be replaced by the following:
- 'Television advertising, sponsorship and teleshopping'.
12. Article 10 shall be replaced by the following:
- 'Article 10*
1. Television advertising and teleshopping shall be readily recognizable as such and kept quite separate from other parts of the programme service by optical and/or acoustic means.
2. Isolated advertising and teleshopping spots shall remain the exception.
3. Advertising and teleshopping shall not use subliminal techniques.
4. Surreptitious advertising and teleshopping shall be prohibited.'
13. Article 11 shall be replaced by the following:
- 'Article 11*
1. Advertising and teleshopping spots shall be inserted between programmes. Provided the conditions contained in paragraphs 2 to 5 are fulfilled, advertising and teleshopping spots may also be inserted during programmes in such a way that the integrity and value of the programme, taking into account natural breaks in and the duration and nature of the programme, and the rights of the rights holders are not prejudiced.
2. In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances comprising intervals, advertising and teleshopping spots shall only be inserted between the parts or in the intervals.
3. The transmission of audiovisual works such as feature films and films made for television

(excluding series, serials, light entertainment programmes and documentaries), provided their scheduled duration is more than 45 minutes, may be interrupted once for each period of 45 minutes. A further interruption shall be allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes.

4. Where programmes, other than those covered by paragraph 2, are interrupted by advertising or teleshopping spots, a period of at least 20 minutes shall elapse between each successive advertising break within the programme.

5. Advertising and teleshopping shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes, and children's programmes, when their scheduled duration is less than 30 minutes shall not be interrupted by advertising or by teleshopping. If their scheduled duration is of 30 minutes or longer, the provisions of the previous paragraphs shall apply.'

14. In Article 12, the introductory words shall be replaced by the following:

'Television advertising and teleshopping shall not:'

15. Article 13 shall be replaced by the following:

'Article 13

All forms of television advertising and teleshopping for cigarettes and other tobacco products shall be prohibited.'

16. In Article 14, the present text shall become paragraph 1 and the following paragraph shall be added:

'2. Teleshopping for medicinal products which are subject to a marketing authorization within the meaning of Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products(*), as well as teleshopping for medical treatment, shall be prohibited.

(*) OJ No 22, 9. 2. 1965, p. 369. Directive as last amended by Directive 93/39/EEC (OJ No L 214, 24. 8. 1993, p. 22).'

17. In Article 15, the introductory words shall be replaced by the following:

'Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:'

18. In Article 16, the present text shall become paragraph 1 and the following paragraph shall be added:

'2. Teleshopping shall comply with the requirements referred to in paragraph 1 and, in addition, shall not exhort minors to contract for the sale or rental of goods and services.'

19. Article 17 shall be amended as follows:

(a) paragraph 2 shall be replaced by the following:

'2. Television programmes may not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.'

(b) paragraph 3 shall become paragraph 4 and the following paragraph shall be inserted:

'3. Sponsorship of television programmes by undertakings whose activities include the manufacture or sale of medical products and medical treatment may promote the name or the image of the undertaking but may not promote specific medical products or medical treatments only available on prescription in the Member State within whose jurisdiction the broadcaster falls.'

20. Article 18 shall be replaced by the following:

'Article 18

1. The amount of transmission time of teleshopping spots, advertising spots and other forms of advertising, with the exception of teleshopping windows within the meaning of Article 18a, shall not exceed 20% of the daily transmission time. The transmission time for advertising spots shall not exceed 15% of the daily transmission time.

2. The amount of advertising spots and teleshopping spots within a given clock hour shall not exceed 20%.

3. For the purposes of this Article, advertising does not include:

— announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes,

— public service announcements and charity appeals broadcast free of charge.'

21. The following Article shall be inserted:

'Article 18a

1. Windows devoted to teleshopping broadcast by a channel not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes.

2. The maximum number of windows per day shall be eight. Their overall duration shall not exceed three hours per day. They must be clearly identified as teleshopping windows by optical and acoustic means.'
22. Article 19 shall be replaced by the following:
- 'Article 19*
- Chapters I, II, IV, V, VI, VIa and VII shall apply *mutatis mutandis* to channels exclusively devoted to teleshopping. Advertising on such channels shall be allowed within the daily limits established by Article 18 (1). Article 18 (2) shall not apply.'
23. The following Article shall be inserted:
- 'Article 19a*
- Chapters I, II, IV, V, VI, VIa and VII shall apply *mutatis mutandis* to channels exclusively devoted to self-promotion. Other forms of advertising on such channels shall be allowed within the limits established by Article 18 (1) and (2). This provision in particular shall be subject to review in accordance with Article 26.'
24. Article 20 shall be replaced by the following:
- 'Article 20*
- Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11 (2) to (5) and Articles 18 and 18a in respect of broadcasts intended solely for the national territory which cannot be received, directly or indirectly by the public, in one or more other Member States.'
25. Article 21 shall be deleted.
26. The title of Chapter V shall be replaced by the following:
- 'Protection of minors and public order'*.
27. Article 22 shall be replaced by the following:
- 'Article 22*
1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence.
2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcast.
3. Furthermore, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.'
28. The following Article shall be inserted:
- 'Article 22a*
- Member States shall ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality.'
29. The following Article shall be inserted:
- 'Article 22b*
1. The Commission shall attach particular importance to application of this Chapter in the report provided for in Article 26.
2. The Commission shall, in liaison with the competent Member State authorities, carry out an investigation of the possible advantages and drawbacks of further measures with a view to facilitating the control exercised by parents or guardians over the programmes that minors may watch.'
30. Article 23 (1) shall be replaced by the following:
- '1. Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies. Member States shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.'*
31. After Article 23, the following new Chapter VIa shall be inserted:
- 'CHAPTER VIa*
- Contact Committee**
- Article 23a*
1. A contact Committee shall be set up under the aegis of the Commission. It shall be composed of

representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and meet either on his initiative or at the request of the delegation of a Member State.

2. The tasks of this Committee shall be:

- (a) to facilitate effective implementation of this Directive through regular consultation on any practical problems arising from its application, and particularly from the application of Article 2, as well as on any other matters on which exchanges of views are deemed useful;
- (b) to be the forum for an exchange of views on what matters should be dealt with in the reports which Member States must submit pursuant to Article 4 (3), on the methodology of these, on the terms of reference for the independent study referred to in Article 25a, on the evaluation of tenders for this and on the study itself;
- (c) to discuss the outcome of regular consultations which the Commission holds with representatives of broadcasting organizations, producers, consumers, manufacturers, service providers and trade unions;
- (d) to facilitate the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities regarding television broadcasting services, taking account of the Community's audiovisual policy, as well as relevant developments in the technical field;
- (e) to examine any development arising in the sector on which an exchange of views appears useful.'

32. The following Article shall be inserted:

'Article 25a

A further review as provided for in Article 4 (4) shall take place before ...(*). It shall take account of an independent study on the impact of the measures in question at both Community and national level.

(*) Five years after the date of adoption of this Directive.'

33. Article 26 shall be replaced by the following:

'Article 26

Not later than 31 December 19...(*) and every two years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive as amended and, if necessary, make further proposals to adapt it to developments in the field of television broadcasting, in particular in the light of recent technological developments.

(*) End of the third year after the date of adoption of this Directive.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ...⁽¹⁾. They shall immediately inform the Commission thereof.

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

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

Article 3

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, ...

For the Parliament
The President

For the Council
The President

⁽¹⁾ 18 months after the date of adoption of this Directive.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 31 May 1995 the Commission submitted a proposal for a Directive amending Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities.
2. The European Parliament and the Economic and Social Committee delivered their opinions on 14 February 1996 and on 13 September 1995 respectively.
3. On 10 May 1996 the Commission submitted an amended proposal in the light of the European Parliament's opinion.
4. On 8 July 1996 the Council adopted its common position in accordance with Article 189b of the Treaty. The Council and/or Commission statements entered in the minutes are annexed to this statement of reasons.

II. OBJECTIVE OF THE PROPOSAL

The purpose of the proposal is, in accordance with Article 26 of Directive 89/552/EEC, to make certain amendments to that Directive in order to bring it up to date and improve its operation, so as to provide a stable legal environment conducive to the development of the audiovisual industry in the European Union.

1. General comments

- 1.1. In its common position, the Council supports the main objectives pursued by the Commission in its proposal for a Directive. The common position establishes a system making for better implementation of the 1989 Directive, with the introduction of provisions bringing greater legal certainty in the European audiovisual area, and it represents a dynamic instrument allowing for technological developments in television broadcasting.
- 1.2. At the Council meeting on 11 June 1996, some amendments were made to the Commission's amended proposal. While preferring its proposed approach in the case of some provisions, the Commission went along with the Council's common position so that the decision-making process could be taken forward and the European Parliament could consider the common position at its second reading.
- 1.3. The common position involves some significant changes compared with the original Commission proposal, in particular:
 - (a) Criteria for determining jurisdiction (Article 2, appearing in Article 1 (2) of the common position)

In accordance with the amended Commission proposal, the common position establishes an exhaustive system for assigning a Member State jurisdiction in respect of any given broadcaster. Article 2 (5) adds a final element of legal certainty for the purposes of determining the Member State with jurisdiction.

- (b) Promotion of European works (Articles 4 and 5)

The Council decided to retain the system for promoting European works introduced by Directive 89/552/EEC, taking the view that this leaves Member

States an advisable degree of flexibility, while ensuring the desired promotion of European audiovisual works. The Council also set up a contact Committee to keep a very close watch on the implementation of the Directive, particularly as a forum for debate on matters relating to Articles 4 and 5 (see Article 1 (31) of the common position).

The clause in Article 4 (4) and in Article 1 (32) of the common position will enable Parliament and the Council to review such matters on the basis of a report from the Commission and taking into account an independent study on the impact of the measures in question at both Community and national level.

- (c) Protection of minors as regards teleshopping (Article 16, appearing in Article 1 (18) of the common position)

The common position strengthens the protection of minors as regards teleshopping by stipulating that teleshopping must not exhort minors to contract for the sale or rental of goods and services.

- (d) Maximum transmission time for advertising (Article 18 (3), appearing in Article 1 (20) of the common position)

The common position excludes from the maximum daily transmission time for advertising the announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes and also public service announcements and charity appeals.

- (e) Teleshopping windows (Article 18a, appearing in Article 1 (21) of the common position)

The common position stipulates a maximum of eight teleshopping windows a day.

- (f) Channels exclusively devoted to teleshopping (Article 19, appearing in Article 1 (22) of the common position)

The rules governing teleshopping channels have been clarified.

- (g) Channels exclusively devoted to self-promotion (Articles 1 (c) and 19a, appearing in Article 1 (1) (b) and (23) respectively of the common position)

Self-promotion is treated in a similar way to television advertising and the rules governing self-promotion channels have been clarified.

- (h) Protection of minors (Article 22b, appearing in Article 1 (29) of the common position)

The means of protecting minors against programmes which might be harmful to them have been strengthened and the Commission is instructed to carry out an investigation, in liaison with Member States, into further ways of protecting minors, in particular by technological means.

- (i) Right of reply (Article 23 (1), appearing in Article 1 (30) of the common position)

Arrangements for exercising the right of reply have been improved.

2. European Parliament amendments

2.1. Amendments accepted by the Commission

In its amended proposal, the Commission took on board 30 European Parliament amendments, five of them in full and 25 in part or in a different wording.

2.2. *Amendments accepted by the Council*

The Council accepted 34 of the European Parliament's amendments in whole, in part or in a different wording. The amendments in question are as follows:

1, 2, 6, 7, 10, 11, 12, 15, 19, 20, 21, 22, 23, 24, 25, 26, 28, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 51, 57, 58, 74, 75, 76 and 88.

It has included the vast majority of the European Parliament amendments accepted by the Commission as well as a number of amendments rejected by the Commission.

2.3. *European Parliament amendments not accepted by the Council*

— Amendments 3, 18 and 77 New Services

The Council did not see fit to extend the scope of the Directive to include certain new audiovisual services. These need to be carefully considered and the Council would like to see a debate on the matter at Community level, on the basis of a Green Paper to be submitted by the Commission at an early opportunity.

Nor did it agree to the proposed definition of a 'television programme', which was accepted by the Commission.

— Amendments 4 and 5 European guarantee fund and possible Directive on ownership arrangements for the mass media

The Council did not think it appropriate at present to refer in legislation either to an instrument to guarantee funds for audiovisual production, while the proposal for a Decision on the matter is still under discussion at the Council, or to a possible Directive on ownership arrangements for the mass media, which has not yet been submitted.

— Amendment 8 Obligation to support national and local production

The Council would refer to the provisions of Article 3 (1), under which 'Member States shall remain free to require television broadcasters under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this Directive'.

The Council took the view, however, that the amendment as worded would be inconsistent with the wording of Article 4.

— Amendments 13 and 68 — Compliance by advertising and teleshopping programmes and spots with the provisions of Council Directives on distance contracts and misleading advertising — Need for a public service

The Council did not regard these amendments as coming within the scope of the Directive.

— Amendments 29, 30, 31, 32, 33, 34 and 59 Promotion of European works

See 1 (3) (b) above.

— Amendment 35 Definition of an independent broadcaster

The Council felt that the proposed definition, accepted by the Commission in recital 21a, did not suitably cover situations in the various Member States.

- Amendment 36
Definition of a European work (co-productions with third countries)

The Council has adjusted the definition of a European work so as to provide greater encouragement for co-productions with European third countries. Co-productions are to be made with European third countries with which the Community has concluded agreements relating to the audiovisual sector.

 - Amendments 43, 47, 48 and 50
Legal rules applicable to advertising and to teleshopping programmes and channels
 - in the case of Amendment 43, the Council could not agree to go beyond the present wording and add 'philosophical' beliefs, an amendment accepted by the Commission,
 - in the case of Amendments 47, 48 and 50, the Council preferred to establish a legal framework for teleshopping aligned in part on the content and presentation rules applicable to advertising; it was more amenable in the case of teleshopping for certain products (Article 14) and more flexible as regards the presentation of teleshopping windows (Article 18a) and teleshopping channels (Article 19).

 - Amendments 102, 52, 55 and 62
Protection of minors

With regard to television advertising and teleshopping directed at minors, the Council regarded the wording in the common position as providing maximum protection for the audience in question without imposing on television channels requirements such as those involved in Amendment 52.

On Amendments 55 and 62, see 1 (3) (h) above.

 - Amendment 56
Tightening of provisions to prevent any incitement to hatred on grounds of race, sex, religion or nationality (Article 22a)

The Council considered the wording which it has opted for to be better suited to the requirement of avoiding any incitement to hatred.
-

ANNEX

Common position with a view to adopting the Directive amending Directive 89/552/EEC*Statements by the Council and/or the Commission*

Re Article 1 (a)

In regard to new audiovisual services (point to point), the Commission states that it intends to present shortly a green paper which will deal in particular with this question.

Re Article 2a

The Council and the Commission state that this Directive does not affect Member States' right to take measures, in accordance with Community law, in situations where physical or legal persons, established in one Member State, have recourse to broadcasters established in other Member States whose broadcasts are aimed entirely or principally at the first mentioned Member State with the purpose of circumventing that State's national rules on advertising adopted in conformity with Community law, in particular those concerning consumer protection.

Re Article 6 (1) (d)

The Commission confirms that, in its view, new subparagraph (d) does not imply any additional powers for it to deal directly with, or act against, third countries.

Re Article 15

The Council and the Commission note that teleshopping for alcoholic beverages may increase their consumption and thus cause social and health risks. The Council and the Commission recognize that such risks could be particularly high in the Member States which have recently taken significant steps to liberalize provisions relating to the supply of alcoholic beverages. The Council and the Commission thus acknowledge that the criteria described in Article 15 are of special importance for those Member States and that, therefore, this fact will be taken into account in their application. Moreover, the question will be reviewed in accordance with the relevant provisions of the Directive.

Re Article 16

The Commission states that it will make a study of the impact of television advertising and teleshopping on minors, with a view to re-examination of the subject in the next revision of the Directive.

Re Article 23a (2) (a)

The Commission states that the tasks ascribed to the contact Committee by Article 23a (2) (a) include in particular taking into account efforts for investment in the production of European works made by broadcasters for whom it would be difficult to achieve a majority proportion of broadcasting time.

In referring, in Article 23a (2) (a), to practical problems arising out of the application of Article 2, the Council wishes the Committee to organize consultations on the question described in recital 12.

COMMON POSITION (EC) No 50/96

adopted by the Council on 8 July 1996

with a view to adopting Directive 96/.../EC of the European Parliament and of the Council amending the Annex to Directive No 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State

(96/C 264/10)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social
Committee⁽²⁾,

Acting in accordance with the procedure laid down in
Article 189b of the Treaty⁽³⁾,

Whereas according to different artistic traditions within
the Community water-colour, gouache and pastel
pictures are variously regarded as being either paintings
or drawings; whereas category 4 of the Annex to
Directive No 93/7/EEC⁽⁴⁾ includes drawings executed
entirely by hand on any medium in any material and
category 3 includes pictures and paintings executed
entirely by hand on any medium in any material; whereas
the financial thresholds which apply to these two
categories are different; whereas in the internal market
this could lead to serious differences of treatment for
water-colour, gouache and pastel pictures depending
upon the Member State in which they are situated;
whereas it is necessary to decide, for the purposes of
the application of the Directive, into which category they
shall fall to ensure that the financial thresholds applied
shall be the same throughout the Community;

Whereas experience shows that the prices realized by
water-colour, gouache and pastel pictures tend to be
rather higher than those realized by drawings and much
lower than those fetched by paintings in oil or tempera;
whereas accordingly it is expedient to place water-colour,
gouache and pastel pictures into a new separate category

⁽¹⁾ OJ No C 6, 11. 1. 1996, p. 15.

⁽²⁾ OJ No C 97, 1. 4. 1996, p. 28.

⁽³⁾ Opinion of the European Parliament of 21 May 1996 (OJ
No C ..., p. ..., Council common position of 8 July 1996
(not yet published in the Official Journal) and Decision of
the European Parliament of ... (not yet published in the
Official Journal).

⁽⁴⁾ OJ No L 74, 27. 3. 1993, p. 74.

with a threshold of ECU 30 000 which would ensure that
works of major significance unlawfully removed from the
territory of a Member State can be returned,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The Annex to Directive No 93/7/EEC shall be amended
as follows:

1. in heading A:

(a) point 3 shall be replaced by:

'3. Pictures and paintings, other than those
included in category 3A or 4, executed
entirely by hand in any medium and on any
material⁽¹⁾;

(b) the following point shall be inserted:

'3A. Water-colours, gouaches and pastels
executed entirely by hand on any
material⁽¹⁾;

(c) point 4 shall be replaced by the following:

'4. Mosaics in any material executed entirely by
hand, other than those falling in categories 1
or 2, and drawings in any medium executed
entirely by hand on any material⁽¹⁾;

2. in heading B:

the following category shall be inserted:

'30 000

— 3A. (Water colours, gouaches and pastels)'

Article 2

Member States shall bring into force the laws, regulations
and administrative provisions necessary to comply with

this Directive within six months of the date of its publication in the *Official Journal of the European Communities*. They shall forthwith inform the Commission thereof.

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

Article 3

This Directive is addressed to the Member States.

Done at Brussels, . . .

For the European Parliament
The President

For the Council
The President

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 22 November 1995 the Commission sent the European Parliament and the Council a proposal, based on Article 100a of the EC Treaty, for a Directive amending the Annex to Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.
2. The European Parliament and the Economic and Social Committee delivered their opinions on 12 May⁽¹⁾ and 31 January⁽²⁾ 1996 respectively.
3. On 8 July 1996, the Council adopted its common position pursuant to Article 189b of the Treaty.

II. OBJECTIVE OF THE PROPOSAL

Creation of a new category of watercolours, gouaches and pastels, with an appropriate threshold, to ensure that the same financial thresholds are applied to such works throughout the Community.

1. General comments

The Council approved the Commission proposal in its common position, while making one procedural change it thought desirable.

2. Specific comments

- 2.1. The Council has inserted a procedural amendment to the Commission proposal to make the date of implementation of the Directive coincide with that of the Regulation amending the Annex to Council Regulation (EEC) No 3911/92 on the export of cultural goods, the proposal for which was submitted at the same time as that for the Directive.

2.2 *Opinion of the European Parliament*

The European Parliament did not submit any amendments to the Commission proposal.

CONCLUSIONS

The Council considers that its common position, which takes on board the whole of the Commission proposal (while adding a technical amendment so that the Directive and the Regulation can be implemented on the same date: see above), constitutes an appropriate response to the need for a new category in which to classify watercolours, gouaches and pastels.

⁽¹⁾ OJ No C 166, 10. 6. 1996, p. 38.

⁽²⁾ OJ No C 97, 1. 4. 1996.

COMMON POSITION (EC) No 51/96

adopted by the Council on 8 July 1996

with a view to adopting Decision No .../96/EC of the European Parliament and of the Council of ... establishing a Community action programme in the field of cultural heritage — the Raphael programme

(96/C 264/11)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 128 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee⁽¹⁾,

Having regard to the opinion of the Committee of the Regions⁽²⁾,

Acting in accordance with the procedure laid down in Article 189b of the Treaty⁽³⁾,

- (1) Whereas the most tangible and influential reality of Europe as a whole is not merely its geographical, political, economic and social features but also its culture;
- (2) Whereas Title IX of the Treaty is devoted specifically to culture and states that the Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore;
- (3) Whereas Article 128 of the Treaty identifies cultural heritage as a specific field of action and that cultural heritage is the expression of national and regional identities and the links between peoples; whereas it must be preserved and the public's access to it improved (including for those who face particular problems of access) in order to contribute to greater mutual understanding and respect;

(4) Whereas Community action can contribute to better preservation of the cultural heritage by promoting the exchange of experiences and expertise and encouraging operational synergies and partnership;

(5) Whereas, because of its socio-economic dimension, the preservation of the cultural heritage is an element in a design for society and can contribute significantly to job creation and regional development and to improving the quality of life and the day-to-day environment of ordinary people; whereas contemporary creative work can play an important role in this respect;

(6) Whereas culture is an important area for action in the context of the information society, as highlighted in the Commission communication entitled 'Europe's way to the information society: an action plan';

(7) Whereas research must be carried out at Community level on the preservation of the cultural heritage; whereas Community action in research, technological development and demonstration is undertaken in accordance with the technological research and development framework programme⁽⁴⁾, which could be of benefit to this programme;

(8) Whereas the Commission has gained experience through the activities undertaken to date in particular in the field of architectural heritage and the results of the consultations it has held with all the parties concerned;

(9) Whereas the European Parliament attaches importance to Community action in favour of heritage, and in particular to training, research,

⁽¹⁾ OJ No C 256, 2. 10. 1995, p. 38.

⁽²⁾ OJ No C 100, 2. 4. 1996, p. 119.

⁽³⁾ Opinion of the European Parliament of 000 (not yet published in the Official Journal), Council common position of 8 July 1996 (not yet published in the Official Journal) and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ Decision No 1110/94/EC of the European Parliament and of the Council of 26 April 1994 concerning the fourth framework programme of the European Community activities in the field of research and technological development and demonstration (1994 to 1998), OJ No L 126, 18. 5. 1994, p. 1.

raising the awareness of young people and adolescents, cooperation with non-member countries and the Council of Europe and links with other Community policies, particularly as regards training and regional development⁽¹⁾;

- (10) Whereas the European Parliament has passed resolutions on the contribution of the Community to work on restoring outstanding examples of the architectural heritage⁽²⁾;
- (11) Whereas the Council has expressed an interest in closer cooperation in the areas of architectural heritage, works of art, artifacts and archives, in particular as regards the exchange of knowledge, documentation and training and in view of the important role of networks of cultural organizations in cultural cooperation in Europe⁽³⁾;

⁽¹⁾ European Parliament resolution on protecting the European cultural heritage, OJ No C 62, 30. 5. 1974, p. 5.

European Parliament resolution on the protection of the architectural and archaeological heritage, OJ No C 267, 11. 10. 1982, p. 25.

European Parliament resolution on the conservation of the Community's architectural and archaeological heritage, OJ No C 309, 5. 12. 1988, p. 423.

European Parliament resolution on preserving the architectural heritage and protecting cultural assets, OJ No C 72, 15. 3. 1993, p. 160.

⁽²⁾ European Parliament resolution on economic aid to Mount Athos (monastery region), OJ No C 144, 15. 6. 1981, p. 92.

European Parliament resolution on the participation of Community financial instruments in the restoration of the historic centre of the city of Palermo, OJ No C 187, 18. 7. 1988, p. 160.

European Parliament resolution on aid for the reconstruction of the Chiado district of Lisbon, OJ No C 262, 10. 10. 1988, p. 110.

European Parliament resolution on the conservation of the Community's architectural and archaeological heritage, OJ No C 309, 5. 12. 1988, p. 423.

European Parliament resolution on the fire at the Gran Teatro del Liceo (Barcelona), OJ No C 61, 28. 2. 1994, p. 184.

⁽³⁾ Resolution of the Ministers responsible for Cultural Affairs meeting within the Council of 13 November 1986 on the protection of Europe's architectural heritage, OJ No C 320, 13. 12. 1986, p. 1.

Resolution of the Ministers with responsibility for cultural affairs meeting within the Council of 13 November 1986 on the conservation of works of art and artifacts, OJ No C 320, 13. 12. 1986, p. 3.

Resolution of the Council and the Ministers for Culture meeting within the Council of 14 November 1991 on arrangements concerning archives, OJ No C 314, 5. 12. 1994, p. 2.

Council conclusions of 17 June 1994 concerning greater cooperation in the field of archives, OJ No C 235, 23. 8. 1994, p. 3.

Resolution of the Council and the Ministers for Culture meeting within the Council of 14 November 1991 on European cultural networks, OJ No C 314, 5. 12. 1991, p. 1.

(12) Whereas, in its communication 'New prospects for Community cultural action', the Commission states that Community action should be extended to the moveable heritage and steps taken to promote dialogue and cooperation between those involved and encourage the dissemination of experiences and specialized information; whereas the European Parliament and the Council have encouraged this approach⁽⁴⁾;

(13) Whereas the European institutions have stressed the importance of integrating the different aspects of cultural heritage in a coherent Community action⁽⁵⁾ which takes account of the richness and diversity of the moveable and non-moveable heritage and supports the work of the numerous parties involved;

(14) Whereas it remains necessary to communicate to as wide a public as possible, by means of general information, the importance of protecting the cultural heritage;

(15) Whereas Community action should take account of the changing nature of the definition of heritage and include all types of heritage by encouraging multidisciplinary approaches;

(16) Whereas the Commission has organized consultations with all interested parties, particularly the departments in the Member States, the professionals, non-governmental organizations, foundations and associations, with a view to preparing an action programme in the field of cultural heritage;

(17) Whereas there are numerous links between the cultural heritage in the Community and that in third countries; whereas, therefore, this field is ideally suited to developing forms of cooperation with third countries and with the Council of Europe and other competent international organizations in the cultural sector such as Unesco,

⁽⁴⁾ European Parliament resolution on the Commission communication entitled 'New prospects for Community cultural action', OJ No C 42, 15. 2. 1993, p. 173.

European Parliament resolution on Community policy in the field of culture, OJ No C 44, 14. 2. 1994, p. 184.

Conclusions of the Council and Ministers for Culture meeting within the Council of 12 November 1992 on guidelines for Community cultural action, OJ No C 336, 19. 12. 1992, p. 1.

⁽⁵⁾ European Parliament resolution on preserving the architectural heritage and protecting cultural assets, OJ No C 72, 15. 3. 1993, p. 160.

Council conclusions of 17 June 1994 on drawing up a Community action plan in the field of cultural heritage, OJ No C 235, 23. 8. 1994, p. 1.

in accordance with the requirements of the Treaty and the conclusions and resolutions cited above;

- (18) Whereas the conclusions of the Copenhagen European Council of 21 to 23 June 1993 call for Community programmes to be opened up to the countries of central and eastern Europe that are party to association agreements; whereas the Community has signed cooperation agreements that include a section on culture with certain third countries;
- (19) Whereas this Decision lays down, for the entire duration of the programme, a financial framework constituting the principal point of reference, within the meaning of point 1 of the Declaration by the European Parliament, the Council and Commission of 6 March 1995, for the budgetary authority during the annual budgetary procedure;
- (20) Whereas measures under this programme will also take account of the complementary nature of measures which may be taken under other Community policies;
- (21) Whereas the implementation of this programme relies on close cooperation with the national authorities, with a view to ensuring that Community action supports and supplements activities at national level in confirming respect for the principle of subsidiarity, as it is defined by Article 3b of the Treaty;
- (22) Whereas, in the light of experience, it might prove necessary to amend the thresholds laid down for the Community financial contribution for the various types of project provided for in the Annex (Actions I, II and III);
- (23) Whereas a *modus vivendi* was concluded on 20 December 1994 between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the Treaty⁽¹⁾,

HAVE DECIDED AS FOLLOWS:

Article 1

The Raphael action programme in the field of cultural heritage, hereinafter referred to as 'the programme', is hereby established for the period from 1 January 1997 to 31 December 2000.

The aim of the programme is to support and supplement, through cooperation, the action taken by the Member States in the field of cultural heritage of European importance.

Article 2

Without prejudice to the powers of the Member States to define cultural heritage, for the purposes of the scope of the programme:

- 'cultural heritage' shall mean moveable and immovable heritage (museums and collections, libraries and archives including photographic, cinematographic and sound archives), archaeological and underwater heritage, architectural heritage, assemblages and sites and cultural landscapes (assemblages of cultural and natural objects),
- 'preservation' shall mean all activities contributing to better knowledge, management, conservation, restoration, display and accessibility of cultural heritage.

Article 3

The programme shall encourage cooperation at European level between Member States in the field of cultural heritage. It shall support and supplement their action in accordance with the principle of subsidiarity by contributing to the flowering of their cultures, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

To that end and in accordance with the general aim set out in the second subparagraph of Article 1, the following are the specific objectives of the programme based on the development of transnational cooperation:

- (a) to encourage the conservation and restoration of aspects of the cultural heritage which are of European importance, helping to develop and promote them;
- (b) to encourage the development of transnational cooperation between institutions and/or those involved in the cultural heritage field, in order to contribute to the pooling of skills and the development of best practice in the preservation of the cultural heritage;
- (c) to improve access to the cultural heritage in its European dimension and encourage the active participation of the general public, in particular children and young people, in the safeguarding and development of the European cultural heritage;
- (d) to encourage transnational cooperation in developing new technologies for application in the various heritage categories and disciplines and in preserving traditional cultural heritage trades and techniques;

⁽¹⁾ OJ No C 102, 4. 4. 1996, p. 1.

- (e) to have account taken of the heritage dimension in other Community programmes and policies;
- (f) to encourage cooperation with third countries and the relevant international organizations.

Article 4

In order to achieve the objectives set out in the second subparagraph of Article 3, the projects developed under the programme will have to have a European dimension and offer added value compared with actions carried out in the Member States and meet the following criteria:

- contribute to the promotion of the cultural heritage, including the provision of information on it,
- present interest at Community level because of their exemplary, innovative or informative nature,
- deal with problems posed by the preservation of the cultural heritage and contribute to the development of the best preservation practices,
- be likely to produce a multiplier effect in cultural, educative or socio-economic terms.

Article 5

The actions described in the Annex shall be carried out in pursuit of the objectives set out in the second subparagraph of Article 3. They shall be implemented in accordance with the procedure laid down in Article 7.

Article 6

1. The programme shall be open to participation by the associated countries of central and eastern Europe in accordance with the conditions laid down in the Additional Protocols to the Association Agreements on participation in Community programmes concluded, or to be concluded, with those countries. The programme shall be open to participation by Cyprus and Malta and to cooperation with other third countries which have concluded association or cooperation agreements involving cultural clauses, on the basis of additional appropriations to be provided according to procedures to be agreed with those countries.

2. The Community and the Member States shall promote cooperation with the Council of Europe and with other relevant international organizations in the cultural sector (e.g. Unesco), while ensuring that the instruments adopted are complementary and respect the

individual identity and autonomy of each institution and organization and that resources are put to the best possible use.

Article 7

1. The Commission shall implement the programme in accordance with this Decision.

2. In carrying out its task, the Commission shall be assisted by a Committee composed of two representatives per Member State and chaired by the representative of the Commission. Members of the Committee may be assisted by experts or advisers.

3. The representative of the Commission shall submit to the Committee a draft of the measures to be taken with regard to:

- the annual work programme,
- a general picture of the balance between the various actions,
- the selection rules and criteria for the various types of project described under each of the actions provided for in the Annex,
- projects in which the requested Community contribution exceeds ECU 30 000. That threshold may be revised by the Committee in the light of experience,
- any amendment of the thresholds for the Community financial contribution for the various types of project provided for in the Annex (Actions I, II and III),
- the detailed rules for monitoring and assessing the programme and the conclusions of the evaluation reports laid down in Article 11 and any other measure readjusting the programme arising therefrom.

4. The Committee shall deliver its opinion on the draft of the measures referred to in paragraph 3 within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately.

However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council

forthwith. In that event, the Commission may defer application of the measures which it has decided for a period of two months from the date of such communication.

The Council, acting by qualified majority, may take a different decision within the time limit referred to in the previous subparagraph.

5. Members of the boards for the selection of projects shall be appointed on proposals from the Member States. The proceedings of the boards — the composition of which may not be made public until the completion of their tasks — must remain confidential and decisions must be taken by consensus.

Article 8

1. The Commission may consult the Committee on any other question concerning the implementation of the programme as well as on the measures provided for in Article 7 (3).

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

3. The representative of the Commission shall keep the Committee informed in good time and on a regular basis of the financial assistance granted under the programme (amount, duration, breakdown, beneficiaries).

Article 9

1. The financial framework for the implementation of the programme for the period referred to in Article 1 is hereby set at ECU 30 million.

2. The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

3. The financial framework mentioned in paragraph 1 will be subject to re-examination before the end of the second year, on a proposal from the Commission, in the light of the budgetary situation and the results obtained in the first phase of the programme.

Article 10

The Commission shall seek to ensure, if necessary in collaboration with the Member States, that the actions provided for in the programme and the other cultural programmes, and in programmes under other provisions of the Treaty with cultural-heritage aspects, are coherent and complementary; it shall also assess the overall effect of these programmes on the heritage.

Article 11

1. After the programme has been in operation for two years and six months, and within six months of the end of that period, the Commission, after having consulted the Committee, shall present a detailed evaluation report on the results achieved to the European Parliament and the Council, accompanied, where necessary, by any measures to adjust the programme. This report is intended to assess, both qualitatively and quantitatively, the extent to which the programme has achieved the objectives listed in Article 3.

2. After the programme has been carried out, the Commission shall submit to the European Parliament, the Council and the Committee of the Regions a qualitative and quantitative report on the implementation and achievements of the programme in the light of the objectives referred to in paragraph 1.

Article 12

The programme, together with practical information, for each of the actions or measures, as regards the procedure, the closing dates for the submission of applications and the documents which must accompany applications, shall be published each year in the 'C' series of the *Official Journal of the European Communities*.

The Commission shall give priority to publicity and the dissemination of information on the programme so as to ensure that all cultural operators and networks are informed about and aware of the actions which concern them.

All projects receiving financial support under the programme shall be required to display the European Union flag and acknowledgement of the funding.

Done at Brussels, ...

For the European Parliament

The President

For the Council

The President

ANNEX

COMMUNITY ACTION PROGRAMME IN THE FIELD OF CULTURAL HERITAGE —
THE RAPHAEL PROGRAMME

The aim of the Raphael programme is to support actions at European level in all categories of moveable and immoveable cultural heritage, in compliance with the principle of subsidiarity.

ACTION I

Conservation, safeguarding and development of the European cultural heritage through European cooperation

— The aim of this action is to contribute to the conservation, safeguarding and development of the European cultural heritage, particularly if under threat, by encouraging the development and pooling of the best practices with a view to creating an environment conducive to the preservation and restoration of the cultural heritage.

— This action will involve the following measures:

1. Support for projects for the conservation and safeguarding of the cultural heritage which qualify as 'European heritage laboratories' by virtue of the interest or exemplary value of their content. The projects must be submitted by the competent authorities in the Member States and must relate to works, monuments or sites of exceptional historic, architectural or artistic importance, and especially those where operations of particular complexity from the scientific and/or technical point of view are required for their conservation.

The 'laboratories', which may be granted Community support under the programme for four years, should particularly associate with their operation a multidisciplinary European team bringing together the most eminent specialists, with a view to studying extremely difficult conservation problems and developing appropriate approaches, methods and/or techniques, ensuring added value in each project. Those in charge of projects will be expected to ensure that experience acquired in the course of projects is adequately disseminated.

2. Support for projects for the conservation and safeguarding of the European cultural heritage in connection with common themes to be determined by the Commission after submission to the Committee referred to in Article 7 of the Decision, bearing in mind problem areas relating to the different categories of the cultural heritage. The projects, which should be submitted by the person(s) in charge of the property concerned, may last a maximum of three years. Priority will be given to projects having exemplary value and a multiplier effect in cultural, technical and socio-economic terms and/or in terms of access to heritage. Those in charge of projects will be expected to ensure that experience acquired in the management and/or preservation problems involved is adequately disseminated among professionals.

Community support is intended to contribute to the added European value of the projects carried out within the framework of this action and to the creation of conditions for the development of European know-how.

Projects must have a balanced financing plan setting out the financial requirements of the action for which administrative costs must not exceed 12 % of the Community financing of the project.

Community financial assistance for a project under this action may not exceed 50 % of the total cost of the project in question and, in the case of projects under paragraph 2, may not exceed ECU 150 000.

Projects shall be the subject of individual applications to the European Community. Each application shall include:

- a detailed description of the actions. An opinion on the technical conformity of the project must be established by the competent authorities in the Member States and reach the Commission within the time limit for the submission of projects. If the opinion is not available within a deadline to be fixed, the procedure for selection of the project will go ahead,
- a detailed estimated budget for these actions.

The resources to be committed to this action shall amount to approximately 50 % of the overall budget allocated to the programme.

ACTION II

Cooperation for the exchange of experiences and the development of techniques applied to the heritage

- The aim of this action is to encourage the strengthening of transnational cooperation for the pooling of skills and development of best practice through networks and partnerships and through the mobility of professionals between heritage-sector institutions and/or operators. Particular attention will be given to the development of new technologies applied to different cultural-heritage disciplines and to the preservation of traditional heritage trades and techniques.

Depending on the theme they deal with, networks will be able to bring together public and/or private institutions and/or operators in the heritage field and, if necessary, other public and/or private institutions, research centres and companies with a special interest.

- The action will involve the following measures:

1. *Innovation and new technologies*

- 1.1. Support for projects intended to identify research requirements — to be developed at Community level — in the heritage field, to circulate research work to heritage professionals and develop practical applications for the use of professionals working in the field. These measures will be developed as far as possible in synergy with the framework research programme. Any subsequent research action will be carried out within the RTD framework programme in accordance with its provisions.
- 1.2. Support for projects for the application to different heritage disciplines of new technologies and services (restoration and preservation techniques; audiovisual and multimedia products, advanced information and communications services, etc.).

2. *Mobility and training of professionals*

- 2.1. Support for projects for exchange of professionals in the various heritage categories and disciplines, enabling them to work for a maximum of 12 months in an equivalent professional environment in another Member State.

Community support will be directed towards organizing exchanges and contributing to additional costs incurred, such as travel and accommodation.

- 2.2. Support for projects of a transnational nature intended to encourage further training of heritage professionals in the new technologies and advanced information and communication services applied to the cultural heritage sector as well as for those intended to develop and preserve the techniques of traditional heritage trades.

3. *Exchanges of experience and information*

- 3.1. Support for exchanges of experience through conducting studies, surveys and working meetings, as well as through seminars, in the following fields in particular:
 - development of technical recommendations (standards) for the improvement of usage and practices in the management and/or conservation of the cultural heritage,
 - identification of risk factors concerning cultural objects as well as systems of periodic inspection of their state of conservation,
 - preventive protection of cultural objects, works and monuments against disaster and conditions for their conservation,
 - qualifications of professionals in heritage-preservation trades,
 - documentation of cultural objects,
 - conditions for the loan of works for temporary exhibitions,
 - repercussions on the cultural-heritage sector of other Community policies.
- 3.2. Support for projects between cultural-heritage institutions, using electronic communication technology (on-line, CD-ROM, CD-I, etc.) for the collation/exchange and dissemination of specialized information, in the following fields in particular:
 - Member States' cultural-heritage legislation,
 - lists and inventories of the cultural heritage,
 - inventories, by discipline, of further training courses,

- integrated databases for the cataloguing and description of cultural objects,
- statistics and indicators on the cultural heritage,
- lists and directories of innovative projects in the cultural heritage field,
- practices and systems used in the preservation, restoration, management and dissemination of the cultural heritage in the Member States,
- practical guides, manuals and information bulletins on the cultural heritage.

Applications, which will be submitted by the institutions and/or operators concerned, must offer the financial guarantees required to carry them out. The Community contribution under this action cannot in any circumstances exceed 50 % of the total cost of the project, nor can it exceed ECU 50 000, except in the case of projects under points 1.2 and 2.2, for which the Community contribution may be up to ECU 150 000, and points 2.1 and 3.1 (fourth indent), for which the Community contribution may be up to ECU 100 000.

ACTION III

Public access to, participation in and awareness of the cultural heritage

- The aim of this action is to improve public access to the cultural heritage by encouraging projects to raise awareness that have a European dimension and by promoting the use of advanced information and communications technologies and services.
- The action will involve the following measures:
 1. Support for transnational cooperation projects between cultural-heritage institutions and/or operators using multimedia systems and products or other forms of communication to present the heritage in its European dimension and in particular to offer the public access to the whole range of works of art of similar and/or complementary styles kept by other European cultural bodies.
 2. Support for events to raise public awareness of the cultural heritage held at European level.
 3. Support for multilingual presentations concerning the heritage in museums, monuments, sites, libraries, archives, etc. aimed at people throughout the European Union. Projects might relate to presentational material, brochures, exhibition panels, electronic guide systems, audiovisual or multimedia products, etc.
 4. Support for transnational cooperation projects bringing together institutions and/or operators from at least three Member States of the Community with the aim of increasing the public's awareness of the cultural heritage, such as exhibitions, teaching programmes, transnational cultural itineraries, etc.

Applications, which will be submitted by the institutions and/or operators concerned, must offer the financial guarantees required to carry them out. The Community contribution under this action cannot in any circumstances exceed 50 % of the total cost of the project, nor can it exceed ECU 50 000, except in the case of projects under points 1 or 3, for which the Community contribution may be up to ECU 150 000.

ACTION IV

Cooperation with third countries and international organizations

- The aim of this action is to develop projects with third countries and create synergies with activities undertaken by other international organizations, in particular the Council of Europe and Unesco.
- The action will involve the following measures:
 1. Support for cooperation with third countries in the fields covered by actions I, II, and III.
Details of the arrangements for participation of third countries are set out in Article 6.
 2. Support for projects in synergy with the international organizations working in the field of cultural heritage and in particular the Council of Europe and Unesco. The procedures for this synergy will be decided on an individual basis between the Community and the international organization concerned, in accordance with the arrangements provided for in Article 7 (3).

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 6 April 1995, the Commission submitted to the European Parliament and to the Council a proposal for a Decision based on Article 128 of the EC Treaty establishing the Raphael Programme.
2. The European Parliament and the Committee of the Regions delivered their respective opinions on 12 October⁽¹⁾ and 21 September 1995⁽²⁾.
3. The Council adopted its common position on 8 July 1996, in accordance with Article 189b of the Treaty.

II. AIM OF THE PROPOSAL

The proposal concerns the implementation at Community level of a specific action programme in the field of cultural and movable and non-movable heritage.

1. General comments

In its common position, the Council approved the essential features of the Commission proposal, while making certain amendments which it thought desirable.

2. Specific comments

2.1. *Amendments by the Council to the Commission proposal*

(a) Scope of the Decision

The Council introduced a definition of the general aim of the programme into the second paragraph of Article 1, viz:

'the aim of the programme is to support and supplement, through cooperation, the action taken by the Member States in the field of cultural heritage of European importance.'

Furthermore, the Council, while broadly adopting the specific aims of the programme as indicated in the Commission proposal, further clarified and extended them in Article 3 by reference to, in particular:

- the encouragement of transnational cooperation in developing new technologies and in preserving traditional cultural heritage trades and techniques,
- the taking into account of the heritage dimension in other Community programmes and policies.

While clarifying the content of the actions listed in the Annex to the Decision, the Council reduced their number from five to four by transforming 'networks and partnerships', which in the Commission proposal formed an action in itself, into a means of accomplishing the present action II ('Cooperation for the exchange of experiences and the development of techniques applied to the heritage').

The Council also stated that the resources to be committed under action I ('Conservation, safeguarding and development of the European cultural heritage through European cooperation') would amount to approximately 50 % of the programme's allocated overall budget. The Council also stated that 'Community support is intended to contribute to the added European value of the projects carried out within the framework of this action and to the creation of conditions for the development of European know-how.'

⁽¹⁾ OJ No C 287, 30. 10. 1995.

⁽²⁾ OJ No C 100, 2. 4. 1996.

(b) Committee procedure

In accordance with the model for the committees established by, on the one hand, the Socrates, Leonardo and Youth for Europe III Decisions and, on the other, the Kaleidoscope Decision, the Council opted for a Committee acting as a Management Committee for certain questions and as an Advisory Committee for others.

(c) Duration of the programme and financial allocation

In view of the periods for the Article 189b procedure, the Council was forced to note that the date of 1 January 1996 for the programme's entry into force could not be retained. It therefore adopted the date of 1 January 1997 in its common position.

Since, furthermore, ECU 10 million are entered in the Community budget for 1996 for Raphael-type activities, the Council thought that 1996 could be regarded as a programme preparation year. Consequently, it adopted a four-year programme duration as from 1 January 1997. The financial framework is set at ECU 30 million.

The Council also agreed to support the entry of an amount of ECU 10 million under the budgetary procedure for 1997 and 1998.

In accordance with a new Article 9 (3), the financial framework of ECU 30 million will be subject to review before the end of the second year, on a proposal from the Commission, in the light of the budgetary situation and of the results achieved in the first stage of the programme.

An assessment is provided for after the programme has been in operation for two years and six months and within six months of the end of that period, accompanied, where necessary, by any measures to adjust the programme.

2.2. *European Parliament amendments*

2.2.1. European Parliament amendments adopted by the Commission

In a statement delivered during the European Parliament part-session on 12 October 1995, the Commission said that it was adopting the spirit or letter of 36 of the 72 Parliament amendments.

2.2.2. European Parliament amendments adopted by the Council

The Council agreed to 38 of the Parliament's amendments, whether in their entirety, in part or in a different wording. These amendments are the following:

1, 2, 3, 12, 14, 15, 18, 21, 23, 24, 25, 26, 27, 29, 30, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 47, 50, 51, 53, 54, 55, 57, 59, 64, 66, 67, 69, 73.

2.2.3. Parliament amendments not adopted by the Council

— Amendments 28 and 44

Budgetary provisions.

The Council thought it necessary to comply strictly with the statement on 6 March 1995 by the European Parliament, the Council and the Commission.

— Amendments 13, 68 and 71

Cooperation between the authorities of the Member States and the latter and the authorities of the CCEE to prevent illegal exports of works of art.

The Council thought that these amendments lay outside the scope of Article 128, on which the Decision proposal was based.

— Amendments 60, 62 and 63

Support for scripts for television programmes and multimedia projects on the cultural heritage. Study into the situation of restorers with a view to organizing the profession of restorer and training for restorers. Support for craft trades

which are essential to the heritage by promoting an association with the industrial sectors producing advanced materials and technologies.

The Council thought that the content of these amendments came broadly within the province of other Community policies.

- Amendments 4, 5, 7, 8, 10, 11, 16, 17, 19, 22, 31, 35, 46, 48, 49, 52, 61, 65, 70, 72

Amendments containing references to situations or activities extraneous to the object of the Decision.

The Council thought that these amendments lay outside the scope of the Decision.

- Amendment 6

Reference to greater use of new technologies in order to limit the damage caused to the heritage by an excessive number of visitors.

The Council rejected this amendment, which appeared to present public access to the heritage in too negative a light, on the grounds that it would contradict one of the specific aims of the programme.

- Amendment 9

Reference to the development of a more enriching type of tourism.

The Council thought that the link between the enhancement of the heritage and the development of a different type of tourism was not obvious.

- Amendment 20

Reference to the need for adequate funding under the Raphael programme.

The Council took the view that such a reference would be inappropriate in a legislative text.

- Amendment 43

Relating to exemplary actions in the heritage field.

The Council thought that this amendment no longer came within the adjusted framework of its draft common position.

- Amendment 56

Support for the idea that multilingual presentations in museums, monuments and sites should be made in the local language.

The Council considered that such provisions came within the exclusive jurisdiction of the Member States' authorities.

- Amendment 58

Reference to measures to facilitate access to archives for those working in the sector and for the general public.

The Council thought that the practices and legislation in force in the Member States were very different and rendered impractical the approach desired by the Parliament.

CONCLUSIONS

In the view of the Council, its common position represents a balanced text which will allow useful work in the field of cultural heritage to be achieved at European level.
