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97/C 284/02

Common position (EC) No 32/97 of 22 July 1997 adopted by the Council, acting in accordance with the procedure referred to in Article 189b of the Treaty establishing the European Community, with a view to adopting a Decision of the European Parliament and of the Council setting up a network for the epidemiological surveillance and control of communicable diseases in the Community

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I

(Information)

COUNCIL

COMMON POSITION (EC) No 31/97

adopted by the Council on 7 July 1997

with a view to adopting Directive 97/.../EC of the European Parliament and of the Council of ... amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

(97/C 284/01)

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 of 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 it is desirable, in order to promote the
establishment and functioning of the internal market and
to ensure that consumers benefit from a high level of
protection, that a single method of calculating the annual
percentage rate of charge for consumer credit should be
used throughout the Community;

Whereas Article 5 of Directive 87/102/EEC⁽⁴⁾ provides
for the introduction of a Community method or methods
of calculating the annual percentage rate of charge;

Whereas, in order to introduce this single method, it is
desirable to draw up a single mathematical formula for
calculating the annual percentage rate of charge and for
determining the credit cost items to be used in the
calculation by indicating those costs which must not be
taken into account;

Whereas Annex II of Directive 87/102/EEC introduced a
mathematical formula for the calculation of the annual
percentage rate of charge and Article 1 (a) (2) of that
Directive provided for the charges to be excluded from
the calculation of the 'total cost of credit to the
consumer';

Whereas during a transitional period of three years from
1 January 1993, Member States which prior to 1 March
1990 applied laws which permitted the use of another
mathematical formula for calculating the annual
percentage rate of charge, were permitted to continue to
apply such laws;

Whereas the Commission has submitted a report to the
Council which makes it possible, in the light of
experience, to apply a single Community mathematical
formula for calculating the annual percentage rate of
charge;

Whereas, since no Member State has made use of
Article 1 (a) (3) of Directive 87/102/EEC by which
certain costs were excluded from the calculation of the
annual percentage rate of charge in certain Member
States, it has become obsolete;

Whereas accuracy to at least one decimal place is
necessary;

⁽¹⁾ OJ C 235, 13. 8. 1996, p. 8, and OJ C 137, 3. 5. 1997,
p. 9.

⁽²⁾ OJ C 30, 30. 1. 1997, p. 94.

⁽³⁾ Opinion of the European Parliament of 20 February 1997
(OJ C 85, 17. 3. 1997, p. 11), Council common position of
7 July 1997 and Decision of the European Parliament of ...
(not yet published in the Official Journal).

⁽⁴⁾ OJ L 42, 12. 2. 1987, p. 48. Directive as amended by
Directive 90/88/EEC (OJ L 61, 10. 3. 1990, p. 14).

Whereas a year is presumed to have 365 days or 365,25 days or (for leap years) 366 days, 52 weeks or 12 equal months; whereas an equal month is presumed to have 30,41666 days;

Whereas it is desirable that consumers should be able to recognize the terms used in different Member States to indicate the 'annual percentage rate of charge';

Whereas it is appropriate to study without delay to what extent a further degree of harmonization of the cost elements of consumer credit is necessary in order to put the European consumer in a position to make a better comparison between the actual percentage rates of charges offered by institutions in the various Member States, thereby ensuring harmonious functioning of the internal market,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 87/102/EEC shall be amended as follows:

(a) Article 1 (a) (1) (a) shall be replaced by the following:

— in the Greek language version of the Directive:

‘Το συνολικό ετήσιο ποσοστό επιβάρυνσης, που εξισώνει, σε ετήσια βάση, την παρούσα αξία του συνόλου των τρεχουσών ή μελλοντικών υποχρεώσεων (δανείων, εξοφλήσεων και επιβαρύνσεων) που έχουν συμφωνηθεί από τον πιστωτή και το δανειζόμενο, υπολογίζεται σύμφωνα με το μαθηματικό τύπο του παραρτήματος II.’

— in the English language version of the Directive:

‘The annual percentage rate of charge which shall be that rate, on an annual basis which equalises the present value of all commitments (loans, repayments and charges), future or existing, agreed by the creditor and the borrower, shall be calculated in accordance with the mathematical formula set out in Annex II.’;

(b) Article 1 (a) (3) shall be deleted;

(c) Article 1 (a) (5) shall be deleted;

(d) Article 3 shall be replaced by the following:

‘Without prejudice to Council Directive 84/450/EEC of 10 September 1984 relating to the approximation

of the laws, regulations and administrative provisions of the Member States concerning misleading advertising(*), and to the rules and principles applicable to unfair advertising, any advertisement, or any offer which is displayed at business premises, in which a person offers credit or offers to arrange a credit agreement and in which a rate of interest or any figures relating to the cost of the credit are indicated, shall also include a statement of the annual percentage rate of charge, by means of a representative example if no other means is practicable.

(*) OJ L 250, 19. 9. 1984, p. 17. Directive as last amended by Directive 97/.../EC (OJ L ...).’;

(e) Annex II shall be replaced by the text of Annex I attached hereto;

(f) Annex III shall be replaced by the text of Annex II attached hereto.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive no later than two years after the entry into force of this Directive. They shall inform the Commission thereof.

When Member States adopt those 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 reference shall be laid down by Member States.

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

Article 3

This Directive is addressed to the Member States.

Done at ...

For the European Parliament
The President

For the Council
The President

ANNEX I

'ANNEX II

THE BASIC EQUATION EXPRESSING THE EQUIVALENCE OF LOANS ON THE ONE HAND AND REPAYMENTS AND CHARGES ON THE OTHER

$$\sum_{K=1}^{K=m} \frac{A_K}{(1+i)^{t_K}} = \sum_{K'=1}^{K'=m'} \frac{A'_{K'}}{(1+i)^{t_{K'}}$$

Meaning of letters and symbols:

- K is the number of a loan
 K' is the number of a repayment or a payment of charges
 A_K is the amount of loan number K
 $A'_{K'}$ is the amount of repayment number K'
 Σ represents a sum
 m is the number of the last loan
 m' is the number of the last repayment or payment of charges
 t_K is the interval, expressed in years and fractions of a year, between the date of loan No 1 and those of subsequent loans Nos 2 to m
 $t_{K'}$ is the interval, expressed in years and fractions of a year, between the date of loan No 1 and those of repayments or payments of charges Nos 1 to m'
 i is the percentage rate that can be calculated (either by algebra, by successive approximations, or by a computer programme) where the other terms in the equation are known from the contract or otherwise.

Remarks:

- (a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.
 (b) The starting date shall be that of the first loan.
 (c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days or 365,25 days or (for leap years) 366 days, 52 weeks or 12 equal months. An equal month is presumed to have 30,41666 days (i.e. 365/12).
 (d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. When rounding to a particular decimal place the following rule shall apply:
 If the figure at the decimal place following this particular decimal place is greater than or equal to 5, the figure at this particular decimal place shall be increased by one.
 (e) Member States shall provide that the methods of resolution applicable give a result equal to that of the examples presented in Annex III.'

ANNEX II

ANNEX III

EXAMPLES OF CALCULATION

A. CALCULATION OF THE ANNUAL PERCENTAGE RATE OF CHARGE ON A CALENDAR BASIS
(1 YEAR = 365 DAYS (OR 366 DAYS FOR LEAP YEARS))**First example**

Sum loaned: $S = \text{ECU } 1\,000$ on 1 January 1994.

It is repaid in a single payment of ECU 1200 made on 1 July 1995 i.e. 1 ½ years or 546 (= 365 + 181) days after the date of the loan.

$$\text{The equation becomes: } 1\,000 = \frac{1\,200}{(1+i)^{\frac{546}{365}}}$$

or:

$$(1+i)^{546/365} = 1,2$$

$$1+i = 1,1296204$$

$$i = 0,1296204$$

This amount will be rounded to 13% (or 12,96% if an accuracy of two decimal places is preferred).

Second example

The sum loaned is $S = \text{ECU } 1\,000$, but the creditor retains ECU 50 for administrative expenses, so that the loan is in fact ECU 950; the repayment of ECU 1200, as in the first example, is again made on 1 July 1995.

$$\text{The equation becomes: } 950 = \frac{1\,200}{(1+i)^{\frac{546}{365}}}$$

or:

$$(1+i)^{546/365} = 1,263157$$

$$1+i = 1,169026$$

$$i = 0,169026$$

This amount will be rounded to 16,9%.

Third example

The sum loaned is ECU 1 000, on 1 January 1994, repayable in two amounts, each of ECU 600, paid after one and two years respectively.

The equation becomes:

$$1\ 000 = \frac{600}{(1+i)} + \frac{600}{(1+i)^{\frac{730}{365}}} = \frac{600}{1+i} + \frac{600}{(1+i)^2}$$

It is solved by algebra and produces $i = 0,1306623$ rounded to 13,1% (or 13,07% if an accuracy of two decimal places is preferred).

Fourth example

The sum loaned is $S = \text{ECU } 1\ 000$, on 1 January 1994, and the amounts to be paid by the borrower are:

After 3 months (0,25 years/90 days):	ECU 272
After 6 months (0,5 years/181 days):	ECU 272
After 12 months (1 year/365 days):	<u>ECU 544</u>
Total:	ECU 1 088

The equation becomes:

$$1\ 000 = \frac{272}{(1+i)^{\frac{90}{365}}} + \frac{272}{(1+i)^{\frac{181}{365}}} + \frac{544}{(1+i)^{\frac{365}{365}}}$$

This equation allows i to be calculated by successive approximations, which can be programmed on a pocket calculator.

The result is $i = 0,13226$ rounded to 13,2% (or 13,23% if an accuracy of two decimal places is preferred).

B. CALCULATION OF THE ANNUAL PERCENTAGE RATE OF CHARGE ON THE BASIS OF A STANDARD YEAR (1 YEAR = 365 DAYS OR 365,25 DAYS, 52 WEEKS, OR 12 EQUAL MONTHS)

First example

Sum loaned: $S = \text{ECU } 1\ 000$.

It is repaid in a single payment of ECU 1 200 made in 1,5 years (i.e. $1,5 \times 365 = 547,5$ days, $1,5 \times 365,25 = 547,875$ days, $1,5 \times 366 = 549$ days, $1,5 \times 12 = 18$ months, or $1,5 \times 52 = 78$ weeks) after the date of the loan.

The equation becomes:

$$1\ 000 = \frac{1\ 200}{(1+i)^{\frac{547,5}{365}}} = \frac{1\ 200}{(1+i)^{\frac{547,875}{365,25}}} = \frac{1\ 200}{(1+i)^{\frac{18}{12}}} = \frac{1\ 200}{(1+i)^{\frac{78}{52}}}$$

or:

$$(1+i)^{1,5} = 1,2$$

$$1+i = 1,129243$$

$$i = 0,129243$$

This amount will be rounded to 12,9% (or 12,92% if an accuracy of two decimal places is preferred).

Second example

The sum loaned is $S = \text{ECU } 1\,000$, but the creditor retains ECU 50 for administrative expenses, so that the loan is in fact ECU 950; the repayment of ECU 1 200, as in the first example, is again made 1,5 years after the date of the loan.

The equation becomes:

$$950 = \frac{1\,200}{(1+i)^{\frac{547,5}{365}}} = \frac{1\,200}{(1+i)^{\frac{547,875}{365,25}}} = \frac{1\,200}{(1+i)^{\frac{18}{12}}} = \frac{1\,200}{(1+i)^{\frac{78}{52}}}$$

or:

$$(1+i)^{1,5} = 1\,200/950 = 1,263157$$

$$1+i = 1,168526$$

$$i = 0,168526$$

This amount will be rounded to 16,9% (or 16,85% if an accuracy of two decimal places is preferred).

Third example

The sum loaned is ECU 1 000, repayable in two amounts, each of ECU 600, paid after one and two years respectively.

The equation becomes:

$$\begin{aligned} 1\,000 &= \frac{600}{(1+i)^{\frac{365}{365}}} + \frac{600}{(1+i)^{\frac{730}{365}}} = \frac{600}{(1+i)^{\frac{365,25}{365,25}}} + \frac{600}{(1+i)^{\frac{730,5}{365,25}}} \\ &= \frac{600}{(1+i)^{\frac{12}{12}}} + \frac{600}{(1+i)^{\frac{24}{12}}} = \frac{600}{(1+i)^{\frac{52}{52}}} + \frac{600}{(1+i)^{\frac{104}{52}}} \\ &= \frac{600}{(1+i)^1} + \frac{600}{(1+i)^2} \end{aligned}$$

It is solved by algebra and produces $i = 0,13066$ which will be rounded to 13,1% (or 13,07% if an accuracy of two decimal places is preferred).

Fourth example

The sum loaned is $S = \text{ECU } 1\,000$ and the amounts to be paid by the borrower are:

After 3 months (0,25 years/13 weeks/91,25 days/91,3125 days):	ECU 272
After 6 months (0,5 years/26 weeks/182,5 days/182,625 days):	ECU 272
After 12 months (1 year/52 weeks/365 days/365,25 days):	ECU 544
Total:	ECU 1 088

The equation becomes:

$$\begin{aligned}
 1\,000 &= \frac{272}{(1+i)^{\frac{91,25}{365}}} + \frac{272}{(1+i)^{\frac{182,5}{365}}} + \frac{544}{(1+i)^{\frac{365}{365}}} \\
 &= \frac{272}{(1+i)^{\frac{91,3125}{365,25}}} + \frac{272}{(1+i)^{\frac{182,625}{365,25}}} + \frac{544}{(1+i)^{\frac{365,25}{365,25}}} \\
 &= \frac{272}{(1+i)^{\frac{3}{12}}} + \frac{272}{(1+i)^{\frac{6}{12}}} + \frac{544}{(1+i)^{\frac{12}{12}}} \\
 &= \frac{272}{(1+i)^{\frac{13}{52}}} + \frac{272}{(1+i)^{\frac{26}{52}}} + \frac{544}{(1+i)^{\frac{52}{52}}} \\
 &= \frac{272}{(1+i)^{0,25}} + \frac{272}{(1+i)^{0,5}} + \frac{544}{(1+i)^1}
 \end{aligned}$$

This equation allows i to be calculated by successive approximations, which can be programmed on a pocket calculator.

The result is $i = 0,13185$ which will be rounded to 13,2% (or 13,19% if an accuracy of two decimal places is preferred).

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 25 April 1996, the Commission submitted a proposal for a Directive based on Article 100a of the EC Treaty, amending Directive 87/102/EEC (as amended by Directive 90/88/EEC) for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit⁽¹⁾.
2. The European Parliament delivered its opinion on 20 February 1997. Further to that opinion, the Commission forwarded an amended proposal on 21 March 1997⁽²⁾.

The Economic and Social Committee delivered its opinion on 26 September 1996⁽³⁾.
3. On 7 July 1997, the Council adopted its common position in accordance with Article 189b of the Treaty.

II. OBJECTIVE

4. The purpose of the Commission proposal is to ensure that a single mathematical formula is used to calculate the annual percentage rate of charge (hereinafter referred to as the APR) for consumer credit, in accordance with Article 1 (a) (5) (b) of Directive 90/88/EEC.

III. ANALYSIS OF THE COMMON POSITION

5. General comment

Overall, the Council's common position does not depart from the amended Commission proposal except to incorporate the substance of the European Parliament's amendments, with the exception of the point relating to the time-limit for transposition (Article 2 (1) of the common position), where the Council considered that a period of two years after entry into force was better than a fixed date for enabling the competent authorities and business operators to make the necessary adjustments, as the date of entry into force of the Directive was not yet known.

6. Specific comments

The following amendments were made by the Council to the amended proposal and accepted by the Commission:

- (i) *Annex I, remark (c) (definition of the year) and ninth recital*

The Council added an optional definition of the standard year equal to 365,25 days, corresponding to the average length of the year over a four-year cycle (three ordinary years plus one leap year), and adapted the ninth recital to reflect these different definitions.

- (ii) *Annex I, remark (d) (accuracy of calculations) and eighth recital*

Like the European Parliament, the Council deemed it inadvisable to impose an accuracy of two decimal places. However, it left the Member States that option with the wording 'an accuracy of *at least* one decimal place'.

⁽¹⁾ OJ C 235, 13. 8. 1996, p. 8.

⁽²⁾ OJ C 137, 3. 5. 1997, p. 9.

⁽³⁾ OJ C 30, 30. 1. 1997, p. 94.

(iii) *Annex I, remark (e) (methods of resolution)*

As it is possible to use a number of methods to solve the equation defining the APR, the Council deemed it desirable to ensure that those methods gave the same result and that the examples given in Annex II did not give rise to divergent interpretations.

(iv) *Annex II (examples of calculation)*

Examples of calculation have been given for the different definitions of the year given in Annex I, remark (c).

(v) *Article 2 (period for transposition)*

As explained in point 5, in Article 2 (1) of the common position the Council set a transposition deadline of two years after the entry into force of the Directive.

(vi) *Eleventh recital (harmonization)*

In response to the concern expressed by the European Parliament in its first amendment, the Council inserted a new recital concerning a study of the extent to which further harmonization of the cost elements of consumer credit might be necessary.

COMMON POSITION (EC) No 32/97

adopted by the Council on 22 July 1997

with a view to adopting Decision .../97/EC of the European Parliament and of the Council of ... setting up a network for the epidemiological surveillance and control of communicable diseases in the Community

(97/C 284/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 129 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 189b of the Treaty⁽⁴⁾,

- (1) Whereas the prevention of disease, in particular of the major health scourges, is a priority for Community action, requiring a global approach coordinated between Member States;
- (2) Whereas the European Parliament, in its resolution on public health policy after Maastricht⁽⁵⁾, invited the Commission to set up a transfrontier network to devise working definitions of notifiable diseases, to collect, update, analyze and disseminate Member State data on such diseases and to work with national and international agencies on these matters;
- (3) Whereas in its resolution of 2 June 1994⁽⁶⁾ on the framework for Community action in the field of public health the Council agreed that priority should be given at present to communicable diseases in particular;

(4) Whereas in its conclusions of 13 December 1993⁽⁷⁾ the Council considered that there was a need to develop at Community level a network for the surveillance and control of communicable diseases, the main purpose of which would be to collect and coordinate information from monitoring networks in the Member States;

(5) Whereas in those same conclusions the Council requested the Commission to devote special attention, in its proposals relating to the framework for action in the field of public health, to setting up an epidemiological network in the Community, taking account of the current proceedings and mechanisms existing at Community and at Member State level, and ensuring the comparability and compatibility of data;

(6) Whereas in their resolution of 13 November 1992 on the monitoring and surveillance of communicable diseases⁽⁸⁾ the Council and the Ministers for Health, meeting within the Council, underlined the desirability of improving, within the Community, the coverage and effectiveness of existing networks between Member States for the surveillance of communicable diseases (including data-processing networks), and also the desirability of maintaining, establishing or strengthening coordination between them for monitoring outbreaks of communicable diseases, where such action could add to the value of existing measures;

(7) Whereas in that same resolution, the Council and the Ministers for Health, meeting within the Council, underlined the value of collecting data from the Member States on a limited number of rare and serious diseases which require large samples for epidemiological study;

(8) Whereas in that same resolution the Council and the Ministers for Health, meeting within the Council, invited the Commission to examine the desirability of giving priority to certain suitable proposals relating to the control and surveillance of

⁽¹⁾ OJ C 123, 26. 4. 1996, p. 10.

⁽²⁾ OJ C 30, 30. 1. 1997, p. 1.

⁽³⁾ OJ C 337, 11. 11. 1996, p. 67.

⁽⁴⁾ Opinion of the European Parliament of 13 November 1996 (OJ C 362, 2. 12. 1996, p. 111), Council common position of 22 July 1997 and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁵⁾ OJ C 329, 6. 12. 1993, p. 375.

⁽⁶⁾ OJ C 165, 17. 6. 1994, p. 1.

⁽⁷⁾ OJ C 15, 18. 1. 1994, p. 6.

⁽⁸⁾ OJ C 326, 11. 12. 1992, p. 1.

- communicable diseases, in the light, *inter alia*, of their estimated cost-effectiveness;
- (9) Whereas, in accordance with the principle of subsidiarity, any new measure taken in an area which does not fall within the exclusive competence of the Community, such as the epidemiological surveillance and control of communicable diseases, may be taken by the Community only if, by reason of the scale or effects of the proposed action, the objectives of the proposed action can be better achieved by the Community than by the Member States;
- (10) Whereas the constantly growing information needs of the structures and/or authorities responsible in the Member States for the epidemiological surveillance of communicable diseases make it necessary to establish, at Community level, a permanent network to respond to those needs;
- (11) Whereas measures to be taken in the health field must take into account other actions undertaken by the Community in the field of public health or which have an impact on public health;
- (12) Whereas the measures to be taken under this Decision are adopted excluding any harmonization of the laws and regulations of the Member States;
- (13) Whereas Decision 647/96/EC of the European Parliament and of the Council of 29 March 1996 adopting a programme of Community action on the prevention of AIDS and certain other communicable diseases within the framework for action in the field of public health (1996 to 2000)⁽¹⁾ envisages a number of Community actions for the creation and development of networks for the control and surveillance of certain communicable diseases, the early detection of such diseases, and promotion of the training of field epidemiologists;
- (14) Whereas cooperation with the competent international organizations, particularly the World Health Organization, in particular with regard to disease classification, must be fostered;
- (15) Whereas cooperation with third countries, in particular in the case of the appearance or resurgence of serious communicable diseases, must be supported;
- (16) Whereas the recent appearance or resurgence of serious communicable diseases has demonstrated that when an emergency situation occurs all relevant data and information must be communicated swiftly to the Commission in an agreed form of presentation, using appropriate methods;
- (17) Whereas, in order to ensure protection of the population in an emergency, Member States must exchange relevant data and information immediately via the Community network;
- (18) Whereas Council Directive 92/117/EEC of 17 December 1992 concerning measures for protection against specified zoonoses and specified zoonotic agents in animals and products of animal origin in order to prevent outbreaks of food-borne infections and intoxications⁽²⁾ applies equally to information concerning zoonoses which affect human beings; whereas that same Directive provides for a system for collecting and transmitting information on specified zoonoses and zoonotic agents;
- (19) Whereas the setting up of a network for the epidemiological surveillance and control of communicable diseases at Community level necessarily presupposes compliance with the legal provisions concerning the protection of individuals with regard to the processing of personal data and the introduction of arrangements to guarantee the confidentiality and security of such data; whereas in this connection the European Parliament and the Council adopted Directive 95/46/EC⁽³⁾;
- (20) Whereas the Community projects in the field of the telematic interchange of data between administrations (IDA)⁽⁴⁾ and the G7 projects should be closely coordinated with the implementation of the Community actions relating to the epidemiological surveillance and control of communicable diseases;
- (21) Whereas consideration must be given to the efforts deployed with a view to encouraging international cooperation in this field, particularly as part of a joint plan of action with the United States;
- (22) Whereas it is important, in an emergency situation, that the competent national structures and/or authorities should strengthen their cooperation, in particular with regard to the identification of biological samples;
- (23) Whereas any Community procedures which may be set up for the rapid exchange of information do not affect the Member States' rights and obligations under bilateral or multilateral agreements and conventions;

⁽²⁾ OJ L 62, 15. 3. 1993, p. 38.

⁽³⁾ OJ L 281, 23. 11. 1995, p. 31.

⁽⁴⁾ OJ L 269, 11. 11. 1995, p. 23.

⁽¹⁾ OJ L 95, 16. 4. 1996, p. 16.

- (24) Whereas a procedure needs to be established to promote coordination between the Member States concerning the measures they may decide to take to control the spread of communicable diseases; whereas the adoption and implementation of these measures fall within the exclusive competence of the Member States;
- (25) Whereas it is important that the Commission should implement the Community network in close cooperation with the Member States; whereas a procedure therefore needs to be established to ensure the Member States' full participation in this implementation;
- (26) Whereas the costs which may result from the operation of the network at Community level should be met from Community resources; whereas relevant Community programmes and initiatives, including those in the context of public health action as well as, in particular, the framework programme for statistical information, projects in the field of telematic interchange of data between administrations, and the framework programme for research and technological development, especially the telematics applications of the latter, might provide the necessary financial means;
- (27) Whereas the costs which may result from the operation of the network at national level will have to be financed by the Member States themselves, unless Community provisions provide otherwise;
- (28) Whereas a *modus vivendi* 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 was concluded on 20 December 1994,

HAVE ADOPTED THIS DECISION:

Article 1

The objective of this Decision is to set up a network at Community level to promote cooperation and coordination between the Member States, with the assistance of the Commission, with a view to improving the prevention and control, in the Community, of the categories of communicable diseases specified in the Annex. This network shall be used for:

- the epidemiological surveillance of these diseases, and
- a response system for the prevention and control of these diseases.

As regards epidemiological surveillance, the network shall be established by bringing into permanent communication with one another, through all

appropriate technical means, the Commission and those structures and/or authorities which, at the level of each Member State and under the responsibility of that Member State, are competent at national level and are charged with collecting information relating to the epidemiological surveillance of communicable diseases, and by establishing procedures for the dissemination of the relevant surveillance data at Community level.

As regards the response system, this network shall be formed by bringing into permanent communication with one another, through appropriate means, the Commission and the competent public health authorities in each Member State responsible for determining the measures which may be required to protect public health.

Article 2

For the purpose of this Decision, the following terms shall have the following meanings:

1. 'epidemiological surveillance': the ongoing systematic collection, analysis, interpretation and dissemination of health data, including epidemiological studies, concerning the categories of communicable diseases set out in the Annex, in particular relating to the pattern of spread of such diseases over time and space and analysis of the risk factors for contracting such diseases, for the purpose of enabling appropriate preventive measures and counter-measures to be taken;
2. 'prevention and control of communicable diseases': the range of measures, including epidemiological investigations, taken by the competent public health authorities in the Member States to prevent and stop the spread of communicable diseases;
3. 'Community network': network for the epidemiological surveillance and control of communicable diseases, namely the system by which the necessary information for carrying out the activities referred to in points 1 and 2 is exchanged.

Article 3

With a view to the effective operation of the Community network with regard to epidemiological surveillance and to achieving uniform information within this framework, the following shall be determined in accordance with the procedure laid down in Article 6:

- (a) the communicable diseases to be gradually covered by the Community network, having regard to the categories set out in the Annex and the existing collaborative networks for disease surveillance that can be readily built upon and on the basis of selection criteria such as:

- value added at the level of the Community and the Member States,
 - potential threat to public health,
 - potential threat to Community policies,
 - need to develop an early warning system,
 - possibilities for improving knowledge about the disease concerned,
 - resources available;
- (b) case definitions;
- (c) the nature and type of data and information to be collected and transmitted by the structures and/or authorities referred to in the second paragraph of Article 1 in the field of epidemiological surveillance;
- (d) epidemiological and microbiological surveillance methods;
- (e) the appropriate technical means and the procedures by which the data will be disseminated and analyzed at Community level.

Article 4

Each structure and/or authority referred to in the second paragraph of Article 1 shall communicate to the Community network:

- (a) information regarding the appearance or resurgence of cases of communicable diseases as referred to in Article 3 (a) in the Member State to which the structure and/or authority belongs;
- (b) any relevant information concerning the progression of epidemic situations for which it has responsibility for information collection;
- (c) information on unusual epidemic phenomena or new communicable diseases of unknown origin;
- (d) any relevant information in its possession:
- on cases of communicable diseases covered by the categories set out in the Annex,
 - on new communicable diseases of unknown origin in third countries;
- (e) information concerning existing and proposed mechanisms and procedures for the prevention and control of communicable diseases, in particular in emergency situations;
- (f) any relevant considerations which could help Member States to coordinate their efforts for the prevention and control of communicable diseases, including any counter-measures implemented.

Article 5

1. Member States shall, on the basis of the information available through the Community network, consult each other in liaison with the Commission with a view to coordinating their efforts for the prevention and control of communicable diseases.

2. Where a Member State intends to adopt measures for the control of communicable diseases, it shall, before adopting those measures, inform and, to the extent possible, depending on the urgency of the situation, consult the other Member States and the Commission on the nature and scope of those measures, through the Community network.

3. Where a Member State has to adopt, as a matter of urgency, control measures in response to the appearance or resurgence of communicable diseases, it shall as soon as possible inform through the Community network the other Member States and the Commission.

In duly justified specific cases, appropriate prevention and protection measures, adopted by mutual agreement amongst Member States in conjunction with the Commission, may be taken by the Member States which so desire.

4. Member States shall, on the basis of their consultations and the information provided, coordinate amongst themselves in liaison with the Commission with regard to the intended or adopted measures. The measures shall, however, remain entirely the responsibility of the Member States.

5. Procedures concerning the information and consultation referred to in paragraphs 1, 2 and 3 and procedures concerning the coordination referred to in paragraphs 1 and 4 shall be established in accordance with the procedure laid down in Article 6.

Article 6

1. For the purposes of implementing this Decision, the Commission shall be assisted by a committee composed of two representatives of each of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman shall 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.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

(b) 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 within three months of the matter being referred to it the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 7

The Annex shall be amended or supplemented in accordance with the procedure laid down in Article 6.

Article 8

Each Member State shall designate, within six months following the entry into force of this Decision, the structures and/or authorities referred to in the second paragraph of Article 1 and shall notify the Commission and the other Member States thereof.

Article 9

For the purposes of this Decision, the competent authorities of the Member States and the Commission shall foster cooperation with third countries and international organizations competent in the field of public health, in particular the World Health Organization.

Article 10

This Decision shall apply without prejudice to Directives 92/117/EEC and 95/46/EC.

Article 11

1. This Decision shall not affect the right of the Member States to maintain or introduce other arrangements, procedures and measures for their national systems for the epidemiological surveillance and control of communicable diseases.

2. This Decision shall not affect Member States' rights and obligations deriving from existing or future bilateral or multilateral agreements or conventions in the field covered by this Decision.

Article 12

The Commission, with the help of the Member States, shall ensure that there is consistency and complementarity between this Decision and the relevant Community programmes and initiatives, including those in the context of public health action as well as, in particular, the framework programme for statistical information, projects in the field of telematic interchange of data between administrations and the framework programme for research and technological development, especially the telematics applications of the latter programme.

Article 13

1. The Commission shall submit a report on the operation of the Community network to the European Parliament and the Council every two years.

The first report shall be submitted two years after the entry into force of this Decision.

2. The second report to be submitted by the Commission shall, in particular, identify those elements of the Community network which should be improved or adapted. It shall also include any proposal that the Commission considers necessary for the amendment or adaptation of this Decision.

Article 14

This Decision shall enter into force on ...(*).

Article 15

This Decision is addressed to the Member States.

Done at ...

For the European Parliament
The President

For the Council
The President

(*) Three months after the date of its publication in the *Official Journal of the European Communities*.

ANNEX

CATEGORIES OF COMMUNICABLE DISEASES

INDICATIVE LIST

- Diseases preventable by vaccination,
 - sexually-transmitted diseases,
 - viral hepatitis,
 - food-borne diseases,
 - water-borne diseases and diseases of environmental origin,
 - nosocomial infections,
 - other diseases transmissible by non-conventional agents (including Creutzfeldt-Jakob's disease),
 - diseases covered by the international health regulations (yellow fever, cholera and plague),
 - other diseases (rabies, typhus fever, viral haemorrhagic fevers, malaria and any other as yet unclassified serious epidemic disease, etc.).
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STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 8 March 1996 the Commission submitted a proposal, based on Article 129 of the Treaty, concerning a Decision of the European Parliament and of the Council setting up a network for the epidemiological surveillance and control of communicable diseases in the Community⁽¹⁾.
2. The European Parliament delivered its opinion on 13 November 1996⁽²⁾. The Economic and Social Committee and the Committee of the Regions delivered their opinions on 25 September 1996⁽³⁾ and 13 June 1996⁽⁴⁾ respectively.
3. In the light of those opinions, the Commission submitted an amended proposal⁽⁵⁾ on 5 February 1997.
4. On 22 July 1997, the Council adopted its common position in accordance with Article 189b of the Treaty.

II. PURPOSE AND CONTENT OF THE PROPOSAL

The proposal, the purpose of which is to establish a coordinated mechanism for the epidemiological surveillance and control of communicable diseases at Community level, involves in particular:

- the establishment of a network by putting into permanent communication with one another structures designated by the Member States,
- the adoption of measures for implementing the surveillance and control, to be adopted in accordance with a type IIIa committee procedure; the scope of such measures — including the protection measures to be laid down — is defined in Article 5 of the proposal,
- the obligation for the abovementioned national structures to communicate to the network all necessary information and evaluation elements (Article 6),
- the drawing up of a list of the serious and/or rare communicable diseases or groups of diseases covered (see Annex), open to review in accordance with the procedure referred to above.

The proposal makes no provision for specific funding for the implementation of this Decision.

III. ANALYSIS OF THE COMMON POSITION

1. Amendments made to the Commission proposal

General comments

Generally speaking, the Council supports the initiative for the establishment of a network for the epidemiological surveillance and control of communicable diseases in the European Community.

It did, however, make fairly substantial amendments to the Commission proposal, taking the view that certain obligations for the Member States, particularly in respect of control measures, would go beyond the framework defined in Article 129 of the Treaty.

⁽¹⁾ OJ C 123, 26. 4. 1996, p. 10.

⁽²⁾ OJ C 362, 2. 12. 1996, p. 111.

⁽³⁾ OJ C 30, 30. 1. 1997, p. 1.

⁽⁴⁾ OJ C 337, 11. 11. 1996, p. 67.

⁽⁵⁾ OJ C 103, 2. 4. 1997, p. 11.

Accordingly, it drew a sharper distinction between 'surveillance', for which Member States were subject to specific obligations regarding the provision of information, and 'control', for which the text lays down a more general and more flexible framework for information, consultation and coordination in respect of measures for prevention and control.

As a result, the text has undergone a degree of restructuring, comments on which are given below.

In addition, the text of the common position seeks to define more clearly the role and responsibilities assigned to the Commission and the Member States.

Article 1 (Objective)

The text of Article 1 has been adjusted in line with the general approach adopted by the Council. It sets out the general objective of the Decision and describes the two tasks of the network to be established, namely:

- epidemiological surveillance, and
- the response system for the prevention and control of communicable diseases.

Article 2 (Definitions)

The amendments made to points 1 and 2 of this Article are of a more technical nature. Regarding point 2, the Council has introduced the concept of prevention, in line with the wording adopted in Article 1.

The Council also considered it advisable to supplement this Article with a definition of the 'Community network'.

Article 3 (Data to be determined in accordance with the procedure laid down in Article 6)

As the main points in Article 3 of the proposal have been incorporated into Article 4, this Article lists the data to be determined in accordance with the procedure laid down in Article 6, so as to enable the Community network to operate effectively in respect of epidemiological surveillance.

The data include, in (b), (c) and (d), the first three points of Article 5 of the Commission proposal.

The Council has added two other points, i.e.:

- in (a), the selection of the diseases to be covered by the Community network, to be made gradually on the basis of certain criteria, and
- in (e), the appropriate technical means and the procedures by which the data will be disseminated and analyzed at Community level.

Article 4 (Information to be communicated to the network)

This Article, which specifies which information is to be passed on to the network, essentially corresponds to Article 6 of the Commission proposal, and incorporates the main points of Article 3 of the proposal.

In its amended form, it covers a very wide spectrum of information, both on the diseases listed for the purposes of the network and on all communicable diseases covered by the categories set out in the Annex.

Article 5 (A response system for the prevention and control of communicable diseases)

The Council has introduced this new Article which organizes the response system for prevention and control. Because, in its view, the constraints imposed by Article 129 of the Treaty rule out the imposition of measures at Community level, the system is based on information, consultation and coordination regarding measures planned or taken by the Member States.

Procedures concerning information, consultation and coordination will be determined in accordance with the procedure laid down in Article 6, with Member States retaining responsibility for the actual measures.

Article 6 (Committee procedure)

This Article subsumes Article 4 of the Commission proposal (type IIIa procedure, which has been retained and which applies to the determination of the data referred to in Article 3, the establishment of the procedures — referred to in Article 5 (5) — concerning information, consultation and coordination, and Article 7 (amendment of the Annex).

Articles 7 and 8

The order of these Articles has been reversed.

Article 9 (new)

Bearing in mind the action under way in this area at international level, particularly within the WHO, the Council felt that a provision should be introduced concerning cooperation with third countries and international organizations.

*Article 10 (former Articles 9 and 10)**Article 11*

The Council has inserted a paragraph 1 into Article 11 — concerning the right of Member States to maintain their national systems for the epidemiological surveillance and control of communicable diseases — the purpose of which is to make it clear that the Decision is not designed to achieve harmonization.

Article 12 (new)

The purpose of this Article is to ensure consistency and complementarity with other Community initiatives and programmes, thereby preventing duplication and overlapping.

Article 13 (new)

By requiring the submission of regular reports by the Commission, this new Article makes possible the follow-up and assessment and, where appropriate, amendment or adjustment of the Decision in the light of experience obtained. In this way, it stresses the developing nature of the mechanism.

Annex (Categories of communicable diseases — indicative list)

The Annex, as amended by the Council, contains an indicative list of the categories of communicable diseases, which covers the widest spectrum, without particular specifications. It will be for the Committee, acting in accordance with the procedure in Article 6, and taking into account the criteria referred to in Article 3 (a) and the appropriate technical evaluation data, gradually to make a selection, within these categories, of the diseases to be covered by the Community network.

Funding (new recitals)

In the absence of specific funding in the Commission proposal for the implementation of the Decision, the Council thought it wise to address the issue in order to clarify the sources and methods of funding which will be used at Community level (26th recital) and at national level (27th recital).

2. European Parliament amendments

(a) Amendments adopted by the Commission in its amended proposal

Of the 17 amendments adopted by the Parliament at first reading, the Commission accepted 12, of which:

- five in full (Amendments 9, 13, 14, 16 and 17), and
- seven in part (Amendments 1, 2, 4, 5, 6, 12 and 15).

(i) Amendments accepted by the Council

The Council incorporated Amendment 17 in its entirety into its common position.

It also accepted, in part or in another form, generally on the basis of the text proposed by the Commission, the following amendments:

AMD 1 (new recital 9a): see recital 10 which incorporates the main part of the text of this amendment

AMD 2 (recital 10): see recital 11 which incorporates the Commission text

AMD 4 (recital 14): see recital 16 which incorporates the Commission text

AMD 5 (recital 15): see recital 17 in a form adjusted to the structure adopted

AMD 6 (recital 18a (new)): see recital 21, which is in line with the wording proposed by the Commission

AMD 12 (Article 4): see Article 6 (committee procedure), which incorporates the adjustments to the wording.

NB: For the composition of the committee, the Council thought it necessary to maintain the provision for two representatives per Member State, in view of the nature of the duties involved

AMD 15 (Article 5 (5a) (new)): principle of this amendment incorporated in another form in the new Article 13, which makes provision for a biennial report (paragraph 1) and lays the basis for possible re-examination when the second report is drawn up (paragraph 2)

AMD 16 (Article 6a (new)): the various points in this amendment have been subsumed or covered in substance in Article 4 of the common position

(ii) Amendments not accepted by the Council

AMD 9 (Article 2, first indent)

The Council did not endorse this amendment, since it considered that the proposed text would limit the scope of epidemiological surveillance under the Decision, even though the objective — set out in Article 3 — is indeed to achieve uniform information.

AMD 13 (Article 5 (1))

As this point has been included in a more general form in Article 3 (b), the amendment is superfluous. The necessary specifications will be defined in accordance with the procedure in Article 6.

AMD 14 (Article 5 (4))

Since the Council did not endorse this point, on grounds of incompatibility of binding measures at Community level with Article 129 of the Treaty, the amendment is superfluous (see more flexible and general approach to the control system in Article 5).

(b) Amendments not adopted by the Commission in its amended proposal

(i) The Council, in line with the reasons given by the Commission, did not endorse the following amendments:

— *AMD 7* (first paragraph of Article 1)

NB: The idea behind this amendment, that of establishing a network which would respond at the first sign of an epidemic, is nevertheless taken into account under the information obligations imposed in Article 4.

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- *AMD 8* (second paragraph of Article 1)
 - *AMD 10* (Article 3 (a))
 - *AMD 11* (Article 3 (b))
- (ii) The Council accepted, in part, *AMD 3* (recital 12 has become recital 14) (specific reference to cooperation with the WHO).

IV. CONCLUSIONS

The enacting terms adopted by the Council are designed, within the constraints imposed by the Treaty, to develop an overall, coordinated approach to the surveillance and control of communicable diseases.
