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## Information and Notices

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<sup>(1)</sup> Text with EEA relevance.

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## II

(Preparatory Acts)

## COMMISSION

**Proposal for a Council Decision granting a Community guarantee to the European Investment Bank against losses under loans for projects in the former Yugoslav Republic of Macedonia and amending Council Decision 97/256/EC granting a Community guarantee to the European Investment Bank against losses under loans for projects outside the Community (Central and Eastern Europe countries, Mediterranean countries, Latin American and Asian countries and South Africa)**

(98/C 108/01)

COM(98) 2 final — 98/0006 (CNS)

(submitted by the Commission on 18 January 1998)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament,

Having regard to Council Decisions of 27 November 1997 concerning the conclusion of a cooperation agreement between the European Community and the former Yugoslav Republic of Macedonia and a transport agreement between the same parties,

Whereas the cooperation agreement includes a Protocol on financial cooperation which provides for the European Investment Bank (EIB) to grant loans from its own resources up to a ceiling of ECU 150 million until 31 December 2000;

Whereas Council Decision 97/256/EC grants the EIB a budget guarantee for lending from its own resources in specified regions outside the Community; whereas the budget guarantee should be extended to cover the Bank loans agreed in the Protocol on financial cooperation with the former Yugoslav Republic of Macedonia;

Whereas the Council is calling on the Bank to finance projects according to the arrangements set out in the Protocol on financial cooperation by offering it the guarantee provided for in this Decision;

Whereas Decision 97/256/EC should therefore be amended;

Whereas, for the purpose of adopting this Decision, the only powers provided for by the Treaty are those set out in Article 235,

HAS DECIDED AS FOLLOWS:

*Article 1*

Council Decision 97/256/EC is hereby amended as follows:

1. in the title of Council Decision 97/256/EC, '... Asian countries and South Africa' is replaced by '... Asian countries, South Africa and the former Yugoslav Republic of Macedonia';
2. in the first paragraph of Article 1(1), '... Asian countries, and in the Republic of South Africa.' is replaced by '...'

- Asian countries, in the Republic of South Africa and in the former Yugoslav Republic of Macedonia.’;
3. in the second paragraph of Article 1(1), ‘ECU 7 105 million’, is replaced by ‘ECU 7 255 million.’;
4. the following fifth indent is added to Article 1(1):
- ‘— former Yugoslav Republic of Macedonia ECU 150 million.’;
5. in the second paragraph of Article 1(1), ‘... Asian countries, and on 1 July 1997 for the Republic of South Africa,’ is replaced by ‘... Asian countries, on 1 July 1997 for the Republic of South Africa, and on 1 January 1998 for the former Yugoslav Republic of Macedonia.’;

6. the following sixth indent is added to Article 1(2):
- ‘— former Yugoslav Republic of Macedonia.’

*Article 2*

The corresponding amendments shall be made to the agreement concluded between the Commission and the EIB referred to in Article 5 of Council Decision 97/256/EC.

*Article 3*

This Decision shall take effect on the day of its publication in the *Official Journal of the European Communities*.

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Proposal for a Council Decision approving amendments to the Statutes of the Joint European Torus (JET), Joint Undertaking

(98/C 108/02)

COM(98) 13 final

(submitted by the Commission on 19 January 1998)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 50 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas, for the purpose of implementing the JET Project, the Council, by Decision 78/471/Euratom<sup>(1)</sup>, established the Joint European Torus (JET), Joint Undertaking, and adopted the Statutes thereof, as last amended by Decision 96/305/Euratom<sup>(2)</sup>;

Whereas, Articles 4 and 8 of the JET Statutes should be amended following the judgment of the Court of First Instance of 12 December 1996 in Joined Cases T-177/94 and T-377/94;

Whereas, the Forschungszentrum Jülich GmbH (KFA) has given notice of its withdrawal from the Joint Undertaking from 31 December 1997; whereas the Forschungszentrum Karlsruhe (FZK) has applied for membership of the Joint Undertaking from 1 January 1998; whereas the JET Council has approved this withdrawal from and application for membership of the Joint Undertaking and the amendments required thereby;

Whereas, following the conclusion of a Contract of Association between Euratom and the Dublin City

University (DCU), the Dublin City University is replacing Ireland as Member of the Joint Undertaking; whereas the Instituto de Cooperação Científica e Tecnológica Internacional (ICCTI) is replacing the Junta Nacional de Investigação Científica has approved the amendments to the Statutes required by these changes;

Whereas, following the accession of Austria to the European Union, the Österreichische Akademie der Wissenschaften (ÖAW) has applied for membership of the Joint Undertaking; whereas the JET Council has approved this application for membership of the Joint Undertaking and the amendments to the Statutes required thereby;

Whereas the JET Council has approved another amendment to the Statutes required by the adoption of the new UK Companies Act 1985 and 1989,

HAS DECIDED AS FOLLOWS:

*Article 1*

The amendments to the Statutes of the 'Joint European Torus (JET), Joint Undertaking', annexed to this Decision, are hereby approved.

*Article 2*

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

<sup>(1)</sup> OJ L 151, 7.6.1978, p. 10.

<sup>(2)</sup> OJ L 117, 14.5.1996, p. 9.

## ANNEX

1. Article 1.3 of the Statutes of the 'Joint European Torus (JET), Joint Undertaking' shall be replaced by the following:

'1.3 The Joint Undertaking shall have the following Members:

The European Atomic Energy Community (hereinafter referred to as "Euratom"),

The Belgian State (hereinafter referred to as "Belgium"), acting for its own part ("Laboratoire de physique des plasmas of the Ecole Royale Militaire — Laboratorium voor plasmaphysica van de Koninklijke Militaire School") and on behalf of the "Université libre de Bruxelles" ("Service de physique statistique, plasmas et optique non linéaire de l'ULB") and of the "Centre d'Etude de l'Energie Nucléaire" (CEN)/"Studiecentrum voor Kernenergie" (SCK),

the "Centro de Investigaciones Energéticas Medioambientales y Tecnológicas", Spain (hereinafter referred to as "CIEMAT"),

the "Commissariat à l'Energie Atomique", France (hereinafter referred to as "CEA"),

the "Ente per le Nuove Tecnologie, l'Energia e l'Ambiente" (hereinafter referred to as "ENEA" which since 1 January 1986, has represented all Italian activities falling within the Euratom Fusion Programme including that of the "Consiglio Nazionale delle Ricerche", CNR),

the Hellenic Republic (hereinafter referred to as "Greece"),

the "Forschungszentrum Karlsruhe", Federal Republic of Germany (hereinafter referred to as "FZK"),

the "Forskingscenter Risø", Denmark, (hereinafter referred to as "Risø"),

the Grand Duchy of Luxembourg (hereinafter referred to as "Luxembourg"),

the "Instituto de Cooperação Científica e Tecnológica Internacional, Portugal (hereinafter referred to as "ICCTI"),

the "Dublin City University", Ireland (hereinafter referred to as "DCU"),

the "Max-Planck-Gesellschaft zur Förderung der Wissenschaften e. V. — Institut für Plasmaphysik", Federal Republic of Germany (hereinafter referred to as "IPP"),

the "Swedish Natural Science Research Council" (hereinafter referred to as "NFR"),

the Swiss Confederation (hereinafter referred to as "Switzerland"),

the "Stichting voor Fundamenteel Onderzoek der Materie", the Netherlands (hereinafter referred to as "FOM"),

the "United Kingdom Atomic Energy Authority" (hereinafter referred to as "the Authority" or "the Host Organization"),

the "Technology Development Centre of Finland" (hereinafter referred to as "TEKES"),

the "Österreichische Akademie der Wissenschaften" (hereinafter referred to as "ÖAW").'

2. Article 4.1.1 and 4.1.2 shall be replaced by the following:

'4.1.1. The Members of the Joint Undertaking shall be represented in the JET Council as follows, the vote of each pair of representatives being weighted as indicated:

Representing	Number of representatives	Weighting of vote
Euratom	2	5
Belgium	2	2
CIEMAT	2	3
CEA	2	5
ENEA	2	5
Greece	2	1

Representing	Number of representatives	Weighting of vote
Risø	2	2
Luxembourg	2	1
DCU	2	1
ICCTI	2	2
IPP and FZK jointly	2	5
NFR	2	2
Switzerland	2	2
FOM	2	2
Authority	2	5
TEKES	2	2
ÖAW	2	2

4.1.2 For their adoption, acts of the JET Council shall require at least 31 votes in favour.'

3. Article 4.2.2. (d) shall be replaced by the following:

'(d) nominate the Director and the senior staff of the Project and determine their period of secondment, approve the main structure of the Project Team and decide the procedures for the secondment and management of staff;'

4. Articles 8.1, 8.3, 8.4, 8.5 and 8.7 shall be replaced by the following:

'8.1 The Project Team shall assist the Director of the Project in the performance of his duties. Its staff shall be fixed in the staff establishment as defined in the annual budget. It shall be composed of staff coming from the Members of the Joint Undertaking as provided for in Article 8.3.'

8.3 The Members of the Joint Undertaking having association contracts with Euratom, or limited duration contracts in the framework of the Euratom Fusion Programme in Member States where there is no association (hereafter referred to as the Parent Organization) shall make available to the Joint Undertaking qualified scientific, technical and administrative staff.

8.4 Staff made available by Parent Organizations shall be seconded to the Joint Undertaking and shall:

- (a) remain throughout the period of secondment in the employment of their Parent Organizations on the terms and conditions of service of those organizations;
- (b) be entitled, throughout the period of their secondment to an allowance as specified in the "Rules applicable to Secondment of Personnel from Parent Organizations to the Joint Undertaking" adopted by the JET Council under Article 8.5.'

8.5 The JET Council shall adopt the detailed procedures for the management of staff (including "Rules applicable to Secondment of Personnel from Parent Organisations to the Joint Undertaking") as well as transitional provisions for Project Team staff assigned to the Joint Undertaking by the Commission and the host organization prior to the entry into force of the above provisions.'

8.7 All staff expenditure, including reimbursement of staff expenditure incurred by the seconding Parent Organizations and expenditure related to staff assigned to the Joint Undertaking by the Commission and the host organization prior to the entry into force of the above provisions, shall be borne by the Joint Undertaking.'

5. Articles 8.8 and 8.9 shall be deleted.

6. Article 22.2 shall be replaced by the following.

'22.2. Without prejudice to the provisions of the third paragraph of Article 49 of the Euratom Treaty, for the avoidance of doubt the Joint Undertaking shall not be regarded as a company within the meaning of the Companies Act 1985 and 1989 of the United Kingdom.'

Proposal for a European Parliament and Council Directive on the harmonization of certain aspects of copyright and related rights in the Information Society

(98/C 108/03)

(Text with EEA relevance)

COM(97) 628 final — 97/0359 (COD)

(submitted by the Commission on 21 January 1998)

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), 66 and 100a thereof,

Having regard to the proposal from the Commission.

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

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

creativity and innovation, including network infrastructure, and lead in turn to growth and increased competitiveness of European industry, both in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors; whereas this will safeguard employment and encourage new job creation;

(1) Whereas the Treaty provides for the establishment of an Internal Market, the removal of barriers to the free movement of goods, the freedom to provide services and the right of establishment and the institution of a system ensuring that competition in the Internal Market is not distorted; whereas harmonization of the laws of the Member States on copyright and related rights contributes to the achievement of these objectives;

(2) Whereas the European Council, meeting at Corfu on 24 and 25 June 1994, has stressed the need to create a general and flexible legal framework at Community level in order to foster the development of the Information Society in Europe; whereas this requires, *inter alia*, the existence of an Internal Market for new products and services; whereas important Community legislation to ensure such a regulatory framework is already in place or is well underway; whereas copyright and related rights play an important role in this context as they protect and stimulate the development and marketing of new products and services and the creation and exploitation of their creative content;

(3) Whereas a harmonized legal framework on copyright and related rights, through increased legal certainty, will foster substantial investment in

(4) Whereas technological development has multiplied and diversified the vectors for creation, production and exploitation; whereas, while no new concepts for the protection of intellectual property are needed, the current law on copyright and related rights will have to be adapted and supplemented to adequately respond to economic realities such as new forms of exploitation;

(5) Whereas, without harmonization at Community level, legislative activities at national level which have already been initiated in a number of Member States in order to respond to the technological challenges might result in significant differences in protection and thereby in restrictions on the free movement of services and products incorporating, or based on, intellectual property, leading to a refragmentation of the Internal Market and legislative inconsistency; whereas the impact of such legislative differences and uncertainties will become more significant with the further development of the Information Society, which has already greatly increased transborder exploitation of intellectual property; whereas this development will and should further increase; whereas significant legal differences and uncertainties in protection may hinder economies of scale for new products and services containing copyright and related rights;

(6) Whereas the Community legal framework for the legal protection of copyright and related rights must, therefore, also be adapted and supplemented as far as is necessary for the smooth functioning of the Internal Market; whereas, to that end, those national provisions on copyright and related rights which vary considerably from one Member State to another or which cause legal uncertainties hindering the smooth functioning of the Internal



Market and the proper development of the Information Society in Europe should be adjusted, and inconsistent national responses to the technological developments should be avoided, whilst differences not adversely affecting the functioning of the Internal Market need not be removed or prevented;

- (7) Whereas the various social, societal and cultural implications of the Information Society require that account be taken of the specific features of the content of products and services;
- (8) Whereas any harmonization of copyright and related rights must take as a basis a high level of protection, since such rights are crucial to intellectual creation; whereas their protection helps to ensure the maintenance and development of creativity in the interests of authors, performing artists, producers, consumers, culture, industry and the public at large; whereas intellectual property has therefore been recognized as an integral part of property;
- (9) Whereas if authors or performing artists are to continue their creative and artistic work they have to receive an appropriate reward for the use of their work; whereas the investment required to produce products such as phonograms, films or multimedia products, and services such as 'on-demand' services, is considerable; whereas adequate legal protection of intellectual property rights is necessary in order to guarantee the availability of such a reward and provide the opportunity for satisfactory returns on this investment;
- (10) Whereas adequate protection of copyright works and subject matter of related rights is also of great importance from a cultural standpoint; whereas Article 128 of the Treaty requires the Community to take cultural aspects into account in its action;
- (11) Whereas the Diplomatic Conference held under the auspices of the World Intellectual Property Organization (WIPO) in December 1996 led to the adoption of two new Treaties, the 'WIPO Copyright Treaty' and the 'WIPO Performances and Phonograms Treaty', dealing respectively with the protection of authors and the protection of performers and phonogram producers; whereas those Treaties update the international protection for copyright and related rights significantly, not least with regard to the so-called 'digital agenda', and improve the means to fight piracy world-wide; whereas the Community and a majority of Member States have already signed the Treaties and the process of making arrangements for the ratification of the Treaties by the Community and the Member

States is under way; whereas this Directive also serves to implement a number of the new international obligations;

- (12) Whereas liability for activities in the network environment concerns not only copyright and related rights but also other areas it will be addressed horizontally in the context of a forthcoming directive clarifying and harmonizing various legal issues relating to Information Society services, including electronic commerce; whereas the latter initiative should come into force, as far as possible, within a time-scale similar to that of this Directive;
- (13) Whereas the provisions of this Directive should be without prejudice to existing Community provisions in the area of copyright and related rights, unless otherwise provided in this Directive;
- (14) Whereas this Directive should define the scope of the acts covered by the reproduction right with regard to the different beneficiaries; whereas this should be done in conformity with the *acquis communautaire*; whereas a broad definition of these acts is needed to ensure legal certainty within the Internal Market;
- (15) Whereas this Directive should harmonize the right applicable to the communication to the public of works, where this has not yet been done by existing Community legislation;
- (16) Whereas the legal uncertainty regarding the nature and the level of protection of acts of on-demand transmission of copyright works and subject matter protected by related rights over networks should be overcome by providing for harmonized protection at Community level; whereas it should provide all rightholders recognized by the Directive with an exclusive right to make available to the public copyright works or any other subject matter by way of interactive on-demand transmissions; whereas such interactive on-demand transmissions are characterized by the fact that members of the public may access them from a place and at a time individually chosen by them; whereas this right does not cover private communication;
- (17) Whereas the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Directive;
- (18) Whereas copyright protection under this Directive includes the exclusive right to control distribution of the work incorporated in a tangible article;

whereas the first sale in the Community of the original of a work or copies thereof by the rightholder or with his consent exhausts the right to control resale of that object in the Community; whereas this right should not be exhausted in respect of the original or of copies thereof sold by the rightholder or with his consent outside the Community;

- (19) Whereas the question of exhaustion does not arise in the case of services and on-line services in particular; whereas this also applies with regard to a material copy of a work or other subject matter made by a user of such a service with the consent of the rightholder; whereas, unlike CD-ROM or CD-I, where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which will have to be subject to authorization where the copyright or related right so provides;
- (20) Whereas the rights referred to in this Directive may be transferred, assigned or subjected to the granting of contractual licences, without prejudice to the relevant national legislation on copyright and related rights;
- (21) Whereas a fair balance of rights and interests between the different categories of rightholders, as well as between the different categories of rightholders and users of protected subject matter must be safeguarded; whereas the existing exceptions to the rights as set out by the Member States have to be reassessed in the light of the new electronic environment; whereas existing differences in the limitations and exceptions to certain restricted acts have direct negative effects on the functioning of the Internal Market of copyright and related rights; whereas such differences could well become more pronounced in view of the further development of transborder exploitation of works and cross-border activities; whereas in order to ensure the proper functioning of the Internal Market, such exceptions should be defined more harmoniously; whereas the degree of their harmonization should be based on their impact on the smooth functioning of the Internal Market;
- (22) Whereas this Directive provides for an exhaustive enumeration of exceptions to the reproduction right and the right of communication to the public; whereas some exceptions only apply to the reproduction right, where appropriate; whereas this list takes due account of the different legal traditions in Member States, while, at the same time, aiming to ensure a functioning Internal Market; whereas it is desirable that Member States

should arrive at a coherent application of these exceptions, which will be assessed when reviewing implementing legislation in the future;

- (23) Whereas the exclusive right of reproduction should be subject to an exception to allow or certain acts of temporary reproduction which are made as part of a technological process and are incidental to, and made for the sole purpose of enabling the use of protected subject matter and which have no separate economic value on their own; whereas under these conditions this exception should include acts of caching or browsing;
- (24) Whereas Member States should be given the option of providing for certain exceptions for cases such as educational and scientific purposes, for the benefit of public institutions such as libraries and archives, for purposes of news reporting, for quotations, for use by people with disabilities, for public security uses and for uses in administrative and judicial proceedings;
- (25) Whereas existing national schemes on reprography, where they do exist, do not create major barriers to the Internal Market; whereas Member States should be allowed to provide for an exception in respect of reprography;
- (26) Whereas Member States should be allowed to provide for an exception to the reproduction right for certain types of reproduction of audio, visual and audio-visual material for private use; whereas this may include the introduction or continuation of remuneration schemes to compensate for the prejudice to rightholders; whereas, although differences between those remuneration schemes affect the functioning of the Internal Market, those differences, with respect to analogue private reproduction, should not have a significant impact on the development of the Information Society; whereas digital private copying is not yet widespread and its economic impact is still not fully known; whereas, therefore, it appears justifiable to refrain from further harmonization of such exceptions at this stage; whereas the Commission will closely follow market developments in digital private copying and will consult interested parties, with a view to taking appropriate action;
- (27) Whereas, when applying the exception on private copying, Member States should take due account of technological and economic developments, in particular with respect to digital private copying and remuneration schemes, when effective technological protection measures are available;

whereas such exceptions should not inhibit the use of technological measures;

(28) Whereas Member States may provide for an exception for the benefit of establishments accessible to the public, such as non-profit-making libraries and equivalent institutions; whereas, however, this should be limited to certain special cases covered by the reproduction right; whereas such an exception should not cover uses made in the context of on-line delivery of protected works or other subject matter; whereas this Directive should be without prejudice to Member States' option to derogate from the exclusive public lending right in accordance with Article 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property<sup>(1)</sup>, as amended by Directive 93/98/EEC<sup>(2)</sup>;

(29) Whereas, when applying those exceptions, they should be exercised in accordance with international obligations; whereas such exceptions may not be applied in a way which prejudices the legitimate interests of the rightholder or which conflicts with the normal exploitation of his work or other subject matter; whereas the provision of such exceptions by Member States should, in particular, duly reflect the increased economic impact that such exceptions may have in the context of the new electronic environment; whereas, therefore, the scope of certain exceptions may have to be even more limited when it comes to certain new uses of copyright works and other subject matter;

(30) Whereas technological development will allow rightholders to make use of technological measures designed to prevent and inhibit the infringement of any copyright, rights related to copyright or sui generis rights provided by law; whereas the danger, however, exists that illegal activities might be carried out in order to enable or facilitate the circumvention of the technical protection provided by these measures; whereas, in order to avoid fragmented legal approaches that could potentially hinder the functioning of the Internal Market, there is a need to provide for harmonized legal protection against any activity enabling or facilitating the circumvention without authority of such measures; whereas such a legal protection should be provided to technological measures that effectively inhibit and/or prevent the infringement of any copyright, rights related to copyright or sui generis rights provided by law; whereas such legal protection should respect proportionality and should not prohibit those devices or activities which have a

commercially significant purpose or use other than to circumvent the technical protection;

(31) Whereas such a harmonized legal protection should not inhibit decompilation permitted by Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs<sup>(3)</sup>, as amended by Directive 93/98/EEC;

(32) Whereas important progress has been made in the international standardization of technical systems of identification of works and protected subject matter in digital format; whereas, in an increasingly networked environment, differences between technological measures could lead to an incompatibility of systems within the Community; whereas compatibility and interoperability of the different systems should be encouraged; whereas it would be highly desirable to encourage the development of global systems;

(33) Whereas technological development will facilitate the distribution of works, notably on networks, and this will entail the need for rightholders to better identify the work or other subject matter, the author or any other rightholder, and to provide information about the terms and conditions of use of the work or other subject matter in order to render easier the management of rights attached to them; whereas, there is, however, the danger that illegal activities might be carried out in order to remove or alter the electronic copyright-management information attached to it, or otherwise to distribute, import for distribution, broadcast, communicate to the public or make available to the public copies from which such information has been removed without authority; whereas in order to avoid fragmented legal approaches that could potentially hinder the functioning of the Internal Market, there is a need to provide for harmonized legal protection against any of those activities;

(34) Whereas any such rights-management information referred to above may, depending on their design, at the same time process personal data about the consumption patterns of protected subject matter by individuals and allow for tracing of on-line behaviour; whereas these technical means, in their technical functions, should incorporate privacy safeguards in accordance with European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data<sup>(4)</sup>;

(35) Whereas this Directive is without prejudice to the application of European Parliament and Council

<sup>(1)</sup> OJ L 346, 27.11.1992, p. 61.

<sup>(2)</sup> OJ L 290, 24.11.1993, p. 9.

<sup>(3)</sup> OJ L 122, 17.5.1991, p. 42.

<sup>(4)</sup> OJ L 281, 23.11.1995, p. 31.

Directive .../.../EC of ... concerning the legal protection of services based on, or consisting of, conditional access<sup>(5)</sup>;

- (36) Whereas Member States should provide for effective sanctions and remedies for infringements of rights and obligations as set out in this Directive; whereas they shall take all the measures necessary to ensure that those sanctions and remedies are applied; whereas the sanctions thus provided for shall be effective, proportionate and dissuasive;
- (37) Whereas, in order to comply with the WIPO Performers and Phonograms Treaty, Directives 92/100/EEC and 93/98/EEC should be amended;
- (38) Whereas, after a period of two years following the date of implementation of this Directive, the Commission should report on its application; whereas this report should examine in particular whether the conditions set out in the Directive have resulted in ensuring a proper functioning of the Internal Market, and should propose action if necessary,

HAVE ADOPTED THIS DIRECTIVE:

#### CHAPTER I

##### OBJECTIVE AND SCOPE

###### *Article 1*

###### Scope

1. This Directive concerns the legal protection of copyright and related rights in the framework of the Internal Market, with particular emphasis on the Information Society.
2. Unless otherwise provided, this Directive shall apply without prejudice to existing Community provisions relating to:
  - (a) the legal protection of computer programs;
  - (b) rental right, lending right and certain rights related to copyright in the field of intellectual property;
  - (c) copyright and related rights applicable to broadcasting of programmes by satellite and cable retransmission;
  - (d) the term of protection of copyright and certain related rights;
  - (e) the legal protection of databases.

<sup>(5)</sup> OJ L ...

#### CHAPTER II

##### RIGHTS AND EXCEPTIONS

###### *Article 2*

###### Reproduction right

Member States shall provide for the exclusive right to authorize or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

- (a) for authors, of the original and copies of their works;
- (b) for performers, of fixations of their performances;
- (c) for phonogram producers, of their phonograms;
- (d) for the producers of the first fixations of films, in respect of the original and copies of their films, and
- (e) for broadcasting organizations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.

###### *Article 3*

###### Right of communication to the public, including the right of making available works or other subject matter

1. Member States shall provide authors with the exclusive right to authorize or prohibit any communication to the public of originals and copies of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.
2. Member States shall provide for the exclusive right to authorize or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:
  - (a) for performers, of fixations of their performances;
  - (b) for phonogram producers, of their phonograms;
  - (c) for the producers of the first fixations of films, of the original and copies of their films, and
  - (d) for broadcasting organizations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. The rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public of a work and other subject matter as set out in paragraph 2, including their being made available to the public.

#### *Article 4*

##### **Distribution right**

1. Member States shall provide authors, in respect of the original of their works or of copies thereof, with the exclusive right to any form of distribution to the public by sale or otherwise.

2. The distribution right shall not be exhausted within the Community in respect of the original of their works or of copies thereof, except where the first sale or other transfer of ownership in the Community of that object is made by the rightholder or with his consent.

#### *Article 5*

##### **Exceptions to the restricted acts set out in Articles 2 and 3**

1. Temporary acts of reproduction referred to in Article 2 which are an integral part of a technological process for the sole purpose of enabling use to be made of a work or other subject matter, and having no independent economic significance, shall be exempted from the right set out in Article 2.

2. Member States may provide for limitations to the exclusive right of reproduction provided for in Article 2 in the following cases:

- (a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects;
- (b) in respect of reproductions on audio, visual or audio-visual recording media made by a natural person for private use and for non-commercial ends;
- (c) in respect of specific acts of reproduction made by establishments accessible to the public, which are not for direct or indirect economic or commercial advantage;

3. Member States may provide for limitations to the rights referred to in Articles 2 and 3 in the following cases:

- (a) use for the sole purpose of illustration for teaching or scientific research, as long as the source is

indicated and to the extent justified by the non-commercial purpose to be achieved;

- (b) for uses for the benefit of visually-impaired or hearing-impaired persons, which are directly related to the disability and of a non-commercial nature and to the extent required by the specific disability;
- (c) use of excerpts in connection with the reporting of current events, as long as the source is indicated, and to the extent justified by the informatory purpose;
- (d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject matter which has already been lawfully made available to the public, that the source is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;
- (e) use for the purposes of public security or for the purposes of the proper performance of an administrative or judicial procedure.

4. The exceptions and limitations provided for in paragraphs 1, 2 and 3 shall only be applied to certain specific cases and shall not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholders' legitimate interests or conflicts with the normal exploitation of their works or other subject matter.

### CHAPTER III

#### **PROTECTION OF TECHNOLOGICAL MEASURES AND RIGHTS-MANAGEMENT INFORMATION**

#### *Article 6*

##### **Obligations as to technological measures**

1. Member States shall provide adequate legal protection against any activities, including the manufacture or distribution of devices or the performance of services, which have only limited commercially significant purpose or use other than circumvention, and which the person concerned carries out in the knowledge, or with reasonable grounds to know, that they will enable or facilitate without authority the circumvention of any effective technological measures designed to protect any copyright or any rights related to copyright as provided by law or the sui generis right provided for in Chapter III of European Parliament and Council Directive 96/9/EC<sup>(6)</sup>.

<sup>(6)</sup> OJ L 77, 27.3.1996, p. 20.

2. The expression 'technological measures', as used in this Article, means any device, product or component incorporated into a process, device or product designed to prevent or inhibit the infringement of any copyright or any rights related to copyright as provided by law or the sui generis right provided for in Chapter III of Directive 96/9/EC. Technological measures shall only be deemed 'effective' where the work or other subject matter is rendered accessible to the user only through application of an access code or process, including by decryption, descrambling or other transformation of the work or other subject matter, with the authority of the rightholders;

#### *Article 7*

#### **Obligations concerning rights-management information**

1. Member States shall provide for adequate legal protection against any person performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights-management information;
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public, of copies of works or other subject matter protected under this Directive or under Chapter III of Directive 96/9/EC from which electronic rights-management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling or facilitating an infringement of any copyright or any rights related to copyright as provided by law, or of the sui generis right provided for in Chapter III of Directive 96/9/EC.

2. The expression 'rights-management information', as used in this Article, means any information provided by rightholders which identifies the work or other subject matter referred to in this Directive or covered by the sui generis right provided for in Chapter III of Directive 96/9/EC, the author or any other rightholder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.

The first subparagraph shall apply when any of these items of information are associated with a copy of, or appear in connection with the communication to the public of, a work or other subject matter referred to in this Directive or covered by the sui generis right provided for in Chapter III of Directive 96/9/EC.

#### CHAPTER IV

#### COMMON PROVISIONS

#### *Article 8*

#### **Sanctions and remedies**

1. Member States shall provide appropriate sanctions and remedies in respect of infringements of the rights and obligations set out in this Directive and shall take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for shall be effective, proportionate and dissuasive.

2. Each Member State shall take the measures necessary to ensure that rightholders whose interests are affected by an infringing activity carried out on its territory can bring an action for damages and/or apply for an injunction and, where appropriate, for the seizure of infringing material.

#### *Article 9*

#### **Application over time**

1. The provisions of this Directive shall apply in respect of all works and other subject matter referred to in this Directive which are, by the date referred to in Article 11(1), protected by the Member States' legislation in the field of copyright and related rights, or which meet the criteria for protection under the provisions of this Directive or the provisions referred to in Article 1(2).

2. This Directive shall apply without prejudice to any acts of exploitation performed before the date referred to in Article 11(1).

3. This Directive shall not affect any contracts concluded or rights acquired before the date of its entry into force.

4. Notwithstanding paragraph 3, contracts concerning the exploitation of works and other subject matter which are in force on the date referred to in Article 11(1) shall be subject to this Directive as from five years after its entry into force if they have not expired before that date.

#### *Article 10*

#### **Technical adaptations**

1. Directive 92/100/EEC is hereby amended as follows:

- (a) Article 7 is deleted.

(b) Article 10(3) is replaced by the following:

‘3. The limitations may only be applied to certain specific cases and may not be interpreted in such a way as to allow their application to be used in a manner which unreasonably prejudices the rightholders’ legitimate interests or conflicts with normal exploitation of their subject matter.’

2. Article 3(2) of Directive 93/98/EEC is replaced by the following:

‘2. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the phonogram is lawfully published during this period, the rights shall expire 50 years from the date of the first such publication.’

#### *Article 11*

##### **Final provisions**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2000. They shall immediately inform the Commission thereof and shall also communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their

official publication. The procedure for such reference shall be adopted by Member States.

2. Not later than at the end of the second year after the date referred to in paragraph 1 and every three 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, in which, *inter alia*, on the basis of specific information supplied by the Member States, it shall examine in particular the application of Articles 5, 6 and 8. Where necessary to ensure the functioning of the Internal Market pursuant to Article 7a of the Treaty, it shall submit proposals for amendments of this Directive.

#### *Article 12*

##### **Entry into force**

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

#### *Article 13*

##### **Addressees**

This Directive is addressed to the Member States.

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**Proposal for a Council Directive on the limitation of the emission of oxides of nitrogen from civil subsonic jet aeroplanes**

(98/C 108/04)

COM(97) 629 *final* — 97/0349 (SYN)

(submitted by the Commission on 22 January 1998)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84(2) thereof,

Having regard to the proposal from the Commission,

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

Acting in accordance with the procedure referred to in Article 189c of the Treaty in cooperation with the European Parliament,

Whereas the Commission communication 'The European Aircraft Industry: First Assessment and Possible Community Action'<sup>(1)</sup>, approved by the Council, shows clearly the need to resolve environmental problems which limit the future growth of the aviation industry;

Whereas the Commission communication 'The Green Paper on the Impact of Transport on the Environment: a Community strategy for sustainable mobility'<sup>(2)</sup> stresses the growing concern about emissions of oxides of nitrogen (NOx) at high altitude; whereas the Commission communication on 'The Future Development of the Common Transport Policy: a global approach to the construction of a Community framework for sustainable mobility'<sup>(3)</sup> clearly indicates the need to set progressively stricter standards for gaseous emissions for the different transport sectors and, more specifically, includes in its action programme more stringent standards for NOx emissions from aeroplanes;

Whereas the application of emission standards to civil subsonic jet aeroplanes has significant consequences for the provision of air transport services, in particular where such standards impose restrictions on the type of aeroplane that may be operated by air carriers and encourage investment in the latest and least polluting aeroplanes available;

Whereas the European Community programme of policy and action in relation to the environment and sustainable development<sup>(4)</sup> shows clearly the importance of the problem of air pollution and, in particular, the need to take action to protect the atmosphere;

Whereas NOx emitted by aircraft in the upper troposphere are implicated in the formation of ozone; whereas ozone in the upper troposphere contributes to the greenhouse effect; whereas research is continuing in order to quantify and describe more precisely the impact of NOx emissions from aeroplanes on stratospheric ozone and climate;

Whereas air traffic activity is forecast to double by 2010; whereas, in the absence of stricter controls, NOx emissions will increase in parallel with this increased activity;

Whereas the majority of modern aeroplane engines can already achieve significant improvements in NOx emissions;

Whereas the precautionary principle requires that while awaiting further scientific data concerning the effects of NOx emissions from aeroplanes, the rate of increase of such emissions should be reduced by introducing standards which are consistent with the performance of new technologies while not imposing excessive costs;

Whereas, in November 1993, the International Civil Aviation Organization (ICAO) amended its standard applicable to the gaseous emissions from civil aeroplanes, Part III, Chapter 2, Volume II of Annex 16 to the Convention on International Civil Aviation, second edition (July 1993), to include a 20% reduction in the regulatory level for NOx; whereas that reduction does not take account of either forecast traffic growth or technical capability;

Whereas, in December 1995, the third meeting of the ICAO Committee on Aviation Environmental Protection (CAEP/3) recommended, on the basis of the available scientific and technical information, a tightening of the NOx emission standard by a further 16%, in order to provide, in the context of increasing air traffic, adequate environmental protection;

<sup>(1)</sup> COM(92) 164 final, 29.4.1992.

<sup>(2)</sup> COM(92) 46 final, 20.2.1992.

<sup>(3)</sup> COM(92) 494 final, 2.12.1992.

<sup>(4)</sup> OJ C 138, 17.5.1993, p. 5.



Whereas, in the absence of action at the international level, it is appropriate and justified for the Community to introduce measures to reduce NOx emission, in line with those recommended by CAEP/3, in so far as those measures do not create unnecessary obstacles to international trade; whereas more stringent emission standards should accordingly be introduced in the Community by means of a non-addition rule which will not affect air carriers based on third countries,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

The objective of this Directive is to lay down rules to restrict future registration in the Member States of certain civil subsonic jet aeroplanes in order to reduce the overall level of NOx emissions.

*Article 2*

Member States shall ensure that civil subsonic jet aeroplanes fitted with engines of a type or model number of which the date of manufacture of the first individual production model is after 31 December 1999 or for which the date of manufacture of the individual engine is after 31 December 2007 shall not be added to their registers unless those engines are of a type having NOx emission levels, measured and computed in accordance with the procedures of Part III, Chapter 2, Volume II of Annex 16 to the Convention on International Civil Aviation, second edition, (July 1993), no greater than a regulatory level determined in accordance with the formulae set out in Annex to this Directive.

*Article 3*

No later than four years following the implementation of this Directive, the Commission shall submit to the Council a report on the results of studies presently underway and an evaluation of the development of NOx emissions from aeroplanes.

*Article 4*

1. Member States shall adopt and publish, before 30 June 1999, the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof. They shall apply these provisions with effect from 31 December 1999.

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

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

*Article 5*

Member States shall lay down the system of penalties for breaching the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive. Member States shall notify the relevant provisions to the Commission not later than the date specified in Article 4 and shall notify any subsequent changes as soon as possible.

*Article 6*

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

*Article 7*

This Directive is addressed to the Member States.

## ANNEX

Formulae for determining the regulatory levels referred to in Article 2

1. For engines with a maximum rated thrust of more than 89,0 kN:

$$D_p/F_{00} = 19 + 1,6 \pi_{00}$$

2. For engines with a maximum rated thrust of more than 26,7 kN but not more than 89,0 kN:

$$D_p/F_{00} = 37,572 + 1,6 \pi_{00} - 0,2087 F_{00}$$

where  $D_p$  represents the mass of any gaseous pollutant emitted during the reference emissions landing and take-off cycle;

where  $F_{00}$  represents the rated output;

where  $\pi_{00}$  represents the reference pressure ratio.

The above symbols are defined in Part I, Chapter 1, Volume II of Annex 16 to the Convention on International Civil Aviation, second edition (July 1993).

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**Proposal for a Council Regulation (EC) on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States)**

(98/C 108/05)

COM(98) 11 *final* — 98/0009 (CNS)

*(submitted by the Commission on 26 January 1998)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 113 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the Fourth ACP-EC Convention, hereinafter referred to as the 'Convention' was signed at Lomé on 15 December 1989 for a 10-years period from 1 March 1990; whereas however, provision was made for the possibility of amending the Convention in mid-term;

Whereas in application of that provision, an agreement amending the said Convention was signed in Mauritius on 4 November 1995;

Whereas transitional measures applicable until entry into force of the said agreement should be adopted in order to give effect in advance to some of these amendments to the Convention;

Whereas Article 168(2)(a) of the Convention lays down that products originating in the ACP States and:

- listed in Annex II to the EEC Treaty, when they come under a common organization of the market within the meaning of Article 40 of the EEC Treaty, or
- subject, on import into the Community, to specific rules introduced under the common agricultural policy,

shall be imported into the Community, notwithstanding the general arrangements applied in respect of third countries, in accordance with the following provisions:

- (i) those products, for which Community provisions in force at the time of import do not provide, apart from customs duties, for the application of any measure relating to their import, shall be imported free of customs duties;
- (ii) for products other than those referred to under (i), the Community shall take the necessary measures to ensure more favourable treatment than that granted to third countries benefiting from the most-favoured-nation clause for the same products;

Whereas Article 168(2)(d) of the Convention lays down that the arrangements referred to under point (a) of that paragraph shall enter into force at the same time as the Convention and shall remain applicable for its duration;

Whereas it was agreed, following the ACP-EC Council decision of 22 April 1997 approving the agreement in the form of an exchange of letters between the Community and the ACP States on Annex XL of the Fourth ACP-EC Convention concerning the joint declaration on agricultural products referred to in Article 168(2)(a)(ii) and Article 1(j) of Decision No 6/95 of the ACP-EC Council of Ministers of 20 December 1995 on transitional measures to be applied from 1 January 1996, that the arrangements provided for in Article 168(2)(a) concerning trade in agricultural and food products should apply to the ACP States which signed the agreement on

the mid-term review of the Convention, from 1 January 1996, that is to say, before the date of entry into force of the amended Convention;

Whereas the Regulations on the common organization of the markets in the sectors concerned establish trade arrangements with third countries;

Whereas, on the one hand, these trade arrangements only provide for the application of customs duties on import of a number of products; whereas, on the other hand, they involve the application of customs duties consisting in an ad valorem rate and a specific rate on certain kinds of meat and products processed from fruits and vegetables, and other measures in respect of imports of fishery products, certain fruits and vegetables, and oils and fats; whereas the obligations of the Community towards the ACP States under Article 168(2)(a) of the Convention may be fulfilled by granting total or partial exemption from customs duties for the products in question where they originate in the ACP States;

Whereas for the purposes of this Regulation, the term 'import duties' is to be defined in accordance with Article 20 of the Customs Code<sup>(1)</sup>;

Whereas it should be specified that the advantages resulting from Article 168(2)(a) of the Convention are accorded only to originating products within the meaning of Protocol 1 concerning the definition of the concept of 'originating products' and methods of administrative cooperation, annexed to the Convention, the early application of which was approved in Regulation (EEC) No 714/90;

Whereas, furthermore, these advantages should be subject to certain conditions and limited to certain annual and multiannual quantities on a case-by-case basis;

Whereas the tariff advantages resulting from Article 168(2)(a) of the Convention are calculated on the basis of rates laid down in the Common Customs Tariff, and in accordance with the rules governing it; whereas they should, however, be calculated on the basis of the autonomous duty where no conventional duty is indicated, or where the autonomous duty is lower than the conventional duty;

Whereas there have traditionally been trade flows from the ACP States to the French overseas departments; whereas measures should therefore be introduced to encourage the import of certain products originating in the ACP States into the French overseas departments to cover local consumption requirements, including consumption following processing; whereas provision should be made for altering the arrangements governing access to the markets in products originating in the ACP States referred to in Article 168(2) of the Convention, particularly in the light of the said departments' economic development requirements;

Whereas it should be stipulated that the safeguard clauses provided for in the Regulations on the common organization of the agricultural markets and in specific rules introduced under the common agricultural policy are applicable;

Whereas it was agreed when negotiating the mid-term review of the Lomé Convention that the amendments to the arrangements should be applicable from 1 January 1996; whereas consequently Regulation (EEC) No 715/90 should be repealed from that date,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. This Regulation shall apply to products originating in the ACP States listed in Annex I.
2. The rules of origin applicable to products imported from the ACP States shall be those in Protocol 1 to the Fourth Convention.

<sup>(1)</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 (OJ L 302, 19.10.1992, p. 1).

## TITLE I

**Beef and veal***Article 2*

The products referred to in Article 1 of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal<sup>(2)</sup>, as last amended by Regulation (EC) No 2321/97<sup>(3)</sup>, shall be imported free of ad valorem customs duties.

Where, in the course of a year, imports into the Community of products falling within CN codes 0201, 0202, 0206 10 95, 0206 29 91, 1602 50 10 or 1602 90 61, originating in an ACP State exceed a quantity equivalent to imports into the Community during whichever year between 1969 and 1974 Community imports of products of that origin were highest, plus an annual growth rate of 7%, exemption from customs duties on the products of that origin shall be partially or totally suspended.

In that event the Commission shall report to the Council which, acting by a qualified majority on a proposal from the Commission, shall determine the arrangements to be applied to the imports in question.

Customs duties applicable to the import of homogenized preparations of meat, liver or blood of bovine animals falling within CN codes ex 1602 10 00, ex 1602 20 90 and ex 1602 90 10 shall be reduced by 16%.

*Article 3*

Within the country-by-country and overall limits referred to in Article 4, specific rates of import duties (import duties other than customs duties), applied to products originating in the ACP States and referred to in Article 1(a) of Regulation (EEC) No 805/68 shall be reduced by 92% of the specific rates of import duties (import duties other than customs duties) applicable on the day of import.

*Article 4*

1. The reduction in specific rates of import duties (import duties other than customs duties) provided for in Article 3 shall apply on a country-by-country basis per calendar year to the following quantities of boneless meat:

Botswana:	18 916 tonnes,
Kenya:	142 tonnes,
Madagascar:	7 579 tonnes,
Swaziland:	3 363 tonnes,
Zimbabwe:	9 100 tonnes,
Namibia:	13 000 tonnes.

The reduction applies to 52 100 tonnes against which the quantities exported by the countries in question will be charged up to the limit of the annual quotas indicated above.

If deliveries do not exceed this amount, the procedure provided for under paragraph 2 shall apply.

2. If an ACP State is not able to supply its annual quota as set out in paragraph 1 or if, as a result of an actual or predicted contradiction of exports due to a disaster such as drought, a cyclone or disease affecting livestock, it does not wish to benefit from the possibility of delivery in the current or following year, a decision may be taken at its request, submitted by 1 September of each year at the latest, in accordance with the procedure referred to in Article (30), to reallocate the quantities laid down in paragraph 1 among the other States concerned, up to the limit of 52 100 tonnes.

<sup>(2)</sup> OJ L 148, 28.6.1968, p. 24.

<sup>(3)</sup> OJ L 322, 25.11.1997, p. 25.

## TITLE II

**Sheepmeat and goatmeat***Article 5*

1. The products referred to in Article 1 of Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organization of the market in sheepmeat and goatmeat shall be imported free of ad valorem customs duties.
2. By way of derogation from paragraph 1,
  - the specific amounts of customs duties fixed in the Common Customs Tariff applicable to imports of live sheep and goats, other than pure-bred breeding animals, falling within CN codes 0104 10 30, 0104 10 80 or 0104 20 90, and to meat of sheep and goats other than that of domestic sheep falling within CN codes 0204, 0210 90 11 or 0210 90 19, shall not be applied within the limits of an annual quota of 100 tonnes;
  - the specific amounts of customs duties fixed in the Common Customs Tariff applicable to imports of meat from domestic sheep falling within CN codes 0204, 0210 90 11 or 0210 90 19 shall be reduced by 65 % within the limits of a quota of 500 tonnes per calendar year to be charged against the quantities fixed in Article 1 of Regulation (EEC) No 3643/85.
3. Customs duties applicable to the import of homogenized preparations of meat, liver or blood of sheep and goats falling within CN codes ex 1602 10 00, ex 1602 20 90 and ex 1602 90 10 shall be reduced by 16 %.

## TITLE III

**Poultry and poultrymeat***Article 6*

1. The specific rates of import duties applicable to imports of live poultry, poultry fat, and poultry offal falling within CN codes 0105, 0209 00 90, 0210 90 71, 0210 90 79 and 1501 00 90 shall be reduced by 16 %.
2. The customs duties applicable to imports of poultrymeat falling within CN code 0207 shall be reduced by 65 % within the limits of a quota of 400 tonnes per calendar year.
3. The customs duties applicable to imports of prepared or preserved meat or offal falling within CN codes 1602 31, 1602 32 11, 1602 32 19, 1602 32 30, 1602 32 90 or 1602 39 shall be reduced by 65 % within the limits of a quota of 500 tonnes per calendar year.

## TITLE IV

**Milk and milk products***Article 7*

1. The customs duties applicable to imports of milk and cream, concentrated or containing added sugar or other sweetening matter, falling within CN code 0402 and to cheese and curd falling within CN code 0406 shall be reduced by 65 % within the limits of a quota of 1 000 tonnes per calendar year for all products in CN codes 0402 and 0406.
2. The customs duties applicable to imports of milk and milk products falling within CN codes 0401, 0403 10 11 to 0403 10 39, 0403 90 11 to 0403 90 69, 0404 10, 0404 90, 0405, 1702 11 00, 1702 19 00, 2106 90 51, 2309 10 15, 2309 10 19, 2309 10 39, 2309 10 59, 2309 10 70, 2309 90 35, 2309 90 39, 2309 90 49, 2309 90 59 and 2309 90 70 shall be reduced by 16 %.

## TITLE V

**Eggs***Article 8*

The customs duties applicable to imports of eggs of poultry falling within CN codes 0407 00 11, 0407 00 19, 0407 00 30 and of birds' eggs and egg yolks falling within CN codes 0408 11 80, 0408 19 81, 0408 19 89, 0408 91 80, 0408 99 80 shall be reduced by 16 %.

## TITLE VI

**Live pigs and pigmeat***Article 9*

1. The customs duties applicable to imports of domestic species of live swine other than pure-bred breeding animals falling within CN codes 0103 91 10, 0103 92 11 and 0103 92 19, of lard and other pig fat falling within CN codes 1501 00 11 and 1501 00 19, of prepared or preserved offal or blood of swine falling within CN codes 1602 10 00, 1602 20 90, 1602 41 10, 1602 42 10, 1602 49, ex 1602 90 10 and 1602 90 51, and of stuffed pasta falling within CN code 1902 20 30 shall be reduced by 16 %.

2. The customs duties applicable to imports of meat of swine, fresh or chilled, falling within CN codes 0203 11 10, 0203 12 11, 0203 12 19, 0203 19 11, 0203 19 13, 0203 19 15, ex 0203 19 55 with the exception of tenderloin presented alone, 0203 19 59, of frozen meat falling within CN codes 0203 21 10, 0203 22 11, 0203 22 19, 0203 29 11, 0203 29 13, 0203 29 15, ex 0203 29 55 with the exception of tenderloin presented alone, and 0203 29 59, of edible offal of domestic swine falling within CN codes 0206 30 21, 0206 30 31 and 0206 41 91, 0206 49 91, of pig fat falling within CN codes 0209 00 11, 0209 00 19, 0209 00 30, meat and edible meat offal, edible flours and meals of meat or meat offal of domestic swine falling within CN codes 0210 11 11 to 0210 11 39 and codes 0210 12 11, 0210 12 19 and codes 0210 19 10 to 0210 90 31 and 0210 90 39 shall be reduced by 50 % within the limits of an annual quota of 500 tonnes.

3. Customs duties applicable to imports of sausages and similar products of pigmeat, meat offal or blood falling within CN code 1601 00 shall be reduced by 65 % within the limits of a quota of 500 tonnes per calendar year.

## TITLE VII

**Fisheries***Article 10*

The products specified in Article 1 of Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products<sup>(4)</sup>, as last amended by Regulation (EC) No 3318/94<sup>(5)</sup>, shall be imported free of customs duties.

<sup>(4)</sup> OJ L 388, 31.12.1992, p. 1.

<sup>(5)</sup> OJ L 350, 31.12.1994, p. 15.

## TITLE VIII

**Oils and fats***Article 11*

The products referred to in Article 1(2)(a) and (b) of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats<sup>(6)</sup>, as last amended by Regulation (EC) No 1581/96<sup>(7)</sup>, shall be imported free of customs duties.

## TITLE IX

**Cereals***Article 12*

1. The customs duties applicable to imports of maize falling within CN codes 0709 90 60, 0712 90 16, 1005 10 90 or 1005 90 00 shall be reduced by ECU 1,81 per tonne.

2. The customs duties applicable to imports of grain sorghum falling within CN code 1007 00 shall be reduced by 60 % up to a ceiling of 100 000 tonnes per calendar year.

3. No customs duties shall be charged on imports of millet falling within CN code 1008 20 00 up to a ceiling of 60 000 tonnes per calendar year.

4. If, in the course of a year, the ceilings fixed pursuant to paragraphs 2 and 3 are reached, the Commission may, by means of a Regulation, reintroduce the application of normal customs duties until the end of the period of validity; the duties applicable shall be reduced by 50 %.

5. The customs duties applicable to imports of wheat and rye flour falling within CN codes 1101 00 and 1102 10 00, groats and meal of wheat falling within CN code 1103 11 and pellets of wheat falling within CN code 1103 21 00 shall be reduced by 16 %.

6. The customs duties applicable to imports of wheat, rye, barley and oats falling within CN codes 1101 10 00, 1001 90 91, 1001 90 99, 1002 00 00, 1003 00 and 1004 00 00 and of buckwheat, canary seed, triticale and other cereals falling within CN code 1008 shall be reduced by 50 % within the limits of a quota of 15 000 tonnes per calendar year.

## TITLE X

**Rice***Article 13*

1. Within the limits of the quantities laid down in Article 14, the customs duties applicable to imports of rice falling within CN code 1006 shall be equal, per tonne of product:

- (a) in the case of paddy rice falling within CN codes 1006 10 21 to 1006 10 98, to the customs duties fixed by the Common Customs Tariff reduced by 65 % and by ECU 4,34;
- (b) in the case of husked rice falling within CN code 1006 20, to the duty fixed pursuant to Article 11(2) of Regulation (EC) No 3072/95 and Regulation (EC) No 1503/96, reduced by 65 % and by ECU 4,34;
- (c) in the case of semi-milled or wholly milled rice falling within CN codes 1006 30, to the duty fixed pursuant to Article 11(2) of Regulation (EC) No 3072/95 and Regulation (EC) No 1503/96, reduced by ECU 16,78, then by 65 % and by ECU 6,52;

<sup>(6)</sup> OJ 172, 30.9.1966, p. 3025/66.

<sup>(7)</sup> OJ L 206, 16.8.1996, p. 11.



(d) in the case of broken rice falling within CN code 1006 40 00, to the duty fixed by the Common Customs Tariff reduced by 65 % and by ECU 3,62.

2. Paragraph 1 shall apply only to imports for which the importer provides proof that an export charge of an amount equivalent to the reduction referred to in the said paragraph has been collected by the exporting country.

#### *Article 14*

1. The reduction in customs duties provided for in Article 13 shall be limited, per calendar year, to a quantity expressed as husked rice, of 125 000 tonnes of rice falling within CN codes 1006 10 21 to 1006 10 98, 1006 20 and 1006 30 and of 20 000 tonnes of broken rice falling within CN code 1006 40 00.

Quantities of rice at other stages of processing than husked rice shall be converted at the rates laid down in Article 1 of Commission Regulation No 467/67/EEC<sup>(8)</sup>, as last amended by Regulation (EEC) No 2325/88<sup>(9)</sup>.

2. Depending on the dates of entry into force and expiry of this Regulation, the quantities provided for in paragraph 1, expressed per calendar year, shall be calculated pro rata temporis.

### TITLE XI

#### **Cereal substitutes and products processed from cereals and rice**

#### *Article 15*

1. The following products shall be imported free of customs duties:

- products falling within CN code 0714 10 91,
- sweet potatoes falling within CN code 0714 20 10,
- products falling within CN code 0714 90 11 and arrowroot falling within CN code 0714 90 11 and ex 0714 90 19,
- flour and meal of arrowroot falling within CN code ex 1106 20,
- starch of arrowroot falling within CN code ex 1108 19 90,
- dog or cat food falling within CN codes 2309 10 11, 2309 10 31.

2. The customs duties applicable to imports of the following products shall be reduced:

- by ECU 6,19 per tonne for products falling within CN codes 0714 10 99 and 0714 90 19, excluding arrowroot,
- by ECU 8,38 per tonne for products falling within CN code 0714 10 10,
- by ECU 7,98 per tonne for products falling within CN codes 1106 20 10 and ex 1106 20 90, excluding flour and meal of arrowroot,
- by 50 % for products falling within CN codes 1108 14 00 and 1108 19 90, excluding starch of arrowroot,
- by ECU 29,18 per tonne for products falling within CN code ex 1106 20 90, flour and meal of sago or of roots or tubers falling within CN code 0714 other than denatured, excluding flour and meal of arrowroot.

<sup>(8)</sup> OJ L 204, 24.8.1967, p. 1.

<sup>(9)</sup> OJ L 202, 27.7.1988, p. 41.

3. For other products listed in Annex A to Regulation (EEC) No 1766/92 and in Article 1(1)(c) of Regulation (EC) No 3072/95 the customs duties fixed in the Common Customs Tariff shall be reduced as follows:

- by ECU 7,3 per tonne for products falling within CN codes 1102 20 10, 1102 90 10, 1102 90 30, 1103 12 00, 1103 13 10, 1103 19 10, 1103 19 30, 1103 21 00, 1103 29 10, 1103 29 20, 1103 29 30, 1103 29 40, 1104 11 90, 1104 12 90, 1104 19 10, 1104 19 30, 1104 19 50, 1104 19 91, 1104 19 99, 1104 21 50 and 1104 30,
- by ECU 3,6 per tonne for products falling within CN codes 1102 20 90, 1102 30 00, 1102 90 90, 1103 13 90, 1103 14 00, 1103 19 90, 1103 29 50, 1103 29 90, 1104 11 10, 1104 12 10, 1104 21 10, 1104 21 30, 1104 21 90, 1104 21 99, 1104 22, 1104 23 and 1104 29,
- by ECU 24,8 per tonne for products falling within CN codes 1108 11 00, 1108 12 00 and 1108 13 00, 1108 14 00, 1108 19 90,
- by ECU 37,2 per tonne for rice starch falling within CN code 1108 19 10,
- by ECU 219 per tonne for wheat gluten falling within CN code 1109 00 00 and residues from the manufacture of starch from maize falling within CN code 2303 10 11,
- by ECU 117 per tonne for products falling within CN codes 1702 30 51, 1702 30 91 and 1702 90 75,
- by ECU 81 per tonne for products falling within CN codes 1702 30 59, 1702 30 99, 1702 40 90, 1702 90 50, 1702 90 79 and 2106 90 55,
- by ECU 7,2 per tonne for products falling within CN codes 2302 10, 2302 20, 2302 30 and 2302 40,
- by 10,90 ECU per tonne for products falling within CN codes 2309 10 13, 2309 10 33, 2309 10 51, 2309 10 53, 2309 90 31, 2309 90 33, 2309 90 41, 2309 90 43, 2309 90 51 and 2309 90 53.

## TITLE XII

### Fruit and vegetables

#### Article 16

1. The products listed below shall be imported free of customs duties:

CN code	Description
0706	Carrots, turnips, salad beetroot, salsify, celeriac, radishes and similar edible roots, fresh or chilled:
0706 90	— Other:
0706 90 30	— — Horseradish ( <i>Cochlearia armoracia</i> )
ex 0706 90 90	— — other:
	— — — salad beetroot
	— — — Radishes ( <i>Raphanus sativus</i> ) termed 'Mooll' radishes
0707 00	Cucumbers and gherkins, fresh or chilled
	— cucumbers: (*)
ex 0707 00 10	
ex 0707 00 15	
ex 0707 00 20	Small winter cucumbers <sup>(10)</sup> (*)
ex 0707 00 35	
ex 0707 00 40	

<sup>(10)</sup> 'Small cucumbers' means cucumbers whose length does not exceed 15 cm.

CN code	Description
0708	Leguminous vegetables, shelled or unshelled, fresh or chilled:
0709	Other vegetables, fresh or chilled:
0709 30 00	— Aubergines (egg plants)
0709 40 00	— Celery, other than celeriac
	— Mushrooms and truffles:
0709 51	— — mushrooms
0709 51 90	— — — other
0709 60	— Fruits of the genus <i>Capsicum</i> or of the genus <i>Pimenta</i> :
0709 60 10	— — Sweet peppers
0709 90	— other
	— — courgettes(*)
0709 90 71	— — — from 1 to 31 January
0709 90 73	— — — from 1 February to 31 March
0709 90 75	— — — from 1 April to 31 May
0709 90 77	— — — from 1 June to 31 July
0709 90 79	— — — from 1 August to 31 December
0709 90 90	— — other
0802	Other nuts, fresh or dried, whether or not shelled or peeled:
	— walnuts
0802 31 00	— — in shell
0802 32 00	— — shelled
0802 50 00	— Pistachios
0802 90	— other
0802 90 10	— — Pecans
0802 90 50	— — Pine nuts
0802 90 60	— — Macadamia nuts
0802 90 85	— — other
0804	Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried:
0804 30 00	— Pineapples
0804 40	— Avocados
0804 50 00	— Guavas, mangoes and mangosteens
0805	Citrus fruit, fresh or dried
0805 30	— Lemons ( <i>Citrus limon</i> , <i>Citrus limonum</i> ) and limes ( <i>Citrus aurantifolia</i> )
0805 30 90	— — Limes ( <i>Citrus aurantifolia</i> )
0805 40	— Grapefruit
0805 90 00	— other
0807 11 00	Melons (including watermelons)
0807 19 00	

CN code	Description
0807 20 00	— Pawpaws (papayas)
0809 40 90	— — Sloes
0810	Other fresh fruit
0810 40	— Cranberries, bilberries and other fruits of the genus <i>Vaccinium</i>
0810 40 30	— — Fruit of the species <i>Vaccinium myrtillus</i>
0810 90	— other fresh fruit
0813	Fruit, dried, other than that of heading Nos 0801 to 0806; mixtures of nuts or dried fruits of this chapter
0813 50	— mixtures of nuts or dried fruits of this chapter
	— — mixtures exclusively of dried nuts of heading Nos 0801 and 0802
0813 50 31	— — — Of tropical nuts
0813 50 39	— — — other

(\*) The exemption applies only to the *ad valorem* component of customs duties.

2. Imports of the products listed below shall attract the customs duty indicated:

CN code	Description	Rate of duty (%)
0810 40	— Cranberries, bilberries and other fruits of the genus <i>Vaccinium</i> :	
0810 40 50	— — Fruits of the species <i>Vaccinium macrocarpon</i> and <i>Vaccinium corymbosum</i>	3
0810 40 90	— — other	5

Artikel 17

1. The customs duties applicable to imports into the Community of the products listed below shall be reduced with the limits indicated:

CN code	Description	Reduction (%)	Quota (TQ) Ceiling (TC) (tonnes) Reference quantity (RQ)
0702 00	Tomatoes, fresh or chilled: Cherry tomatoes		
ex 0702 00 45			
0702 00 50	— from 15 November to 30 April	100 (*)	TQ 2 000
0702 00 15			
0702 00 20	Tomatoes, other than cherry tomatoes		
	— from 15 November to 30 April	60 (*)	TQ 2 000

CN code	Description	Reduction (%)	Quota (TQ) Ceiling (TC) (tonnes) Reference quantity (RQ)
0703	Onions, shallots, garlic, leeks and other alliacious vegetables, fresh or chilled		
0703 10	— Onions, shallots:		
	— — Onions		
0703 10 19	— — — other		
	— — — — from 1 February to 15 May	100	
	— — — — from 16 May to 31 January	15	
0703 20 00	— Garlic:		
	— — from 1 February to 31 May	100	
	— — from 1 June to 31 January	15	
0704	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled:		
0704 90	— other		
ex 0704 90 90	— — other		
	— — — Chinese cabbage,		
	— — — — from 1 November to 31 December	100	
	— — — — from 1 January to 31 October	15	
0705	Lettuce ( <i>Lactuca sativa</i> ) and chicory ( <i>Chichorium spp.</i> ), fresh or chilled		
	— Lettuce:		
0705 11	— — Cabbage lettuce:		
	— — — from 1 April to 30 November		
ex 0705 11 05			
ex 0705 11 10	— Iceberg lettuce:	ex 0705 11 80	
	— — from 1 July to 31 October	100	
	— — from 1 November to 30 June	15	
0706	Carrots, turnips, salad beetroot, salsify, celeriac, radishes and similar edible roots, fresh or chilled:		
ex 0706 10 00	— Carrots and turnips		
	— Carrots:		
	— — from 1 January to 31 March	100	
	— — from 1 April to 31 December	15	
0709	Other vegetables, fresh or chilled:		
0709 10	— Globe artichokes		
ex 0709 10 30	— — from 1 October to 31 December	100	
0709 10 40			
0709 10 10			
0709 10 20	— — from 1 January to 30 September	15	
ex 0709 10 30			

CN code	Description	Reduction (%)	Quota (TQ) Ceiling (TC) (tonnes) Reference quantity (RQ)
0709 20 00	— Asparagus:		
	— — from 15 August to 15 January	100	
	— — from 16 January to 31 January	40	
	— — from 1 February to 14 August	15	
0804	Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried:		
ex 0804 20 10	— — Figs, fresh:		
	— — — from 1 November to 30 April	100	TC 200
0805	Citrus fruit, fresh or dried:		
ex 0805 10	— Oranges, from 15 May to 30 September	100(*)	RQ 25 000
	— — from 1 October to 14 May	80(*)	
ex 0805 20	— Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids:		
	— — from 15 May to 30 September	100	RQ 4 000
	— — from 1 October to 14 May	80(*)	
0806	Grapes, fresh or dried:		
0806 10	— Fresh:		
	— — table grapes:		
	— — — from 1 January to 14 July		
ex 0806 10 29	— — — — other:		
	— — — — — seedless table grapes		
	— — — — — — from 1 January to 31 January	100	TQ 400
	— — — — — — from 1 February to 31 March	100	RQ 100
	— — — from 21 November to 31 December		
ex 0806 10 69	— — — — other:		
	— — — — — seedless table grapes:		
	— — — — — — from 1 December to 31 December	100	TQ 400
0808	Apples, pears and quinces, fresh:		
0808 10	— Apples	50(*)	TQ 1 000
0808 20	— Pears and quinces:		
ex 0808 20	— — Pears	65(*)	TQ 2 000
0809	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh:		
0809 10	— Apricots:		
ex 0809 10 50	— — from 1 September to 30 April	100	
ex 0809 10 10			
ex 0809 10 10			
0809 10 20	— — from 1 May to 31 August	15(*)	

CN code	Description	Reduction (%)	Quota (TQ) Ceiling (TC) (tonnes) Reference quantity (RQ)
0809 10 30 0809 10 40 ex 0809 10 50			
0809 20	— Cherries:		
ex 0809 20 11			
ex 0809 20 19	— — from 1 November to 31 March	100	
ex 0809 20 71 ex 0809 20 79			
0809 30	— Peaches, including nectarines:		
	— — from 1 December to 31 March	100	
	— — from 1 April to 30 November	15 (*)	
	— — Plums		
0809 40 10 0809 40 20 0809 40 30 0809 40 40	— — — from 15 December to 31 March	100	
0809 40 10 0809 40 20 0809 40 30 0809 40 40	— — — from 1 April to 14 December	15 (*)	
0809 40 90	— Sloes		
0810	Other fruit, fresh:		
0810 10	— Strawberries:		
ex 0810 10 05	— — from 1 August to 30 April:		
ex 0810 10 80	— — — from 1 November to end February	100	TQ 1 600

(\*) The exemption applies only to the *ad valorem* component of customs duties.

2. If imports of a product referred to in paragraph 1 exceed the reference quantity, a decision may be taken in accordance with the procedure provided for in Article 30 to make it subject to a ceiling equal to the reference quantity, having regard to the annual balance of trade in the product.

If a ceiling fixed in accordance with this paragraph is reached during the course of a year, the Commission may, by means of a Regulation, reintroduce until the end of the period of validity the customs duties applicable to third countries.

#### Article 18

The customs duties applicable to the products listed below shall be reduced by 16%:

CN code	Description
0703	Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled:
0703 10	— Onions and shallots:
0703 10 90	— — Shallots
0703 90 00	— Leeks and other alliaceous vegetables

CN code	Description
0704	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled:
0704 10	— Cauliflowers and headed broccoli
0704 20 00	— Brussels sprouts
0704 90	— Other
0704 90 10	— — White cabbages and red cabbages
0704 90 90	— — other cabbages
0705	Lettuce ( <i>Lactuca sativa</i> ) and chicory ( <i>Cichorium spp.</i> ), fresh or chilled:
ex 0705 11	— Cabbage lettuce, not including Iceberg lettuce
0705 19 00	— — other lettuce
	— Chicory
0705 21 00	— — Witloof chicory ( <i>Cichorium intybus</i> var. <i>Foliosum</i> )
0705 29 00	— — other chicory
0706	Carrots, turnips, salad beetroot, salsify, celeriac, radishes and similar edible roots, fresh or chilled:
ex 0706 10 00	— Turnips
0706 90	— Other:
	— — Celeriac (rooted celery or German celery):
0706 90 05	— — — from 1 January to 30 April
0706 90 11	— — — from 1 May to 30 September
0706 90 17	— — — from 1 October to 31 December
0706 90 19	— — — from 1 October to 30 April
0707	Cucumbers and gherkins, fresh or chilled:
	— Cucumbers, not including small cucumbers: (*)
ex 0707 00 10	— — from 1 January to end February
ex 0707 00 15	— — from 1 March to 30 April
ex 0707 00 20	— — from 1 May to 15 May
ex 0707 00 35	— — from 1 November to 10 November
ex 0707 00 40	— — from 11 November to 31 December
0707 00 90	— Gherkins
0709	Others vegetables, fresh or chilled:
	— Mushrooms and truffles:
0709 51	— — Mushrooms:
0709 51 10	— — — of the genus <i>Agaricus</i>
0709 51 30	— — — Chanterelles
0709 51 50	— — — Flap mushrooms
0709 52 00	— — Truffles
0709 70 00	— Spinach, New Zealand spinach and orache spinach (garden spinach)



CN code	Description
0709 90	— other:
0709 90 10	— — Salad vegetables, other than lettuce ( <i>Lactuca sativa</i> ) and chicory ( <i>Cichorium spp.</i> )
0709 90 20	— — Chard (or white beet) and cardoons
0709 90 40	— — Capers
0709 90 50	— — Fennel
0802	Other nuts, fresh or dried, whether or not shelled or peeled:
	— Almonds
0802 11	— — in shell:
0802 11 90	— — — other
0802 12	— — shelled:
0802 12 90	— — — other
	— Hazelnuts or filberts ( <i>Corylus spp.</i> ):
0802 21 00	— — in Shell
0802 22 00	— — shelled
0802 40 00	— Chestnuts ( <i>Castanea spp.</i> )
0808	Apples, pears and quinces, fresh:
0808 20	— Pears and quinces:
0808 20 90	— — Quinces
0810	Other fresh fruit:
0810 20 10	— — Raspberries
0810 20 90	— — Blackberries, mulberreries and loganberries
0810 30	— Black-, white- or redcurrants and gooseberries:
0810 30 10	— — Blackcurrants
0810 30 30	— — Redcurrants and whitecurrants
0810 30 90	— — Gooseberries

(\*) The reduction applies only to the *ad valorem* component of customs duties.

### TITLE XIII

#### Sugar

##### Article 19

1. The customs duties applicable to imports of molasses falling within CN code 1703 shall be reduced to zero within the limits of a quota of 600 000 tonnes per marketing year.

2. The customs duties applicable to imports of products falling within CN codes 1212 91 20, 1212 91 80, 1212 92 00, 1702 20 10, 1702 20 90, 1702 30 10, 1702 40 10, 1702 60 10, 1702 60 90, 1702 90 30, 1702 90 60, 1702 90 71, 1702 90 80, 1702 90 99, 2106 90 30 and 2106 90 59 shall be reduced by 16%.

However, this reduction shall not be applied when the Community, in accordance with its Uruguay Round commitments, applies additional duties.

## TITLE XIV

**Products processed from fruit and vegetables***Article 20*

1. The products listed in Article 1 of Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the market in products processed from fruit and vegetables <sup>(11)</sup> as last amended by Regulation (EC) No 1491/97 <sup>(12)</sup> shall be imported free of customs duties.

2. Moreover, the specific components of customs duties shall not be applicable for products falling within the following CN codes: 2007 10 10, 2007 99 20, 2007 99 31, 2007 99 33, 2007 99 35, 2007 99 39, 2007 99 51, 2007 99 55, 2007 99 58, ex 2008 20, ex 2008 30, ex 2008 40, ex 2008 80, ex 2008 92, ex 2008 99, 2009 20 11, 2009 20 91, ex 2009 40, ex 2009 80 and ex 2009 90.

## TITLE XV

**Wine***Article 21*

The products listed below shall be imported free of customs duties:

CN code	Description
2009 60	— Grape juice (including grape must):
2204 30	— Other grape must:
	— — other
	— — — Of a density of 1,33 g/cm <sup>3</sup> or less at 20°C and of an actual alcoholic strength by volume not exceeding 1 % vol:
2204 30 92	— — — — concentrated
2204 30 94	— — — — other
	— — — other
2204 30 96	— — — — concentrated
2204 30 98	— — — — other

## TITLE XVI

**Raw tobacco***Article 22*

The products listed in Article 1 of Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organization of the market in raw tobacco <sup>(13)</sup>, as last amended by Regulation (EC) No 2444/96 <sup>(14)</sup>, shall be imported free of customs duties.

<sup>(11)</sup> OJ L 297, 21.11.1996, p. 1.

<sup>(12)</sup> OJ L 202, 30.7.1997, p. 27.

<sup>(13)</sup> OJ L 215, 30.7.1992, p. 70.

<sup>(14)</sup> OJ L 333, 21.12.1996, p. 4.

*Article 23*

If serious disturbances occur as a result of a large increase in duty-free imports of products falling within CN code 2401, originating in the ACP States, or if these imports create difficulties which bring about a deterioration in the economic situation of a region of the European Union, the Council may, without prejudice to Article 32, and acting by a qualified majority on a proposal from the Commission, take measures to counteract any deflection of trade.

## TITLE XVII

**Prepared or preserved potatoes***Article 24*

The customs duties applicable to imports of prepared or preserved potatoes, not frozen, other than in the form of flour, meal or flakes, falling within CN codes 2005 20 20 and 2005 20 80 shall be reduced by 16 %.

## TITLE XVIII

**Certain goods resulting from the processing of agricultural products***Article 25*

1. The products listed in Table 1 of Annex B to Regulation (EEC) No 3448/93 shall be imported free of the *ad valorem* component of customs duties.

2. Moreover, for the following products the agricultural component or the specific rate of customs duties shall be suspended:

1702 50 00	Chemically pure fructose
1704 90 30	White chocolate
	Chocolate and other food preparations containing cocoa:
1806 20	— Preparations in blocks, slabs or bars weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packing, of a content exceeding 2 kg (except products falling within code 1806 20 70)
1806 31 00	— Other, in blocks, slabs or bars, filled or not filled
1806 32	
1806 90 11	— Other chocolate and chocolate products, sugar confectionery and substitutes therefor made from sugar substitution products, containing cocoa
1806 90 19	
1806 90 31	
1806 90 39	
1806 90 50	
ex 1901	Food preparations of flour, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of heading Nos 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:
	— Whether or not containing less than 1,5 % by weight of milk fat, with a starch or flour content of 50 % or over but of less than 75 % by weight.

1903 00 00	Tapioca and substitutes therefore prepared from starch, in the form of flakes, grains, pearls, siftings or similar forms.
1905	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products.
ex 1905 30	Sweet biscuits, waffles and wafers: — Biscuits
ex 1905 40	— Rusks, toasted bread and similar toasted products, excluding ship's biscuit.
ex 1905 90	— Other: — — Biscuits
2008 99 85	Maize (corn), otherwise prepared or preserved, without the addition of sugar or alcohol, other than sweetcorn ( <i>Zea mays</i> var. <i>saccharata</i> ).
2101 12 98	Preparations with a basis of coffee.

## TITLE XIX

## Other markets subject to common organization

## Article 26

The products referred to in the following Regulations shall be admitted free of customs duties:

- Council Regulation (EEC) No 234/68 of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage<sup>(15)</sup>, as last amended by Regulation (EC) No 3290/94<sup>(16)</sup>,
- Council Regulation (EEC) No 827/68 of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty<sup>(17)</sup>, as last amended by Regulation (EC) No 3290/94,
- Council Regulation (EEC) No 1308/70 of 29 June 1970 on the common organization of the market in flax and hemp<sup>(18)</sup>, as last amended by Regulation (EC) No 3290/94,
- Council Regulation (EEC) No 1696/71 of 26 July 1971 on the common organization of the market in hops<sup>(19)</sup>, as last amended by Regulation (EC) No 3290/94,
- Council Regulation (EEC) No 2358/71 of 26 October 1971 on the common organization of the market in seeds<sup>(20)</sup>, as last amended by Regulation (EC) No 3290/94,
- Council Regulation (EC) No 603/95 of 21 February 1995 on the common organization of the market in dried fodder<sup>(21)</sup>, as last amended by Regulation (EC) No 1347/95<sup>(22)</sup>.

<sup>(15)</sup> OJ L 55, 2.3.1968, p. 1.

<sup>(16)</sup> OJ L 349, 31.12.1994, p. 105.

<sup>(17)</sup> OJ L 151, 30.6.1968, p. 16.

<sup>(18)</sup> OJ L 146, 4.7.1970, p. 1.

<sup>(19)</sup> OJ L 175, 4.8.1971, p. 1.

<sup>(20)</sup> OJ L 246, 5.11.1971, p. 1.

<sup>(21)</sup> OJ L 63, 21.3.1995, p. 1.

<sup>(22)</sup> OJ L 131, 15.6.1995, p. 1.

## TITLE XX

## Provisions relating to the French overseas departments

## Article 27

1. Subject to paragraph 3, 4 and 5, customs duties shall not be applied to imports into the French overseas department of the products listed below originating in the ACP States or in the overseas countries and territories:

CN code	Description
0102	Live bovine animals, domestic species, other than pure-bred breeding animals:
0102 90	
0102 90 05	
0102 90 21	
0102 90 29	
0102 90 41	
0102 90 49	
0102 90 51	
0102 90 59	
0102 90 61	
0102 90 69	
0102 90 71	
0102 90 79	
0201	Meat of bovine animals, fresh, chilled or frozen
0202	
0206 10 95	
0206 29 91	
0709 90 60	Sweetcorn
0712 90 19	
1005 10 90	
1005 90 00	
0714 10 91	— Manioc (cassava) including yams:
0714 90 11	

2. Subject to paragraph 4, customs duty shall not be applied to direct imports into the overseas department of Réunion of rice falling within CN code 1006, excluding rice for sowing falling within CN code 1006 10 10.

3. If imports into the French overseas departments of maize originating in the ACP States or in the countries and territories have exceeded 25 000 tonnes in a year and are causing or are likely to cause serious disturbances on those markets, the Commission shall, at the request of a Member State or on its own initiative, take the necessary measures.

Any Member State may, within three working days of notification of the measure taken by the Commission, refer that measure to the Council. The Council, acting by a qualified majority, may take a different decision within one month.

4. This Article shall apply to products which are intended for use in the overseas departments and are released on the market there. If necessary, measures to ensure this may be taken in accordance with the procedure laid down in Article 30.

5. The exemption from customs duty for products falling within CN codes 0714 10 91 and 0714 90 11 shall apply within the limits of an annual quota of 2 000 tonnes.

6. Within the limits of an annual quantity of 8 000 tonnes, the customs duty fixed pursuant to Article 10(1) of Regulation (EEC) No 1766/92 shall not be applied to imports into Réunion of wheat bran falling within CN code 2302 30, originating in the ACP States.

#### TITLE XXI

### General and final provisions

#### *Article 28*

The reductions provided for by this Regulation shall be calculated on the basis of the rates of customs duties in the Common Customs Tariff.

#### *Article 29*

In so far as the import arrangements set out in this Regulation provide for quantitative limits, imports of the products concerned which originate in the countries and territories will be counted against these quantities. The using-up of these quantities will not however prevent placing in free circulation the products in question originating in the ACP States within the limits of the global quantities set out in this Regulation.

#### *Article 30*

1. If necessary, detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 or in the corresponding Articles of the other Regulations on the common organization of agricultural markets, as the case may be.

2. In the case of meat and rice, these detailed rules shall relate in particular to:

- (a) the basis for calculation and the reference period to be used for fixing the amount by which import duties are to be reduced;
- (b) the arrangements for fixing the corresponding amount to be collected by the exporting country;
- (c) the issue of import licences and/or the introduction of import licence arrangements;
- (d) the forms of proof acceptable and checking procedures.

3. Without prejudice to the first and second paragraphs, provisions for the application of the tariff quotas, tariff ceilings and reference quantities provided for in Article 17, and amendments and technical adaptations made necessary by amendments to the Combined Nomenclature and Taric codes or arising from the conclusion of agreements, protocols or exchanges of letters between the Community and the ACP States, shall be adopted by the Commission, assisted by the Customs Code Committee, in accordance with the procedure set out in paragraph 4 of this Article.

4. 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 period referred to in the first indent.

5. The committee may examine any question concerning the application of tariff quotas, tariff ceilings and reference quantities, which is raised by its chairman either at the latter's initiative or at the request of a Member State.

6. As soon as a tariff ceiling is reached, the Commission may adopt a regulation re-establishing, until the end of the calendar year, the customs duties applicable to third countries in respect of imports of the products concerned.

#### *Article 31*

In the light of the economic development requirements of the French overseas departments, the Council, acting in accordance with the procedure laid down in Article 43 of the Treaty, may alter the arrangements governing access to those departments' markets for the products covered by this Regulation.

#### *Article 32*

1. The safeguard clauses provided for in the Regulations on the common organization of agricultural markets and in the specific rules introduced under the common agricultural policy shall be applicable to the products covered by this Regulation.

2. As regards relations with the ACP States, the provisions of Regulation (EEC) No 3075/90<sup>(23)</sup> shall apply as complementary measures to the safeguard clauses pursuant to Chapter 1 of the third part of the Convention until 29 February 2000.

#### *Article 33*

Regulation (EEC) No 715/90 is hereby repealed.

#### *Article 34*

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

It shall apply from 1 January 1996.

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

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<sup>(23)</sup> OJ L 358, 21.12.1990, p. 4.

## ANNEX I

## LIST OF THE ACP STATES REFERRED TO IN ARTICLE 1

Angola	Lesotho
Antigua and Barbuda	Liberia
Bahamas	Madagascar
Barbados	Malawi
Belize	Mali
Benin	Mauritania
Botswana	Mauritius
Burkina Faso	Mozambique
Burundi	Namibia
Cameroon	Niger
Cape Verde	Nigeria
Central African Republic	Papua New Guinea
Comoros	Rwanda
Congo	São Tomé and Príncipe
Chad	Senegal
Côte-d'Ivoire	Seychelles
Democratic Republic of Congo	Sierra Leone
Djibouti	Solomon Islands
Dominica	Somalia
Dominican Republic	Saint Kitts and Nevis
Equatorial Guinea	Saint Lucia
Eritrea	Saint Vincent and the Grenadines
Ethiopia	Sudan
Fiji	Suriname
Gabon	Swaziland
Gambia	Tanzania
Ghana	Togo
Grenada	Tonga
Guinea	Trinidad and Tobago
Guinea Bissau	Tuvalu
Guyana	Uganda
Haiti	Vanuatu
Jamaica	Western Samoa
Kenya	Zambia
Kiribati	Zimbabwe

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**Proposal for a Council Regulation (EC) amending Regulation (EEC) No 3677/90 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances**

(98/C 108/06)

COM(98) 22 *final* — 98/0016 (ACC)

*(submitted by the Commission on 26 January 1998)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas Council Regulation (EEC) No 3677/90<sup>(1)</sup> of 13 December 1990 imposes stringent controls on the export, import and transit of 22 substances which may be diverted into the illicit manufacture of narcotic drugs or psychotropic substances;

Whereas a significant number of other substances, many of them traded legally in large quantities, have been identified as precursors to the illicit manufacture of synthetic designer drugs;

Whereas the extension of the existing control mechanisms under the Regulation to the non-scheduled substances would considerably entail additional obstacles to the licit trade, thus putting at risk the efficiency of the monitoring system in place;

Whereas it is therefore necessary to establish at Community level a voluntary system of monitoring those non-scheduled substances which would be based on the cooperation between the authorities and the industry, so that operators notify authorities in the Member States of suspected transactions in the non-scheduled substances.

Whereas it is necessary to give the possibility to the competent authorities of taking appropriate action when it appears that non-scheduled substances could be diverted for the illicit manufacture of drugs;

Whereas in order to ensure a coherent monitoring system on chemical precursors within the whole territory of the Community it is necessary to share experience and information in the committee established by Article 10 of Regulation (EEC) No 3677/90;

Whereas, in particular, this committee will have to establish and update the list of non-scheduled substances

to be monitored under this Regulation in all the Member States of the Community,

HAS ADOPTED THIS REGULATION:

*Article 1*

Council Regulation (EEC) No 3677/90 is hereby modified as follows:

1. The title of Article 3 is amended to read as follows:

**‘Cooperation regarding scheduled substances’**

2. After Article 3, new Article 3a is inserted as follows:

*Article 3a*

**Cooperation regarding non-scheduled substances**

Member States shall take appropriate measures to establish close cooperation between the competent authorities and operators, so that operators, on a voluntary basis, notify the competent authorities immediately of any circumstances, such as unusual orders and transactions involving any non-scheduled substances, which suggest that such substances intended for import, export or transit may be diverted for the illicit manufacture of narcotic drugs or psychotropic substances.’

3. In Article 6, the following is inserted as second subparagraph in paragraph 2:

‘With a view of pursuing the objectives of this regulation as described in Article 1(1), the provisions of the first subparagraph apply *mutatis mutandis* as regards any other chemical substances if there are reasonable grounds for suspecting that these substances are intended for the illicit manufacture of narcotic drugs or psychotropic substances.’

4. Article 10 is modified by the insertion of the following new third subparagraph in paragraph 1:

‘In particular, with a view to facilitating cooperation under Article 3a and to ensuring a coherent approach

<sup>(1)</sup> OJ L 357, 20.12.1990, p. 1. Regulation as last amended by Regulation (EEC) No 900/92 (OJ L 96, 10.4.1992, p. 1).

throughout the Community, the committee shall establish and regularly update a list of non-scheduled substances which, according to the experience of competent authorities in the Member States or available at international level, are known to be used frequently in illicit manufacture. It shall also establish for which non-scheduled substances in this list Article 3a shall apply in all Member States. More generally, information shall be exchanged within the committee on the current situation as regards the use of new substances or new diversion methods, in order

to facilitate any adaptation of the relevant Community provisions that may appear necessary.'

*Article 2*

This Regulation enters into force on the twentieth day following 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.

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**Proposal for a European Parliament and Council Directive amending Council Directive 92/109/EEC relating to the manufacturing and placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances**

(98/C 108/07)

COM(98) 22 *final* — 98/0017 (COD)

*(submitted by the Commission on 26 January 1998)*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF  
THE EUROPEAN UNION,

suspicious transactions in these substances and take  
appropriate action.

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

HAS ADOPTED THIS DIRECTIVE

Having regard to the proposal from the Commission,

*Article 1*

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

Directive 92/109/EEC on the manufacture and the  
placing on the market of certain substances used in the  
illicit manufacture of narcotic drugs and psychotropic  
substances is hereby modified as follows:

Acting in accordance with the procedure referred to in  
Article 189B of the Treaty,

1. The title of Article 5 is amended to read as follows:

**‘Cooperation and regarding scheduled substances’**

Whereas Council Directive 92/109/EEC imposes stringent  
controls on the manufacture and the placing on the  
market of 22 substances which may be diverted into the  
illicit manufacture of narcotic drugs or psychotropic  
substances<sup>(1)</sup>;

2. After Article 5, new Article 5a is inserted as follows:

*‘Article 5a*

**Cooperation regarding non-scheduled substances**

Whereas Annex I of the Directive contains a list of 22  
substances commonly used in the illicit manufacture of  
drugs;

Member States shall take appropriate measures to  
establish close cooperation between the competent  
authorities and operators, so that operators, on a  
voluntary basis, notify the competent authorities  
immediately of any circumstances, such as unusual  
orders and transactions involving any non-scheduled  
substances, which suggest that such substances may  
be diverted for the illicit manufacture of narcotic  
drugs or psychotropic substances.’

Whereas a significant number of other substances, many  
of them traded legally in large quantities, have been  
identified as precursors to the illicit manufacture of  
synthetic designer drugs;

3. In Article 6, the following paragraph is added:

‘2. With a view to pursuing the objectives of this  
Directive is described in Article 1(1), the competent  
authorities of each Member State may prohibit  
transactions of non-scheduled substances if there are  
reasonable grounds for suspecting that these  
substances are intended for the illicit manufacture of  
narcotic drugs or psychotropic substances.’

Whereas to subject these substances to the same strict  
controls as those listed in Annex I would present an  
unnecessary obstacle to trade involving licences to  
operate and documentation of transactions; whereas it is  
therefore necessary to establish a more flexible  
mechanism at Community level whereby the competent  
authorities in the Member States can be notified of

<sup>(1)</sup> OJ L 370, 19.12.1992, p. 76.

4. In Article 10, paragraph 1, the following subparagraph is added:

'In particular, with a view to facilitating cooperation under Article 5a and to ensuring a coherent approach throughout the Community, the committee shall establish and regularly update a list of non-scheduled substances which, according to the experience of competent authorities in the Member States or available at international level, are known to be used frequently in illicit manufacture. It shall also establish for which non-scheduled substances in this list Article 5a shall apply in all Member States. More generally, information shall be exchanged within the committee on the current situation as regards the use of new substances or new diversion methods, in order to facilitate any adaptation of the relevant Community provisions that may appear necessary.'

*Article 2*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 30 June 1999. They shall forthwith inform the Commission thereof. They shall apply these provisions as from 1 July 1999.
2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be determined by the Member States.

*Article 3*

This Directive is addressed to the Member States.

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**Proposal for a European Parliament and Council Decision establishing a general framework for community activities in favour of consumers**

(98/C 108/08)

(Text with EEA relevance)

COM(97) 684 final — 98/0028 (COD)

(submitted by the Commission on 28 January 1998)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 129A thereof,

Having regard to the proposal from the Commission,

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

Acting in accordance with the procedure referred to in Article 189B of the Treaty,

Whereas Community action helps to ensure a high level of protection of consumers and human health;

Whereas Community action in favour of consumers helps to strengthen economic and social cohesion;

Whereas this objective cannot be achieved effectively without the cooperation and participation of all the institutions and parties concerned;

Whereas the Community intends to give new impetus to its action in favour of consumers and their health in order to enable them to become a driving and innovative force;

Whereas the Community needs to plan the actions required to achieve the objective it has set itself by grouping them together in a general framework that identifies the activities and areas of activity which must be tackled as a matter of priority;

Whereas this general framework aims in particular to bring together the initiatives carried out for the benefit of consumers in order to optimize their effects for consumers;

Whereas the Community system of information on domestic and leisure accidents had been introduced by the decision 3092/94/EEC of the European Parliament and the Council<sup>(1)</sup> to cover only the period 1994—1997;

Whereas this general framework must provide for both initiatives taken by the Community, in compliance with the principle of subsidiarity, and actions to support the organizations which work to defend consumer interests at Community or national level;

Whereas this general framework for Community action does not prejudice measures which may become necessary during the period fixed, as regards the achievement of the objectives set out in Article 129A of the Treaty;

Whereas the initiatives undertaken by the Community and the actions to support other private or public initiatives complement one another and must form part of an integrated approach;

Whereas the implementation of this general framework should make it possible to take better account of consumers' interests in the other policies of the Community, notably in the fields of public health, research and transport;

Whereas the initiatives developed in this framework should be complementary to the actions being carried out in the field of public health, concerning in particular foodstuffs;

Whereas a harmonized and neutral approach to matters related to the protection of consumers and their health is indispensable and as the Community has at its disposal the skills of the Joint Research Centre;

Whereas this framework is open to the participation of the associated countries of central and eastern Europe in accordance with the European Agreements or their additional protocols, and also to Cyprus in accordance with conditions to be agreed, as well as to the EFTA/EES countries on the basis of additional appropriations in accordance with the rules fixed in the Agreement on the European Economic Space;

Whereas it is necessary to draw up a list of priority areas for Community action in order to help achieve maximum effectiveness throughout the planned period;

<sup>(1)</sup> OJ L 331, 21.12.1994, p. 1.

Whereas it is also necessary to strengthen the bodies and organizations that are active in the area of consumer protection so that they can be a more effective driving force for making consumers aware of the priorities set by the Community;

Whereas it is necessary to ensure that the interests of consumers are represented at Community level and to provide significant support to the European organizations which represent the interests of consumers effectively and actively;

Whereas it is necessary, at the same time, to support organizations which are active at national or regional level by encouraging them to take part in concerted action in the areas recognized as priorities;

Whereas it is therefore necessary to set out the arrangements for the financial support provided by the Community to the bodies and organizations that are representative of consumer interests, out of a constant concern for maximum transparency and for effectiveness in the use of the funds allocated by the Community;

Whereas it is necessary to lay down selection criteria for the provision of financial support;

Whereas it is necessary to establish effective methods for evaluation and monitoring and to make provision for informing the target groups concerned in an appropriate way;

Whereas the implementation of the activities provided for under this general framework must be evaluated in the light of the experience gained in the first three years;

Whereas this decision establishes, for the whole of the planned duration, a financial allocation which constitutes 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 in the annual budgetary procedure,

HAVE DECIDED AS FOLLOWS:

#### CHAPTER I

#### GENERAL OBJECTIVES AND APPROACH

##### *Article 1*

1. This decision establishes, at Community level, a general framework for activities for promoting the interests of consumers and providing them with a high level of protection.

2. This general framework of activities consists of actions designed to help protect the health, safety and economic interests of consumers and to promote their

right to information and education and to join forces in order to protect their interests.

3. This general framework of activities shall be established from 1 January 1999 to 31 December 2003. The financial allocation for carrying out the activities planned in this general framework shall be ECU 114 million for the whole period.

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

##### *Article 2*

These activities shall comprise:

- (a) actions taken by the Commission to support and supplement the policy conducted by the Member States, and to develop, update and monitor it;
- (b) actions providing financial support for the activities of European consumer organizations, under the conditions set out in Article 5;
- (c) actions providing financial support for specific projects to promote consumers' interests in the Member States, notably the projects presented by consumer organizations, under the conditions set out in Article 6.

##### *Article 3*

The Commission shall ensure that there is consistency and complementarity between the Community activities and projects under this general framework and the other Community programmes and initiatives, and shall lay down the priorities to be applied in the activities mentioned in Article 4.

##### *Article 4*

The actions mentioned in Article 2 shall concern the following specific areas in particular:

- (a) the health and safety of consumers;
- (b) protecting the economic interests of consumers as regards products and services;
- (c) educating and informing consumers about their protection and rights;
- (d) promotion and representation of the interests of consumers.

The Annex gives an indicative list of the activities by area.

## CHAPTER II

*Article 7*

## IMPLEMENTING ARRANGEMENTS

*Article 5*

1. The financial support referred to in Article 2, point b), may be granted to European consumer organizations which:

- are non-governmental, not-for-profit organizations whose main objectives are to promote and protect the interests and health of consumers and
- have been mandated to represent the interests of consumers at European level by organizations that are representative of the consumers of at least half the Member States of the Community and that are active at national or regional level.

2. The financial support referred to in Article 2 point b), may be granted to support the activities of European consumer organizations that are planned in the annual programme of their activities, where these activities relate to one or more of the areas mentioned in Article 4.

3. The conditions for granting financial support are set out in Articles 7—9.

In addition, the financial support may not, in principle, exceed 50% of the expenditure involved in carrying out the eligible activities.

*Article 6*

1. Any natural or legal person or association of natural persons who/which is actually responsible for the implementation of the projects may receive the financial support referred to in Article 2 point c), where the main objectives of these projects are to promote and protect the interests and health of consumers.

2. The financial support referred to in Article 2 point c), shall be granted on the basis of the description of the project, where it relates to one or more of the areas mentioned in Article 4.

3. The conditions for granting financial support are set out in Articles 7—9.

In addition, the financial support may not, in principle, exceed 50% of the expenditure involved in implementing the project(s), excluding all operating expenses.

The Community financial support referred to in Article 2 points b) and c) shall be granted to actions selected on the basis of the following criteria in particular:

- a satisfactory level of cost-effectiveness,
- an added value ensuring a high and uniform level of the representation of consumers' interests,
- a lasting multiplier effect at European level,
- effective and balanced cooperation between the various parties for planning and carrying out activities and for financial participation,
- the development of lasting transnational cooperation, especially by the exchange of experience to raise the awareness of consumers and economic operators and by joint utilization of their results,
- the widest possible dissemination of the results of the activities and projects supported,
- the ability to analyse the situations to be covered, the means earmarked for evaluating the activities and projects and their suitability for best practice.

## CHAPTER III

## PROCEDURES, EVALUATION AND MONITORING

*Article 8*

1. Each year, the Commission shall publish a note in the *Official Journal of the European Communities* describing the areas for funding and setting out the selection and award criteria and the procedures for application and approval.

2. Having assessed the proposals, the Commission shall select the activities and projects referred to in Chapter II which are to receive financial support. This decision shall lead to the conclusion of a contract with the recipients responsible for implementation, concerning the rights and obligations of the parties.

3. Community assistance shall relate to the actions which should take place in the year of the financial contribution or in the following year.

4. A list of the recipients and of the actions funded under this framework shall be published each year, with an indication of the amount of the assistance.

#### *Article 9*

1. The Commission shall ensure the monitoring and supervision of effective implementation of the activities financed by the Community. This shall be done on the basis of reports using the procedures agreed between the Commission and the recipient; it shall include checks in situ by means of sampling.

2. Recipients shall submit a report to the Commission for each action within three months of its completion. The Commission shall determine the form and content of this report.

3. Recipients of financial support shall keep at the Commission's disposal all the documentary evidence of expenditure for a period of five years from the last payment concerning an action.

#### *Article 10*

The Commission shall see to it that the actions funded by the Community are evaluated regularly. These evaluations may be carried out by the Commission and by independent experts employed to this end.

#### *Article 11*

1. The Commission may reduce, suspend or recover financial assistance granted for an activity if it detects irregularities or learns that the activity has, without

its approval, been significantly modified so that it is incompatible with the objectives of the agreed implementing arrangements.

2. If the deadlines are not met or if the state of progress of an activity warrants only partial use of the appropriations granted, the Commission shall ask the recipient concerned to provide an explanation within a given period of time. If the recipient's reply is not satisfactory, the Commission may cancel the balance of financial assistance and demand that the sums already paid be refunded immediately.

3. All incorrect payments shall be refunded to the Commission. Any sums not refunded in good time may be increased by default interest. The Commission shall determine the arrangements for the application of this paragraph.

#### *Article 12*

1. Each year, the Commission shall report to the European Parliament and to the Council on the implementation of this framework.

This report shall include the results of the evaluation of the actions, activities and projects carried out under this framework.

2. By 30 June 2002 at the latest, the Commission shall submit an evaluation report to the European Parliament and to the Council on the first three years of implementation of activities under this general framework.

#### *Article 13*

This Decision shall enter into force on 1 January 1999.



## ANNEX

## INDICATIVE ACTIVITIES BY AREA

**1. Consumer health and safety**

- Actions undertaken for the preparation and elaboration of opinions of the Scientific Committees.
- Expertise and inspections relating to controls in the food, veterinary and phytosanitary sectors.
- Technical expertise to assess risks relating to products, notably for foodstuffs.
- Making best use of scientific and technical elements relating to consumer protection actions, notably through the use of expertise of the Joint Research Centre.
- Measures relating to consumer products causing danger to consumers.
- Dissemination of information about dangerous products and potential risks.

**2. Protecting the economic interests of consumers as regards products and services**

- Measures to improve cooperation between the bodies participating in market surveillance.
- Measures to ensure the respect of consumer rights in the supply of products and services, including mechanisms for settling consumer disputes, notably through pilot projects and setting up databases.
- Measures to ensure a level playing field in consumers transactions, taking into account the impact of new technologies, and the development of financial services.

**3. Educating and informing consumers**

- Improving information to consumers about their rights and how to enforce them and raising awareness of manufacturers and consumers about safety aspects of products.
- Improving information to consumers about features of specific products and services notably through comparative testing.
- Develop the education and training of consumers, particularly in schools.
- The development of, and support for, European centres providing information and advice to cross border consumers in the Community.

**4. Promotion and representation of the interests of consumers**

- Strengthening the representation of consumer interests at the European and international level.
  - Supporting consumer organizations in the Member States, notably where their means are limited.
  - Promotion and coordination of consumer participation at the European level in standardization.
  - Pilot projects promoting sustainable consumption models, notably those that are environmentally friendly.
-

**Amended proposal for a European Parliament and Council Directive on the supplementary supervision of insurance undertakings in an insurance group<sup>(1)</sup>**

(98/C 108/09)

(Text with EEA relevance)

COM(1998) 38 *final* — 95/0245 (COD)

*(submitted by the Commission pursuant to Article 189 a(2) of the EC-Treaty on 26 January 1998)*

INITIAL PROPOSAL

AMENDED PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

unchanged

Having regard to the proposal from the Commission,

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

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

Whereas Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance<sup>(2)</sup> as last amended by European Parliament and Council Directive 95/26/EC<sup>(3)</sup> and Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance<sup>(4)</sup>, as last amended by Directive 95/26/EC require insurance undertakings to possess a solvency margin;

unchanged

Whereas, as a result of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life assurance Directive)<sup>(5)</sup>, and Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC

unchanged

<sup>(1)</sup> OJ C 341, 19.12.1995, p. 16.

<sup>(2)</sup> OJ L 228, 16.8.1973, p. 3.

<sup>(3)</sup> OJ L 168, 18.7.1995, p. 7.

<sup>(4)</sup> OJ L 63, 13.3.1979, p. 1.

<sup>(5)</sup> OJ L 228, 11.8.1992, p. 1.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

and 90/619/EEC (third life assurance Directive)<sup>(6)</sup>, the taking-up and the pursuit of the business of insurance is subject to the granting of a single authorization issued by the competent authorities of the Member State in which an insurance undertaking has its head office; whereas such authorization allows an undertaking to carry on business throughout the Community, under the right of establishment or the freedom to provide services; whereas the competent authorities of home Member States are responsible for monitoring the financial health of insurance undertakings, including their state of solvency;

Whereas measures involving supplementary supervision on insurance undertakings in a group should enable the authorities supervising a parent insurance undertaking to make a more soundly based judgement about the financial situation of that insurance undertaking; whereas supplementary supervision should take into account certain undertakings which are presently not subject to supervision under Community directives; whereas this Directive does not in any way imply that Member States are required to play a supervisory role in relation to those undertakings standing alone;

Whereas insurance undertakings in a single insurance market engage in direct competition with each other and the standards pertaining to capital requirements must therefore be equivalent; whereas, to that end, the criteria for determining supplementary supervision must not be left solely to Member States; whereas the adoption of common basic standards will be in the best interests of the Community in that it will prevent Distortions of competition and will strengthen the Community insurance system; whereas it is necessary to eliminate certain differences between the laws of the Member States as regards the prudential rules to which insurance undertakings that are part of a group are subject;

Whereas it is necessary to calculate an adjusted solvency situation for insurance undertakings in a group; whereas different methods are applied by some authorities in the Community to take into account the effects on the financial position of an insurance undertaking in a group; whereas the principle is accepted that these methods are prudentially equivalent;

Whereas the approach adopted consists in bringing about such harmonization as is essential, necessary and sufficient to achieve the mutual recognition of prudential control systems in this field;

Whereas certain provisions of this Directive define minimum standards; whereas a home Member State may lay down stricter rules for insurance undertakings authorized by its own competent authorities;

Whereas this Directive is concerned solely with cases where one insurance undertaking is owned wholly or in part by another insurance undertaking or holding company; whereas the supervision of individual insurance undertakings by the competent authorities remains an essential principle of insurance supervision;

unchanged

unchanged

unchanged

unchanged

unchanged

unchanged

<sup>(6)</sup> OJ L 360, 9.12.1992, p. 1.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

Whereas the competent authorities must at least have the means of obtaining from all undertakings within a group the information necessary for the performance of their function; whereas cooperation between the authorities responsible for the supervision of insurance undertakings as well as between the authorities responsible for the supervision of different financial sectors must be established;

unchanged

Whereas certain types of intra-group transactions can affect the financial position of an insurance undertaking; whereas the competent authorities should determine whether intra-group transactions are concluded in principle according to normal market conditions; whereas the application of this general principle does not imply that intra-group transactions concluded on other terms should be prohibited under all circumstances; whereas it is therefore desirable that the competent authorities monitor such transactions;

unchanged

Whereas this Directive will, in particular, ensure the homogeneous application throughout the Community of prudential rules established by other Community legislation and facilitate the taking-up and pursuit of the business of insurance; whereas application of this Directive must be aimed at, in particular, protecting the interests of the policyholders of insurance undertakings;

unchanged

Whereas the application of this Directive requires complicated adaptations to be made to the laws of certain Member States in the fields of prudential supervision, company law and taxation, and that these adaptations therefore justify that these Member States may apply the definition of a participation in another undertaking at the level of 25 % of the capital or the voting rights until 1 July 2001 at the latest,

unchanged

HAVE ADOPTED THIS DIRECTIVE:

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

*Article 1*

**Definitions**

**Definitions**

For the purpose of this Directive:

unchanged

(a) 'insurance undertaking' means an undertaking which has received official authorization in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;

unchanged

(b) 'third country insurance undertaking' means an undertaking which if it had its registered office in the Community would require authorization in accordance with Article 6 of Directive 73/239 or Article 6 of Directive 79/267/EEC;

(b) 'reinsurance undertaking' means an undertaking which only accepts risks ceded by an insurance undertaking or other reinsurance undertakings established in the Community or in a third country;

(c) 'reinsurance undertaking' means an undertaking which only accepts risks ceded by an insurance undertaking or other reinsurance undertakings established in the Community or in a third country;

## INITIAL PROPOSAL

- (c) 'parent undertkaing' means a parent undertaking within the meaning of Article 1 (1) of Council Directive 83/349/EEC<sup>(7)</sup> and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;
- (d) 'subsidiary' means a subsidiary undertaking within the meaning of Article 1 (1) of Directive 83/349/EEC and any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence. All subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the undertaking that is their original parent;
- (e) 'subsidiary' means the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;
- (f) 'participating undertaking' means an undertaking which is either a parent undertaking or an undertaking which holds a participation;
- (g) 'related undertaking' means either a subsidiary or any other undertaking in which a participation is held;
- (h) 'insurance holding company' means an undertaking other than an insurance undertaking, the subsidiary undertakings of which are exclusively or mainly insurance or reinsurance undertakings, one at least of such subsidiaries being an insurance undertaking;
- (i) 'mixed activity insurance holding company' means a parent undertaking, other than an insurance holding company or an insurance undertaking, the subsidiaries of which include at least one insurance undertaking;
- (j) 'competent authorities' means the national authorities which are empowered by law or regulation to supervise insurance undertakings.

*Article 2***Scope**

Subject to the provisions of Article 3, this Directive shall apply to insurance undertakings which have their registered offices in the Community.

<sup>(7)</sup> OJ L 193, 18.7.1983, p. 1.

## AMENDED PROPOSAL

- (d) 'parent undertkaing' means a parent undertaking within the meaning of Article 1 [...] of Council Directive 83/349/EEC<sup>(7)</sup> and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;
- (e) 'subsidiary' means a subsidiary undertaking within the meaning of Article 1 [...] of Directive 83/349/EEC and any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence. All subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the undertaking that is their original parent;
- (f) 'participation' means participation within the meaning of Article 17, first sentence, of Directive 78/660/EEC<sup>(8)</sup> or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;
- (g) 'participating undertaking' means an undertaking which is either a parent undertaking or an undertaking which holds a participation;
- (h) 'related undertaking' means either a subsidiary or any other undertaking in which a participation is held;
- (i) 'insurance holding company' means an undertaking other than an insurance undertaking, the subsidiary undertakings of which are exclusively or mainly insurance or reinsurance udnertakings, one at least of such subsidiaries being an insurance undertaking;
- (j) 'mixed activity insurance holding company' means a parent undertaking, other than an insurance undertaking, a third country insurance undertaking, a reinsurance undertaking or an insurance holding company, the subsidiaries of which include at least one insurance undertaking;
- (k) 'competent authorities' means the national authorities which are empowered by law or regulation to supervise insurance undertakings.

*Article 2***Scope**

unchanged

<sup>(7)</sup> OJ L 193, 18.7.1983, p. 1.

<sup>(8)</sup> OJ L 222, 14.8.1978, p. 11.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

*Article 3**Article 3***Supplementary supervision of insurance undertakings in a group****Supplementary supervision of insurance undertakings in a group**

1. In addition to the provisions of Directives 73/239/EEC and 79/267/EEC laying down the rules for the supervision of insurance undertakings, Member States shall provide that the supervision of any insurance undertaking which is a participating undertaking of at least one insurance undertaking or reinsurance undertaking shall be supplemented to the extent and in the manner prescribed in Articles 5, 6, 8 and 9.

unchanged

2. Every insurance undertaking the parent undertaking of which is an insurance holding company which has its registered office in the Community shall be subject, to the extent and in the manner prescribed in Articles 5 (2), 6, 8 and 10, to supplementary supervision.

unchanged

3. Every insurance undertaking the parent undertaking of which is a mixed activity insurance holding company which has its registered office in the Community shall be subject, to the extent and in the manner prescribed in Articles 5 (2), 6 and 8, to supplementary supervision.

unchanged

4. The exercise of supplementary supervision in accordance with this Article shall not in any way imply that the competent authorities are required to play a supervisory role in relation to the insurance holding company or mixed activity insurance holding company or reinsurance undertaking standing alone.

unchanged

5. Member States or the competent authorities responsible for exercising supplementary supervision may decide that in the cases listed below an insurance undertaking or other undertaking which is a subsidiary or in which a participation is held need not be included in the supplementary supervision:

unchanged

— if the undertaking that should be included is situated in a third country where there are legal impediments to the transfer of the necessary information;

— if, in the opinion of the competent authorities, the undertaking that should be included is of negligible interest only with respect to the objective of monitoring insurance undertakings; or

— if, in the opinion of the competent authorities, the inclusion of the financial situation of the undertaking in the calculation of the adjusted solvency situation would be inappropriate or misleading as far as the objectives of the supplementary supervision of insurance undertakings are concerned.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

*Article 4**Article 4***Competent authorities for exercising supplementary supervision****Competent authorities for exercising supplementary supervision**

1. The supervision referred to in Article 3 shall be exercised by the competent authorities of the Member State that authorized the insurance undertaking under Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC.

unchanged

2. Where Member States have more than one competent authority for the prudential supervision of insurance undertakings and reinsurance undertakings, Member States shall take the requisite measures to organize coordination between such authorities.

unchanged

*Article 5**Article 5***Availability and quality of information****Availability and quality of information**

1. Member States shall prescribe that the competent authorities shall require that, in any insurance undertaking, which is a participating undertaking or related undertaking of one or more insurance undertakings, insurance holding companies or reinsurance undertakings, there are adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of supervision in accordance with this Directive.

unchanged

2. Member States shall take the necessary steps to ensure that there are no legal impediments preventing the undertakings that are subject to the supervision referred to in Article 3, and their related undertakings and participating undertakings, from exchanging amongst themselves any information which would be relevant for the purposes of supervision in accordance with this Directive.

unchanged

*Article 6**Article 6***Access to information****Access to information**

1. Member States shall provide that their competent authorities responsible for exercising the supervision referred to in Article 3 shall have access to any information which would be relevant for the purpose of supervision of an insurance undertaking which has participating undertakings, related undertakings or related undertakings of participating undertakings in the insurance undertaking. The competent authorities may address themselves to the undertakings concerned directly to ensure the communication of the required information, or they may receive such information through the insurance undertaking.

1. Member States shall provide that their competent authorities responsible for exercising supplementary supervision referred to in Article 3 shall have access to any information which would be relevant for the purpose of supervision of an insurance undertaking [...] subject to such supplementary supervision. The competent authorities may address themselves to the undertakings concerned directly to ensure the communication of the required information, [...] only when such information has been requested from the insurance undertaking and it has not been supplied by it.

## INITIAL PROPOSAL

2. Member States shall provide that their competent authorities may carry out, within their territory, themselves or through the intermediary of persons they appoint for that purpose, on-the-spot verification of the information received under paragraph 1.

3. Where, in applying paragraph 2, the competent authorities of one Member State wish in specific cases to verify the information concerning an insurance undertaking situated in another Member State, they must ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request, must, within the framework of their competence, act upon it either by carrying out the verification themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out.

*Article 7***Cooperation between competent authorities**

1. Where insurance undertakings are directly or indirectly related, or have a common participating undertaking and are established in different Member States, the competent authorities of each Member State shall communicate to each other all relevant information which may allow or aid the exercise of supervision in the framework of this Directive.

2. Where an insurance undertaking and a credit institution as defined in Council Directive 77/780/EEC<sup>(8)</sup> or investment firm as defined in Council Directive 93/22/EEC<sup>(9)</sup> are directly or indirectly related, or have a common participating undertaking, the competent authorities and the authorities entrusted with the public task of supervising those other undertakings shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task, in particular in the framework of this Directive.

3. Information received pursuant to this Directive and, in particular, any exchange of information between competent authorities which is provided for in this Directive shall be subject to the obligation of professional secrecy defined in Article 16 of Directive 92/49/EEC and Article 15 of Directive 92/96/EEC.

<sup>(8)</sup> OJ L 322, 17.12.1977, p. 30.

<sup>(9)</sup> OJ L 141, 11.6.1993, p. 27.

## AMENDED PROPOSAL

unchanged

3. Where, in applying paragraphs 1 and 2, the competent authorities of one Member State wish in specific cases to verify the information concerning an insurance undertaking situated in another Member State, they must ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request, must, within the framework of their competence, act upon it either by carrying out the verification themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out.

*Article 7***Cooperation between competent authorities**

unchanged

2. Where an insurance undertaking and a credit institution as defined in Council Directive 77/780/EEC<sup>(9)</sup> or investment firm as defined in Council Directive 93/22/EEC<sup>(10)</sup> are directly or indirectly related, or have a common participating undertaking, the competent authorities and the authorities entrusted with the public task of supervising those other undertakings shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task, in particular in the framework of this Directive.

unchanged

<sup>(9)</sup> OJ L 322, 17.12.1977, p. 30.

<sup>(10)</sup> OJ L 141, 11.6.1993, p. 27.



## INITIAL PROPOSAL

## AMENDED PROPOSAL

*Article 8**Article 8***Intra-group transactions****Intra-group transactions**

1. With a view to establishing whether transactions are, in principle, carried out according to normal market conditions, Member States shall provide that the competent authorities monitor:

unchanged

(a) the transactions referred to in paragraph 2 between an insurance undertaking and:

- (i) a related undertaking of the insurance undertaking;
- (ii) a participating undertaking in the insurance undertaking;
- (iii) a related undertaking of a participating undertaking in the insurance undertaking;

(b) the transactions referred to in paragraph 2 between the insurance undertaking and a natural person which holds a participation in:

- (i) the insurance undertaking or any of its related undertakings;
- (ii) a participating undertaking in the insurance undertaking;
- (iii) a related undertaking of a participating undertaking in the insurance undertaking.

2. Member States shall require at least an annual reporting by the insurance undertaking to the competent authorities of the transactions as described in paragraph 1, concerning in particular significant:

unchanged

- loans,
- guarantees and other off-balance sheet transactions,
- elements eligible for the solvency margin,
- investments.

*Article 9**Article 9***Adjusted solvency requirement****Adjusted solvency requirement**

1. Subject to Article 3 (1), Member States shall require that an adjusted solvency calculation shall be carried out in accordance with Annex I.

1. In the cases referred to in Article 3 (1), Member States shall require that an adjusted solvency calculation shall be carried out in accordance with Annex I.

2. The calculation described in Annex I shall include a related undertaking or participating undertaking which has its registered office in a third country and which is:

unchanged

- an undertaking which, if it were established in the Community, would be required to have an authorization in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC,
- a reinsurance undertaking, or
- an insurance holding company.

## INITIAL PROPOSAL

3. If the adjusted solvency situation is negative, the competent authorities shall take appropriate measures at the level of the relevant insurance undertaking.

*Article 10***Insurance holding companies**

1. In the case referred to in Article 3 (2), Member States shall require the application of one of the supplementary methods of supervision in accordance with Annex II.

2. In the case referred to in Article 3 (2), the calculation shall include all related undertakings of the insurance holding company referred to in Article 9 (2).

3. If, as a result, the competent authorities are of the opinion that the state of solvency of a related insurance undertaking of the insurance holding company is affected, the competent authorities shall take appropriate measures at the level of that insurance undertaking.

*Article 11***Implementation**

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 1 January 1997, and bring them into force no later than 1 July 1997. They shall immediately inform the Commission thereof.

2. Member States may decide to apply the definition of a 'participation' at a level of 25% for a period expiring not later than 1 July 2001.

3. When Member States adopt the measures referred to in paragraph 1, these shall contain a reference to this Directive, or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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

## AMENDED PROPOSAL

unchanged

*Article 10***Insurance holding companies**

unchanged

unchanged

unchanged

*Article 11***Implementation**

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 1 January 1999 (...). They shall immediately inform the Commission thereof.

2. Member States shall provide that the provisions referred to in paragraph 1 shall first apply to the supervision of accounts for financial years beginning on 1 January 2000 or during that calendar year.

3. Member States may decide to apply the definition of a 'participation' at a level of 25% for a period expiring not later than 1 July 2001.

4. When Member States adopt the measures referred to in paragraph 1, these shall contain a reference to this Directive, or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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

6. Five years at the latest after the deadline for implementation of this Directive, the Commission shall submit to the Insurance Committee a report on its implementation and, if appropriate, on any need for further harmonization of supplementary supervision of insurance undertakings in an insurance group.

INITIAL PROPOSAL	AMENDED PROPOSAL
<i>Article 12</i>	<i>Article 12</i>
<b>Entry into force</b>	<b>Entry into force</b>
This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.	unchanged
<i>Article 13</i>	<i>Article 13</i>
<b>Addressees</b>	<b>Addressees</b>
This Directive is addressed to the Member States.	unchanged
—————	
<i>ANNEX I</i>	<i>ANNEX I</i>
<b>CALCULATION OF THE ADJUSTED SOLVENCY SITUATION</b>	<b>CALCULATION OF THE ADJUSTED SOLVENCY SITUATION</b>
<b>1. Choice of method of calculation and general principles</b>	<b>1. Choice of method of calculation and general principles</b>
A. One or more of the methods described below shall be applied for the calculation of the adjusted solvency situation of insurance undertakings referred to in Article 3 (1). For this purpose, the elements eligible for the solvency margin shall be adjusted and compared with an adjusted solvency margin.	A. One or more of the methods described below shall be applied for the calculation of the adjusted solvency situation of insurance undertakings referred to in Article 3 (1). For this purpose, the elements eligible for the solvency margin mentioned in Article 16 paragraph 1 of Directive 73/239/EEC or in Article 18 of Directive 79/267/EEC shall be adjusted and compared with an adjusted solvency margin.
B. Regardless of the method applied, the intragroup creation of elements eligible for the solvency margin must be eliminated in the calculation of the adjusted solvency situation.	unchanged
For this purpose, where the methods do not already provide for this, for the calculation of the elements eligible for the adjusted solvency situation no account shall be taken of:	unchanged
(i) all elements eligible for the solvency margin of the insurance undertaking for which the adjusted solvency situation is calculated, which ultimately originate from:	unchanged
— a related undertaking of this insurance undertaking, or	
— a related undertaking of a participating undertaking in the insurance undertaking;	
and	
(ii) all elements eligible for the solvency margin of a related insurance undertaking or the notional solvency requirement of a related reinsurance undertaking, of a participating insurance undertaking for which the adjusted solvency situation is calculated, originating from:	unchanged
— the participating insurance undertaking,	
— related undertaking of the participating insurance undertaking,	
— a related undertaking of a participating undertaking in the participating insurance undertaking for which the adjusted solvency situation is calculated.	

## INITIAL PROPOSAL

Applying the same rules *mutatis mutandis*, the calculation shall also not take into account:

- all subscribed but non paid-in parts of the capital,
- profit reserves and future profits of life assurance undertakings.

C. With the exception of calculating a solvency deficit in a subsidiary, the calculation shall be carried out on a proportional basis<sup>(10)</sup> taking into account the relevant percentages of the mediating participations.

D. The competent authorities shall ensure that the adjusted solvency situation is calculated at the same frequency as the calculation of the solvency margin for insurance undertakings according to Directives 73/239/EEC and 79/267/EEC. The value of the assets and liabilities shall be assessed according to the relevant provisions of Directives 73/239/EEC and Directive 79/267/EEC, as amended by Directives 92/49/EEC and 92/96/EEC.

## 2. Methods and relevant situations

### 2.1. *Related insurance undertakings*

In the case of an insurance undertaking which is a directly participating undertakings in another insurance undertaking, the adjusted solvency calculation shall be carried out in accordance with one of the following methods.

In all methods and in the case that the insurance undertaking has more than one directly related insurance undertaking, the adjusted solvency calculation shall be carried out by integrating each of these directly related undertakings.

## AMENDED PROPOSAL

C. Without prejudice to the provision of section B of this Annex:

- [...] subscribed but non paid-in parts of the capital of a related insurance undertaking of the insurance undertaking for which the adjusted solvency is calculated, and
- profit reserves and future profits arising in a related life insurance undertaking of the insurance undertaking for which the adjusted solvency is calculated

may only be included in the calculation in so far as they are eligible to cover the solvency margin requirement of that related undertaking.

D. The calculation of the adjusted solvency of an insurance undertaking shall take account of the proportional share held by the relevant participating undertaking in the related undertakings concerned.

Proportional share means either, where method 1 or method 2 is used, the proportion of the subscribed capital that is owned, directly or indirectly, by the relevant participating undertaking or, where method 3 is used, the percentages used in drawing up the consolidated accounts.

However, whichever method is used, when the related undertaking is a subsidiary and has a solvency deficit, the total solvency deficit of the subsidiary has to be taken into account.

E. The competent authorities shall ensure that the adjusted solvency situation is calculated at the same frequency as the calculation of the solvency margin for insurance undertakings according to Directives 73/239/EEC and 79/267/EEC. The value of the assets and liabilities shall be assessed according to the relevant provisions of Directives 73/239/EEC, [...] 79/267/EEC [...] and 91/674/EEC.

## 2. Methods and relevant situations

### 2.1. *Related insurance undertakings*

unchanged

unchanged

<sup>(10)</sup> Where this Annex refers to a proportional share or relevant percentage, the calculation shall be based on the basis of the percentage used for the establishment of the consolidated accounts.

## INITIAL PROPOSAL

In cases of successive participations (e. g. an insurance undertaking is a participating undertaking in another insurance undertaking which is also a participating undertaking in an insurance undertaking) the adjusted solvency calculation shall be carried out at the level of each participating undertaking which has at least one related insurance or reinsurance undertaking.

If method 3 is applied, and without prejudice to specific provisions contained in other Directives, Member States may waive calculation of the adjusted solvency situation for an insurance undertaking, if this undertaking is a related undertaking of another insurance undertaking in the same Member State, which calculates an adjusted solvency situation taking into account its related insurance undertakings and reinsurance undertakings. The same waiver shall be allowed where the participating undertaking is an insurance holding company which has its head office in the same Member State as the insurance undertaking, provided that it is subject to the same standard of supervision as that exercised over insurance undertakings. In both cases, steps must be taken to ensure that capital is distributed adequately within the insurance group, and is genuinely available for transfer between the related and participating undertaking or undertakings concerned.

**METHOD 1: *Deduction and aggregation method***

The adjusted solvency situation of the participating insurance undertaking is the difference between:

(i) the sum of:

1. the elements eligible for the solvency margin of the participating undertaking;
  2. the proportional share of the participating undertaking in the solvency margin of the related undertaking, which originates from the participating undertaking;
- and

(ii) the sum of:

- (a) the book value in the participating undertaking of all elements eligible for the solvency margin of the related undertaking;
- (b) the solvency requirement of the participating undertaking;
- (c) the proportional share of the solvency requirement of the related undertaking; if the related undertaking is a subsidiary and has a solvency deficit, the total requirement has to be taken into account.

## AMENDED PROPOSAL

unchanged

[...] Member States may waive calculation of the adjusted solvency [...] of an insurance undertaking:

- either if the undertaking is a related undertaking of another insurance undertaking authorized in the same Member State, and that related undertaking is taken into account in the calculation of the adjusted solvency of the participating insurance undertaking;
- or if the undertaking is a related undertaking of an insurance holding company which has its registered office in the same Member State as the insurance undertaking, and both the holding company and the related insurance undertaking are taken into account in the calculation carried out.

Member State may also provide for the waiver involved in the above two cases to be granted in the case of an insurance undertaking which is a related undertaking of another insurance undertaking or insurance holding company that has its registered office in another Member State, if the competent authorities of the Member States concerned have agreed to allow the competent authorities of the other Member State to carry out supplementary supervision.

In all cases, the waiver may only be granted if the competent authorities are satisfied that the elements eligible for the solvency margin of the insurance undertakings to be included in the calculation are distributed adequately [...] and genuinely available for transfer between those undertakings.

**METHOD 1: *Deduction and aggregation method***

unchanged

## INITIAL PROPOSAL

## AMENDED PROPOSAL

**METHOD 2: Requirement deduction method**

The adjusted solvency situation of the participating insurance undertaking is the difference between<sup>(11)</sup>:

- (i) the sum of the elements eligible for the solvency margin of the participating undertaking;
- and
- (ii) the sum of:
  - (a) the solvency requirement of the participating undertaking;
  - (b) the proportional share of the solvency requirement of the related undertaking; if the related undertaking is a subsidiary and has a solvency deficit, the total requirement has to be taken into account.

**METHOD 3: Accounting consolidation-based method**

The calculation of the adjusted solvency situation of the participating undertaking shall start from the consolidated accounts in order to calculate the consolidated elements eligible for the solvency margin of the participating and the related undertakings concerned in accordance with Directive 91/674/EEC and Directive 73/239/EEC and Directive 79/267/EEC, as amended by Directives 92/49/EEC and 92/96/EEC.

The adjusted solvency situation of the participating undertaking is the difference between:

- (i) the elements eligible for the solvency margin as shown in the consolidated accounts;
- and
- (ii) the sum of the solvency requirement of the participating undertaking, and the full or relevant proportional share of the solvency requirement of the related undertaking. If the related undertaking is a subsidiary and has a solvency deficit, its solvency requirement shall be taken into account in full.

**2.2. Related reinsurance undertaking**

For each related reinsurance undertaking of an insurance undertaking, a notional solvency requirement shall be established according to the same rules that have been laid down in Article 16 (3) of Directive 73/239/EEC or Article 18 (3) of Directive 79/267/EEC. The same own funds elements for the related reinsurance undertaking shall be recognized as eligible for its national own funds, as those according to the rules laid down in Article 24 of Directive 92/49/EEC or Article 25 of Directive 92/96/EEC. The value of the assets and liabilities shall be assessed according to the same rules that have been laid down in Directive 73/239/EEC and Directive 79/267/EEC, as amended by Directives 92/49/EEC and 92/96/EEC.

The adjusted solvency situation of the participating insurance undertaking is obtained by applying the methods and general principles described above.

<sup>(11)</sup> The participation in a related undertaking must be included at the net asset value of shares.

**METHOD 2: Requirement deduction method**

unchanged

**METHOD 3: Accounting consolidation-based method**

unchanged

**2.2. Related reinsurance undertaking**

unchanged

## INITIAL PROPOSAL

## AMENDED PROPOSAL

2.3. *Intermediate insurance holding company*

## Methods 1 and 2

For each participating insurance undertaking in an insurance holding company which is a participating undertaking in an insurance undertaking or reinsurance undertaking, the adjusted solvency situation shall be calculated applying the methods and general principles described above, *mutatis mutandis*.

## Method 3

The insurance holding company shall be taken into account in the assessment by integration in the accounting consolidation applying the methods and general principles described above, *mutatis mutandis*.

## 3. Undertakings in third countries

Where there are legal impediments to the transfer of the information necessary for the inclusion of a related undertaking situated in a third country as referred to in Article 9 (2), the calculation shall, in applying the methods referred to in this Annex, deduct from the elements eligible for the adjusted solvency margin, the book value in the participating undertaking of all elements eligible for the solvency margin of the related undertaking.

## 4. Non-specified cases

The competent authorities shall require in cases that are not covered in 2.1—2.3, an appropriate combination of the described methods.

2.3. *Intermediate insurance holding company*

## Methods 1 and 2

For each participating insurance undertaking in an insurance holding company which is a participating undertaking in an insurance undertaking or reinsurance undertaking, the adjusted solvency situation shall be calculated applying the methods and general principles described above, *mutatis mutandis*. When carrying out this calculation, resources of the insurance holding company which fulfil the same conditions as laid down in Article 16 paragraph 1 of Directive 79/239/EEC or in Article 18 of Directive 79/267/EEC shall be recognized as elements eligible for the solvency margin.

## Method 3

The insurance holding company shall be taken into account in the assessment by integration in the accounting consolidation applying the methods and general principles described above, *mutatis mutandis*. When carrying out this calculation, resources of the insurance holding company which fulfil the same conditions as laid down in Article 16 paragraph 1 of Directive 73/239/EEC or in Article 18 of Directive 79/267/EEC shall be recognized as elements eligible for the solvency margin.

## 3. Undertakings in third countries

When calculating the adjusted solvency of an insurance undertaking which is a participating undertaking in a third country insurance undertaking, the latter shall be treated, for the sole purpose of that calculation, in a similar way to a related insurance undertaking, by applying the general principles and methods described in this Annex.

However, when the third country in which that undertaking is established makes it subject to authorization and imposes on it a solvency requirement comparable to that laid down in Directives 73/239/EEC or 79/267/EEC, taking into account the elements of cover of that requirement, Member States may provide that the calculation shall take into account, as regards that undertaking, the solvency requirement and the elements eligible to satisfy that requirement as laid down by the third country in question.

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## INITIAL PROPOSAL

## AMENDED PROPOSAL

## ANNEX II

## ANNEX II

SUPPLEMENTARY SUPERVISORY  
METHODS FOR INSURANCE  
UNDERTAKINGS THAT ARE  
SUBSIDIARIES OF AN INSURANCE  
HOLDING COMPANY WHICH IS THE  
ULTIMATE PARENT OF AN INSURANCE  
UNDERTAKING IN A GROUP

SUPPLEMENTARY SUPERVISORY  
METHODS FOR INSURANCE  
UNDERTAKINGS THAT ARE  
SUBSIDIARIES OF AN INSURANCE  
HOLDING COMPANY WHICH IS THE  
ULTIMATE PARENT OF AN INSURANCE  
UNDERTAKING IN A GROUP

**1. Choice of supplementary supervisory method**

unchanged

- One of the methods described below shall be applied in order to check that its capital is sufficient.
- In the case of insurance undertakings referred to in Article 3 paragraph 2, which are the subsidiaries of an insurance holding company and which are established in different Member States, the competent authorities shall ensure that the methods described in this Annex are applied in a coherent manner.
- The competent authorities shall exercise the supplementary supervision in the same frequency as the calculation of the solvency margin for insurance undertakings according to Directives 73/239/EEC and 79/267/EEC.

**2. Methods**

**2. Methods**

2.1. *'Solvency warning test'*

2.1. *'Solvency warning test'*

The capital of an insurance holding company shall equal or exceed the sum of the solvency requirements of its related insurance undertakings and the notional solvency requirements of its related reinsurance undertakings.

The resources of an insurance holding company which fulfil the same conditions as laid down in Article 16 paragraph 1 of Directive 73/239/EEC or in Article 18 of Directive 79/267/EEC shall equal or exceed the sum of the solvency requirements of its related insurance undertakings and the notional solvency requirements of its related reinsurance undertakings.

2.2. *'Accounting consolidation test'*

2.2. *'Accounting consolidation test'*

The capital situation of an insurance holding company must equal or exceed the sum of the solvency requirements of its related insurance undertakings and the notional solvency requirements of its related reinsurance undertakings. The capital situation of this insurance holding company is calculated in accordance with the accounting consolidation method in Annex 1, under 2.3, method 3.

The resources of an insurance holding company must equal or exceed the sum of the solvency requirements of its related insurance undertakings and the notional solvency requirements of its related reinsurance undertakings. The resources of this insurance holding company, including the elements which fulfil the same conditions as laid down in Article 16 paragraph 1 of Directive 73/239/EEC or in Article 18 of Directive 79/267/EEC, are calculated in accordance with the accounting consolidation method in Annex 1, under 2.3, method 3.

**3. Undertakings in third countries**

**3. Undertakings in third countries**

Where there are legal impediments to the transfer of the information necessary for the inclusion of a related undertaking situated in a third country as referred to in Article 10 (2), the calculation shall, in applying the methods referred to in this Annex, deduct from the elements eligible for the adjusted solvency margin the book value of the participation and of all other elements eligible for the solvency margin of the related undertaking, which are held by the insurance undertaking.

unchanged



**Proposal for a Council Regulation (EC) amending Regulation (EC) No 3295/94 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods**

(98/C 108/10)

COM(98) 25 final — 98/0018 (ACC)

*(submitted by the Commission on 29 January 1998)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas, pursuant to Article 15 of Council Regulation (EC) No 3295/94<sup>(1)</sup>, conclusions should be drawn from the experience gained during the early years of its implementation with a view to improving the operation of the system it set up;

Whereas the marketing of counterfeit goods infringing patents on products or, where they concern patents on products, supplementary protection certificates for medicinal products as provided for in Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products<sup>(2)</sup>, as amended by the Act of Accession of Austria, Finland and Sweden, or supplementary protection certificates for plant protection products, as provided for in Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products<sup>(3)</sup> causes serious injury to their holders and constitutes an unfair and unlawful business activity; whereas such goods should as far as possible be prevented from being placed on the market and measures should be adopted to that end to deal effectively with this unlawful activity without impeding the freedom of legitimate trade; whereas this objective is also being pursued through efforts being made along the same lines at international level;

Whereas, in order to guarantee the integrity of the Community's external frontier, the customs authorities should be permitted to take action against counterfeit, pirated and associated goods whatever their customs status; whereas the release for free circulation in the Community, entry for a suspensive procedure, re-export or placing in a free zone or free warehouse of such goods should therefore be prohibited; whereas moreover the customs authorities should be authorized to take action as soon as the said goods are brought into the Community;

Whereas, as regards suspensive procedures, free zones and free warehouses, re-export subject to notification and temporary storage, the customs authorities will act only where goods suspected to be counterfeit or pirated are discovered during a check;

Whereas Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark<sup>(4)</sup>, as amended by Regulation (EC) No 3288/94<sup>(5)</sup>, has established a system whereby right holders can, by means of a single procedure, obtain Community trade marks enjoying uniform protection and producing their effects throughout the Community;

Whereas to enhance the Community dimension of the said trade mark the administrative procedure for obtaining customs protection should be simplified;

Whereas trade mark holders should have access to a system whereby the granting of a single application for action by the competent authority in one Member State can bind one or more other Member States as well;

Whereas a single period of validity should be set in the interests of the uniform application of such decisions in the Member States concerned,

<sup>(1)</sup> OJ L 341, 30.12.1994, p. 8.

<sup>(2)</sup> OJ L 182, 2.7.1992, p. 1.

<sup>(3)</sup> OJ L 198, 8.8.1996, p. 30.

<sup>(4)</sup> OJ L 11, 14.1.1994, p. 1.

<sup>(5)</sup> OJ L 349, 31.12.1994, p. 83.

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 3295/94 is hereby amended as follows:

1. The title is replaced by the following:

‘Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures concerning the entry into the Community and the export and re-export from the Community of goods infringing certain intellectual property rights’.

2. Article 1 is amended as follows:

(a) The second indent of paragraph 1(a) is replaced by the following:

‘— found in the course of checks on goods under customs supervision within the meaning of Article 37 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code(\*) placed under a suspensive procedure within the meaning of Article 84(1)(a) of that Regulation, re-exported subject to notification or placed in a free zone or free warehouse within the meaning of Article 166 thereof;

(\*) OJ L 302, 19.10.1992, p. 1.’

(b) Paragraph 2 is amended as follows:

(i) a fourth indent is added to point (a) as follows:

‘— goods infringing, in the Member State in which the application for action by the customs authorities is made, a patent on a product under the law of that Member State or a supplementary protection certificate as provided for by Council Regulation (EEC) No 1768/92(\*) or Council Regulation (EC) No 1610/96(\*\*);

(\*) OJ L 182, 2.7.1992, p. 1.

(\*\*) OJ L 198, 8.8.1996, p. 30.’

(ii) Point (c) is replaced by the following:

‘(c) “holder of a right”: means the holder of a trade mark, a patent on a product or a certificate, as referred to in (a), and/or one of the rights referred to in (b), or any other person authorized to use that trade mark, patent on a product, certificate and/or right, or a representative thereof’.

(iii) The following points (e) and (f) are added:

‘(e) “Community trade mark” means the trade mark defined in Article 1 of Regulation (EC) No 40/94(\*).

(f) “certificate” means the supplementary protection certificate provided for by Regulation (EEC) No 1768/92 or by Regulation (EC) No 1610/96.

(\*) OJ L 11, 14.1.1994, p. 1.’

(c) Paragraph 3 is replaced by the following:

‘3. Any mould or matrix which is specifically designed or adapted for the manufacture of a counterfeit trade mark or of goods bearing such a trade mark, of goods infringing a patent on a product or a certificate or of pirated goods shall be treated as “counterfeit or pirated goods”, as the case may be, provided that the use of such moulds or matrices infringes the rights of the holder of the right in question under Community law or the law of the Member State in which the application for action by the customs authorities is made.’

(d) The first subparagraph of paragraph 4 is replaced by the following:

‘This Regulation shall not apply to goods which bear a trade mark with the consent of the holder of that trade mark or which are protected by a patent on a product or a certificate, copyright or related right or a design right and which have been manufactured with the consent of the holder of the right but are placed in one of the situations referred to in paragraph 1(a) without the latter’s consent.’

3. Article 2 is replaced by the following:

*Article 2*

The entry into the Community, release for free circulation, export, re-export, placing under a suspensive procedure or placing in a free zone or free warehouse of goods found to be counterfeit or pirated on completion of the procedure provided for in Article 6 shall be prohibited.’

4. Article 3 is amended as follows:

(a) The following text is added as the second subparagraph of paragraph 1:

‘Where the applicant holds a Community trade mark, the application may seek action not only by the customs authorities of the Member State in which the application is lodged but by the

customs authorities of one or more other Member States as well.'

- (b) Paragraphs 3 and 4 are replaced by the following:

'3. Save where the second subparagraph of paragraph 1 is applied, the application must specify the length of the period during which the customs authorities are requested to take action.

Applications under the second subparagraph of paragraph 1 shall indicate the Member State or States in which the customs authorities are requested to take action.

4. The applicant may be charged a fee to cover the administrative costs incurred in dealing with the application.

The applicant or his representative may also be charged a fee in each of the Member States where the decision granting the application is effective to cover the costs incurred in implementing the said decision.

Such fees shall not be disproportionate to the service provided.'

- (c) The following third subparagraph shall be inserted into paragraph 5:

'Where an application is submitted under the second subparagraph of paragraph 1 the said period shall be set at one year, but may be extended for a further year, at the right holder's request, by the service which took the original decision.'

- (d) The following paragraph 9 is added:

'9. The provisions of paragraphs 1 to 8 shall apply *mutatis mutandis* to the extension of the decision on the original application.'

5. Article 5 is replaced by the following:

*'Article 5*

1. The decision granting the application by the holder of the right shall be forwarded immediately to the customs offices of the Member State which are liable to be concerned with the goods alleged in the application to be counterfeit or pirated.

2. Where an application is submitted under the second subparagraph of Article 3(1), the first indent of Article 250 of Regulation (EEC) No 2913/92 shall apply *mutatis mutandis* to the decision granting the said application and the decisions extending or repealing it.

The service which adopted those decisions shall forward certified copies thereof to the relevant service of the customs authority in the Member State or States where the applicant has requested that action be taken.

The Member State or States so notified shall immediately acknowledge receipt of the decisions referred to in the first subparagraph.

The period referred to in the third subparagraph of Article 3(5) shall run from the date on which the decision granting the application was adopted. The Member States to which the said decision is addressed may suspend implementation until the free referred to in the second subparagraph of Article 3(4) has been paid and the security referred to in Article 3(6) has been provided.'

6. Article 7(2) is replaced by the following:

'2. In the case of goods suspected of infringing patents on products, certificates or design rights, the owner, the importer or the consignee of the goods shall be able to have the goods in question released or their detention revoked against provision of a security, provided that:

- the customs service or office referred to in Article 6(1) has been informed, within the time limit referred to in paragraph 1, that the matter has been referred to the authority competent to take a substantive decision referred to in the aforesaid paragraph 1,
- on expiry of the time limit, the authority empowered for this purpose has not imposed interim measures, and
- all the customs formalities have been completed.

The security must be sufficient to protect the interests of the holder of the right. Payment of the security shall be without prejudice to the other remedies open to the holder of the right. Where the matter has been referred to the authority competent to take a substantive decision other than on the initiative of the holder of the patent on a product, certificate or design right, the security shall be released if that person does not exercise his right to institute legal proceedings within 20 working days of the date on which he is notified of the suspension of release or detention. Where the second subparagraph of paragraph 1 applies, this period may be extended to a maximum of 30 working days.'

7. The introductory wording of Article 8(1) is replaced by the following:

'Without prejudice to the other forms of legal recourse open to the right holder, Member States shall adopt the measures necessary to allow the competent authorities.'

8. In Article 9, paragraphs 1 and 2 are replaced by the following:

‘1. Save as provided by the law of the Member State in which an application in accordance with Article 3(2) is lodged or, in the case of an application under the second subparagraph of Article 3(1), in which counterfeit or pirated goods escape detection by a customs office, the acceptance of an application shall not entitle the holder of a right to compensation where such goods are not detected by a customs office and are released or no action is taken to detain them in accordance with Article 6(1).

2. Save as provided by the law of the Member State in which the application is made or, in the case of an application under the second subparagraph of Article 3(1), in which loss or damage is incurred, exercise by a customs office or by another duly

empowered authority of the powers conferred on them in regard to combating counterfeit or pirated goods shall not render them liable to the persons involved in the operations referred to in Article 1(1)(a) or Article 4, in the event of their suffering loss or damage as a result of their action.’

#### *Article 2*

This Regulation shall enter into force on the twentieth day following that 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.

**Proposal for a Council Decision on measures of financial assistance for innovative and job-creating small and medium-sized enterprises (SMEs)**

**The growth and employment initiative**

(98/C 108/11)

COM(98) 26 final — 98/0024 (CNS)

*(submitted by the Commission on 6 February 1998)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Having regard to the opinion of the Committee of the Regions,

(1) Whereas the European Council, meeting in Amsterdam on 16 and 17 June 1997, in the context of measures for the alleviation of unemployment, invited the European Investment Bank (EIB) and the European Investment Fund (EIF), *inter alia*, to develop a facility to provide venture capital for high-technology projects of SMEs and by so doing, acknowledged, not only the link between SMEs, innovation and technology, and new jobs, but also the role of risk-capital in underpinning job-creation;

(2) Whereas the European Special Council on Employment, meeting in Luxembourg on 20 and 21 November 1997, welcomed the European Parliament's Growth and Employment Initiative, providing for the strengthening of budgetary resources earmarked for employment; whereas the European Council invited the Commission to make proposals, as soon as possible, for new financial instruments to support innovative and job-creating SMEs, so that the Council can adopt them speedily; whereas these new instruments must reinforce the European Technology Facility, financed by the European Investment Bank and administered by the European Investment Fund, by opening a 'risk capital window', supporting the creation of transnational joint ventures between SMEs within the European Union and establishing within the European Investment Fund a special guarantee fund to facilitate risk-taking by institutions providing finance for small and medium-sized enterprises;

(3) Whereas the EIB and EIF have already responded by creating the European Technology Facility (ETF), which will provide venture-capital for technology oriented SMEs by using established venture-capital funds as intermediaries;

(4) Whereas, on 9 December 1996, the Council adopted Decision 97/15/EC<sup>(1)</sup> on a third multiannual programme for small and medium-sized enterprises in the European Union; whereas this programme includes the objectives of improving access to loan and risk capital financing, facilitating the development of specific financial instruments and stimulating the development of capital markets for fast-growing SMEs;

(5) Whereas, on 5 November 1997, the Commission adopted Decision 97/761/EC<sup>(2)</sup>, approving a support mechanism for the creation of transnational joint ventures by SMEs in the European Union, a financially limited initiative launched under the third multiannual programme for SMEs;

(6) Whereas, on 15 December 1994, the Council adopted Decision 94/917/EC<sup>(3)</sup>, adopting a specific programme for the dissemination and optimization of the results of activities in the field of research and technological development, including demonstration (1994—1998) which provides for activities to improve the European environment for financing the exploitation, adaptation and dissemination of technology by appropriate Community schemes; whereas the Commission on 25 November 1996 adopted a communication on the 'First action plan for innovation in Europe — innovation for growth and employment'<sup>(4)</sup>, setting out for innovation financing to be facilitated in Europe, especially by encouraging investment in risk capital and equity, particularly in start-up investment and innovative, high-growth firms, which are a major source of new jobs, and by reinforcing European Investment Fund action in favour of innovation; whereas this Decision should

<sup>(1)</sup> OJ L 6, 10.1.1997, p. 25.

<sup>(2)</sup> OJ L 310, 13.11.1997, p. 28.

<sup>(3)</sup> OJ L 361, 31.12.1994, p. 101.

<sup>(4)</sup> COM(96) 589 final, 25 November 1996.

be implemented in appropriate coordination with the abovementioned activities;

- (7) Whereas the lack of venture capital constitutes a particular difficulty for new firms and SMEs looking to expand, especially those exploiting new technology and innovative ideas; whereas this segment of the venture-capital market is underdeveloped in Europe and entails the highest risks which potentially translate to high losses; whereas a determined public sector involvement will assist private sector operators to make onward investments to early stage and emerging SMEs;
- (8) Whereas SMEs frequently encounter difficulties in obtaining bank financing for the development of transnational joint ventures because of the higher risk for financial institutions; whereas the development of joint ventures between Community SMEs makes it possible to make better use of the opportunities of the Internal Market, to increase investment and trade and to have a positive effect on employment and economic growth; whereas advances and subsidies constitute the most suitable measure to overcome the financial obstacles for SMEs to create transnational joint ventures;
- (9) Whereas bank loans constitute an important source of external funding for SMEs; whereas the raising of debt finance is difficult for SMEs as banks are often reluctant to lend to them; whereas loans are often only available to SMEs against tangible security; whereas loan guarantees constitute a cost-effective instrument to facilitate access to loans; whereas both tangible and intangible investments should be eligible under the scheme; and whereas a significant leverage effect can be achieved with a guarantee instrument;
- (10) Whereas this Decision constitutes the legal basis for specific measures which are complementary with other Community measures and which cannot be better carried out at Member State level and therefore respect the principle of subsidiarity; whereas the Decision is limited to the minimum necessary to achieve its objectives and does not exceed what is necessary to this end and therefore respects the principle of proportionality;
- (11) Whereas the definition of SMEs as set out in Commission Recommendation 96/280/EC<sup>(5)</sup> should be applied in the implementation of this Decision;
- (12) Whereas the EIF was set up in June 1994 to contribute to the pursuit of Community objectives by stimulating investment in trans-European networks and small and medium-sized enterprises; whereas the Community has become a member of the EIF by virtue of Council Decision 94/375/EC<sup>(6)</sup>;

whereas the Fund is empowered to issue loan guarantees and to make equity investments according to its statute;

- (13) Whereas the EIF has indicated its willingness to participate in the implementation of the ETF start-up and the SME guarantee facility schemes under this Decision;
- (14) Whereas the Joint European Venture (JEV) scheme will be administered by the Commission in accordance with its Decision 97/761/EC;
- (15) Whereas the measures financed by the EIB and the EIF do not fall under the provisions of the Treaty on State aid; whereas those measures, if they have effects on beneficiary SMEs comparable to those arising from State aid, have to observe the limits and conditions laid down for the compatibility of comparable State aid;

HAS DECIDED AS FOLLOWS:

#### *Article 1*

##### **Objective of the programme**

A programme of financial assistance for innovatory and job-creating small and medium-sized enterprises is hereby set up with the aim to facilitate the establishment and growth of innovative SMEs (hereinafter 'the programme') as defined in Recommendation 96/280/EC, by supporting their investment activity through increased availability of finance, and thereby stimulating the creation of employment.

#### *Article 2*

##### **Description of the programme**

The programme shall consist of three complementary facilities which shall be a risk-capital scheme ('ETF Start-up') managed by the European Investment Fund (EIF), a scheme for financial contributions supporting the creation of transnational joint-ventures by SMEs within the European Union ('Joint European Venture') managed by the Commission and a guarantee scheme ('SME Guarantee Facility') managed by the EIF.

#### *Article 3*

##### **The ETF start-up facility**

1. The Community shall provide risk-capital participations in SMEs primarily at their establishment

<sup>(5)</sup> OJ L 107, 30.4.1996, p. 4.

<sup>(6)</sup> OJ L 173, 7.7.1994, p. 12.

and early stages and/or innovative SMEs through investments in relevant specialized venture-capital funds, particularly in smaller or newly established funds, funds operating regionally or funds focused on specific industries or technologies, or venture-capital funds financing the exploitation of R&D results, e.g. funds linked to research centres and science parks.

2. The EIF shall select, make and manage the investments into the venture-capital funds. The detailed terms and conditions for implementing the ETF start-up facility, including its monitoring and control, shall be laid down in a cooperation agreement between the Commission and the EIF.

3. The cooperation agreement shall take account of the indicative outline set out in Annex I.

#### *Article 4*

##### **Joint European Venture — JEV**

1. The Community shall provide financial contributions to SMEs for the setting-up of new transnational joint ventures within the European Union. The Community contribution is intended to cover a part of the expenses incurred in the conception and the setting-up of transnational joint ventures. The maximum contribution per project shall be ECU 100 000 covering:

- (a) up to 50 % of the eligible expenses, with a maximum of ECU 50 000;
- (b) up to 10 % of the total amount of investment made in fixed assets.

2. Eligible expenses for the purposes of point (a) of paragraph 1 are those essential expenses related to the conception and setting-up of a transnational joint venture defined in point 6 of Annex II and created by European SMEs.

3. Applications for contributions shall be channelled to the Commission through a network of financial intermediaries. In the implementation of the JEV, the indicative outline set out in Annex II shall be taken into account.

#### *Article 5*

##### **The SME guarantee facility**

1. The Community shall provide budgetary allocations for the purpose of covering the cost of guarantees and counter-guarantees issued by the EIF in order to promote an increase in the availability of loans supported by

guarantee schemes operating in the Member States in the public or the private sector, including mutual guarantee schemes; the scheme may also support any risk-sharing SME instruments the EIB or any other appropriate financial institutions may make available.

2. The budgetary allocation shall cover the full cost of the facility, including EIF's guarantee losses and any other eligible costs or expenses of the facility. The cost of the facility shall be capped; there shall be no contingent liability on the Community budget.

3. The facility shall be targeted to SMEs with growth and therefore employment creation potential. Priority shall be given to small enterprises with up to 100 employees. The guarantees issued by the EIF shall be partial guarantees; there shall always be a risk-sharing arrangement between the EIF and the intermediary financial institution.

4. The detailed terms and conditions for implementing the SME guarantee facility, including its monitoring and control, shall be laid down in a cooperation agreement between the Commission and the EIF.

5. The cooperation agreement shall take into account the indicative outline set out in Annex III.

#### *Article 6*

##### **Reporting and evaluation**

1. The Commission shall report annually to the European Parliament and the Council on the implementation of this Decision, notably on its impact on the access to financing by SMEs, its immediate effects on the creation of employment and the prospects for the creation of employment in the long term.

2. The Commission shall within 48 months at most from the date of its adoption, provide an evaluation on the programme, notably on its overall utilization, its immediate effects on the creation of employment and the prospects for the creation of employment in the long term, in particular for the purpose of assessing possible future action beyond the initial period.

#### *Article 7*

##### **Final provision**

This Decision shall enter into force on adoption by the Council and shall cover a three-year period.

## ANNEX I

**Indicative outline of the implementation of the ETF start-up scheme****1. Introduction**

The ETF start-up will be operated by the EIF on a trust basis. The EIF will invest the Community funds allocated for the scheme in relevant specialized venture-capital funds, particularly in smaller or newly established funds, funds operating regionally or funds focused on specific industries or technologies, or venture capital funds financing the exploitation of R&D results, e.g. funds linked to research centres and science parks which in turn provide risk capital for SMEs. The ETF start-up scheme will reinforce the European Technology Facility established by the EIB in cooperation with the EIF by adopting an investment policy involving a higher risk-profile, both as regards intermediary funds and their investment policies.

**2. Intermediaries**

The EIF shall use its best efforts to target investments into smaller or newly established funds, funds covering specific regions, whether assisted or not, or focusing on specific industries or technologies, or venture-capital funds linked to research centres and science parks. The intermediaries will be selected in conformity with best business and market practice in a fair and transparent manner in order to avoid any distortion of competition, having regard to the aim of working through a wide range of specialized funds.

**3. Maximum investment**

The maximum aggregate investment in an intermediary venture-capital fund shall be 25% of the total equity capital held by the relevant fund, or 35% in exceptional cases such as new funds which are likely to have a particularly strong catalytic role in the development of venture-capital markets for a specific technology or in a specific region. No commitment in a single venture-capital fund shall exceed ECU 10 million. The intermediary venture-capital funds shall comply with established market practices with regard to portfolio diversification.

**4. Life of the facility**

The ETF start-up scheme is established as a long-term facility that will usually take 5 to 12-year positions in venture-capital funds. The EIF shall use its best efforts to fully commit the funds allocated to the facility not later than during the calendar year following the year in which the relevant budgetary payments are made. In any case, investments will not exceed 16 years from the time of signature of the cooperation agreement.

**5. Realization of investments**

As most of the investments to be made under the ETF start-up scheme will be in unquoted, illiquid venture-capital funds, the realization of those investments will be based on the distribution of the proceeds received by the intermediary funds from the sale of their investments in SMEs.

**6. Reinvestment of proceeds from realized investments**

Proceeds from realized investments may be reinvested during the first four years of the operations of the scheme. The reinvestment period can be extended by up to three years, subject to a satisfactory evaluation of the facility 48 months after its adoption.

**7. Trust account**

A separate trust account shall be set up within the EIF to hold budgetary funds underpinning the scheme. This account shall be interest bearing; interest earned shall be added to the resources of the facility. The investments made by the EIF under the ETF start-up scheme and EIF's management fees and other eligible expenses shall be debited from, and the proceeds from realized investments shall be credited to the trust account. After the fourth anniversary of the scheme or, provided that the reinvestment period of the scheme is extended, after the end of the extended reinvestment period, any balances on the trust account, other than



funds committed and not yet drawn down/invested and funds reasonably required to cover eligible costs and expenses, such as EIF's management fee, shall be returned to the Community budget.

#### 8. Court of Auditors

Appropriate arrangements shall be made to allow the Court of Auditors of the European Union to exercise its mission in order to verify the regularity of payments made.

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### ANNEX II

#### Indicative outline of the implementation of the Joint European Venture scheme

##### 1. Introduction

The Joint European Venture scheme will provide financial contributions to support the establishment of transnational joint ventures between SMEs within the European Union. It is based on the limited initiative launched under the third multiannual programme for SMEs, adopted by Commission Decision 97/761/EC of 5 November 1997, approving a support mechanism for the creation of transnational joint ventures by SMEs in the European Union.

##### 2. Intermediaries

The scheme will be accessible to SMEs through intermediaries, which may be banks or other appropriate financial institutions. The network of financial intermediaries will comprise financial intermediaries selected in conformity with the abovementioned initiative of 5 November 1997, following a new call for expression of interest published in the *Official Journal of the European Communities*. The Commission will check the eligibility of the applications in the light of the programme objectives.

##### 3. Application procedure

Applications for financial contributions under this scheme shall be submitted by SMEs to one of the intermediaries. The intermediary shall be entrusted with the evaluation of the application, and, in the event of a favourable opinion, passing it on to the Commission. The Commission shall check the eligibility of the applications in the light of the objectives of the scheme, in particular the employment effect.

##### 4. Payment of financial contributions

The contributions, the total of which shall not exceed ECU 100 000 shall be paid to the SME, through the financial intermediary which shall pass on all payments without delay and deductions.

Payments under the first tranche, up to ECU 50 000, to cover 50% of eligible expenditure for the conception and preparation of the joint venture, shall be made in two instalments. A reimbursable advance of 50% (maximum ECU 25 000) shall be paid as soon as the application has been accepted by the Commission. A second payment of 50% (maximum ECU 25 000) shall be made on presentation of supporting documents for all the expenditure incurred and on the basis of a detailed project evaluation report which permits an assessment of the feasibility of the joint venture as well as the investment envisaged. After acceptance of the documents by the Commission, the reimbursable advance will be converted into a grant.

Payment under the second tranche, covering up to 10% of the investment, shall be made after receipt by the Commission of satisfactory evidence of completion of the investment and commencement of the new activity.

Any SME benefiting from a payment under the second tranche (10% of the investment) must undertake to submit to the Commission, for a period of five years, information of the activities of the joint venture set up and, in particular, on the number of jobs created.

#### 5. External management cost

In the management of the programme, recourse shall be made to external assistance specialized in monitoring projects. This assistance shall be provided by external contractors selected following a call for expression of interest. A maximum of 5 % of the budgetary allocation shall be reserved to cover the external management cost of the initiative.

#### 6. Definition of a joint venture

The concept of a 'joint venture' shall be interpreted broadly, that is including any form of consortium, partnership or joint venture in the strict sense, which should lead to a new legal entity, of an industrial, service, commercial or craft nature, subject to the following conditions being met:

- the project shall create new economic activities, involving investment and employment creation within the Community. Transfers of existing economic activities are not eligible. Similarly, purchases of existing enterprises are not eligible;
- the partners shall play an active part in the joint venture and assume an adequate measure of responsibility. Any joint venture in which one of the partners owns more than 75 % will be ineligible. Any change in the holdings in the joint venture within three years following the signing of the contract with the Commission must be submitted to the Commission for a review of its financial participation;
- the joint venture must be newly created by at least two SMEs from two different Member States.

#### 7. Eligible expenses

Eligible expenses are those relating to the conception and setting-up of a joint venture: Expenses incurred as part of the preparatory action (market surveys, preparation of the legal framework, environmental impact assessment, technical standards, business plan, etc.); expenses for external experts (lawyers, advisers, accountants); fees based on actual costs, transport costs, accommodation and subsistence expenses (in accordance with the provisions laid down within the framework of the Commission's contracts for the provision of services); expenses for internal experts (relating to travel abroad): daily allowance, transport costs and accommodation and subsistence expenses (in accordance with the provisions laid down within the framework of the Commission's contracts for the provision of services).

For the grant, covering up to 10 % of the investment made, an investment is considered to be any purchase or production of tangible or intangible assets which are accounted for as fixed assets in the balance sheet of the joint venture and valued in accordance with generally accepted accounting standards.

Financing costs and expenses relating to partner search are excluded.

#### 8. Obligations of the beneficiaries

Appropriate arrangements shall be made to allow the Court of Auditors of the European Union or the Commission to exercise their mission in order to verify the regularity of declarations made by beneficiaries in support of payment claims submitted by them as well as the corresponding payments made.

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*ANNEX III***Indicative outline of implementation of the SME guarantee facility****1. Introduction**

The SME guarantee facility will be operated by the EIF on a trust basis. Whilst the EIF will provide counter-guarantees or, where appropriate, co-guarantees for guarantee schemes operating in Member States, and direct guarantees in the case of the EIB or any other appropriate financial intermediary, its losses from the relevant guarantees shall be covered by Community funds. This will permit the targeting of the scheme to SMEs with growth potential experiencing particular difficulty in raising finance because of the perceived high risk inherent in lending to them, such as small or newly established companies.

**2. Intermediaries**

Guarantee schemes operating in the Member States within the public or private sector, including mutual guarantee schemes, the EIB or any other appropriate financial institution in connection with any risk-taking SME facilities they may make available. Intermediaries will be selected in conformity with best business and market practice in a fair and transparent manner, having regard to: (a) the effect on the volume of debt finance made available to SMEs, and/or (b) the effect on the access to debt finance by SMEs, and/or (c) the effect on risk-taking in SME lending by the intermediary concerned.

**3. Eligible SME lending**

The financial criteria governing the eligibility of SME lending for guarantees under the SME guarantee facility shall be determined individually for each intermediary in the framework of the guarantee schemes they are already operating, with the aim of reaching as many SMEs as possible. These rules shall reflect market conditions and practices in the relevant territory. The guarantees and counter-guarantees will mainly be available to cover lending to SMEs with less than 100 employees. Particular attention shall be given to lending to finance intangible assets.

**4. EIF guarantees**

The guarantees given by the EIF shall relate to individual loans in a specific loan portfolio, which may be an existing loan portfolio, where that leads to the expansion of lending to SMEs, or a loan portfolio to be created within a specific period of time. The guarantees issued by the EIF shall cover a part of the credit risk inherent in the underlying loan portfolio with the risk shared with the relevant financial intermediary.

**5. EIF's capped maximum cumulative losses**

The EIF's obligation to pay its share of loan losses to the intermediary will continue until the cumulative amount of payments made to cover losses from a specific loan portfolio, reduced by the cumulative amount of corresponding loss recoveries, reaches a pre-agreed amount, after which EIF's guarantee is automatically cancelled.

**6. EIF pari passu with intermediary**

The guarantees given by the EIF shall usually rank pari passu with the guarantees or where appropriate with the loans given by the intermediary.

**7. Trust account**

A trust account shall be set up within the EIF to hold the budgetary funds underpinning the scheme. This account shall be interest bearing; interest earned shall be added to the resources of the facility.

**8. EIF's right to withdraw funds from the trust account**

The EIF shall have the right to debit the trust account for payments to meet its obligations for the maximum cumulative losses under the guarantee facility, and, subject to agreement by the Commission, any other eligible costs, for example its management fees, eligible legal fees and promotional expenses of the scheme.

**9. Loss recoveries payable to the trust account**

Any moneys recovered from loan losses for which payment has been made under guarantees called shall be credited to the trust account.

**10. Duration of the scheme**

It is envisaged that the individual SME guarantees will have a maturity of 5—10 years. Provided that adequate funds are held in the trust account, the EIF will enter into new guarantee commitments up to the fourth anniversary of the adoption of the facility. Any amount outstanding on the trust account at the time of expiry of the outstanding guarantees shall be repaid to the Community budget.

**11. Court of Auditors**

Appropriate arrangements shall be made to allow the Court of Auditors of the European Union to exercise its mission in order to verify the regularity of payments made.

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**Proposal for a Council Directive governing the tax treatment of private motor vehicles moved permanently to another Member State in connection with a transfer of residence or used temporarily in a Member State other than that in which they are registered**

(98/C 108/12)

(Text with EEA relevance)

COM(98) 30 *final* — 98/0025 (CNS)

(submitted by the Commission on 10 February 1998)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas, in the single market, tax obstacles to the free movement of persons and their personal property, including motor vehicles, should be removed;

Whereas, at present, Community law regarding the tax treatment of private motor vehicles used temporarily in a Member State other than that in which they are registered is unnecessarily restrictive in the context of the principles of the single market;

Whereas, furthermore, present Community law covering the tax treatment of motor vehicles belonging to persons transferring residence from one Member State to another can place an unnecessary administrative burden on such persons to prove that a liability to pay tax does not exist;

Whereas, accordingly, the terms of the exemptions provided by Council Directive 83/182/EEC on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another<sup>(1)</sup> and Council Directive 83/183/EEC on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals<sup>(2)</sup> do not reflect the present needs concerning free circulation of persons and of goods;

Whereas, in any event, Directives 83/182/EEC and 83/183/EEC no longer accurately cover the systems of taxation of motor vehicles applied by Member States since the introduction of the single market; whereas their application to exemption from VAT has already been repealed by Article 2 of Council Directive 91/680/EEC supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers<sup>(3)</sup>; whereas, in practice, problems concerning taxation of property following a transfer of residence are confined to motor vehicles and it is thus no longer necessary to lay down rules for other goods; whereas permanent exemptions other than in connection with transfer of residence need no longer be provided for;

Whereas, however, abuses caused by the differing levels of taxation of motor vehicles between Member States should be prevented; whereas, therefore, it is still necessary to provide for certain restrictions on temporary use by residents of vehicles registered in other Member States;

Whereas, therefore, the provisions of Directives 83/182/EEC and 83/183/EEC require updating and these directives should be repealed and replaced by a single, consolidated directive;

Whereas Member States should not charge taxes on private motor vehicles moved to their territory from other Member States by individuals transferring residence from such Member States;

Whereas Member States should not charge taxes on private motor vehicles registered in other Member States where such vehicles are used temporarily on their territory, in certain defined circumstances;

Whereas for the purposes of determining liability to tax it is necessary to define the place of normal residence of the vehicle user;

<sup>(1)</sup> OJ L 105, 23.4.1983, p. 59.

<sup>(2)</sup> OJ L 105, 23.4.1983, p. 64.

<sup>(3)</sup> OJ L 376, 31.12.1991, p. 1.

Whereas in the case of transfer of residence, no tax should be payable in the new Member State, subject to certain conditions and provided the vehicle has been acquired in accordance with the tax rules of the first Member State;

Whereas temporary use in another Member State without payment of taxes should be permitted for a period of six months in any twelve; whereas, in the case of a person whose professional ties are in another Member State, this should be increased to nine months;

Whereas it is necessary, in the interests of the internal market, to introduce some flexibility concerning the use of rental vehicles in Member States other than that of registration, subject to certain conditions; whereas, furthermore, it is necessary to expressly provide for use of vehicles by certain persons other than the owner, and whereas it is necessary, in certain circumstances, to allow use by a resident of a Member State a vehicle registered in another Member State;

Whereas it is necessary to provide rules governing the temporary use of a private vehicle in another Member State for business purposes;

Whereas vehicles which, during temporary use in another Member State, are irretrievably damaged should not incur liability to taxation as a result;

Whereas persons who wish to use vehicles in a Member State other than that of their place of residence should be entitled to register vehicles in such Member States; whereas, in such cases, taxes shall be payable in the Member State of registration; whereas, furthermore, the Member State of residence of the owner may prohibit use of such vehicles on its territory;

Whereas, in cases where infringements of the rules are encountered, any sanctions imposed shall be proportionate to the offence;

Whereas, in cases where Member States are entitled to impose registration or similar taxes on used vehicles arriving from other Member States, they shall ensure that the tax charged does not exceed the residual amount of tax contained in the value of similar vehicles on the domestic market, in accordance with Article 95 of the Treaty;

Whereas, in cases of dispute, the competent authorities of the relevant Member States shall consult with each other; whereas, furthermore, in such cases tax should not be imposed pending the outcome of such consultations by the relevant competent authorities; whereas if no agreement is reached between the competent authorities, the Commission should decide on the matter,

HAS ADOPTED THIS DIRECTIVE:

## TITLE I

### GENERAL PROVISIONS

#### *Article 1*

##### **Prohibition on imposing taxes in certain circumstances**

1. A Member State shall not impose excise duties, registration taxes and/or other consumption taxes, such as the taxes listed in Annex I, but excluding the taxes listed in Annex II, on private motor vehicles registered in other Member States and brought into that Member State permanently in connection with the transfer of normal residence of a private individual from another Member State, subject to the conditions laid down below.
2. A Member State shall not impose excise duties, registration taxes, other consumption taxes and/or road taxes, such as the taxes listed in Annex I and Annex II, on private motor vehicles registered in other Member States and used temporarily on its territory, subject to the conditions laid down below.
3. The provisions of paragraphs 1 and 2 shall also apply to the normal spare parts, accessories and equipment of the motor vehicle.
4. This Directive shall not apply to value added tax.

#### *Article 2*

##### **Definitions**

For the purposes of this Directive:

- (a) 'commercial vehicle' means any road vehicle which, by its design or equipment, is suitable for and intended for transporting, whether for payment or not:
  - more than nine persons, including the driver,
  - goods,as well as any road vehicle for special use other than transport as such;
- (b) 'private vehicle' means any road vehicle, including its trailer, if any, other than a commercial vehicle;
- (c) 'business use' of a motor vehicle means the use thereof in the direct exercise of an activity carried out for consideration or financial gain;

- (d) 'private use' means any use other than business use;
- (e) 'residence' means normal residence as defined in Article 3;
- (f) a person's 'family' shall be deemed to mean his spouse, his immediate ancestors and descendants and those of his spouse.

## TITLE II

### NORMAL RESIDENCE

#### *Article 3*

#### **General rules for determining normal residence**

1. For the purposes of this Directive, 'normal residence' means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

2. Notwithstanding paragraph 1, the normal residence of a person whose occupational ties are in a different place from his personal ties, and who consequently lives in turn in different places situated in two or more Member States, shall be regarded as being the place of his personal ties, provided that he returns there regularly.

3. Where a person is living in a Member State in order to carry out a task of a definite duration, and as a result has his occupational ties in a different place from his personal ties, his place of residence shall be regarded as being the place of his personal ties, irrespective of whether he returns there regularly.

4. Attendance at a university or school in another Member State shall not imply transfer of normal residence.

5. A change in a person's marital status shall not, of itself, imply a change of residence.

6. Individuals shall give evidence of their place of normal residence by any appropriate means, such as their identity card or any other valid document.

7. Without prejudice to Article 12, where the competent authorities of the Member State of destination have doubts as to the validity of a statement as to normal residence made in accordance with this Article, or for the purpose of certain specific controls, they may request additional information or evidence either from the individual making the statement or from the competent authorities of the other Member State concerned.

## TITLE III

### TRANSFER OF RESIDENCE

#### *Article 4*

#### **Conditions under which tax is not payable following a transfer of residence**

1. The provisions of Article 1(1) shall apply where the following conditions are fulfilled:

- (a) the motor vehicle has been acquired under the general conditions of taxation in force in the domestic market of one of the Member States and is not subject, as a result of its being brought to another Member State, to any exemption from or refund of any of the taxes referred to in Article 1(1) in the Member State from which it is brought.

These two conditions shall be deemed to be fulfilled if the vehicle bears a standard registration plate of the Member State of registration, all types of temporary plate being excluded.

For the purposes of this Directive, the general conditions of taxation shall be deemed to include diplomatic and consular arrangements, agreements concerning international organisations and their members, arrangements governing forces which are party to the North Atlantic Treaty or the civilian staff accompanying them;

- (b) the person transferring residence has had the use of the vehicle for a period of at least six months prior to the transfer of residence;
- (c) the motor vehicle is brought into the Member State to which the person transfers his residence not later than 12 months after such transfer.

2. In the case of vehicles acquired under the diplomatic and consular arrangements or other arrangements mentioned in the third indent of paragraph 1 (a), Member States may increase the period mentioned in paragraph 1 (b) to 12 months.

## TITLE IV

### TEMPORARY USE OF A VEHICLE

#### *Article 5*

#### **General conditions under which tax is not payable when a vehicle is used temporarily in a Member State other than that of registration**

1. The provisions of Article 1(2) shall apply in respect of a motor vehicle used temporarily in a Member State,

other than the Member State in which it is registered, for a period, continuous or otherwise, of not more than six months in any 12 months, provided that:

- (a) the person using the vehicle has his normal residence in a Member State other than the Member State of temporary use;
- (b) the vehicle is only the subject of private use;
- (c) the vehicle is not hired out in the Member State of temporary use, or lent to a resident of that State, other than as provided for in Article 6.

2. The period of six months referred to in paragraph 1 shall be increased to nine months in the case of a person whose occupational ties are not in the Member State of his normal residence and who uses in the Member State of his occupational ties a vehicle registered in the Member State of his normal residence.

#### *Article 6*

##### **Specific cases of private use where taxation is not permitted**

In addition to the cases covered by Article 5, the provisions of Article 1(2) shall apply in respect the following cases:

- (a) a private vehicle belonging to a car rental firm, where that vehicle is in the Member State of temporary use as a result of a rental contract which ended in that Member State and which:
  - (aa) is re-rented to a person other than a resident of the Member State of temporary use, subject to the limitation that the period of any such re-renting must terminate within two months of the end-date of the original contract under which the vehicle was returned to the car rental firm in the current Member State, save where the vehicle is re-rented to a non-resident with a view to being removed from that State within thirty days from the date of the new rental period;
  - (bb) is re-rented to a resident of the Member State of temporary use with a view to being removed from that State within fifteen days from the beginning of the new rental period, or
  - (cc) is returned by an employee of the car rental firm to the country where it was originally rented even if such employee resides in the Member State of temporary use;

- (b) a private vehicle registered in another Member State and rented from a car rental firm under a rental contract which commenced in that Member State by a resident of the Member State of temporary use, subject to a limit of eight days use;
- (c) a private vehicle used, while the person who brought the vehicle to the Member State of temporary use is in that Member State, by members of his family, whether or not such family members have their normal residence in the Member State of temporary use;
- (d) a private vehicle used by any person, provided that the person who brought the vehicle to the Member State of temporary use is also on board the vehicle;
- (e) a private vehicle registered in another Member State and used by a resident of the Member State of temporary use following temporary immobilisation of his vehicle as a result of breakdown or accident in the other Member State, where such use is confined to the period during which the user's own vehicle is being repaired and in any event does not exceed a maximum period of two months;
- (f) a private vehicle registered in another Member State which belongs to or is hired by an undertaking established in the Member State in which it is registered and which is used by an employee of such undertaking, or by a member of the family of such employee, where such user has his normal residence in the Member State of temporary use. This category shall not be subject to any time limit;
- (g) a private vehicle registered in the country of normal residence of the user and used regularly for the journey from his residence to his place of work in another Member State, and vice versa. This category shall not be subject to any time limit;
- (h) a private vehicle registered in the Member State of his normal residence used by a student in the Member State in which he is pursuing his studies, where such Member State is not that of his normal residence.

#### *Article 7*

##### **Cases of business use where taxation is not permitted**

1. A Member State shall not impose the taxes specified in Article 1(2) on a private vehicle used temporarily on its territory for business purposes, provided that:



- (a) the person using the vehicle has his normal residence in a Member State other than the Member State of temporary use.

This condition need not apply in the case of a person who has his normal residence in the Member State of temporary use, where that person is an employee of an undertaking established in another Member State and is using a vehicle which belongs to or is hired by that undertaking and which is registered in the Member State where the undertaking is established;

- (b) the vehicle is not used in the Member State of temporary use to carry passengers for hire or material reward of any kind, or for the industrial and/or commercial transport of goods, whether for reward or not;
- (c) the vehicle is not hired out or lent in the Member State of temporary use;
- (d) the vehicle is registered in the Member State of normal residence of the user;
- (e) the vehicle has been acquired under the general conditions of taxation of the Member State of normal residence of the user and is not subject to any refund of any of the taxes referred to in Article 1(2) by virtue of its being used in another Member State.

This condition shall be deemed to be satisfied if the vehicle bears a standard registration plate of the Member State of registration, all types of temporary plate being excluded;

- (f) any periodic vehicle taxes ordinarily payable in the Member State of registration are paid.
2. The provisions of paragraph 1 shall apply without any time limit.

#### *Article 8*

##### **Provisions concerning irreparable damage to vehicles**

Where a private vehicle registered in another Member State is used temporarily in a Member State without imposition of the taxes referred to in Article 1(2) in accordance with the provisions of this Directive, and that vehicle becomes badly damaged as a result of a duly proven accident, breakdown or criminal or malicious act which occurs within that Member State, where the cost of the requisite repairs exceeds the market value of the vehicle, and where the vehicle is disposed of with a view to being scrapped or destroyed, no subsequent demand for any of the taxes referred to in Article 1(2) shall be made by the Member State of temporary use. The

competent authorities of Member States may require proof of the damage and/or of the proper disposal of the vehicle.

#### *Article 9*

##### **Permanent use in a Member State other than that of normal residence**

1. Where a person wishes to use a vehicle in a Member State other than that in which he has his place of normal residence for a period in excess of that provided for in Article 5, for example on an ongoing basis in connection with a secondary residence, the Member State in question shall register such vehicle.
2. Where the provisions of paragraph 1 apply, the Member State of registration shall be entitled to impose such taxes as would ordinarily be payable in connection with and following registration of such vehicle.
3. The Member State in which the owner of a vehicle as described in paragraph 1 has his place of normal residence may refuse to allow use of such vehicle on its territory.

#### TITLE V

##### FINAL PROVISIONS

#### *Article 10*

##### **Infringements and sanctions**

1. Where a vehicle is used in a Member State temporarily and the provisions of this Directive are not complied with, such vehicle shall not be deemed to have been brought to that Member State permanently, and taxes shall not automatically be deemed to be payable. In such instance, notwithstanding any sanctions applied, the individual concerned may choose either to remove the vehicle from the Member State of temporary use or to have it registered, and to pay taxes, in the normal way in that Member State.
2. In applying sanctions, Member States shall take into account the good faith of the individuals concerned and the absence of any intention of fraud.
3. The control procedures applied by the competent authorities of the Member States shall not be framed in such a way as to restrict the free movement of goods and persons required by the Treaty. In cases where the provisions of this Directive are infringed, penalties shall not be so disproportionate to the gravity of the infringement that they become an obstacle to the free movement of goods and persons.

*Article 11***Calculation of tax, where payable**

In cases where a used motor vehicle is brought permanently from one Member State to another, in circumstances other than those governed by this Directive, and the latter Member State imposes a registration tax or similar tax such as the taxes listed in Annex I on that vehicle, the Member State in question shall ensure that the amount of tax charged shall not be greater than the amount of residual tax contained in the value of a vehicle of similar age, characteristics and condition on the domestic market of that Member State.

*Article 12***Settlement of disputes**

1. Where the practical application of this Directive gives rise to difficulties, the competent authorities of the Member States concerned shall take the necessary decisions by mutual agreement.

2. In particular, where a person claims to have transferred his place of normal residence from one Member State to another, and that claim is disputed by the competent authorities of either of those States, the competent authorities of both States shall consult each other to decide which place of residence should be used for the purposes of deciding where the vehicle should be subject to taxation. Similarly, where a person claims to be using a vehicle temporarily in one Member State whilst his place of normal residence is in another Member State, and that claim is disputed by the competent authorities of the Member State in which the vehicle is being used, the competent authorities of both States shall consult each other to decide which residence should be used for the purposes of taxing the vehicle. The Member State to which the user claims to have transferred his normal residence, or in which he claims to be using the vehicle temporarily, shall not impose the taxes referred to in Article 1 pending the outcome of such consultations.

3. If Member States do not come to an agreement within six months of the date of the claim by the individual concerned, they shall refer the question to the Commission. The Commission, after having examined the arguments put forward by the two Member States and, if the Commission considers it appropriate, by the individual concerned, will issue a decision establishing which residence shall be used for the purposes of taxing the vehicle.

*Article 13***Repeals**

The following Directives shall cease to have effect on 1 July 1998:

- Directive 83/182/EEC,
- Directive 83/183/EEC as amended by Directive 89/604/EEC.

*Article 14***Implementation of the Directive**

1. Member States may retain or introduce provisions which are more favourable to users than those laid down in this Directive, in order to allow temporary use of vehicles registered in other Member States, or permanent transfer of vehicles from other Member States, without imposition of the taxes referred to in Article 1.

2. Member States may not, by virtue of this Directive, apply within the Community tax treatment which is less favourable than that applied in connection with imports or use of vehicles brought directly from third countries.

3. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 1998. Member States 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 reference shall be laid down by the Member States.

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

*Article 15***Addressees**

This Directive is addressed to the Member States.

## ANNEX I

## BELGIUM

— Taxe de mise en circulation

## DENMARK

— Registreringsafgift af motorkøretøjer

## GERMANY

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## GREECE

— Special consumption tax (EFK)

— Registration tax (EPET)

## SPAIN

— Impuesto Especial sobre Determinados Medios de Transporte

## FRANCE

— Taxe sur les certificats d'immatriculation des véhicules à moteur

## IRELAND

— Vehicle registration tax

## ITALY

— IET

— APIET

## LUXEMBOURG

—

## NETHERLANDS

— Belasting Personenauto's en Motorrijwielen

## AUSTRIA

— Normverbrauchsabgabe

## PORTUGAL

— Imposto Automovel

## FINLAND

— Autovero

## SWEDEN

— Sales tax

## UNITED KINGDOM

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## ANNEX II

## BELGIUM

- Taxe de circulation sur les vehicules automobiles/Verkeersbelasting up de autovoertuigen
- Taxe compensatoire des accises/
- Taxe de circulation complémentaire;

## DENMARK

- Vægtafgift af motorkøretøjer

## GERMANY

- Kraftfahrzeugsteuer (Kraftfahrzeugsteuergesetz — 1979)
- Kraftfahrzeugsteuer (Durchführungsverordnung — 1979)

## GREECE

- Τέλη κυκλοφορίας

## SPAIN

- Impuesto sobre vehiculos de traccion mecanica
- Tributos Locales sobre circulation de vehiculos automoviles

## FRANCE

- Taxe différentielle sur les véhicules à moteur
- Taxe sur les véhicules des sociétés

## IRELAND

- Motor vehicle excise duties

## ITALY

- Tassa sulla circolazione degli autoveicoli

## LUXEMBOURG

- Taxe sur les véhicules automoteurs

## NETHERLANDS

- Motorrijtuigenbelasting

## AUSTRIA

- Kraftfahrzeugsteuer

## PORTUGAL

- Imposto municipal sobre veiculos
- Imposto de circulação

## FINLAND

- Moottoriajoneuvovero
- Windscreen sticker tax

## SWEDEN

- Vagtrafikskatt

## UNITED KINGDOM

- Vehicle excise duty
-

**Proposal for a European Parliament and Council Directive amending Directive 76/116/EEC on the approximation of the laws of the Member States relating to fertilizers, as regards the marketing in Austria, Finland and in Sweden of fertilizers containing cadmium<sup>(1)</sup>**

(98/C 108/13)

(Text with EEA relevance)

COM(98) 44 final — 98/0026 (COD)

(submitted by the Commission on 11 February 1998)

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,

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

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

Whereas Article 69 and Annex VIII to the Act of  
Accession to the EU of Austria provide that Article 7 of  
Council Directive 76/116/EEC<sup>(1)</sup>, in so far as it concerns  
the cadmium content of fertilizers, shall not apply to  
Austria before 1 January 1999 and that these provisions  
be reviewed in accordance with EC procedures before  
31 December 1998;

Whereas Article 84 and Annex X to the Act of Accession  
to the EU of Finland, provide that Article 7 of Directive  
76/116/EEC, in so far as it concerns the cadmium content  
of fertilizers, shall not apply to Finland before 1 January  
1999 and that these provisions be reviewed in accordance  
with EC procedures before 31 December 1998;

Whereas Article 112 and Annex XII to the Act of  
Accession to the EU of Sweden provide that Article 7 of  
Directive 76/116/EEC, in so far as it concerns the  
cadmium content of fertilizers, shall not apply to Sweden  
before 1 January 1999 and that these provisions be  
reviewed in accordance with EC procedures before  
31 December 1998;

Whereas the said review cannot be completed by  
31 December 1998 because of the absence in many  
Member States of the exposure data needed to evaluate  
the risks of cadmium in fertilizers to health and the  
environment and whereas the review needs to be  
continued by performing further work after this date;

Whereas the further work should evaluate the risks in  
Member States from cadmium in fertilizers to health,  
including to the health of vulnerable population groups,  
and to the environment and whereas this can only be  
accomplished after several years;

Whereas a risk assessment of cadmium in the framework  
of Council Regulation (EC) No 739/93/EC<sup>(2)</sup> has been  
launched and whereas the results will become available  
only after several years;

Whereas, apart from the obligation to review provided  
for by the Acts of Accession of Austria, of Finland and of  
Sweden, review of Community legislation in force can  
always be decided according to Community procedures,  
and whereas Community legislation can provide for  
derogations for limited periods for certain Member States  
because of the specificity of their situations,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

The following paragraphs are added to Article 7 of  
Directive 76/116/EEC

<sup>(1)</sup> OJ L 24, 30.1.1976, p. 21, as last amended by Council  
Directive 97/63/EC (OJ L 335, 6.12.1997, p. 15).

<sup>(2)</sup> OJ L 84, 5.4.1993, p. 1.

‘However, Austria, Finland and Sweden may prohibit the marketing on their territories of fertilizers containing cadmium at concentrations in excess of those which were fixed nationally at the date of Accession. The derogation shall apply for the period from 1 January 1999 until 31 December 2001.

The Commission shall, in consultation with Member States and interested parties, review by 31 December 2001 the need for establishing provisions at European level concerning the cadmium content of fertilizers.’

*Article 2*

Austria, Finland and Sweden shall adopt and publish the provisions necessary to comply with this Directive by 31 December 1998 at the latest.

*Article 3*

This Directive is addressed to Austria, Finland and Sweden.

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**Amended proposal for a Council Directive on the control of *Pseudomonas solanacearum*  
(Smith) Smith<sup>(1)</sup>**

(98/C 108/14)

COM(98) 57 final — 97/0025 (CNS)

*(submitted by the Commission pursuant to Article 189a(2) of the EC-Treaty on  
11 February 1998)*

In response to the opinion delivered by the European Parliament at its plenary session of 15 to 19 December 1997 on the proposal for a Council Directive presented on 29 January 1997, on the control of *Pseudomonas solanacearum* (Smith) Smith, and in accordance with Article 189a(2) of the EC Treaty, the Commission has decided to amend the aforementioned proposal as follows:

(1) The seventh recital is replaced by the following:

‘Whereas the measures have to take into account that systematic official surveys are necessary to locate the pathogen; whereas such surveys should include inspection procedures and, where appropriate, given that under certain environmental circumstances the disease can remain latent and unobserved both in the growing crop of tomatoes and potatoes and in stored potato tubers, should include sampling and testing procedures; whereas spread of the pathogen within the growing crop is not the most important factor, but whereas the pathogen can spread by surface water and certain associated wild solanaceous plants, and therefore the irrigation of potato and tomato crops using contaminated water appears to pose a risk for infection of such crops; whereas also the pathogen can exist through the winter in self-sown (volunteer) potato and tomato plants and these may be a source of infection being carried from one season to the next; whereas the pathogen is spread also by the contamination of potatoes through contact with infected potatoes and through contact with planting, harvesting and handling equipment or transport and storage containers which have become contaminated with the organism by previous contact with infected potatoes; whereas spread of the pathogen can be reduced or prevented by decontamination of such objects; whereas any such contamination of seed potatoes poses a major risk for the spread of the pathogen; similarly the latent infection of seed potatoes poses a major risk for the spread of the pathogen and this can be prevented only by the use of seed potatoes produced in an officially approved programme whereby seed potatoes have been tested and found free from infection’.

(2) Article 4(2)(c) is replaced by the following:

‘(c) introduce appropriate additional precautionary measures based on the level of estimated risk,

particularly in relation to production of the listed plant material and the movement of seed potato lots other than those referred to in (a), produced on the place of production from which the samples referred to in (a) were taken, in order to prevent any spread of the organism.’

(3) Article 4(3) is amended as follows:

‘3. In those cases of suspected occurrence where there is a risk of contamination of the listed plant material or surface water from or into another Member State(s), the Member State in which the suspected occurrence has been reported shall immediately notify, according to the risk identified, the details of the said suspected occurrence to the other Member State(s) concerned, and there shall be appropriate cooperation between the said Member States. The Member State(s) so notified shall introduce precautionary measures in accordance with paragraph 2(c) and take any further action, as appropriate, in accordance with paragraphs 1 and 2.’

(4) Article 10, second paragraph is deleted.

(5) In Article 12(1) ‘1 July 1997’ is amended to ‘1 March 1998’.

(6) Annex I, Section I the phrase ‘Plants, other than seeds, of *Lycopersicon lycopersicum* (L.) Karsten ex Farw.’ is replaced by ‘Plants other than fruits and seeds of *Lycopersicon lycopersicum* (L.) Karsten ex Farw.’.

(7) Annex I, Section II, point 1(ii) is replaced by the following:

‘(ii) in the case of tomato,

— visual inspection, at appropriate times, of at least the growing crop of plants intended for replanting for professional use’.

(8) Annex I, Section II, point 2(ii) is replaced by the following:

‘(ii) in the case of surveys on, at least, the growing crop of plants of tomato intended for replanting for professional use,

<sup>(1)</sup> OJ C 124, 21.4.1997, p. 12.

- estimated total number of plants
- number of visual inspections.'

‘— the field shall be established and maintained during the first three years either, in bare fallow or, in cereals according to the risk identified, or, in permanent pasture with frequent close cutting or intensive grazing or, as grass for seed production, followed by planting in the succeeding two years with non-host plants of the organism for which there is no identified risk of the organism surviving or spreading.’

(9) In Annex II the reference to the Commission Decision is completed as ‘Commission Decision 97/647/EC’ with footnote ‘(4) OJ L 273, 6.10.1997, p. 1.’

(10) Annex VI point 2(ii) is deleted.

(11) Annex VI point 4.1(a)(ii), first indent, second subindent is replaced by the following:

(12) Annex VI, point 4.1(a)(ii), second indent, second subindent is deleted.



**Proposal for a Council Regulation (EC) amending Regulation (EEC) No 2075/92 on the common organization of the market in raw tobacco**

(98/C 108/15)

COM(98) 19 final — 98/0027 (CNS)

(submitted by the Commission on 12 February 1998)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas Article 26 of Regulation (EEC) No 2075/92<sup>(1)</sup>, as last amended by Regulation (EC) No 2595/97<sup>(2)</sup>, requires the Commission to submit proposals on the premium and quota arrangements to be used in the organization of this market;

Whereas the present market situation is one of mismatch of supply and demand, largely due to the poor quality of Community production; whereas this situation calls for a fundamental reform of the sector to improve its economic position; whereas such reform must entail a variation of aid in line with product quality, greater flexibility and simplicity in the setting of quotas, stricter control procedures and improved observance of public health and environmental protection requirements;

Whereas, in order to encourage improvement of the quality and value of Community production, and at the same time to provide income support to producers, the payment of part of the premium should be linked to the value of the tobacco produced; whereas the extent of this differentiation may vary by variety and tobacco-growing Member State; whereas, if it is to be effective, differentiation should operate within a certain range; whereas, given the importance of this change, a transitional period should be set; whereas this system should be established within the producer groups, while permitting a comparison of the market prices obtained by individual producers;

Whereas it is essential to reinforce control procedures; whereas the definitions of 'producer', 'first processor' and 'first processing' should be made more precise and control agencies should be allowed access to all information relevant to their task;

Whereas an auction system for cultivation contracts should be established so that contract prices for tobacco truly reflect market conditions;

Whereas by participating in determination of the purchase price of the tobacco delivered the first processor plays a central role in determination of the premium to be paid to the individual producer; whereas first processors benefit indirectly from Community aid by acquiring a subsidized product; whereas national authorities should be allowed to take appropriate action against any first processors not complying with Community rules; whereas to this end only approved first processors should be able to sign cultivation contracts, approval being withdrawn for non-compliance;

Whereas to simplify management of the sector, producer groups should be made responsible for paying the variable part of the premium to producers and for allocating production quotas between their members;

Whereas transfer of production quotas between producers should be permitted for improvement of the structure of production; whereas quota buy-back arrangements should be introduced to help producers who wish to leave the sector but find no purchaser for their quota;

Whereas due account should be taken of the imperatives of public health and respect for the environment; whereas to this end the premium deduction financing the Community fund for tobacco research and information should be doubled and the specific aid used not only to help producer groups discharge their new management functions but also to finance y action aimed at enhancing respect for the environment,

<sup>(1)</sup> OJ L 215, 30.7.1992, p. 70.

<sup>(2)</sup> OJ L 351, 31.12.1997, p. 11.

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 2075/92 is amended as follows:

1. Article 3(1) and (2) are replaced by the following:

‘1. From the 1999 harvest onwards, a premium scheme shall apply to tobacco, its amount being set for all the tobacco varieties shown in each of the different groups.

2. A supplementary amount shall, however, be granted on flue-cured, light air-cured and dark air-cured tobaccos grown in Austria, Belgium, France or Germany. That amount shall be equal to that applicable to the 1997 harvest.’

2. The following Article 4a is inserted:

*‘Article 4a*

1. The premium shall comprise a fixed part, a variable part and a specific aid.

2. The variable part of the premium shall account for 35 % to 45 % of the total premium. It shall be introduced in stages up to the 2001 harvest. It may be adjusted within that specified range, according to variety group and Member State.

3. The fixed part of the premium shall be paid either to producer groups for distribution to the members of the group or to individual producers who are not members of a group.

4. The variable part shall be paid to producer groups for distribution to each member in proportion to the purchase price paid by the first processor for his crop.

5. Specific aid, not exceeding 2 % of the total premium, shall be paid to producer groups.’

3. Articles 6 and 7 are replaced by the following:

*‘Article 6*

1. Cultivation contracts shall be concluded between first processors of tobacco and producer groups or individual producers who are not members of a group.

2. For the purposes of this Regulation:

— the term “producer” shall mean individual producers who are not members of a group, individual producers who are members of a group, or producer groups, all of whom deliver their crop of raw tobacco to a first processor under a cultivation contract,

— a “first processor” shall mean any approved natural or legal person who carries out first processing of raw tobacco by operation, in his own name and on his own account, of one or more establishments suitably equipped for that purpose,

— “first processing” shall mean the processing of raw tobacco delivered by a producer into a stable, storable product put up in uniform bales of a quality meeting final user (manufacturer) requirements.

3. The cultivation contract shall include:

— a commitment by the first processor to pay the producer the purchase price according to quality grade,

— an undertaking by the producer to deliver to the first processor the raw tobacco meeting the quality requirements specified in the contract.

4. The Member State’s competent body shall, on submission of proof of delivery of the tobacco and of payment of the price as referred to in the first indent of paragraph 3, pay:

— the fixed part of the premium to the producer group or to the individual producer not a member of a group,

— the variable part of the premium and the specific aid to the producer group.

5. A cultivation contract auction scheme shall be introduced, covering all contracts referred to in paragraph 1 which have been concluded before the date on which delivery of the tobacco commences.

*Article 7*

Rules for the application of this Title shall be adopted in accordance with the procedure laid down in Article 23.

Their scope shall include:

— delimitation of production zones for each variety,

— quality requirements for tobacco delivered,

— other details of the cultivation contract and the closing date for its conclusion,

— any requirement of a security to be lodged by producers applying for an advance, and the terms of its provision and release,

— determination of the variable part of the premium,

— specific premium terms for cultivation contracts concluded with producer groups,

- action to be taken if the producer or first processor fails to meet his obligations,
- the cultivation contract auction scheme.'

4. Articles 8 to 11 are replaced by the following:

*'Article 8*

A maximum overall guarantee threshold is set for the Community of 350 600 tonnes of raw leaf tobacco per harvest.

Within that quantity the Council shall set for three consecutive harvests, and in accordance with the procedure laid down in Article 43(2) of the Treaty, individual guarantee thresholds for each variety group.

*Article 9*

1. To ensure observance of the guarantee thresholds production quotas shall be imposed.

2. The Council, acting in accordance with the procedure laid down in Article 43(2) of the Treaty, shall allocate for three consecutive harvests the quantity available for each variety group between producer Member States.

3. On the basis of the quantities set pursuant to paragraph 2 and without prejudice to paragraphs 4 and 5, Member States shall assign production quotas to individual producers who are not members of a producer group and to producer groups, in proportion to the average quantity of tobacco of the particular variety group delivered for processing by each individual producer over the three years preceding that of the most recent harvest.

4. Member States may be authorized, before the final date for conclusion of cultivation contracts, to transfer parts of their guarantee threshold allocations, in accordance with paragraph 3, to another variety group.

Subject to the third subparagraph a one-tonne reduction in the allocation for one variety group shall give rise to an increase of at most one tonne in the allocation for the other variety group.

Transfer of parts of guarantee threshold allocations from one variety group to another may not give rise to additional costs to the EAGGF.

The quantities authorized for transfer shall be determined in accordance with the procedure laid down in Article 23.

5. National quota reserves shall be set up. Their operating rules shall be adopted in accordance with the procedure laid down in Article 23.

*Article 10*

1. No premium may be granted on any quantity in excess of a producer's quota.

2. Notwithstanding paragraph 1, a producer may deliver excess production of up to 10 % of his quota for each variety group, this surplus being eligible for the premium granted on the following harvest, provided that he reduces his production for that harvest accordingly so that the combined quota for the two harvests is observed.

3. Member States shall keep accurate data on the production of all individual producers so that, where appropriate, production quotas can be assigned to them.

4. Production quotas may be transferred between individual producers in the same Member State.

*Article 11*

Rules for the application of this Title shall be adopted in accordance with the procedure laid down in Article 23.'

5. Articles 12, 13 and 14 are replaced by the following:

*'Article 12*

1. The specific aid referred to in Article 4a shall be paid to producer groups for the purposes of improving respect for the environment, boosting production quality, strengthening management and ensuring compliance with Community rules within the group.

2. The Commission shall determine rules for the application of this Article in accordance with the procedure laid down in Article 23. These rules shall cover:

- fixing of the specific aid amount,
- definition of producer groups eligible for the aid,
- terms of recognition of groups,
- use of the specific aid, and in particular its allocation between the purposes specified in paragraph 1.

*Article 13*

1. A Community Tobacco Fund financed by a deduction of 2 % of the premium shall be set up.

2. It shall finance action in the following areas:

- combating tobacco-smoking, in particular informing the public of the dangers of tobacco consumption,

— research to develop new varieties and cultivation methods that result in less harm to human health and that are more environment-friendly.

3. Rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 23.

#### Article 14

1. In order to facilitate the voluntary departure from the sector by individual producers, a quota buy-back programme with corresponding reduction of the guarantee thresholds referred to in Article 8 shall be set up in accordance with the procedure laid down in Article 23.

2. Rural development programmes for the conversion of tobacco-growing regions in difficulty to other activities may be implemented under Community structural policies.'

6. The heading of Title V is replaced by the following:

'TITLE V

**Control measures'**

7. Article 17 is replaced by the following:

'Article 17

1. Member States shall take all necessary action to ensure and verify compliance with Community provisions concerning raw tobacco.

2. Member States shall make arrangements for granting entitlement to first processors to sign cultivation contracts.

3. Entitlement shall be withdrawn by the Member State if the processor deliberately or through serious negligence fails to comply with the Community provisions concerning raw tobacco.

4. Member States shall take the action necessary so that their control bodies can verify compliance with Community provisions, and in particular:

— have access to production and processing facilities,

— can acquaint themselves with first processors' accounts and stock records and with other relevant documents and take copies or extracts,

— can obtain all relevant information, particularly in order to check that tobacco delivered has actually been processed,

— have exact figures for the volume and purchase price of the production of all individual producers,

— check the quality of the tobacco and payment by the processor of a purchase price to the individual producer,

— check each year the areas planted by individual producers.

5. Rules for the application of this Title shall be adopted in accordance with the procedure laid down in Article 23.'

8. The following heading is inserted after Article 17:

'TITLE VI

**General and transitional provisions'**

9. Article 20 is replaced by the following:

'Article 20

To deal with unforeseen circumstances, exceptional market support measures may be adopted in accordance with the procedure laid down in Article 23. Their scope and duration shall be strictly limited to what is necessary to support the market.'

10. Article 26 is replaced by the following:

'Article 26

Before 1 April 2002, the Commission shall submit a report to the Council on the functioning of the common organization of the market in raw tobacco.'

11. In Article 27, the following paragraph is added:

'Where transitional measures prove necessary to facilitate the application of the amendments to this Regulation, introduced by Regulation (EC) No .../98, such measures shall be adopted in accordance with the procedure laid down in Article 23.'

#### Article 2

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

It shall apply from the 1999 harvest.

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

**Proposal for a Council Regulation (EC) establishing a special framework of assistance for traditional ACP suppliers of bananas**

(98/C 108/16)

*COM(98) 5 final — 98/0014 (SYN)*

*(submitted by the Commission on 17 February 1998)*

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,

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

Whereas the fourth ACP-EEC Convention provides that, in respect of its banana exports to the Community markets, no ACP State shall be placed, as regards access to its traditional markets and its advantages on those markets, in a less favourable situation than in the past or at present;

Whereas the common organisation of the market in bananas established by Regulation (EEC) No 404/93, as last amended by Regulation (EC) No 3290/94, set the framework for continuing, on the Community market, the advantages enjoyed in the past by traditional ACP suppliers;

Whereas, in particular, the trade regime with third countries established by Title IV of that Regulation was designed to allow bananas produced by the ACP States which are traditional suppliers to the Community to be disposed of on the Community market providing an adequate income for the producers, in accordance with the Community's commitment set out above;

Whereas this trade regime has been amended by Regulation (EC) No . . ./98;

Whereas these modifications have substantially altered the market conditions for traditional ACP suppliers;

Whereas particular efforts will thus be needed by traditional ACP suppliers to adapt to these new market conditions in order to maintain a presence on the Community market and to allow for the continuing viability of traditional ACP supplies;

Whereas technical and financial assistance, additional to that provided for in the fourth ACP-EC Convention, should therefore be granted to traditional ACP suppliers to enable them to adapt to new market conditions and in particular to improve competitiveness; whereas at the same time environment-friendly production and marketing methods should be encouraged;

Whereas, as this assistance should relate to the special efforts required as a consequence of the new market conditions, objective criteria should be fixed to determine the extent of such assistance;

Whereas, in order to ensure the appropriateness of such assistance with regard to the objectives pursued, this assistance should be temporary and gradually and smoothly phased out;

Whereas, to facilitate implementation of these provisions, a procedure involving close cooperation between the Member States and the Commission should be established,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A special framework for technical and financial assistance is hereby established to assist traditional ACP suppliers of bananas to adapt to the new market conditions following the amendments introduced to the common organisation of the market in bananas by Regulation (EC) No . . ./98.

2. This special framework shall be implemented for a period not exceeding ten years starting on 1 January 1999.

*Article 2*

For the purposes of this Regulation:

- 'traditional ACP suppliers' means the ACP States listed in the Annex
- 'bananas' means fresh or dried bananas covered by CN code 0803 00 19.

*Article 3*

1. Traditional ACP suppliers shall be eligible for technical and financial assistance.

2. Technical and financial assistance shall be granted to contribute to the implementation of programmes in the banana sector aiming at improving competitiveness, in particular through:

- increasing productivity, without causing damage to the environment,

- improving quality,
- adapting production, distribution or marketing methods to meet the quality standards provided for in Article 2 of Regulation (EEC) No 404/93,
- establishing producers' organizations which have as their objective the improvement of the marketing and competitiveness of their products and the development of systems for certifying environment-friendly production methods,
- developing a production and/or marketing strategy to meet the requirements of the market in the Community in the light of the common organisation of the market in bananas,
- assisting with training, market intelligence, the development of environment-friendly production methods, improving the distribution infrastructure and improving commercial and financial services to banana producers.

#### *Article 4*

The Commission shall decide on the eligibility of the programmes referred to in Article 3 after consultation with the traditional ACP suppliers concerned. It shall also take into account the consistency of the envisaged programme with the general development objectives of the ACP State concerned and its impact on regional cooperation with other banana producers, in particular the Community producers.

#### *Article 5*

1. Within the global amount available for a given year, the Commission shall fix the maximum amount available to each traditional ACP supplier for the financing of the programmes referred to in Article 3(2), taking into account the level of competitiveness and the importance of banana production for the economy of the country concerned.

2. In order to ensure the appropriateness of the technical and financial assistance with regard to the objectives pursued, a reduction coefficient of up to 15 % shall be applied, where appropriate, from the year 2004, to the level of assistance made available to an individual ACP traditional supplier in the previous year, where no sufficient increase in competitiveness can be observed.

#### *Article 6*

The financial support provided under this Regulation shall be in addition to any funds available for traditional ACP suppliers pursuant to the provisions of the fourth ACP-EC Convention.

#### *Article 7*

1. Detailed rules for the application of this Regulation shall be laid down by the Commission.

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

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 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.

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

5. 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.

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

#### *Article 8*

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

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

## ANNEX

*List provided for in Article 2(1)*

**Traditional ACP suppliers of bananas**

Belize  
Cameroon  
Cape Verde  
Côte d'Ivoire  
Dominica  
Grenada  
Jamaica  
Madagascar  
Saint Lucia  
Saint Vincent and the Grenadines  
Somalia  
Suriname

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**Amended proposal for a Council Directive establishing a framework for Community action in the field of water policy (COM(97) 49 final)<sup>(1)</sup>**

(98/C 108/17)

(Text with EEA relevance)

COM(98) 76 final — 97/0067(SYN)

*(presented by the Commission pursuant to Article 189 a (2) submitted of the EC-Treaty on 17 February 1998)*

Annex V of the Water Framework Directive is replaced by the following:

\*Contents

1. SURFACE WATERS
  - 1.1 ECOLOGICAL SURFACE WATER STATUS
    - 1.1.1 Type parameters for classification of ecological status of surface waters
      - 1.1.1.1 *Rivers*
      - 1.1.1.2 *Lakes*
      - 1.1.1.3 *Estuaries*
      - 1.1.1.4 *Coastal waters*
    - 1.1.2 Normative definitions of ecological status classifications
      - 1.1.2.1 *Rivers*
      - 1.1.2.2 *Lakes*
      - 1.1.2.3 *Estuaries*
      - 1.1.2.4 *Coastal waters*
      - 1.1.2.5 *Procedure for setting chemical quality standards*
    - 1.1.3 Identification of reference conditions
      - 1.1.3.1 *Classification of water body ecotype*
        - 1.1.3.1.1 Rivers
        - 1.1.3.1.2 Lakes
        - 1.1.3.1.3 Estuaries
        - 1.1.3.1.4 Coastal waters
      - 1.1.3.2 *Establishment of reference conditions*
    - 1.1.4 Monitoring of ecological status for inland and coastal waters
      - 1.1.4.1 *Selection of monitoring sites*
      - 1.1.4.2 *Selection of type parameters for monitoring*
      - 1.1.4.3 *Selection of frequency*
      - 1.1.4.4 *Additional provisions on priority list substances*
      - 1.1.4.5 *Monitoring of protected areas*

<sup>(1)</sup> OJ C 184, 17.6.1997, p. 20.



- 1.1.4.6 *Monitoring in the event of accidental pollution*
- 1.1.4.7 *Standards for monitoring of type parameters*
- 1.1.5 **Monitoring and assessment of other marine waters**
- 1.1.6 **Presentation of monitoring results and harmonised classification of ecological quality**
- 1.1.6.1 *Presentation of monitoring results and classification of ecological status*
- 1.1.6.2 *Comparability of biological monitoring results*
- 1.1.7 **Criteria for the designation of heavily modified physical characteristics**
- 1.2. **CHEMICAL SURFACE WATER STATUS**
- 1.2.1 **Selection of monitoring sites, and sampling and analysis frequencies**
- 1.2.2 **Presentation of chemical status**
  
- 2. **GROUNDWATER**
- 2.1 **ANALYSIS OF THE CHARACTERISTICS OF THE RIVER BASIN DISTRICT**
- 2.2 **GROUNDWATER QUANTITATIVE STATUS**
- 2.2.1 **Parameter for the classification of quantitative status of groundwater**
- 2.2.2 **Definition of good quantitative status**
- 2.2.3 **Monitoring of groundwater quantitative status**
- 2.2.3.1 *Groundwater level monitoring sites*
- 2.2.3.2 *Selection of frequency*
- 2.2.3.3 *Representation of quantitative status*
- 2.3 **GROUNDWATER CHEMICAL STATUS**
- 2.3.1 **Parameters for the classification of chemical status**
- 2.3.2 **Definition of good chemical status**
- 2.3.3 **Monitoring of groundwater chemical status**
- 2.3.3.1 *Identification of monitoring points*
- 2.3.3.2 *Selection of parameters*
- 2.3.3.3 *Selection of frequency*
- 2.3.3.4 *Representation of groundwater chemical status*

1. SURFACE WATERS

1.1 ECOLOGICAL SURFACE WATER STATUS

1.1.1 Type Parameters for classification of ecological status of surface waters

1.1.1.1 *Rivers*

**Biological parameters**

- Composition and abundance of aquatic flora
- Composition and abundance of benthic invertebrate fauna
- Composition, abundance and age structure of fish fauna

**Hydromorphological parameters supporting the biological parameters**

- Hydrological regime (quantity and dynamics of water flow, including connection to the groundwater body)
- River continuity
- Morphological elements (river depth and width variation, structure and substrate of the river bed, structure of the riparian zone)

**Chemical and physico-chemical parameters supporting the biological parameters**

*General parameters*

- Water temperature
- Oxygen balance
- Salt content
- pH
- Acidification status
- Nutrient concentration

*Other substances under Annex VIII*

- All priority substances
- other substances identified as being discharged in significant quantities into the body of water by the inventory of point and diffuse sources of pollution

1.1.1.2 *Lakes*

**Biological parameters**

- Composition and abundance of aquatic flora (other than phytoplankton)
- Composition, abundance and biomass of phytoplankton
- Composition and abundance of benthic invertebrate fauna
- Composition, abundance and age structure of fish fauna

**Hydromorphological parameters supporting the biological parameters**

- Hydrological regime (quantity and dynamics of water flow, including residence time and connection to the groundwater body)
- Morphological elements (lake depth variation, quantity, structure and substrate of the lake bed, structure of the riparian zone)

**Chemical and physico-chemical parameters supporting the biological parameters**

*General parameters*

- Transparency
- Water temperature
- Oxygen balance
- Salt content
- pH
- Acidification status
- Nutrient concentration

*Other substances under Annex VIII*

- All priority substances
- Other substances identified as being discharged in significant quantities into the body of water by the inventory of point and diffuse sources of pollution

1.1.1.3 *Estuaries***Biological parameters**

- Composition and abundance of aquatic flora (other than phytoplankton)
- Composition, abundance and biomass of phytoplankton
- Composition and abundance of benthic invertebrate fauna
- Composition, abundance and age structure of fish fauna

**Hydromorphological parameters supporting the biological parameters**

- Tidal regime
- Continuity
- Morphological elements (depth variation, quantity, structure and substrate of the bed, structure of the riparian zone)

**Chemical and physico-chemical parameters supporting the biological parameters***General parameters*

- Temperature
- Oxygen balance
- Salinity
- pH
- Nutrient concentration

*Other substances under Annex VIII*

- All priority substances
- Other substances identified as being discharged in significant quantities into the body of water by the inventory of point and diffuse sources of pollution

1.1.1.4 *Coastal water***Biological parameters**

- Composition and abundance of aquatic flora (other than phytoplankton)
- Composition, abundance and biomass of phytoplankton
- Composition and abundance of benthic invertebrate fauna
- Composition, abundance and age structure of fish fauna

**Hydromorphological parameters supporting the biological parameters**

- Morphological elements (freshwater flow, depth, sediment load, direction of dominant currents, structure and substrate of the coast, structure of the riparian zone)

**Chemical and physico-chemical parameters supporting the biological parameters***General parameters*

- Water temperature
- Oxygen balance
- Salinity
- pH
- Nutrient concentration

*Other substances under Annex VIII*

- All priority substances
- Other substances identified as being discharged in significant quantities into the body of water by the inventory of point and diffuse sources of pollution

1.1.2. Normative definitions of ecological status classifications

Table 1.1.2.1: Normative definitions for high, good and fair ecological status in rivers

Element	High quality	Good quality	Fair quality
<b>General</b>	<p>No evidence, or only very minor evidence, of anthropogenic impacts on biological communities, and the physicochemical and physical environment.</p> <p>The composition and abundance of the biota reflect that normally associated with the ecotype under undisturbed conditions.</p>	<p>Detectable but low-level impacts on biological communities, and the physicochemical and physical environment.</p> <p>The biota shows signs of disturbance but deviates in terms of survival, reproduction and development only slightly from that normally associated with the ecotype under undisturbed conditions.</p>	<p>Significant impacts on biological communities and their physicochemical and physical environment.</p> <p>The biota deviates moderately from that normally associated with the ecotype under undisturbed conditions.</p>

**Biological elements**

Aquatic flora: Phytoplankton	<p>Species composition and abundance correspond totally or nearly totally to the type-specific conditions.</p> <p>The average biomass and/or chlorophyll-a concentration are at type-specific levels corresponding to the type-specific nutrient levels.</p>	<p>No accelerated growth of algae and higher forms of plant life such as to produce an undesirable disturbance to the balance of organisms present in the water and to the quality of the water concerned.</p>	<p>Species composition and abundance show significant/moderate effects of impacts (e.g. eutrophication) due to anthropogenic activities.</p> <p>The average chlorophyll-a concentration is significantly different from the type-specific natural levels.</p>
Macrophytes and phytobenthos	<p>Species composition and abundance correspond totally or nearly totally to type-specific conditions.</p> <p>There are no changes (increase or decrease) in macrophytic and phytobenthic biomass due to anthropogenic activities.</p>	<p>Only slight changes in species composition and abundance compared to type-specific conditions. No significant changes (increase or decrease) in macrophytic and phytobenthic biomass due to anthropogenic activities (e.g. nutrient input).</p> <p>The phytobenthic community is not interfered with by bacterial tufts/coats due to anthropogenic activities.</p>	<p>Species composition and abundance differ significantly from type-specific conditions. Significant/moderate changes (increase or decrease) in macrophytic and phytobenthic biomass due to anthropogenic activities (e.g. nutrient input).</p> <p>The phytobenthic community is interfered/displaced by bacterial tufts/coats due to anthropogenic activities.</p>

Element	High quality	Good quality	Fair quality
Fish fauna	Species composition, abundance, biomass and age structure correspond totally or nearly totally to type-specific conditions with the appropriate sensitive species present.	Few species of the type-specific community are missing. There is a slight change in species composition, abundance, biomass and age structure.  Species untypical of the ecotype or stocked species can be found but do not significantly interfere with the autochthonous fish population.	Some species or a whole group of species are missing. There would be a significant/moderate change in species composition, abundance, biomass and age structure.  A moderate proportion of the expected sensitive species would be absent or of very low abundance.  Some species can not reproduce naturally.  Species untypical of the ecotype or stocked species can be found which significantly interfere with the autochthonous fish population.
Benthic invertebrate fauna	Species composition, abundance and share of sensitive species in comparison to tolerant species correspond totally or nearly totally to the type-specific conditions.	Species composition and abundance do not significantly differ from type-specific level.  The major features of the type-specific community can develop and survive.	Species composition and abundance differ significantly from the type-specific level.  The major features of the type-specific community cannot develop and survive.

#### Hydromorphological elements

Hydrological regime	Quantity and dynamics of flow reflect totally or nearly totally the type specific natural conditions.	Such as to allow the occurrence of the type-specific biological communities specified above.	Such as to allow the quantity of biological community specified above.
River continuity	Is specific for the type of river, not interrupted by anthropogenic activities and allows undisturbed migration of aquatic organisms and sediment transport.	Such as to allow the occurrence of the type-specific biological communities specified above.	Such as to allow the quality of biological community specified above.
Morphological elements	Channel patterns, width and depth variations, flow velocities, substrate conditions and structure/ condition of the riparian zones correspond totally or nearly totally to the natural type specific conditions.	Such as to allow the occurrence of the type-specific biological communities specified above.	Such as to allow the quality of biological community specified above.

Element	High quality	Good quality	Fair quality
<b>Chemical elements<sup>(1)</sup></b>			
General parameters	Physico-chemical parameters are at type-specific levels. Concentrations not in excess of background concentrations ( $\leq$ bgl).	Concentrations/levels not exceeding standards established so as to ensure the functioning of the ecosystem and the occurrence of the biological community specified above ( $\leq$ eqs).	Such as to allow the quality of biological community specified above.
Substances under Annex VIII not included under general parameters	Concentrations not in excess of detection limit of most advanced analytical techniques or ubiquitous levels.	Concentrations not exceeding no effect concentration <sup>(2)</sup> for algae, Daphnia and fish, without prejudice to Directive 91/414/EC. The lowest value shall be used ( $\leq$ eqs).	Such as to allow the quality of biological community specified above.

<sup>(1)</sup> The following abbreviations are used: bgl = background level, eqs = environmental quality standard.

<sup>(2)</sup> Established by the Member State for the specific body of water concerned according to the procedure established in Section 1.1.2.5.

Table 1.1.2.2: Normative definitions for high, good and fair ecological status for lakes

Element	High quality	Good quality	Fair quality
<b>General</b>	<p>No evidence, or only very minor evidence, of anthropogenic impacts on biological communities and the physico-chemical and physical environment.</p> <p>The composition and abundance of the biota reflect that normally associated with the ecotype under undisturbed conditions.</p>	<p>Detectable but low-level impacts on biological communities and the physico-chemical and physical environment.</p> <p>The biota shows signs of disturbance but deviates in terms of survival, reproduction and development only slightly from that normally associated with the ecotype under undisturbed conditions.</p>	Significant impacts on biological communities and the physico-chemical and physical environment. The biota deviates moderately from that normally associated with the ecotype under undisturbed conditions.

#### Biological elements

Aquatic flora: Phytoplankton	<p>Species composition and abundance correspond totally or nearly totally to type specific natural conditions.</p> <p>The average biomass and/or chlorophyll-a concentrations are at type-specific natural levels corresponding to the type-specific natural nutrient levels.</p>	No accelerated growth of algae and higher forms of plant life such as to produce an undesirable disturbance to the balance of organisms present in the water and to the quality of water concerned.	<p>A significant/moderate change in species composition and abundance.</p> <p>The average biomass and/or chlorophyll-a concentration are significantly above type-specific natural levels.</p>
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Element	High quality	Good quality	Fair quality
Macrophytes and phytobenthos	<p>Species composition and abundance correspond totally or nearly totally to type-specific conditions.</p> <p>No changes (increase or decrease) in macrophytic and phytobenthic biomass due to anthropogenic activities (e.g. nutrient input).</p>	<p>Only slight changes in the expansion and species composition and abundances compared to type-specific conditions.</p> <p>No significant changes (increase or decrease) in macrophytic and phytobenthic biomass due to anthropogenic activities (e.g. nutrient input).</p>	<p>Species composition and abundance significantly differ from type-specific conditions. Significant/moderate changes (increase or decrease) in macrophytic and phytobenthic biomass due to anthropogenic activities (e.g. nutrient input).</p>
Benthic invertebrate fauna	<p>Species composition and abundance correspond totally or nearly totally to the type-specific composition.</p>	<p>Only a slight change of species composition and abundance so that the type specific main features can develop and survive.</p>	<p>A significant/moderate change of species composition and abundance.</p>
Fish fauna	<p>Species composition, abundance and age structure totally or nearly totally corresponds to type-specific conditions with the appropriate share of sensitive species present.</p>	<p>Slight change in species composition, abundance, and age structure.</p> <p>A small proportion of the expected sensitive species would be absent or of very low abundance.</p> <p>Few species of the type-specific community are missing. Species untypical of the ecotype or stocked species can be found but do not significantly interfere with the autochthonous fish population.</p>	<p>Some species or a whole group of species are missing.</p> <p>There is a moderate change in species composition, abundance, biomass and age structure.</p> <p>A moderate proportion of the expected sensitive species is absent or of very low abundance.</p> <p>Some species can not reproduce naturally.</p> <p>Species untypical of the ecotype or stocked species can be found which significantly interfere with the autochthonous fish population.</p>

#### Hydromorphological parameters

Hydrological regime	<p>Quantity and dynamics of water flow corresponds totally or nearly totally to type specific natural conditions</p>	<p>Such as to allow the occurrence of the type-specific biological community specified above.</p>	<p>Such as to allow the quality of biological community specified above.</p>
Morphological elements	<p>Lake depth variation, quantity, structure and substrate of bed and the structure of the riparian zone correspond totally or nearly totally to the natural type specific conditions.</p>	<p>Such as to allow the occurrence of the type-specific biological community specified above.</p>	<p>Such as to allow the quality of biological community specified above.</p>

Element	High quality	Good quality	Fair quality
<b>Chemical elements<sup>(1)</sup></b>			
General parameters	Physico-chemical parameters are at type-specific levels. Concentrations not in excess of background concentrations ( $\leq$ bgl).	Concentrations/levels not exceeding standards established so as to ensure the functioning of the ecosystem and the occurrence of the biological community specified above ( $\leq$ eqs).	Such as to allow the quality of biological community specified above.
Substances under Annex VIII not included under general parameters	Concentrations not in excess of detection limit of most advanced analytical techniques or ubiquitous levels.	Concentrations not exceeding no effect concentration <sup>(2)</sup> for algae, Daphnia and fish, without prejudice to Directive 91/414/EC. The lowest value shall be used ( $\leq$ eqs).	Such as to allow the quality of biological community specified above.

(<sup>1</sup>) The following abbreviations are used: bgl = background level, eqs = environmental quality standard)  
(<sup>2</sup>) Established by the Member State for the specific body of water concerned according to the procedure established in Section 1.1.2.5.

Table 1.1.2.3 Normative definitions for high, good and fair ecological quality for estuaries

Element	High quality	Good quality	Fair quality
<b>General</b>	No evidence, or only very minor evidence, of anthropogenic impacts on biological communities and the physico-chemical and physical environment.  The composition and abundance of the biota reflect that normally associated with the ecotype under undisturbed conditions.	Detectable but low-level impacts on biological communities and the physico-chemical and physical environment.  The biota shows signs of disturbance but deviates in terms of survival, reproduction and development only slightly from that normally associated with the ecotype under undisturbed conditions.	Significant impacts on biological communities and the physico-chemical and physical environment.  The biota deviates moderately from that normally associated with the ecotype under undisturbed conditions.
<b>Biological</b>			
Aquatic flora: Phytoplankton	Species composition and abundance correspond totally or nearly totally to the type-specific conditions.  The average biomass and/or chlorophyll-a concentration are at type-specific levels corresponding to the type-specific nutrient levels.	No accelerated growth of algae and higher forms of plant life such as to produce an undesirable disturbance to the balance of organisms present in the water and to the quality of the water concerned.	Species composition and abundance show significant/moderate effects of impacts (e.g. eutrophication) due to anthropogenic activities.  The average chlorophyll-a concentration is significantly different from the type-specific natural levels.



Element	High quality	Good quality	Fair quality
Macroalgae	There would be a normal (expected) abundance (cover) and biomass of macroalgae.	Reduced but still relatively high abundance and biomass.	Low abundance and biomass.
Angiosperms	There would be a normal (expected) abundance (cover) and biomass of angiosperms.	Reduced but still relatively high abundance and biomass.	Low abundance and biomass.
Benthic invertebrate fauna	The number of taxa would be high, total abundance low and biomass moderate.  Typical/key indicator species of unimpacted state would be present.	The number of taxa would be high, total abundance low and biomass high. Most typical/key indicator species of unimpacted state would be present.	The number of taxa, total abundance and total biomass would be moderate. Species indicative of impact (for example organic pollution) would be present.
Fish fauna	Composition, abundance and biomass typical of undisturbed hydrophysical conditions.  No hindrance to fish migration.  Recruitment of fish normal for ambient biotic and hydrophysical conditions.	Sustainable resident fish populations with slightly reduced composition, abundance and biomass.  Some hindrance to fish migration but sustainable fisheries exist upstream.  Sustainable nursery fishery but below optimal recruitment.	Resident fish population not sustainable, much reduced composition, abundance and biomass.  Significant hindrance to fish migration, fisheries upstream not sustainable.  Some fish breed successfully.

#### Hydromorphological factors

Hydrological regime	Quantity and dynamic of flow reflects totally, or nearly totally the type-specific natural conditions. Thus tidal regimes (currents and height) freshwater flows into the estuary, sediment transport and deposition would not significantly be influenced by anthropogenic activities.	Such as to allow the occurrence of the type-specific biological communities specified above.	Such as to allow the quality of biological community specified above.
Estuary continuity	Specific for the type of estuary, not interrupted by anthropogenic activities and, for example, allows undisturbed migration of fish between rivers and the adjacent coastal waters.	Such as to allow the occurrence of the type-specific biological communities specified above.	Such as to allow the quality of biological community specified above.
Morphological elements	Channel patterns, width and depth variations, flow velocities, substrate conditions, inter-tidal areas and riparian conditions correspond totally or nearly totally to the natural type specific conditions.	Such as to allow the occurrence of the type-specific biological communities specified above.	Such as to allow the quality of biological community specified above.

Element	High quality	Good quality	Fair quality
<b>Chemical elements<sup>(1)</sup></b>			
General parameters	Physico-chemical parameters are at type-specific levels. Concentrations not in excess of background concentrations ( $\leq$ bgl).	Concentrations/levels not exceeding standards established so as to ensure the functioning of the ecosystem and the occurrence of the biological community specified above ( $\leq$ eqs).	Such as to allow the quality of biological community specified above.
Substances under Annex VIII not included under general parameters	Concentrations not in excess of detection limit of most advanced analytical techniques or ubiquitous levels.	Concentrations not exceeding no effect concentration <sup>(2)</sup> for algae, Daphnia and fish, without prejudice to Directive 91/414/EC. The lowest value shall be used ( $\leq$ eqs).	Such as to allow the quality of biological community specified above.

<sup>(1)</sup> The following abbreviations are used: bgl = background level, eqs = environmental quality standard)

<sup>(2)</sup> Established by the Member State for the specific body of water concerned according to the procedure established in Section 1.1.2.5.

Table 1.1.2.4 Normative definitions for high, good and fair ecological quality for coastal waters

Element	High quality	Good quality	Fair quality
<b>General</b>	No evidence, or only very minor evidence, of anthropogenic impacts on biological communities and their ecotype.  The composition and abundance of the biota reflect that normally associated with the ecotype under undisturbed conditions.	Detectable but low-level impacts on biological communities and their ecotype.  The biota shows signs of disturbance but deviates in terms of survival, reproduction and development only slightly from that normally associated with the ecotype under undisturbed conditions.	Significant impacts on biological communities and their ecotypes.  The biota deviates moderately from that normally associated with the ecotype under undisturbed conditions.
<b>Biological</b>			
Phytoplankton	Concentration of Chlorophyll-a (in $\mu\text{g/l}$ ), very low (for example in the Mediterranean $< 1 \mu\text{g/l}$ )  No exceptional phytoplanktonic blooms.  High transparency, (for example in the Mediterranean $< 20$ m)	No accelerated growth of algae and higher forms of plant life such as to produce an undesirable disturbance to the balance of organisms present in the water and to the quality of the water concerned.	Concentration of Chlorophyll-a ( $\mu\text{g/l}$ ), moderate (for example in the Mediterranean around 1 to 2 $\mu\text{g/l}$ )  Frequent phytoplanktonic blooms.  Low transparency (for example in the Mediterranean $> 10$ to 5 m)
Macroalgae and angiosperms	Presence of indicator species (of unimpacted conditions) with very high density.	Presence of indicator species (of unimpacted conditions) with high density.	Presence of indicator species (of unimpacted conditions) with medium density.

Element	High quality	Good quality	Fair quality
<b>Hydromorphological parameters</b>			
Hydrological regime	Quality and dynamic of flow reflects totally, or nearly totally the type specific natural conditions. Thus tidal regimes (currents and height), freshwater flows into the coastal waters, sediment transport and deposition would not significantly be influenced by anthropogenic activities. Allows the occurrence of biological communities specific for the type of coastal water of the quality described above. Allows the occurrence of a biological community of the quality specified above	Such as to allow the occurrence of the type-specific biological communities specified above.	Such as to allow the quality of biological community specified above.
Continuity	Specific for the type of coastal water, not interrupted by anthropogenic activities and, for example, allows undisturbed migration and passage of fish and other biota to and from estuaries and rivers.	Such as to allow the occurrence of the type-specific biological communities specified above.	Such as to allow the quality of biological community specified above.
Morphological elements	Structure and substrate of the adjacent and hydrodynamically related coastal and inter-tidal areas, and riparian conditions correspond totally or nearly totally to the natural type specific conditions.	Such as to allow the occurrence of the type-specific biological communities specified above.	Such as to allow the quality of biological community specified above.
<b>Chemical elements<sup>(1)</sup></b>			
General parameters	Physico-chemical parameters are at type-specific levels. Concentrations not in excess of background concentrations ( $\leq$ bgl).	Concentrations/levels not exceeding standards established so as to ensure the functioning of the ecosystem and the occurrence of the biological community specified above ( $\leq$ eqs).	Such as to allow the quality of biological community specified above.
Substances under Annex VIII not included under general parameters	Concentrations not in excess of detection limit of most advanced analytical techniques or ubiquitous levels.	Concentrations not exceeding no effect concentration <sup>(2)</sup> for algae, Daphnia and fish, without prejudice to Directive 91/414/EEC. The lowest value shall be used ( $\leq$ eqs).	Such as to allow the quality of biological community specified above.

<sup>(1)</sup> The following abbreviations are used: bgl = background level, eqs = environmental quality standard)

<sup>(2)</sup> Established by the Member State for the specific body of water concerned according to the procedure established in Section 1.1.2.5.

### 1.1.2.5 Procedure to be followed by Member States for the setting of chemical quality standards

#### 1.1.2.5.1 Data requirements

Where possible, both acute and chronic data shall be obtained for the following taxa, collectively termed "the base set":

- Algae and/or macrophytes
- Daphnia
- Fish

Other taxa for which data are available may be taken into account as appropriate.

#### 1.1.2.5.2 Setting the Environmental Quality Standard

The following procedure applies to the setting of a maximum annual average concentration.

- (i) The lowest reliable and relevant effect concentration shall be determined from laboratory tests and the appropriate safety factor applied as set out in the table below:

	Safety factor
At least one short-term L(E)C <sub>50</sub> from each of three trophic levels of the base-set	1 000
One long-term NOEC (either fish or Daphnia)	100
Two long-term NOECs from species representing two trophic levels (fish and/or Daphnia and/or algae)	50
Long-term NOECs from at least three species (normally fish, Daphnia and algae) representing three trophic levels	10
Field data or model ecosystems	Case by case assessment

Member States may adjust the factors indicated here in certain cases as indicated in section 3.3.1 of Part II of Technical guidance document in support of Commission Directive 93/67/EEC on risk assessment for new notified substances and Commission Regulation (EC) No 1488/94 on risk assessment for existing substances.

- (ii) Where data on persistence and bioaccumulation are available, these should be taken into account in deriving the final value of the Environmental Quality Standard.
- (iii) The standard thus derived should be compared with any evidence from field studies. Where anomalies appear the derivation should be reviewed.
- (iv) The standard derived should be subject to peer review and public consultation within the Member State.

### 1.1.3 Classification of water body ecotype and identification of reference conditions

#### 1.1.3.1 Classification of water body ecotype

##### Methodology

- (i) The surface water bodies within the river basin shall be discriminated into ecotypes.
- (ii) For this purpose, Member States may use either System A or System B identified below. If system A is used, the river basin must be discriminated into ecoregions according to the map set out in Annex X. The water bodies in each ecoregion must then be discriminated into ecotypes according to the criteria set out in the tables for System A.
- (iii) If System B is used, Member States must achieve at least the same degree of discrimination as would be achieved using System A.
- (iv) This exercise must be completed by 31 June 2001.
- (v) Member States shall submit a list of ecotypes distinguished, together with maps (GIS) of their geographical location, to the Commission at the latest by 31 December 2001.
- (vi) Where appropriate, Member States shall adjust the classification of water body type, inter alia in the light of the results of the monitoring required by Article 13.

## 1.1.3.1.1 Classification into ecotypes for rivers

## System A

Level	Type	Descriptors/parameters/factors
1	Ecoregion	18 ecoregions described by Illies (1978) in <i>Limnofauna Europaea</i>
2	Ecotype	<p>Altitude typology</p> <ul style="list-style-type: none"> <li>— high &gt; 800 m</li> <li>— mid-altitude 200 to 800 m</li> <li>— lowland &lt; 200 m</li> </ul> <p>Size typology based on catchment area</p> <ul style="list-style-type: none"> <li>— Small &lt; 100 km<sup>2</sup></li> <li>— Medium 100 to 1 000 km<sup>2</sup></li> <li>— Large 1 000 to 10 000 km<sup>2</sup></li> <li>— Very large &gt; 10 000 km<sup>2</sup></li> </ul> <p>Geology</p> <ul style="list-style-type: none"> <li>— calcareous</li> <li>— siliceous</li> <li>— organic</li> </ul>

## System B

Continuum of ecotypes/habitat types	Physical and chemical factors that in combination determine ecotype and hence affect biological community structure and composition		
	<p><b>Obligatory factors</b></p> <ul style="list-style-type: none"> <li>— altitude</li> <li>— latitude</li> <li>— longitude</li> <li>— geology</li> <li>— size</li> </ul>		
	<p><b>Optional factors</b></p> <ul style="list-style-type: none"> <li>— distance from river source</li> <li>— energy of flow (function of flow and slope)</li> <li>— mean water width</li> <li>— mean water depth</li> <li>— mean water slope</li> </ul>	<ul style="list-style-type: none"> <li>— form and shape of main river bed</li> <li>— river discharge (flow) category</li> <li>— valley shape</li> <li>— transport of solids</li> <li>— alkalinity</li> </ul>	<ul style="list-style-type: none"> <li>— mean substratum composition</li> <li>— chloride</li> <li>— air temperature range</li> <li>— mean air temperature</li> </ul>

## 1.1.3.1.2 Classification into ecotypes for lakes.

## System A

Level	Type	Descriptors/parameters/factors
1	Ecoregion	18 ecoregions described by Illies (1978) in <i>Limnofauna Europaea</i>
2	Ecotype	<p>Altitude typology</p> <ul style="list-style-type: none"> <li>— high &gt;800 m</li> <li>— mid-altitude 200 to 800 m</li> <li>— lowland &lt;200 m</li> </ul> <p>Depth typology based on mean depth</p> <ul style="list-style-type: none"> <li>— &lt;3 m,</li> <li>— between 3 m and &lt;15 m,</li> <li>— &gt;15 m</li> </ul> <p>Size typology based on surface area</p> <ul style="list-style-type: none"> <li>— 0,01 to 0,1 km<sup>2</sup></li> <li>— &gt;0,1 to 1 km<sup>2</sup></li> <li>— &gt;1 to 10 km<sup>2</sup></li> <li>— &gt;10 to 100 km<sup>2</sup></li> <li>— &gt;100 km<sup>2</sup></li> </ul> <p>Geology</p> <ul style="list-style-type: none"> <li>— calcareous</li> <li>— siliceous</li> <li>— organic</li> </ul>

## System B

Continuum of ecotypes/habitat types	Physical and chemical factors that in combination determine ecotype and hence affect biological community structure and composition		
	<p><b>Obligatory factors</b></p> <ul style="list-style-type: none"> <li>— altitude</li> <li>— latitude</li> <li>— longitude</li> <li>— geology</li> <li>— size</li> </ul>		
	<p><b>Optional factors</b></p> <ul style="list-style-type: none"> <li>— mean water depth</li> <li>— lake shape</li> <li>— residence time</li> <li>— mean air temperature</li> <li>— air temperature range</li> </ul>	<ul style="list-style-type: none"> <li>— alkalinity</li> <li>— acidification sensitivity</li> <li>— mixing characteristics (e.g. monomictic, dimictic, polymictic)</li> </ul>	<ul style="list-style-type: none"> <li>— acid neutralising capacity</li> <li>— background nutrient status</li> <li>— mean substratum composition</li> </ul>

## 1.1.3.1.3 Classification into ecotypes for estuaries

## System A

Level	Type	Descriptors/parameters/factors
1	Ecoregion	Based on the main sea areas of the EU as proposed by the EEA: — Baltic Sea — Barents Sea — Norwegian Sea — North Sea — North Atlantic Ocean — Mediterranean Sea
2	Ecotype	Based on mean annual salinity — <0,5‰ Freshwater — 0,5 to <5‰ Oligohaline — 5 to <18‰ Mesohaline — 18 to <30‰ Polyhaline — 30 to <40‰ Euhaline Based on mean tidal range — <2 m microtidal — 2 to 4 m mesotidal — >4 m macrotidal

## System B

Continuum of ecotypes/habitat types	Physical and chemical factors that in combination determine ecotype type and hence affect biological community structure and composition	
	<b>Obligatory factors</b> — latitude — longitude — tidal range — salinity	
	<b>Optional factors</b> — depth — current velocity — exposure — residence time — mean water temperature	— mixing characteristics — turbidity — mean substratum composition — estuary shape — water temperature range

## 1.1.3.1.4 Classification into ecotypes for coastal waters

## System A

Level	Type	Descriptors/parameters/factors
1	Ecoregion	Based on the main sea areas of the EU as proposed by the EEA — Baltic Sea — Barents Sea — Norwegian Sea — North Sea — North Atlantic Ocean — Mediterranean Sea
2	Ecotype	Based on mean annual salinity — < 0.5‰ Freshwater — 0.5 to < 5‰ Oligohaline — 5 to < 18‰ Mesohaline — 18 to < 30‰ Polyhaline — 30 to < 40‰ Euhaline Based on mean depth — shallow waters < 30 m, — intermediate (30 to 200 m), — deep > 200 m

## System B

Continuum of ecotypes/habitat types	Physical and chemical factors that in combination determine ecotype type and hence affect biological community structure and composition		
	<b>Obligatory factors</b> — latitude — longitude — salinity — depth		
	<b>Optional factors</b> — current velocity — exposure — mean water temperature — mixing characteristics — turbidity — retention time (of enclosed bays) — mean substratum composition — water temperature range		

## 1.1.3.2. Establishment of reference conditions: methodology

- (i) For each ecotype identified under Section 1.1.3.1, a set of reference conditions shall be established. These reference conditions shall be the values for the biological parameters which would be obtained for that ecotype at high status.
- (ii) The reference conditions may be spatially based and/or temporally based.
- (iii) For spatially-based reference conditions, Member States must develop a reference network of at least five reference sites of high status within each ecotype. Using this network, it shall then identify the values for the biological parameters listed in Section 1.1 corresponding to high ecological status, either by direct use of reference data or by of predictive models based on reference data.



- (iv) Temporally based reference conditions shall be identified using historical data at the site to identify the values for the biological parameters listed in Section 1.1 corresponding to high ecological status. Reference conditions may also be constructed using a combination of spatially and temporally-based reference conditions, for example by using historical data at a reference site. Historical values shall be determined by using either data collected in the past, or data collected in the present using palaeological methods.
- (v) Establishment of reference conditions shall be completed by 31 December 2001.

#### 1.1.4 Monitoring of ecological status for inland and coastal waters

Monitoring programmes for surface water status, as required by Article 10, shall be instituted according to the following requirements, so as to provide a comprehensive overview of the surface water status in each River Basin. Such monitoring programmes shall be reviewed every three years.

##### 1.1.4.1 Selection of monitoring sites

Member States shall separately identify all bodies of water in each River Basin District.

Member States shall designate monitoring sites to be included in the monitoring programme according to the following requirements:

1. Identify those bodies which are subject to point source pressures in accordance with Annex 3.2,
2. Identify those bodies which are subject to diffuse pressures in accordance with Annex 3.3,
3. Identify those bodies which are not subject to anthropogenic pressure,
4. Identify all significant<sup>(1)</sup> water bodies which cross a Member State boundary, and
5. Identify all significant bodies which discharge into territorial waters.

Bodies identified in 1. above shall be designated as monitoring sites.

Bodies identified in 2. above shall be assessed. This assessment shall be carried out by:

- designating as a monitoring site each body that is subject to the pressure,
- or
- designating as monitoring sites a selection of water bodies which are both:
  - representative of the ecotypes<sup>(2)</sup> that are subject to the pressure
  - and
  - representative of the spatial variability of the pressure.

Bodies identified in 3. above shall be assessed. Such an assessment shall be carried out by:

- designating as a monitoring site each body of water
- or
- designating as monitoring sites a selection of the water bodies which are representative of all the ecotypes present in the basin

Bodies identified in 4 and 5 above shall be monitored at the point of discharge into territorial waters or the territory of another state.

Member States shall designate additional monitoring sites as are necessary to ensure a comprehensive overview of surface water status for each River Basin.

<sup>(1)</sup> Significant bodies are to be considered those which, on average, account for more than 20 % of the annual discharge from a River Basin. Member States will designate all the monitoring stations listed in Annex I to Council Decision 77/795/EEC for this purpose.

<sup>(2)</sup> For the purpose of this requirement an ecotype is one of the types of water body identified under Section 1.1.3.1.

#### 1.1.4.2 Selection of type parameters for monitoring

Member States shall monitor each site identified in 1 to 5 above for those parameters listed in the table below:

Type Parameters	Biology	General Parameters	Hydro-morphological	Priority List	Other Pollutants
Body type 1	All	Inventory + Investigation	Inventory + Investigation	Inventory	Inventory
Body type 2	All	Inventory + Investigation	Inventory + Investigation	Inventory	Inventory
Body type 3	All	Reference + Investigation	Reference + Investigation	Option	Option
Body type 4	All	All	Option	All	Inventory
Body type 5	All	All	Option	All	Inventory

“Inventory” in the table above means: “monitor for those supporting parameters that indicate the level of those pressures, identified in the inventory of pollution sources required by Annex III, that are being imposed upon the water body, and thus the biological community.”

“Investigation” in the table above means: “monitor for supporting parameters in the event that the biological quality does not achieve good status.”

“Reference” in the table above means: “monitor the condition of reference sites<sup>(3)</sup> for all supporting parameters to ensure that they are not subject to significant anthropogenic pressure.”

<sup>(3)</sup> Reference sites are defined in section 1.1.3 of this Annex.

#### 1.1.4.3 Selection of frequency

Member States shall carry out monitoring at such a frequency as is envisaged as necessary to ensure that any changes in classification that occur are detected with a 90 % degree of confidence between three year periods, but in any event Member States shall, where required to do so by Table 1.1.4.2 above, monitor the relevant quality elements at the minimum frequency detailed below.

Type Parameter	Minimum Frequency
<b>Biological</b>	
Aquatic Flora	1 / 3 year
Macro invertebrates	1 / 3 year
Fish	1 / 3 year
<b>Hydromorphological</b>	
Continuity	1 / 3 year
Hydrology	continuous
Morphology	1 / 3 year

Type Parameter	Minimum Frequency
<b>Physico-Chemical</b>	
Temperature	1 / 3 months
Oxygen Balance	1 / 3 months
Salt Content	1 / 3 months
pH	1 / 3 months
Nutrients	1 / 3 months
Acidification Status	1 / 3 months
Priority Substances	1 / month
Other Pollutants	1 / 3 months

The level of confidence and precision reached by the monitoring system used shall be stated in the River Basin Management Plan.

#### 1.1.4.4 *Additional provisions on priority list substances*

- (i) Type 1 bodies of water which have been subject to inputs of priority list substances shall continue to be monitored until such time as twelve consecutive samples are measured to be below the relevant EQS for the substances in question.
- (ii) Monitoring points shall be chosen such as to determine whether the relevant quality objectives are being consistently achieved sufficiently close to the input, so as to be representative of the quality of the receiving water in the area affected by the input, allowing for a reasonable mixing zone.
- (iii) Additional monitoring required in the event of an EQS for a priority list substances being breached should include monitoring at a range of distances from the input in order to identify the extent of the area of exceedence.

#### 1.1.4.5 *Monitoring of protected areas*

The monitoring required under sections 1.1.4.1 to 1.1.4.4 shall be supplemented according to the following requirements:

##### (i) Drinking water abstraction points

Areas designated under Article 8 (drinking water abstraction) shall be designated as monitoring sites and shall be monitored for all parameters for which environmental quality standards have been set pursuant to Article 8. Monitoring shall be carried out in accordance with the frequencies detailed below:

Minimum annual frequency of sampling and analysis for each parameter for which an EQS has been set under Article 8.

Population served	Frequency
< 10 000	1 / 3 months
> 10 000 to < 30 000	1 / 6 weeks
> 30 000 to < 100 000	1 / month
> 100 000	1 / month

##### (ii) Bathing waters

Monitoring shall be carried out for these areas in accordance with the requirements of Directive 76/160/EEC

## (iii) Nutrient sensitive areas

Monitoring shall be carried out for these areas in accordance with the requirements of Directives 91/271/EEC and 91/676/EEC

## (iv) Habitat and species protection areas

Monitoring for these areas shall be carried out as for bodies of type 1, as referred to above, and such further monitoring as is considered necessary to ensure the condition of these areas satisfy the requirements of the measure under which they are designated.

1.1.4.6 *Monitoring in the event of accidental pollution*

In the event of accidental pollution, as referred to in Article 19, monitoring shall be carried out as for a body of type 1 above in order to assess the impact of the accidental pollution on the receiving water body.

1.1.4.7 *Standards for monitoring of type parameters*

## Macroinvertebrate sampling

ISO 5667-3 1995	Water quality — Sampling — Part 3: Guidance on the preservation and handling of samples
EN 27828: 1994	Water quality — Methods of biological sampling — Guidance on hand net sampling of benthic macroinvertebrates
EN 28265: 1994	Water quality — Methods of biological sampling — Guidance on the design and use of quantitative samplers for macroinvertebrates on stony substrata in shallow waters
ISO 9391: 1995	Water quality — Sampling in deep waters for macroinvertebrates — Guidance on the use of colonisation, qualitative and quantitative samplers
ISO/CD 8689.1	Biological classification of rivers PART I: guidance on the interpretation of biological quality data from surveys of benthic macroinvertebrates in running waters
ISO/CD 8689.2	Biological classification of rivers PART I: guidance on the presentation of biological quality data from surveys of benthic macroinvertebrates in running waters

## Macrophyte sampling

CEN/ISO standards under development

## Fish sampling

CEN/ISO standards under development

## Diatom sampling

CEN/ISO standards under development by CEN

## Standards for physico-chemical parameters

## Standards for hydromorphological parameters

1.1.5 *Monitoring and assessment of other marine waters*

Table 1.1.5

	Main anthropogenic effects to be considered
1	Discharges of substances in Annex VIII (with the exception of nutrients) and in particular Cd, Hg, Pb, TBT, PCBs <sup>(1)</sup> , PAHs <sup>(2)</sup> , chlorinated dioxins, dibenzofurans and oil;
2	Nutrients
3	Discharges of litter;
4	Fisheries and mariculture

<sup>(1)</sup> These are as follows: CB 28, CB 52, CB 101, CB 118, CB 138, CB 153 and CB 180.

<sup>(2)</sup> These are as follows: phenanthrene, anthracene, fluoranthene, pyrene, benzo[*a*]anthracene, chrysene, benzo-[*α*]-pyrene, benzo-[*ghi*]-perylene, indeno-[1,2,3-*cd*]-pyrene.

## Methodology

1. Each Member State shall identify, according to the methodology established under Annex III:
  - (a) those substances or contaminants in section 1 or 2 of table 1.1.5 which are input in significant quantities to the marine environment, from the atmosphere, from rivers and estuaries, from direct discharges, in the vicinity of shipping lanes and in the vicinity of offshore installations. They shall include in particular those substance inputs for which there is evidence that they are contributing significantly to pollution of the marine waters of any other Member State;
  - (b) significant occurrences of litter at the sea surface, on the seabed and along shorelines;
  - (c) significant instances of fishing and mariculture activities.
2. For each substance or contaminant in section 1 of table 1.1.5 identified under paragraph 1(a), Member States shall:
  - (a) undertake monitoring of marine concentrations in sediments and biota;
  - (b) establish background concentrations;
  - (c) compare concentrations with ecotoxicological assessment criteria.

For important groups of pollutants so identified, Member States shall establish biological effects monitoring regimes.
3. For significant inputs of nutrients identified under paragraph 1(a), Member States shall:
  - (a) establish a monitoring programme to identify where elevated nutrient concentrations or fluxes from anthropogenic sources cause an increase in any of frequency, magnitude or duration of phytoplankton blooms, or a change in species composition; and
  - (b) monitor to detect and assess the extent to which any of increased phytoplankton abundance, changed phytoplankton species composition, and the presence of toxic phytoplankton species result in ecological disturbance.
4. For occurrences of litter identified under paragraph 1(b), Member States shall:
  - (a) establish and assess sources, composition, occurrence and quantities of litter; and
  - (b) assess information on stomach contents of birds and marine organisms in relation to health.
5. For instances of fishing and mariculture activities identified under paragraph 1(c), Member States shall:
  - (a) for fishing activities
    - monitor fisheries discards and discards of offal,
    - monitor by-catches and establish biological effects monitoring to quantify effects on stocks of non-target species and benthic communities;
  - (b) for mariculture activities:
    - establish and monitor the genetic composition of wild stocks to identify any impacts,
    - monitor disease and parasites in wild stocks and undertake risk assessments of potential introduction from mariculture,
    - survey concentrations/biological effects of pesticides and antibiotics.
6. With a view to achieving a global assessment of ecological health in order to determine the extent of human impact, Member States shall develop ecological quality objectives, identify suitable indicator species and define a biological monitoring system in relation to their ecological quality objectives.
7. The technical specifications and quality-assurance provisions required to ensure the reliability and comparability of the data and to clearly record the procedures used for monitoring, assessment and

analysis for the activities in paragraphs 2—6 shall be adopted by the Commission by 31 December 2001 at the latest, in accordance with the procedure laid down in Article 25. The Commission shall ensure the maximum of consistency between the obligations established and those under the international conventions covering territorial and other marine waters.

#### 1.1.6 Presentation of monitoring results and harmonised classification of ecological quality

##### 1.1.6.1 Presentation of monitoring results and classification of ecological status

- (i) For biological monitoring, Member States shall present the monitoring results for each site in terms of deviation from the reference conditions for that site. This deviation shall be expressed by a single figure representing numerically the degree of departure.
- (ii) For each chemical parameter, the monitoring result shall be expressed as an absolute numerical value and translated into a quality classification as provided for in Section 1.2.
- (iii) For hydromorphological parameters, the monitoring result shall be expressed as a quality classification as provided for in Section 1.2.
- (iv) Member States shall classify the ecological quality for each body of water according to the following scheme:

High	A — blue
Good	B — green
Fair	C — yellow
Poor	D — orange
Bad	E — red

A map shall be provided of biological quality, colour-coded as indicated above.

Where failure to achieve good ecological status is entirely due to heavily modified physical characteristics, a set of green dashes shall be superimposed on the appropriate colour code.

- (v) The ecological quality classification for the body of water shall be presented by three letters in juxtaposition. The first letter shall represent the classification for biological parameters, the second the classification for hydromorphological parameters, and the third the classification for chemical parameters. The overall ecological status of the water body shall be the lowest of the three.

##### 1.1.6.2 Comparability of biological monitoring results

- (i) The Commission shall ensure an exchange of information between Member States leading to the identification across the Community of a set of bodies of water, of a representative selection of ecotypes, of qualities corresponding to the normative definitions of quality classes established in Section 1.2. This group of sites shall be collectively known as “the intercalibration network”. A register of the sites comprising the intercalibration network shall be prepared and made available for comment by 31 March 2001.
- (ii) Establishment of the intercalibration network for good ecological status shall be completed by 31 December 2001.
- (iii) The Commission shall coordinate an intercalibration exercise. Every biological monitoring system to be used by a Member State for the purposes of Article 10 shall be tested on the intercalibration network. This testing shall take the following form:
  - Each biological monitoring system shall be applied to every site in the intercalibration network which is of an ecotype for which it shall be used in practice. The intercalibration network shall include at least five sites at each of the five quality levels for every such ecotype.
  - Environmental quality ratios for each national monitoring system shall be established for each of the five quality classes. Member States shall classify the ecological status of the water body for the purposes of this Directive by reference to the ratios so established.
- (iv) The intercalibration exercise outlined in paragraph 4 shall be completed by 31 December 2002 at the latest. A table of all the values so established shall be published by the Commission by 30 June 2003.

### 1.1.7 Criteria for the designation of heavily modified physical characteristics

The Member State may designate physical characteristics of a body as heavily modified on the basis of consideration of the following:

- (i) whether it is technically possible and economically feasible to make modifications
- (ii) the effects of such modifications on the wider environment
- (iii) the effects on navigation
- (iv) the effects on activities for the purposes of which water is stored (power generation, drinking-water supply, etc. . .)
- (v) the effects on water regulation and flood protection.

Where characteristics of a body of water are so designated, that designation and the reasons for it shall be stated in the River Basin Management Plan.

## 1.2 CHEMICAL SURFACE WATER STATUS

### 1.2.1 Selection of monitoring sites, and sampling and analysis frequencies

These shall be selected as specified in the legislation laying down the environmental quality standard. Where no specific guidance is given the scheme for priority list substances set out in section 1.1.4.3 shall be adopted.

### 1.2.2 Presentation of chemical status

Where a body meets all the environmental quality standards with which compliance is required under Article 13(3)(a) or 13(3)(h), it shall be recorded as achieving good chemical status. If not, the body shall be recorded as failing to achieve good chemical status.

## 2. GROUNDWATER

### 2.1 ANALYSIS OF THE CHARACTERISTICS OF THE RIVER BASIN DISTRICT

#### Identification, mapping and characterisation of groundwater bodies

Member States shall identify, map and characterize all groundwater bodies at a national, regional and local level.

In characterizing groundwater bodies the following information shall be collected where relevant for each groundwater body:

- boundaries and area of the groundwater body,
- geological characteristics of the groundwater body, including extent and type of geological units,
- hydrogeological characteristics of the aquifer including hydraulic conductivity, porosity and confinement,
- characteristics of the superficial deposits and soils overlying the aquifer, including their thickness, porosity, hydraulic conductivity, and absorptive properties,
- stratification characteristics of the groundwater within the groundwater body,
- an inventory of associated surface systems, including terrestrial ecosystems and bodies of surface water, with which the groundwater body is dynamically linked,
- estimates of the directions and rates of exchange of water between the groundwater body and associated surface systems, and
- sufficient data to calculate the long term annual average rate of overall recharge.

In characterizing the impact of human activity, the following information shall be collected and maintained for each groundwater body:

- location of points in the groundwater body from which water is abstracted,
- the annual average rates of abstraction from such points,
- the chemical composition of water abstracted from the groundwater body,

- location of points in the groundwater body into which water is directly discharged,
- the rates of discharge at such points,
- the chemical composition of waters discharged to the groundwater body,
- land use in the catchment for the groundwater body, including anthropogenic alterations to the recharge characteristics of the groundwater body, including rainwater and run-off diversion through land sealing, artificial recharge, damming and drainage, and
- areas of human development which may be susceptible to damage as a result of changes in groundwater level.

Sufficient information shall be provided to allow a reliable water balance calculation to be made for each groundwater body such as to identify the net change in water storage in the body resulting from the total volumes of water entering and leaving the body.

## 2.2. GROUNDWATER QUANTITATIVE STATUS

### 2.2.1 Parameter for classification of quantitative status of groundwater

Groundwater level regime

### 2.2.2 Definition of good quantitative status

Elements	Good status
Groundwater level	<p>The level of groundwater in the groundwater body is consistent with the achievement of good quantitative status as defined in Article 2.</p> <p>The level of groundwater is not subject to anthropogenic alterations such as would result in failure to achieve the ecological quality objectives specified under Article 4 for associated surface waters or any significant diminution in the ecological quality of such waters or any significant damage to associated terrestrial ecosystems.</p> <p>The level of groundwater does not exhibit an anthropogenically induced trend liable to result in such alterations to the groundwater level.</p> <p>Alterations to flow direction resulting from level changes may occur temporarily, or continuously in a spatially limited area, but such reversals do not cause saltwater or other intrusion, and do not indicate an anthropogenically induced trend in flow direction likely to result in such intrusions.</p>

### 2.2.3 Monitoring of groundwater quantitative status

#### 2.2.3.1 Groundwater level monitoring sites

Each competent authority shall establish a groundwater monitoring network in accordance with the requirements of Article 10. The monitoring network shall be designed so as to provide a reliable estimate of the quantitative status of all groundwater bodies.

Member States shall:

1. Identify those groundwater bodies from which waters are abstracted and ensure sufficient monitoring points are provided to assess the impact of the abstraction upon the groundwater level within the groundwater body.
2. Identify those groundwater bodies which are subject to direct or indirect discharges and ensure sufficient monitoring points are provided to assess the impact of the discharge upon the groundwater level within the groundwater body.
3. Identify all significant groundwater bodies where groundwater flows across a Member State boundary and ensure sufficient monitoring points are provided to estimate the direction and rate of groundwater flow across the Member State boundary.



4. Identify those groundwater bodies not included in 1., 2., or 3. above and ensure sufficient monitoring points are provided to estimate the groundwater level including dynamic elements such as seasonal variations, and long term natural fluctuations within the groundwater body.

#### 2.2.3.2 Selection of frequency

Monitoring of groundwater levels shall be carried out so as to identify both short-term and long-term trends in groundwater levels. Monitoring shall be sufficient for the identification of such trends despite the presence of climatically induced variation as a result of factors such as rainfall events and long term climatic change.

The frequency of observations of the groundwater level in each body of groundwater shall permit assessment of trends in groundwater level as a result of both anthropogenic and non-anthropogenic influences on the body.

The frequency of observations shall permit the calculation of the available groundwater resource.

#### 2.2.3.3 Representation of quantitative status

For each groundwater level monitoring point, observations of groundwater level shall be analysed to assess trends in the level of groundwater in the groundwater body. The detection or prediction of anthropogenic trends liable to give rise to a reduction in the ecological status of associated surface systems shall be considered as a failure to achieve good quantitative status.

### 2.3 GROUNDWATER CHEMICAL STATUS

#### 2.3.1 Parameters for classification of chemical status

Conductivity

Concentrations of priority list substances

Concentrations of Annex VIII pollutants

#### 2.3.2. Definition of chemical status

Elements	Good status
General	<p>The chemical composition of the groundwater body is such that the concentrations of pollutants:</p> <ul style="list-style-type: none"> <li>— as specified below, do not exhibit the effects of saline or other intrusions</li> <li>— do not exceed the environmental quality standards specified below</li> <li>— are not such as would result in failure to achieve the environmental objectives specified under Article 4 for associated surface waters nor any significant diminution of the ecological or chemical quality of such bodies nor in any significant damage to associated terrestrial ecosystems</li> </ul> <p>and monitoring data do not exhibit any trend likely to result in the exceedance of such environmental quality standards, failure to achieve such environmental objectives, such loss of ecological or chemical quality in associated surface waters or such damage to associated terrestrial ecosystems.</p>
Conductivity	is not indicative of saline or other intrusion into the groundwater body
Priority list pollutants	any environmental quality standards established under Article 21(6) or under other relevant Community legislation
Other pollutants	any environmental quality standards established by the Member State under Article 8 or Article 21(6) or those applicable under other relevant Community legislation

### 2.3.3. Monitoring of groundwater chemical status

#### 2.3.3.1 Identification of monitoring points

Member States shall assess, where relevant, the inherent susceptibility of each groundwater body to pollution by reference to relevant available monitoring data or by reference to the characteristics of the groundwater body determined in accordance with Annex II and in particular:

- the thickness, hydraulic conductivity, absorptive and reactive properties of materials overlying the geological unit in which the groundwater is located,
- the thickness, hydraulic conductivity, absorptive and reactive properties of the solid geological strata in the unsaturated zone, and
- the depth below ground of the uppermost portion of aquifer associated with the groundwater body.

Member States shall:

1. Identify those bodies of groundwater which are subject to point sources of pollutants and ensure sufficient monitoring points are provided to assess the impact of the point source input upon the groundwater body given its inherent susceptibility.
2. Identify those bodies of groundwater which pollutants enter other than from point sources and ensure sufficient monitoring points are provided to assess the impact of such sources upon the groundwater body given its inherent susceptibility.
3. Identify those bodies which are susceptible to saline or other intrusion as a result of groundwater abstraction and ensure sufficient monitoring points shall be provided to detect the rate of intrusion of saline or other intrusion into the groundwater body.
4. Identify all significant bodies of groundwater where groundwater flows across a Member State boundary and ensure at least one monitoring point is provided and such further points as are considered necessary to be representative of the variability of chemical composition across the member state boundary.
5. Designate such additional monitoring sites as are necessary in order to ensure a comprehensive overview of groundwater chemical status for each body of groundwater.

Groundwater bodies designated as waters used for the abstraction of water intended for human consumption under Article 8 shall be monitored at the point of abstraction in order to ensure achievement of the environmental quality standards set by the Member State in accordance with Article 8.

#### 2.3.3.2 Selection of Parameters

Monitoring and analysis shall be carried out for those parameters specified in the table below:

Type parameters	Conductivity	Priority list substances	Other pollutants
Body type 1 — Diffuse input	Option	Inventory	Inventory
Body type 2 — Point source impact	Option	Inventory	Inventory
Body type 3 — Intrusion sensitive	All	Inventory	Inventory
Body type 4 — Trans boundary	Option	All	Inventory
Body type 5 — Unimpacted	Option	Selection	Selection

“Inventory” in the table above means: “monitor for those pollutants which are identified in the inventory of sources of pollutants that are liable to enter the groundwater body, as identified in the review of human impacts detailed in 2.3.1 above.”

“Selection” in the table above means: “monitor a selection of unimpacted sites for the presence of pollutants which are liable to be widespread, so as to obtain values for the background concentration of such pollutants.”

“Option” in the table above means: “may be monitored at the discretion of the Member State.”

#### 2.3.3.3 *Selection of frequency*

Member States shall carry out monitoring, where required to do so by Table 2.3.3.2 above, at such a frequency as is envisaged necessary to ensure that trends in the concentration of all pollutants are detected. In any event monitoring shall be carried out at a minimum frequency of once per annum.

The level of confidence and precision achieved by the monitoring system used shall be stated in the River Basin Management Plan.

#### 2.3.3.4 *Representation of Groundwater Chemical Status*

Failure to achieve the standards set out in 2.2.2 shall be judged as a failure to achieve good groundwater chemical status.’

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**Proposal for a Council Directive on conditions for the operation of regular Ro-Ro Ferry and high speed passenger craft services in the Community**

(98/C 108/18)

(Text with EEA relevance)

COM(98) 71 *final* — 98/0064(SYN)

*(submitted by the Commission on 18 February 1998)*

THE COUNCIL OF THE EUROPEAN UNION,

a common minimum level of safety for ships throughout the Community;

Having regard to the Treaty establishing the European Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission,

Whereas, in view of the proportionality principle, a Council Directive is the appropriate legal instrument as it provides a framework for the Member States' uniform and compulsory application of safety standards, while leaving each Member State the right to decide which implementation tools best fit its internal system;

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

In cooperation with the European Parliament,

Whereas the safety of ships is the primary responsibility of flag States; whereas Member States can ensure compliance with adequate safety requirements by ferries and high-speed craft flying their flag; whereas the only way to ensure safety of these vessels and craft irrespective of their flag operating or wishing to operate on a regular service to and from their ports is for the Member States to require their effective compliance with safety rules as a condition to operate on a regular service from their ports;

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

Whereas within the framework of the common transport policy further measures must be taken to enhance safety in the maritime transport of passengers;

Whereas this Directive addresses the Member States in their capacity of host States; whereas these responsibilities are based upon specific port State responsibilities fully in line with the 1982 United Nations Convention on the Law of the Sea (UNCLOS);

Whereas the Community is seriously concerned by shipping accidents involving ro-ro ferries which have resulted in a massive loss of lives; whereas persons using ro-ro passenger ships and high speed passenger craft throughout the Community have the right to expect, and be able to rely on an appropriate level of safety;

Whereas the Council in its resolution of 22 December 1994 on the safety of roll-on/roll-off passenger ferries<sup>(1)</sup> invited the Commission to submit proposals for a mandatory survey regime and for the establishment of a control regime for the safety of ro-ro ferries;

Whereas action at Community level is the best way to ensure the mandatory enforcement of some principles agreed upon within the IMO, while avoiding distortion of competition between different Community ports and ro-ro ferries and high speed passenger craft;

Whereas this Directive is in conformity with the right of Member States to impose on passenger ships and craft sailing to or from their ports, certain more stringent requirements than those laid down in the SOLAS Convention;

Whereas in the interest of improving safety and avoiding distortion of competition the common safety requirements should apply to ro-ro ferries and high speed passenger craft providing regular services and engaged both on international and domestic voyages in sea areas where its without doubt practical to apply the Directive, irrespective of the flag they fly, whilst leaving the possibility to the Member States to extend the scope of application to ships sailing in other areas if practicable;

Whereas in view, in particular, of the internal market dimension of maritime passenger transport, action at Community level is the most effective way of establishing

<sup>(1)</sup> OJ C 379, 31.12.1994, p. 8.

Whereas companies should know in advance all the safety related conditions they have to fulfil to operate their ro-ro ferries and high speed craft in the Community; whereas companies operating ro-ro ferries and high speed passenger craft found in compliance with the requirements of the Directive should not be prevented from operating on a regular service within the Community and should duly be informed thereof;

Whereas this Directive does not interfere with the obligations and the right of a Member State to inspect ships or craft under the provisions of Article 5 of Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)<sup>(2)</sup>;

Whereas Member States should cooperate to exercise their responsibilities as host States;

Whereas it is necessary to identify harmonized requirements for survey and certification by the flag States; whereas Member States might find it necessary to delegate these tasks only to recognized organizations which meet the requirements of Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organizations and for relevant activities of marine administrations<sup>(3)</sup>;

Whereas all ro-ro ferries operating to and from EC ports should conform, at the building stage and during their entire lifetime, with the relevant classification standards as regards their hull strength, main and auxiliary machinery and electrical and automatic plants and should be fitted with a voyage data recorder complying with the relevant international requirements;

Whereas regional stability requirements should apply without ambiguity to all ro-ro ferries sailing in the region irrespective of their flag or the nature of their voyage;

Whereas it is the responsibility of the companies as a condition to provide a regular service to and from EC ports to provide the evidence of compliance with the requirements of the Directive and to ensure that Member States can fully participate in any accident investigation according to the provisions of the IMO code for the investigation of marine casualties;

Whereas verification of compliance of ro-ro ferries and high speed passenger craft with the requirements is necessary through specific surveys by the host States on the basis of harmonized procedures and detailed guidelines and should be carried out by a qualified team of inspectors prior to the start of a service fulfilling the requirements of this Directive and subsequently at regular intervals;

Whereas to reduce the burden upon companies for the verification of compliance of ships and craft due account should be taken of their operational and maintenance schedule as well as of the confirmation of compliance for operation on similar routes; whereas ships and craft which have been surveyed to the satisfaction of the host State should not be subjected to expanded inspections under Directive 95/21/EC;

Whereas Member States should ensure that their internal legal system enables them and any other substantially interested Member States to participate or cooperate in accident investigation on the basis of the provisions of the IMO code for the investigation of marine casualties; whereas the outcome of such investigations should be given due publicity, bearing in mind the high public interest which accidents involving passenger traffic attract;

Whereas a set of accompanying measures to be taken by the Member States is suitable for a coherent and efficient implementation of the requirements by both host States and companies;

Whereas the Commission is bound to ensure an adequate monitoring of the implementation of this Directive and that all information related to a ship or craft falling under the scope of this Directive should be accessible to all parties with a vested interest in the operation of these ships and craft through a transparent data base which will be set up by the Commission;

Whereas it is necessary to ensure that all States involved in the traffic to and from EC ports fulfil the same requirements for the safe operation of ro-ro ferries and high-speed passenger craft and for the investigation of marine casualties; whereas these requirements are not in conflict with UNCLOS; whereas third countries involved in the operation of ro-ro ferries and high speed passenger craft falling under the scope of this Directive should be informed by the Member States of the conditions

<sup>(2)</sup> OJ L 157, 7.7.1995, p. 1.

<sup>(3)</sup> OJ L 319, 12.12.1994, p. 20.

imposed under Community legislation to companies to provide regular services to and from EC ports;

Whereas it is necessary for a committee consisting of representatives of the Member States to assist the Commission in the effective application of this Directive; whereas the Committee set up in Article 12 of Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods<sup>(4)</sup> can assume that function;

Whereas certain provisions of the Directive may be adopted by that committee to take into account future amendments to the SOLAS Convention which have entered into force and to ensure a harmonized implementation of amendments to some IMO resolutions,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

##### **Purpose**

The purpose of this Directive is to lay down conditions for the safe operation of regular ro-ro ferry and high-speed passenger craft services to or from ports in the Member States of the Community and to provide the right for Member States to conduct, participate in or cooperate with any investigation of maritime casualties or incidents on these services.

#### *Article 2*

##### **Definitions**

For the purpose of this Directive and its annexes,

- (a) 'ro-ro ferry' shall mean a seagoing passenger vessel with facilities to enable road or rail vehicles to roll on and roll off the vessel, and carrying more than twelve passengers;
- (b) 'high-speed passenger craft' shall mean a high speed craft as defined in Regulation 1 of Chapter X of the 1974 SOLAS Convention, as amended on the date of the adoption of this Directive, which carries more than twelve passengers;
- (c) '1974 SOLAS Convention' shall mean the International Convention for the Safety Of Life At Sea, together, with Protocols and amendments thereto, in force on the date of adoption of this Directive;
- (d) 'High-Speed Craft Code' shall mean the 'International Code for Safety of High-Speed Craft' contained in IMO Maritime Safety Committee resolution MSC 36 (63) of 20 May 1994, as amended on the date of the adoption of this Directive;
- (e) 'regular service' shall mean a series of ro-ro ferry or high-speed passenger craft crossings operated so as to serve traffic between the same two or more ports, either:
  1. according to a published timetable; or
  2. with crossings so regular or frequent that they constitute a recognizable systematic series;
- (f) 'sea area' shall mean any sea area as established in accordance with Article 4.2 of Council Directive 98/.../EC on safety rules and standards for passenger ships;
- (g) 'certificates' shall mean for ro-ro ferries a passenger ship safety certificate, issued either under the provisions of the 1974 SOLAS Convention, or in accordance with Directive 98/.../EC on safety rules and standards for passenger ships, and for high-speed passenger craft a high speed craft safety certificate, and a permit to operate high-speed craft issued in accordance with the provisions of the High-Speed Craft Code; together with the relevant records of equipment and where applicable Exemption Certificates;
- (h) 'exemption certificate' shall mean any certificate issued under the provisions of Regulation I A/12(a)(vi) of the 1974 SOLAS Convention;
- (i) 'administration of the flag State' shall mean the competent authorities of the State whose flag the ro-ro ferry or the high-speed passenger craft is entitled to fly;
- (j) 'host State' shall mean a Member State to or from whose ports a ro-ro ferry or a high-speed passenger craft is engaged on a regular service;
- (k) 'international voyage' shall mean a voyage by sea from a port of a Member State to a port outside that Member State, or conversely;
- (l) 'domestic voyage' shall mean a voyage in sea areas from a port of a Member State to the same or another port within that Member State;
- (m) 'recognized organization' shall mean an organization recognized in conformity with Article 4 of Council Directive 94/57/EC on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations;
- (n) 'company' shall mean a company operating one or more ro-ro ferries to which a document of compliance has been issued in compliance with

<sup>(4)</sup> OJ L 247, 5.10.1993, p. 19.

Article 5.2 of Council Regulation (EC) No 3051/95 or a company operating high-speed passenger craft, to whom a document of compliance has been issued in accordance with Regulation IX/4 of the 1974 SOLAS Convention, as amended on the date of adoption of this Directive;

- (o) 'Code for the investigation of marine casualties' shall mean the code for the investigation of marine casualties and incidents adopted by the IMO through Assembly resolution A.849(20) of 27 November 1997;
- (p) 'specific survey' shall mean a survey by the host State as specified in Article 7;
- (q) 'qualified inspector' shall mean a public-sector employee or other person, duly authorized by the competent authority of a Member State to carry out surveys and inspections related to the certificates and fulfilling the criteria of qualification and independence specified in Annex VI;
- (r) 'deficiency' shall mean a condition found not to be in compliance with the requirements of this Directive.

### Article 3

#### Scope

1. This Directive shall apply to all ro-ro ferries and high-speed passenger craft operating to or from a port of a Member State on a regular service, regardless of their flag, when engaged on international voyages or on domestic voyages in sea areas of Class A.

2. A Member State may, as far as practicable, apply this Directive to ro-ro ferries and high-speed craft engaged on domestic voyages in other sea areas than those referred to in paragraph 1. In those circumstances the relevant rules shall be applied to all ro-ro ferries or high speed passenger craft operating under the same conditions, without discrimination in respect of flag, nationality or place of establishment of the company.

### Article 4

#### Application

1. Each host State shall ensure, as a requirement for ro-ro ferries and high-speed passenger craft to provide a regular service to or from one or more of its ports, that companies which operate or intend to operate such ship or craft comply with the provisions of Article 6 and that their ships or craft fulfil the requirements of Article 5.

2. The host State which, after verification in accordance with the provisions of Article 7.1, is satisfied that the requirements of paragraph 1 are complied with shall confirm this in writing to the company and shall not prevent, for reasons arising from this Directive, the company from operating its ship or craft on that regular service.

3. A host State shall prevent a company from operating a ro-ro ferry or a high-speed passenger craft on a regular service to or from one or more of its ports:

- when the conditions referred to in Articles 5 and 6 are not fulfilled, or
- whenever it has not been consulted by the flag State on the suitability of exemptions granted, as referred to in Article 10.1, or
- whenever the deficiencies found at the occasion of one of the specific surveys referred to in Article 7 are not rectified to its satisfaction in accordance with the provisions of Article 8.6,
- or for reasons listed in Annex II.

4. Whenever they have decided to prevent that company from operating a ship or craft in accordance with the provisions of paragraph 3 host States shall by a reasoned decision inform the company thereof as well as of its right of appeal. An appeal shall not cause the decision to be automatically suspended.

5. Host States involved in the same regular service shall liaise with each other when applying the provisions of this Article.

### Article 5

#### Provisions to be fulfilled by ro-ro ferries and high-speed passenger craft

1. Ro-ro ferries and high speed passenger craft shall:
  - (a) carry valid certificates, issued by the administration of the flag State or by a recognized organization acting on its behalf;
  - (b) be surveyed for the issue of certificates in accordance with the relevant procedures and guidelines annexed to IMO Assembly resolution A.746(18) on Survey Guidelines under the harmonized system of survey and certification, as they are at the time of adoption of this Directive or with procedures designed to achieve the same goal.
2. Ro-ro ferries and high-speed passenger craft shall:

- (a) comply with the standards specified for classification by the rules of a recognized organization, or rules accepted as equivalent by the administration of the flag State for the construction and maintenance of their hull, machinery and electrical and control installation;
- (b) be fitted with a voyage data recorder (VDR) for the purpose of providing information for the benefit of a possible casualty investigation. The VDR shall meet the performance standards of IMO Assembly resolution A.861(20) of 27 November 1997 and comply with the testing standards laid down in IEC standard No 61996. However, for VDR to be placed on board ro-ro ferries or high-speed passenger craft built before the adoption of this Directive, exemptions for compliance with some of the requirements may be granted. These exemptions and the conditions under which they can be granted shall be adopted in accordance with the procedure laid down in Article 12.
3. Ro-ro ferries shall fulfil the specific stability requirements adopted at regional level and notified to the Commission in accordance with Council Directive 83/189/EEC together with the common interpretations which may be adopted in accordance with the procedure laid down in Article 12, when operating in the region covered by such regional rules.

#### Article 6

##### Provisions to be fulfilled by companies

1. Companies shall take the necessary measures to ensure that the specific requirements laid down in Annex 1 of this Directive are applied and shall provide in accordance with the procedures referred to in Article 10.5, the evidence of compliance with this paragraph and with Article 5 to the host States involved in the regular service.
2. Companies shall not prevent host States or any substantially interested Member State from conducting, participating fully in, or cooperating with any investigation of a marine casualty or incident as defined in the code for the investigation of marine casualties, nor deny them access to the information retrieved from the VDR of their ferry or craft involved in such a casualty or incident.
3. Companies shall inform the host States that for ships or craft, flying a flag other than that of a Member State, the administration of that flag State has accepted the company's commitment to fulfil the requirements imposed by the host States as a condition to provide a regular service to or from one or more of their ports.

#### Article 7

##### Verification of evidence of compliance

1. Each host State shall verify the validity of the evidence provided in accordance with Article 5 and 6.1 and carry out an initial specific survey in accordance with the guidelines laid down in Annex III, to satisfy itself that the ro-ro ferry or high speed passenger craft fulfils all the conditions to operate a regular service to or from one or more of its ports.
2. The verification of the validity of the evidence of compliance with Articles 5 and 6.1 and the initial specific survey referred to in paragraph 1 shall be carried out either prior to the entry into operation of the ship or craft on such a regular service, or no later than 12 months after the date mentioned in Article 15.1, if the ship or craft is already operating on regular services to or from ports of the Member States on that date.

Whenever a ro-ro passenger ferry or high-speed passenger craft operating on a regular service for which the involved host States have confirmed to the company that it complies with the requirements to operate on that regular service, is to be engaged on another regular service involving another host State, this host State shall take the utmost account of the confirmations previously issued for that ship or craft. Provided that this other host State is satisfied with these previous confirmations and that the operational conditions of the regular services are the same, it may dispense that ship or craft from an initial specific survey prior to its entry into operation on that other regular service.

3. Host States shall also carry out a specific survey in accordance with the guidelines for an initial specific survey as laid down in Annex III each time the ro-ro ferry or high-speed passenger craft undergoes repairs, alterations and modifications of a major character, or when there is a change in management or flag, or a transfer of class.
4. In addition to the initial surveys, two unscheduled specific surveys shall be carried out in accordance with the guidelines laid down in Annex III during the period of validity of the certificates. At least one of these unscheduled surveys shall take place during a regular crossing of the ro-ro ferry or high-speed passenger craft.
5. Ro-ro ferries and high-speed passenger craft that have been subject to the specific surveys to the satisfaction of the involved host State(s) are to be exempted by these host State(s) from expanded inspections as mentioned in Article 7.4 of Council Directive 95/21/EC and from expanded inspections based upon the clear grounds that they belong to the category



of passenger ships as mentioned in Annex V.3 and referred to in article 7.1 of Council Directive 95/21/EC.

#### *Article 8*

##### **Procedures related to specific surveys**

1. Administrations of two or more host States involved in a specific survey of the same ship or craft shall cooperate with each other. The specific surveys shall be carried out by a team composed of qualified inspectors of the involved host State(s). For a specific initial survey the team shall also include a surveyor of a recognized organization. This team shall assess the compliance of the ro-ro ferry or high-speed passenger craft with the requirements of Articles 5 and 6.1 on the basis of their professional judgement and taking into account the guidelines set out in Annex V. They shall report deficiencies to the administrations of the host States.

2. Host States, when required by companies, shall invite the administration of the flag State which is not a host State to be represented in any specific survey under the provisions of this Directive.

3. Host States, in planning an initial survey, shall take due account of the operational and maintenance schedule of the ship or craft.

4. The findings of the specific surveys shall be recorded in a report of which the format shall be established in accordance with the procedure laid down in Article 12.

5. In case of persistent disagreement between host States on the fulfilment of the requirements of Articles 5 and 6.1, the Administration of any host State involved in a specific initial survey shall immediately notify to the Commission the reasons of the disagreement.

Unless the Commission is informed of an agreement between the host States concerned within one month it shall initiate proceedings in order to take a decision in accordance with the procedure laid down in Article 12.

6. In the case where deficiencies are established host States shall require the company to take the necessary measures for their prompt rectification or within a well-defined and reasonable period of time if they do not pose an immediate danger to the safety of the ship or craft, its crew and passengers. After rectification of the deficiencies the concerned host States shall verify that the rectification has been carried out to their full satisfaction,

and if this is not the case, they shall prevent the ferry or craft from operating as provided under Article 4.3.

#### *Article 9*

##### **Accident investigation**

1. Member States shall define, in the framework of their respective internal legal systems, a legal status that will enable them and any other substantially interested Member State to conduct, to participate in, or to cooperate in any maritime casualty or incident investigation involving any ro-ro ferry and high-speed passenger craft engaged on a regular service to or from their ports for which they bear responsibilities under this Directive.

2. Member States conducting, cooperating with or participating in such investigations shall ensure that the investigation is concluded in the most efficient way and within the shortest possible time taking into account the code for the investigation of marine casualties.

3. Reports resulting from such an investigation shall be made public and notified to the Commission.

#### *Article 10*

##### **Accompanying measures**

1. Member States issuing or recognizing an exemption certificate shall work together with the involved host State or administration of the flag State to resolve any disagreement concerning the suitability of the exemptions prior to the initial specific survey.

2. Member States shall establish the appropriate shore based navigational guidance systems and other information schemes to assist ro-ro ferries and high-speed passenger craft in the safe conduct of the regular service, or part of it, for which they bear responsibility.

3. Ro-ro ferries and high-speed passenger craft which operate on a regular service to or from ports of the Member States shall be provided with an identification number in accordance with the IMO ship identification number scheme adopted by IMO resolution A.600(15).

4. Each Member State shall regularly provide the Commission with updated data as listed in Annex IV for all ro-ro ferries and high-speed passenger craft which operate on a regular service to or from its ports. If two or more host States are involved in the regular service, the data may be provided by one of these host States.

5. Member States shall establish and maintain appropriate procedures in accordance with their national legislation for:

- an expeditious verification of the evidence and organisation of the initial survey mentioned in Article 7,
- preventing companies to operate ro-ro ferries and high-speed passenger craft on regular services to or from one or more of its ports, in accordance with Article 4.3,
- the right of appeal for companies, in accordance with the provisions of Article 4.4.

6. Member States shall ensure that companies operating ro-ro ferries or high-speed passenger craft on regular services to or from their ports are able to maintain and implement an integrated system of contingency planning for shipboard emergencies. To this end they shall make use of the framework provided by IMO Assembly resolution A.852(20) on guidelines for a structure of an integrated system of contingency. If two or more Member States are involved as host States in the regular service they shall jointly establish a plan for the different routes.

7. Member States shall ensure that they have been fully involved in their capacity as host State by the administration of the flag State, before the issuance of the permit to operate high-speed craft, in accordance with the provisions of paragraph 1.9.3 of the High Speed Craft Code. They shall ensure that operational restrictions required by local situations, necessary to protect life, natural resources and coastal activities are established or maintained and they shall take measures to ensure the effective enforcement of these restrictions.

#### *Article 11*

#### **Supporting measures**

1. The Commission shall set up and maintain a data base containing all the data provided by Member States in accordance with the provisions of Article 10.4. The data shall be accessible to all concerned flag State administrations and host States. The company responsible for a ro-ro ferry or high-speed passenger craft falling under the scope of this Directive, as well as other parties with a vested interest in the operation of the ro-ro ferry or high-speed passenger craft shall also have access to the data under the conditions to be determined in accordance with the procedure laid down in Article 12.

2. The Member States shall inform third countries which bear either flag State responsibilities or responsibilities similar to those of a host State for ro-ro ferries and high-speed passenger craft falling under the scope of this Directive and operating between a port of a Member State and a port of a third State of the requirements imposed by this Directive on any company providing a regular service to or from a port of the Community.

#### *Article 12*

#### **Regulatory Committee**

The Commission shall be assisted by the Committee set up pursuant to Article 12 paragraph 1 of Directive 93/75/EEC. The Committee shall operate in accordance with the procedure laid down in paragraphs 2 and 3 of that Article.

#### *Article 13*

#### **Amendment procedure**

This Directive may be amended in accordance with the procedure laid down in Article 12, in order to adapt its Annexes to take into account relevant amendments of Conventions and Community instruments mentioned in this Directive, the coming into force of new Community instruments as well as any IMO resolution recognized important for the establishment or improvement of the regime established by this Directive.

#### *Article 14*

#### **Penalties**

Member States shall lay down the system of penalties for breaching the national provisions adopted pursuant to this directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive.

#### *Article 15*

#### **Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 2000 and forthwith inform the Commission thereof.

The provisions of Article 5.2.b shall be applied no later than [30] months after the publication date of IEC

standard No 61996 [or by 1 January 2002, whichever of these dates comes later].

2. 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 reference shall be laid down by the Member States.

3. The Member States shall immediately notify to the Commission all provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

#### *Article 16*

##### **Entry into force**

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

#### *Article 17*

##### **Addressees**

This Directive is addressed to the Member States and the Commission.

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## ANNEX I

## SPECIFIC REQUIREMENTS TO BE FULFILLED BY COMPANIES

*(as referred to in Article 6.1)*

Companies shall ensure that on board of their ro-ro ferries and high-speed passenger craft:

- the master is provided with appropriate information on the availability of shorebased navigational guidance systems and other information schemes to assist him in the safe conduct of the voyages, before the ship or craft begins to sail, and that he participates in the navigational guidance and information schemes set up by the Member States;
- the relevant provisions of paragraphs 2 to 6 of MSC/Circular 699 — revised guidelines for passenger safety instructions are applied;
- a table with the shipboard working arrangements is posted in an easily accessible place, and contains at least:
  - a) the schedule of service at sea and service in port; and
  - b) the maximum hours of work or the minimum hours of rest required;
- the master is not constrained from taking any decision, which in his professional judgement is necessary for safe navigation and operation, in particular in severe weather and in heavy seas;
- the master keeps a record of navigational activities and incidents which are of importance to safety of navigation;
- any damage to, or permanent deflection of shell doors and associated hull plating that may affect the integrity of the ferry or craft, and any deficiencies in the securing arrangements of such doors, are promptly reported to both the flag State administration and the host State and are promptly repaired to their satisfaction;
- an up-to-date voyage plan is available before the departure of the ro-ro ferry or high-speed passenger craft on its voyage. In preparing the voyage plan the guidelines set out in MSC resolution . . . (70) on guidelines on voyage planning shall be taken fully into account;
- general information about the services and assistance available to elderly and disabled persons on board is made known to the passengers and is made available in formats suitable for people with impaired sight.

## ANNEX II

## ADDITIONAL REASONS FOR PREVENTING A COMPANY FROM OPERATING A RO-RO FERRY AND HIGH SPEED PASSENGER CRAFT

*(as referred to in Article 4.3)*

Established failure to comply with the obligations laid down in:

- Council Directive 93/75/EEC, as amended, or
- Council Directive 94/58/EC, as amended, or
- Council Regulation (EC) 3051/95, as amended.

## ANNEX III

## GUIDELINES FOR SPECIFIC SURVEYS

(as referred to in Article 7)

1. The initial specific survey shall ensure that statutory requirements, in particular those for loading, stability, fire protection, maximum number of passengers, life saving appliances and the carriage of dangerous goods are fulfilled and shall for that purpose, and whenever applicable at least include:
  - the starting of the emergency generator,
  - an inspection of emergency lighting,
  - an inspection of the emergency source of power for radio-installations,
  - a test of the public address system,
  - a fire drill, including a demonstration of the ability to use firemen's outfits,
  - the operation of the emergency fire-pump with two firehoses connected to the fire main line in operation,
  - the testing of the remote emergency stop controls for fuel supply to boilers, main and auxiliary engines, and for ventilation fans,
  - the testing of remote and local controls for the closing of fire dampers,
  - the testing of fire detection and alarm systems,
  - the testing of proper closing of fire doors,
  - the operation of bilge pumps,
  - the closing of watertight bulkhead doors; both from the local and remote control positions,
  - a demonstration that shows that key crew members are acquainted with the damage control plan,
  - the lowering of at least one rescue boat and one lifeboat to the water, starting and testing their propulsion and steering system, and recovering them from the water into their stowed position on board,
  - the checking of the inventory of all lifeboats and rescue boats,
  - the testing of the ship's or craft's steering gear and auxiliary steering gear.

The initial specific surveys shall include a verification that the construction and maintenance of the ship's or craft's hull, machinery, electrical and control installation comply with the standards specified for classification by the rules of a recognized organization. Any subsequent specific survey shall verify the maintenance of this condition.

2. Any specific survey shall whenever appropriate include the tests mentioned in paragraph 1 and shall include the verification of the planned maintenance system on board.

Any specific survey shall focus on the familiarisation of crew members with, and their effectiveness in, safety procedures, emergency procedures, maintenance, safe manning, working practices, passenger safety, bridge procedures and cargo and vehicle-related operations. Seafarers' ability to understand and, where appropriate, give orders and instructions and report back in the common working language, as recorded in the ship's logbook shall be checked. The documented evidence that crew members have successfully followed a special training shall be checked, in particular with regard to:

- crowd management training;
- familiarisation training;
- safety training for personnel providing direct safety assistance to passengers in passenger spaces, and in particular to elderly and disabled persons in an emergency, and;
- crisis management and human behaviour training.

The specific survey shall include an assessment of fatigue and an assessment as to whether rostering patterns are causing unreasonable fatigue particularly for watch-keeping personnel. For this purpose the watch-keeping schedules, which have to be posted shall be used to check whether the minimum rest periods are respected.

3. When checking the certificates of competence of the crew members, certificates issued by third States shall only be recognised when they comply with Article 9 paragraph 3 of Council Directive 94/58/EC as amended and if these States are mentioned on the IMO white list.
4. Annex V contains a list of guidelines for qualified inspectors when carrying out specific surveys.

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#### ANNEX IV

### INFORMATION TO BE COMMUNICATED TO THE COMMISSION

*(as referred to in Article 10.4)*

Ship's name

Flag

Ownership

Company

IMO identification number

Classification symbols, marks and notations and number of entry in the society's register book

Information on statutory certificates (dates, validity, exemptions)

Survey reports by flag State and classification societies

Specific survey reports

Crew qualification

Operational limitations

Reports on deficiencies and detentions under Council Directive 95/21/EC

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## ANNEX V

## GUIDELINES FOR QUALIFIED INSPECTORS WHEN CARRYING OUT SPECIFIC SURVEYS

*(as referred to in Article 8.1)*

**1. Passenger information.**

The means used to ensure that the passenger number for which the ship is certified is not exceeded. That the system for registration of passenger information complies with the regulations and is effective. How the information on the total number of passengers is passed to the master and, if appropriate, how passengers doing a double crossing without going ashore are included in the total for the return voyage.

**2. Loading and stability information.**

That, when applicable, reliable draught gauges are fitted and are in use. That measures are taken to ensure that the ship is not overloaded and the appropriate sub-division load line is not submerged. That the loading and stability assessment, is carried out as required. That goods vehicles and other cargo are weighed where required and the figures passed to the ship for use in the loading and stability assessment. That damage control plans are permanently exhibited and that booklets containing damage control information are provided for the ship's officers.

**3. Security for sea.**

The procedure to ensure that the ship is secured for sea before leaving the berth, which should include a positive reporting procedure that all the shell watertight and weather-tight doors are closed. That all the vehicle deck doors are closed before the ship leaves the berth or remain open long enough only to enable the bow visor to be closed, the closing arrangements for the bow, stern and side doors, and the provision of indicator lights and TV surveillance to show their status on the navigating bridge. Any difficulties with the operation of the indicator lights, particularly the switches at the doors, should be ascertained and reported.

**4. Safety announcements.**

The form of routine safety announcements and the posting of instructions and guidance on emergency procedures in the appropriate language(s). That the routine safety announcement takes place at the commencement of the voyage and can be heard in all public spaces, including open decks, to which passengers have access.

**5. Log book entries.**

An examination of the log book to ensure that the entries are being made regarding the closing of the bow, stern and other watertight and weather-tight doors, drills for sub-division watertight doors, testing of steering gears, etc. Also that draughts, freeboard and stability are being recorded as well as the common working language for the crew.

**6. Dangerous goods.**

That any cargo of dangerous or polluting goods is carried in accordance with the relevant regulations and, in particular: that a declaration concerning dangerous and polluting goods is provided together with a manifest or stowage plan to show their location on board, that the carriage of the particular cargo is permitted on passenger ships, and that the dangerous and polluting goods are properly marked, labelled, stowed, secured and segregated.

That vehicles carrying dangerous and polluting goods are properly placarded and secured. That, when dangerous and polluting goods are carried, a copy of the relevant manifest or stowage plan is available ashore. That the master is aware of the notification requirements under Directive 93/75/EEC, as amended, and of the instructions on the emergency procedures to be followed and the rendering of first aid should there be an incident involving the dangerous goods or marine pollutants. That the means of ventilating the vehicle decks is in use at all times, is increased when the engines of the vehicles are running and that there is some form of indication on the bridge to show that the vehicle deck ventilation is in operation.

7. **Securing freight vehicles.**

How freight vehicles are secured, for example, whether block stow or individual lashings. Whether sufficient strong points are available. The arrangements for securing freight vehicles when adverse weather is experienced or expected. The method of securing coaches and motor cycles, if any. That the ship has a Cargo Securing Manual.

8. **Vehicle decks.**

Whether special category and ro-ro cargo spaces are being continuously patrolled or monitored by a TV surveillance system so that the movement of vehicles in adverse weather and the unauthorised entry of passengers may be observed. That fire doors and entrances are kept shut and that notices are posted to keep passengers off the vehicle decks whilst the ship is at sea.

9. **Closure of watertight doors.**

That the policy laid down in the ship's Operational Instructions for the sub-division watertight doors is being followed. That the required drills are being carried out. That the bridge control for the watertight doors is kept, when possible, on 'local' control. That the doors are being kept closed in restricted visibility and any hazardous situation. That crews are instructed in the correct way to operate the doors and are aware of the dangers of their misuse.

10. **Fire patrols.**

It should be confirmed that an efficient patrol is being maintained so that any outbreak of fire may be readily detected. This should include special category spaces where a fixed fire detection and alarm system is not fitted noting that these spaces may be patrolled as indicated in paragraph 8.

11(a). **Communications in an emergency.**

That there are sufficient crew members in accordance with the Muster List to assist passengers in an emergency and that they are readily identifiable and able to communicate with the passengers in an emergency, taking into account an appropriate and adequate combination of any of the following factors:

- (a) the language or languages appropriate to the principal nationalities of passengers carried on a particular route;
- (b) the likelihood that an ability to use elementary English vocabulary for basic instructions can provide a means of communicating with a passenger in need of assistance whether or not the passenger and crew member share a common language;
- (c) the possible need to communicate during an emergency by some other means (e.g. by demonstration, hand signals, or calling attention to the location of instructions, muster stations, life-saving devices or evacuation routes when verbal communication is impractical);
- (d) the extent to which complete safety instructions have been provided to passengers in their native language or languages;
- (e) the languages in which emergency announcements may be broadcast during an emergency or drill to convey critical guidance to passengers and to facilitate crew members in assisting passengers.

11(b). **Common working language between crew members.**

Verify that a working language is established to ensure effective crew performance in safety matters and that this working language is recorded in the ship's logbook.

12. **Safety equipment.**

That the life-saving and fire appliances, including the fire doors and other items of the structural fire protection that may be readily inspected, are being maintained. That fire control plans are permanently exhibited or booklets containing the equivalent information are provided for the information of the ship's officers. That the stowage of the lifejackets is appropriate and that the stowage of children's lifejackets may be readily identified. That the loading of vehicles does not prevent the operation of the fire controls, emergency shut-offs, controls for the storm valves etc., that may be located on the vehicle decks.

13. **Navigational and radio equipment.**

That the navigational and radio communications equipment, including EPIRBs, are operational.



14. **Supplementary emergency lighting.**

That supplementary emergency lighting is fitted, when required by the regulations, and that a record of deficiencies is being kept.

15. **Means of escape.**

Marking, in accordance with the applicable requirements, and the illumination, from both the main and emergency sources of power, of the means of escape. The measures taken to keep vehicles clear of escape routes where the means of escape cross or pass through vehicle decks. That exits, particularly exits from duty free shops, which have been found to be blocked by an excess of goods, are kept clear.

16. **Operations book.**

That copies of the operations book are provided for the master and each senior officer and that other copies are available for all members of the crew. Also that there are check lists to cover the preparation for sea and other operations.

17. **Engine Room Cleanliness.**

That the engine room is maintained in a clean condition with regard to maintenance procedures.

18. **Garbage disposal.**

That the arrangements for the handling and disposal of garbage are satisfactory.

19. **Planned maintenance.**

All companies should have specific standing orders, with a planned maintenance system, for all safety related areas including bow and stern doors and side openings, together with their closing arrangements, but also covering engine room maintenance and safety equipment. Plans should be in place for periodically checking all items so as to maintain safety standards at the highest level. Procedures should be in place for recording deficiencies and confirming they have been properly rectified so that the Master and the designated person ashore within the company management structure are aware of the deficiencies and are notified when they have been rectified within a time specified. Periodic checking of the operation of the inner and outer bow door closing arrangements should include the indicators, surveillance equipment and any scuppers in the spaces between of bow visor and the inner door and especially the closing mechanisms and their associated hydraulic systems.

20. **Making a voyage.**

When making a voyage the opportunity should be taken to check overcrowding, including the availability of seats and the blocking of passageways, stairs and emergency exits by baggage and by passengers unable to find seats. That the vehicle deck is vacated by passengers before the ship sails and that they do not again have access until immediately prior to docking should also be checked.

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## ANNEX VI

## CRITERIA OF QUALIFICATION AND INDEPENDENCE FOR QUALIFIED INSPECTORS

(as referred to in Article 2(q))

1. The qualified inspector must be authorised to carry out the specific surveys referred to in article 7 by the competent authority of the Member State.
  2. Either:
    - The qualified inspector must have completed a minimum of one year's service with the competent authority of a Member State as a flag-State inspector dealing with surveys and certification in accordance with the 1974 SOLAS Convention,
    - and be in possession of:
      - (a) a certificate of competency as master, enabling that person to take command of a ship of 1 600 GT or more (see STCW, Regulation II/2); or
      - (b) a certificate of competency as chief engineer enabling him to take up that task on board a ship whose main power plant has a power equal or superior to 3 000 kW, (see STCW, Regulation III/2); or
      - (c) have passed in a Member State an examination as a naval architect, mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least five years,
    - The qualified inspectors mentioned under (a) and (b) must have served for a period of not less than five years at sea as officer in the deck- or engine-department respectively.
  - Or:

The qualified inspector must:

    - hold a relevant university degree or an equivalent training in a Member State, and
    - have been trained and qualified at a school for ship safety inspectors in a Member State, and
    - have served at least two years with the competent authority of a Member State as a flag-State inspector dealing with surveys and certification in accordance with the 1974 SOLAS Convention.
  3. Qualified inspectors shall have the ability to communicate orally and writing with seafarers in the language most commonly spoken at sea.
  4. Qualified inspectors shall have an appropriate knowledge of the provisions of the 1974 SOLAS Convention and of the relevant procedures of this Directive.
  5. The qualified inspectors carrying out specific surveys shall have no commercial interest either in the company concerned or any other company operating on a regular service to and from the involved host State or in the ro-ro ferries or high-speed passenger craft inspected, nor shall the qualified inspectors be employed by or undertake work on behalf of non-governmental organizations which carry out statutory or classification surveys of ships or issue certificates for that purpose.
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## DECISION OF THE EEA JOINT COMMITTEE

of ...

## amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof.

Whereas Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 8/96<sup>(1)</sup>;

Whereas Council Directive (98/.../EC) of (... .. 1998) on conditions for the operation of regular ro-ro ferry and high speed passenger craft services in the Community<sup>(2)</sup> is to be incorporated into the Agreement,

HAD DECIDED AS FOLLOWS:

*Article 1*

The following point shall be inserted after point 56c (Council Regulation (EC) No 3051/95):

‘56.d 395 L ...: Council Directive (98/.../EC) of (... .. 1998) on conditions for the operation of regular ro-ro ferry and high speed passenger craft services in the Community (OJ No L ..., ..... 1998, p. ...)’

*Article 2*

The texts of Directive 98/.../EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

*Article 3*

This Decision shall enter into force on .../.../19... , provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

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<sup>(1)</sup> OJ L 102, 25.4.1996, p. 51.

<sup>(2)</sup> OJ L ...

**Proposal for a Council Regulation (EC) amending Regulation (EEC) No 823/87 laying down special provisions relating to quality wines produced in specified regions**

(98/C 108/19)

COM(98) 86 final — 98/0053(CNS)

(submitted by the Commission on 20 February 1998)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the opinion of the European Parliament,

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

Having regard to the proposal from the Commission,

Whereas Council Regulation (EEC) No 823/87<sup>(1)</sup> lays down special provisions relating to quality wines produced in specified regions; whereas the bottling of certain quality wines psr in the specified region of production is one of the measures applied by agricultural regions to safeguard and enhance the quality of their products; whereas the oenological expertise and know-how necessary to safeguard the characteristics of such wines and their typicality are normally more common in the regions of production of such wines;

Whereas transporting quality wines psr in bulk is likely to affect the wine's distinctive characteristics; whereas the risk of dangerous or even fraudulent operations likely to affect the characteristics of the wine is greater where a high number of operators is involved; whereas provision should accordingly be made for certain restrictions;

Whereas concentrating all the operations relating to the product within a limited area simplifies checks on the authenticity and typicality of wine and makes it easier to lay down and implement measures to enhance the reputation of the quality wine psr in question;

Whereas all these factors justify provision being made in Community legislation for compulsory bottling in the region of production; whereas the impact of such a measure on the sector as a whole calls for certain objective conditions to be met, in particular regarding the technical justification of the measure and its compliance with the general will of the producers affected;

Whereas transitional measures are necessary if established intra-Community trade flows in quality wines psr are not to be suddenly interrupted,

HAS ADOPTED THIS REGULATION:

*Article 1*

The following Article is hereby inserted in Regulation (EEC) No 823/87:

*'Article 6a*

1. The Member States may make it compulsory for quality wines psr defined in Article 1(2) to be bottled within the specified region of production where they demonstrate that the measure is justified, i.e. by showing that the bottling of one or more of the quality wine psr categories concerned in the region of production imparts special characteristics to wine originating in that region such as to set it apart or that bottling in the region of production is an important factor in preserving the specific characteristics which that quality wine psr has acquired.

In addition, the Member States may only apply the possibility provided for in the first subparagraph where:

- any existing joint-trade organisation recognised by the national authorities decides, in accordance with its own operating methods, to make bottling in the specified region of production compulsory for the quality wine psr in question,
- if no recognised joint-trade organisation exists, at least 90 % of the grape producers entitled to use the name of the specified region concerned and accounting for at least 80 % of production of the quality wine psr in question choose to bottle the quality wine psr in the specified region of production.

2. Where the Member States make bottling in the specified region of production compulsory for one or more of the quality wine psr categories concerned, they must permit the bottling of the quality wines psr concerned to continue, for a transitional period of five years, outside the specified region in question by those operators who have been bottling such quality wines psr outside the specified region for three years prior to the entry into force of this Regulation. That transitional period shall commence once bottling in the region of production has become compulsory.

<sup>(1)</sup> OJ L 84, 27.3.1987, p. 59.

The Member States may make provision for supplementary internal checks of such quality wines psr bottled outside the specified region.

3. The Member States shall in due course forward detailed information to the Commission concerning the conditions referred to in paragraphs 1 and 2. Bottling in the region of production may only be made compulsory once the Commission has noted that the abovementioned conditions have been met.'

*Article 2*

This Regulation shall enter into force on the seventh day following 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.

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