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Information and Notices

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I

(Information)

COMMISSION

Ecu ⁽¹⁾

13 May 1998

(98/C 148/01)

Currency amount for one unit:

Belgian and Luxembourg franc	40,6170	Finnish markka	5,98362
Danish krone	7,50026	Swedish krona	8,47504
German mark	1,96892	Pound sterling	0,676015
Greek drachma	341,844	United States dollar	1,10583
Spanish peseta	167,223	Canadian dollar	1,58752
French franc	6,60255	Japanese yen	148,435
Irish pound	0,781778	Swiss franc	1,63883
Italian lira	1941,61	Norwegian krone	8,25388
Dutch guilder	2,21873	Icelandic krona	78,9449
Austrian schilling	13,8538	Australian dollar	1,76368
Portuguese escudo	201,736	New Zealand dollar	2,07550
		South African rand	5,61870

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day. Users of the service should do as follows:

- call telex number Brussels 23789,
- give their own telex code,
- type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu,
- the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

Note: The Commission also has an automatic fax answering service (No 296 10 97/296 60 11) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

⁽¹⁾ Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ L 379, 30.12.1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ L 189, 4.7.1989, p. 1).

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ L 349, 23.12.1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ L 349, 23.12.1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ L 345, 20.12.1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ L 345, 20.12.1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ L 311, 30.10.1981, p. 1).

Average prices and representative prices for table wines at the various marketing centres

(98/C 148/02)

(Established on 12 May 1998 for the application of Article 30(1) of Regulation (EEC) No 822/87)

Type of wine and the various marketing centres	ECU per % vol/hl	% of GP °	Type of wine and the various marketing centres	ECU per % vol/hl	% of GP °
<i>R I Guide price*</i>	3,828		<i>A I Guide price*</i>	3,828	
Heraklion	No quotation		Athens	No quotation	
Patras	No quotation		Heraklion	No quotation	
Requena	4,752	124 %	Patras	No quotation	
Reus	No quotation		Alcázar de San Juan	2,247	59 %
Villafranca del Bierzo	No quotation (¹)		Almendralejo	No quotation	
Bastia	5,385	141 %	Medina del Campo	No quotation (¹)	
Béziers	3,922	102 %	Ribadavia	No quotation	
Montpellier	4,007	105 %	Villafranca del Penedés	No quotation	
Narbonne	4,187	109 %	Villar del Arzobispo	No quotation (¹)	
Nîmes	4,067	106 %	Villarrobledo	No quotation (¹)	
Perpignan	No quotation (¹)		Bordeaux	No quotation	
Asti	No quotation		Nantes	No quotation	
Florence	No quotation		Bari	No quotation	
Lecce	No quotation (¹)		Cagliari	No quotation (¹)	
Pescara	4,053	106 %	Chieti	2,685	70 %
Reggio Emilia	5,066	132 %	Ravenna (Lugo, Faenze)	2,786	73 %
Treviso	3,926	103 %	Trapani (Alcamo)	No quotation	
Verona (for local wines)	4,813	126 %	Treviso	3,673	96 %
Representative price	4,144	108 %	Representative price	2,918	76 %
<i>R II Guide price*</i>	3,828			ECU/hl	
Heraklion	No quotation		<i>A II Guide price*</i>	82,810	
Patras	No quotation		Rheinfalz (Oberhaardt)	67,372	81 %
Calatayud	No quotation		Rheinhessen (Hügelland)	65,527	79 %
Falset	No quotation		The wine-growing region of the Luxembourg Moselle	No quotation	
Jumilla	No quotation (¹)		Representative price	66,854	81 %
Navalcarnero	No quotation (¹)				
Requena	No quotation		<i>A III Guide price*</i>	94,570	
Toro	No quotation		Mosel-Rheingau	No quotation	
Villena	No quotation (¹)		The wine-growing region of the Luxembourg Moselle	No quotation	
Bastia	No quotation		Representative price	No quotation	
Brignoles	No quotation				
Bari	No quotation				
Barletta	No quotation				
Cagliari	No quotation				
Lecce	No quotation				
Taranto	No quotation				
Representative price	No quotation (¹)				
	ECU/hl				
<i>R III Guide price*</i>	62,150				
Rheinfalz-Rheinhessen (Hügelland)	No quotation				

(¹) Quotation not taken into account in accordance with Article 10 of Regulation (EEC) No 2682/77.

* Applicable from 1.2.1995.

° GP = Guide price.

STATE AID

C 29/96 (ex NN 18/96)

Italy

(98/C 148/03)

*(Articles 92 to 94 of the Treaty establishing the European Community)***Commission communication pursuant to Article 93(2) of the EC Treaty to the other Member States and other interested parties concerning aid which Italy plans to grant to the vine-growing sector (regional law No 31/90 amending regional law No 42/82)**

By the following letter, the Commission informed the Italian Government of its intention to open proceedings:

'By letter dated 23 May 1995 the Office of the Permanent Representative of Italy to the European Union forwarded to the Commission the Campania regional law No 31/90.

This law inserts a new Article (29a) into regional law No 42/82 (Implementation of the regional agriculture programme), which had never been notified as required by Article 93(3) of the Treaty.

All the aids covered by regional law No 42/82, the text of which was forwarded by the Italian authorities by letter dated 23 May 1995 were entered on the register of non-notified aids under NN 59/96 (agriculture) and NN 63/96 (aquaculture).

This letter concerns only the aids covered by regional law No 31/90 and currently the subject of Article 29a of regional law No 42/82 (support for direct vinification in DOC-areas of production).

The aids were granted in the form of a grant of 60 % of eligible expenditure and a subsidised loan repayable over 15 years for the difference between the expenditure accepted as eligible and the grant. The Italian authorities consider that the net present value of this loan does not exceed the difference between 75 % of the expenditure accepted as eligible and the grant made.

However, the Commission, by its letter dated 26 February 1996, asked the Italian authorities to supply the details concerning the part of the aid provided in the form of a loan (subsidised rate, method of repayment,

etc.) required to calculate its grant equivalent. That information has not been supplied.

The grant and loan referred to above are made for investment involving:

- (a) the construction, restructuring or modernisation of plants for processing grapes or ageing wine;
- (b) the construction of nurseries and fields for stock vines for DOC wines or other structures for vegetative propagation;
- (c) the purchase of land for the investments referred to in (b).

Only those holdings which devote at least 70 % of their land to the production of DOC wines are eligible for these aids and the provisions are intended to encourage the establishment of structures for direct processing in the area.

The aids for the construction of nurseries and fields of stock DOC vines or other structures for vegetative propagation are covered by Article 12(2) of Regulation (EEC) No 2328/91 (aid for investments in holdings which do not satisfy the conditions laid down in Article 5 of that Regulation). They are currently being examined to see whether they comply with that provision. In accordance with Article 35 of Regulation (EEC) No 2328/91, Articles 92 and 93 of the Treaty do not apply in this instance.

The Commission has decided to open proceedings pursuant to Article 93(2) of the Treaty against aid under Article 29a(1)(a) of regional law No 42/82 and aid for the purchase of land under paragraph 1(b) of that Article.

The Commission's arguments for adopting that decision are as follows:

(a) *Aids for the construction, restructuring or modernisation of plants for processing grapes or ageing wine*

The last indent of Article 12(5) and Article 35 of Regulation (EEC) No 2328/91 require aid for investments in the processing and marketing of agriculture products on agriculture holdings to be examined within the meaning of Articles 92 and 93 of the Treaty.

This means that the Community guidelines on State aid for the processing and marketing of agricultural products (OJ C 29 of 2.2.1996) apply.

Under these guidelines, State aids for investment under the second and third indents of paragraph 1.2 of the Annex to Commission Decision 94/173/EC of 22 March 1994 or definitively excluded by paragraph 2 of that Annex may not be considered compatible with the common market. All investments referred to in paragraph 2 of the Annex are also excluded unless they comply with the special conditions attached to the granting of such aid.

The guidelines lay down that, in the Objective 1 regions, the intensity of aid may not exceed 75 % of the cost of the investment.

Since the Italian authorities have not provided the Commission with the details it requested of the way the aid is granted in the form of a subsidised loan, it is not possible to verify whether this limit of 75 % (which applies in this instance) has been complied with.

Furthermore, the sector concerned by this aid is subject to the specific sectoral limits laid down in Commission Decision 94/173/EC.

No information has been provided to demonstrate that the conditions set out in paragraph 2.11 of the Annex to Decision 94/173/EC, which permit derogation from the general ban on granting aid to the wine and alcohol sectors, have been complied with. If no assurance to the contrary can be given, the aids in question appear intended to finance investments which include those ineligible under that Decision and the guidelines on State aid referred to above.

In view of the above, the aids in question appear incompatible with the common market. The information available suggests that they satisfy the criteria in Article 92(1) of the Treaty without qualifying for any of the derogations under paragraphs 2 and 3 of that Article.

(b) *Aid for the purchase of land*

This aid falls within the first indent of Article 12(5) of Regulation (EEC) No 2328/91 and should therefore be assessed, as required by Article 35 of that Regulation, under Articles 92 and 93 of the Treaty.

The Commission's constant practice in the case of measures of this type is that the grant equivalent of the aid should not exceed 75 % of the cost of the investment in areas which are disadvantaged within the meaning of Directive 75/268/EEC and 35 % in other areas.

The information available suggests that the maximum limit laid down by the Commission for this type of aid has not been respected in the non-disadvantaged areas while, in view of the considerations set out at (a), it is not possible to ascertain whether the ceiling of 75 % was complied with in the disadvantaged areas.

These aids therefore appear to be incompatible with the common market. The information available suggests that they satisfy the criteria in Article 92(1) of the Treaty without qualifying for any of the derogations pursuant to paragraphs 2 and 3 of that Article.

In accordance with the procedure laid down in Article 93(2), the Commission invites the Italian Government to make its comments within one month.

By means of publication in the *Official Journal of the European Communities*, it will invite the other Member States and other interested parties to make their comments within the same period.

The Commission would draw the attention of the Italian Government to the letter which it sent to all Member States on 3 November 1983 concerning their obligations within the meaning of Article 93(3) of the EC Treaty and the notice published in Official Journal C 318 of 24 November 1983, page 3, pointing out that aids granted illegally, that is without awaiting a final decision under Article 93(2) of the Treaty, could result in recovery

being required and/or refusal to charge to the EAGGF budget the expenditure on national measures which directly include Community measures.

Any repayment would have to be made in accordance with Italian law and include interest calculated on the basis of the rate used to assess regional aid schemes and starting to run on the date when the illegal aid was granted.'

The Commission hereby gives formal notice to the other Member States and other interested parties to submit their comments on the measures in question within one month from the date of this publication to:

European Commission,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.

These comments will be communicated to the Italian Government.

Communication from the Netherlands pursuant to Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons

(98/C 148/04)

(Text with EEA relevance)

Invitation for the submission of applications for an exploration licence for hydrocarbons in block E 2

The Minister for Economic Affairs of the Kingdom of the Netherlands serves notice that an application for an exploration licence for hydrocarbons has been received for block E 2 as indicated on the map appended as Annex I to the Regulation on hydrocarbon licences for the continental shelf 1996 (Netherlands Government Gazette 93).

With reference to Article 3(2)(b) of Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons and Article 16a of the Continental Shelf Mining Act, the Minister for Economic Affairs invites interested parties to submit an application for an exploration licence for hydrocarbons in block E 2.

Applications may be submitted within 13 weeks of the publication of this invitation in the *Official Journal of the European Communities* to the Minister for Economic Affairs, for the attention of the Director Oil and Gas, marked 'personal', Bezuidenhoutseweg 6, 2594 AV The Hague, Netherlands. Applications submitted after this deadline shall not be taken into consideration.

A decision concerning the applications will be taken not later than nine months after the expiry of this deadline.

Further information may be obtained via telephone No (31-70) 379 66 85.

Prior notification of a concentration
(Case No IV/M.1174 — RWE-DEA/Hüls)

(98/C 148/05)

(Text with EEA relevance)

1. On 7 May 1998, the Commission received notification of a proposed concentration pursuant to Article 4 of a Council Regulation (EEC) No 4064/89⁽¹⁾ by which the undertaking RWE-DEA Aktiengesellschaft für Mineralöl und Chemie ('RWE-DEA'), a subsidiary of the RWE group, acquires within the meaning of Article 3(1)(b) of the Regulation control of the surfactants and fat businesses as well as of parts of the solvents business and Hüls' shares in Servo Delden NV ('Hüls businesses') of Hüls AG by way of purchase of assets and shares.

2. The business activities of the undertakings concerned are:

— RWE-DEA: extraction of mineral oil and gas, production and distribution of mineral oil products, production and distribution of chemical products, including surfactants,

— Hüls businesses: production and distribution of chemical products, especially surfactants.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference IV/M.1174 — RWE-DEA/Hüls, to the following address:

European Commission,
Directorate-General for Competition (DG IV),
Directorate B — Merger Task Force,
Avenue de Cortenberg/Kortenberglaan 150,
B-1040 Brussels.

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

Prior notification of a concentration
(Case No IV/M.1195 — Siebe/Eurotherm)

(98/C 148/06)

(Text with EEA relevance)

1. On 7 May 1998, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ⁽¹⁾ by which the undertaking Siebe plc acquires, within the meaning of Article 3(1)(b) of the Regulation, control of the whole of the undertaking Eurotherm plc by way of public bid announced on 27 April 1998.

2. The business activities of the undertakings concerned are:

- Siebe: manufacture of controls, notably appliance controls, process automation controls, and electronic power controls,
- Eurotherm: manufacture of controls and instruments, notably for industrial processes; also manufacture of electric motor controls and manufacture of thickness gauges and related products.

3. On preliminary examination, the Commission finds that the first notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01/296 72 44) or by post, under reference IV/M.1195 — Siebe/Eurotherm, to the following address:

European Commission,
Directorate-General for Competition (DG IV),
Directorate B — Merger Task Force,
Avenue de Cortenberg/Kortenberglaan 150,
B-1040 Brussels.

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

Prior notification of a concentration
(Case No IV/M.1153 — Krauss-Maffei/Wegmann)

(98/C 148/07)

(Text with EEA relevance)

1. On 4 May 1998, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89⁽¹⁾ by which the undertakings Krauss-Maffei AG (Krauss-Maffei) and Wegmann & Co. GmbH (Wegmann) acquire, within the meaning of Article 3(1)(b) of the Regulation, joint control of the newly created joint venture Krauss-Maffei Wegmann GmbH & Co. KG (KMW).

2. The business activities of the undertakings concerned are:

- Krauss-Maffei: defence technology, civilian simulation technology, traffic technology, automation technology, surface technology, synthetic material technology and process engineering,
- Wegmann: defence technology, rail point technology, rationalisation equipment for construction sites,
- KMW: defence technology, civilian simulation technology.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01/296 72 44) or by post, under reference IV/M.1153 — Krauss-Maffei/Wegmann, to the following address:

European Commission,
Directorate-General for Competition (DG IV),
Directorate B — Merger Task Force,
Avenue de Cortenberg/Kortenberglaan 150,
B-1040 Brussels.

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

Notification of a joint venture**(Case No IV/36.947)**

(98/C 148/08)

(Text with EEA relevance)

1. On 27 February 1998, the Commission received notification of agreements pursuant to Article 4 of Council Regulation No 17 (EEC) ⁽¹⁾ by which Time Inc. and Newsweek Inc. have created a joint venture, International Magazine Services (IMS) based in the United Kingdom. The Object of the joint venture is the provision of services to the parent company and, at a later stage to third parties, such as paper-purchasing, printing and distribution services for the European edition of some publications including Time and Newsweek.

2. On preliminary examination, the Commission finds that the notified joint venture could fall within the scope of Regulation No 17 (EEC).

3. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 29 69 804) or by post, under reference IV/36.947, to the following address:

European Commission,
Directorate-General for Competition (DG IV),
Directorate C,
Office C 150/108,
Avenue de Cortenberg/Kortenberglaan 150,
B-1040 Brussels.

⁽¹⁾ OJ 13, 21.2.1962, p. 204/62.

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

Authorisation for State aid pursuant to Article 61 of the EEA Agreement and Article 11 of the Act referred to in point 1b of Annex XV to the EEA Agreement

EFTA Surveillance Authority decision not to raise objections

(98/C 148/09)

Date of adoption:	18 March 1998
EFTA State:	Norway
Aid No:	97-011
Title:	— Prolongation and amendment of existing State aid to the shipbuilding industry — Grants for shipbuilding, new buildings and conversions — Export credit guarantees for ships (by the GIEK) — The guarantee scheme for ship construction
Objective:	Contract-related production aid to shipbuilding
Legal basis:	Regulation by the Royal Ministry of Industry and Energy of 6.2.1996 (Føresegner for statleg støtte ved kontrahering av skip) For guarantees by the Guarantee Institute for Export Credits (GIEK) and the guarantee scheme for ship construction: the annual State budget
Budget:	NOK 550 million for contracts entered into in 1998
Aid intensity:	For the construction of vessels of not less than 100 gt: — 7 % for vessels whose contract value is at least ECU 10 million — 3,5 % for vessels of a contract value less than ECU 10 million — 3,5 % for major conversions of vessels of at least 1 000 gt Credit guarantees within the limits of the OECD Understanding on Export Credits for Ships
Duration:	Applies to new binding contracts entered into as from 1 January 1998 until the OECD Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry enters into force and until 31 December 1998 at the latest

Communication from the EFTA Surveillance Authority

(98/C 148/10)

The EFTA Surveillance Authority announces that pursuant to Article 4(2) and (3) of the Act referred to in point 1b of Annex XV to the Agreement on the European Economic Area (Council Directive on aid to shipbuilding (90/684/EEC)) it has decided to set the common maximum ceiling for operating aid to shipbuilding, referred to in Articles 4(1) and 5(1) of the Directive, at 9 % for the period as from 1 January 1998 until the OECD Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry enters into force and until 31 December 1998 at the latest.

In view of the provisions of Article 4(2), second subparagraph, of the Directive, the maximum level of aid permissible for the construction of small ships of a contract value of less than ECU 10 million as well as for all ship conversions covered by the Directive has at the same time been fixed at 4,5 % for the same period, except for the construction of such ships destined for national utilisation in Greece.

II

(Preparatory Acts)

COMMISSION

Amended proposal for a European Parliament and Council Directive on the sale of consumer goods and associated guarantees ⁽¹⁾

(98/C 148/11)

(Text with EEA relevance)

*COM(1998) 217 final — 96/0161(COD)**(Submitted by the Commission pursuant to Article 189a(2) of the EC Treaty on 1 April 1998)*

⁽¹⁾ OJ C 307, 16.10.1996, p. 8.

INITIAL PROPOSAL

AMENDED PROPOSAL

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 referred to in
Article 189b of the Treaty,

Unchanged

Whereas the Community contributes to the attainment of
a high level of consumer protection through the
measures it adopts in the framework of completing the
internal market;

Whereas the internal market comprises an area without
internal frontiers in which the free movement of goods,
persons, services and capital is guaranteed; whereas free
movement of goods concerns not only persons acting in
the course of business but also private individuals;
whereas it implies that consumers resident in one
Member State should be free to purchase goods in the
territory of another Member State on the basis of a
minimum set of fair rules governing the purchase of
consumer goods;

Unchanged

INITIAL PROPOSAL

Whereas the laws of the Member States concerning the sale of consumer goods are quite disparate, with the result that national consumer goods markets differ from one another and that competition between sellers may be distorted;

Whereas consumers who are keen to benefit from the large market by purchasing goods in Member States other than their State of residence play a fundamental role in the completion of the internal market by preventing the artificial reconstruction of new frontiers and the compartmentalisation of markets; whereas these opportunities have been greatly broadened by new communication technologies which allow ready access to distribution systems in other Member States or at international level; whereas in the absence of minimum harmonisation of the rules governing the purchase of consumer goods, the development of the sale of goods through the medium of new distance communication technologies risks being impeded;

Whereas the creation of a common minimum corpus of consumer law, valid no matter where goods are purchased within the Community, will further strengthen consumer confidence and enable consumers to make the most of the internal market;

Whereas the main difficulties encountered by consumers and the main source of disputes with sellers concern the non-conformity of goods with the contract; whereas it is therefore appropriate to approximate national legislation governing the sale of consumer goods in this respect, without however impinging on provisions and principles of national law relating to contractual and non-contractual liability;

Whereas the goods must, above all, conform with the contractual specifications; whereas the notion of conformity with the contract may be considered as common to the different national legal traditions; whereas the seller should be directly liable to the consumer for the conformity of the goods with the contract; whereas this is the traditional solution enshrined in the legal orders of the Member States; whereas, nevertheless, the seller should be free to pursue remedies against his own seller or the producer when the non-conformity is the result of an act of commission or omission on their part;

AMENDED PROPOSAL

Whereas the sale of consumer goods should cover all types of contract whereby goods are supplied by the seller to the consumer, including contracts where goods are supplied in exchange for another asset in place of the purchase price and contracts where payments are made by instalments and ownership of the goods is not transferred to the consumer until all instalments due have been paid;

Unchanged

INITIAL PROPOSAL

Whereas, in the case of non-conformity of the product with the contract, consumers should be entitled to request that the product be repaired or replaced, or to a reduction in the price paid by way of damages or cancellation of the contract of sale; whereas, however, exercise of these rights should be limited in time and time limits laid down during which these rights may be invoked against the seller;

Whereas, in the interest of a stable business environment and good faith in the relations between the Contracting Parties, it should be incumbent on the consumer to notify the seller of any non-conformity he detects within a short period; whereas in order to allow the parties to reach amicable settlements without immediately having to institute legal proceedings to safeguard their rights the limitation period should be interrupted once the consumer draws attention to the lack of conformity of the goods;

Whereas it is current practice, for certain categories of goods, for sellers and producers to offer guarantees on their products designed to insure consumers against any defect which becomes manifest within a certain period; whereas this practice can stimulate competition; whereas, however, these guarantees may be a simple publicity ploy and deceive the consumer; whereas to ensure market transparency certain common principles applicable to the guarantees offered by the economic operators should be laid down;

Whereas the rights granted to consumers should not be excludable by common consent between the parties since otherwise the legal protection afforded would be vitiated; whereas consumers should always be entitled to rely on the rights resulting from this Directive or any other applicable national provision, even if they accept the implementation of the guarantee; whereas consumer protection resulting from this Directive should not be reduced on the grounds that the law of a non-member country is applicable to the contract;

Whereas legislation and case-law in this area in the various Member States show that there is growing concern to ensure a high level of consumer protection; whereas in the light of these trends and the experience acquired in implementing this Directive it may be necessary to envisage more far-reaching harmonisation, notably by stipulating the producer's direct liability for defects for which he is responsible;

AMENDED PROPOSAL

Deleted

Whereas it is current practice, for certain categories of goods, for sellers and producers to offer commercial guarantees on their products designed to insure consumers against any defect which becomes manifest within a certain period; whereas this practice can stimulate competition; whereas, however, these guarantees may be a simple publicity ploy and deceive the consumer; whereas to ensure market transparency certain common principles applicable to the guarantees offered by the economic operators should be laid down;

Unchanged

INITIAL PROPOSAL

AMENDED PROPOSAL

Whereas Member States must be allowed to adopt or maintain in force more stringent provisions, in the field covered by this Directive, to ensure a yet higher level of consumer protection,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1***Scope and definitions**

1. The purpose of this Directive is the approximation of the laws, regulations and administrative provisions of the Member States on the sale of consumer goods and associated guarantees in order to ensure a uniform minimum level of consumer protection in the context of the internal market.

Unchanged

2. For the purposes of this Directive,

- (a) 'Consumer' means any natural person who, in the contracts covered by this Directive, is acting for purposes which are not directly related to his trade, business or profession;
- (b) 'Consumer goods' means any goods, excluding buildings, normally intended for final use or consumption;
- (c) 'Seller' means any natural or legal person who sells consumer goods in the course of his trade, business or profession;
- (d) 'Guarantee' means any additional undertaking given by a seller or producer, over and above the legal rules governing the sale of consumer goods, to reimburse the price paid, to exchange, repair or handle a product in any way, in the case of non-conformity of the product with the contract.

- (a) 'Consumer' means any natural person who, in the contracts covered by this Directive, is acting for purposes which are not directly related to his trade, business or profession;
- (b) 'Consumer goods' means any moveable goods that are supplied by sellers to consumers;
- (c) 'Seller' means any natural or legal person who sells consumer goods in the course of his trade, business or profession or supplies them in exchange for another asset in place of the purchase price;
- (d) 'Commercial guarantee' means any special undertaking given by a seller or producer to put things right if the goods do not match the characteristics described in the guarantee statement or the relevant advertising;
- (e) 'Manufacturer' means the manufacturers of the goods, the persons importing the goods into Community territory, or any persons purporting to be the manufacturer by putting their name, trademark or other distinguishing mark on the goods;
- (f) 'Manufacturer's representative' means the natural or legal person who acts as the official distributor or official service provider of the manufacturer, with the exception of independent sellers who operate exclusively as retailers;

3. Contracts for the delivery of goods to be manufactured or produced shall be equated with purchase contracts.

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*Article 2***Conformity with the contract**

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| <p>1. Consumer goods must be in conformity with the contract of sale.</p> <p>2. Goods shall be deemed to be in conformity with the contract if, at the moment of delivery to the consumer:</p> <p>(a) they comply with the description given by the seller and possess the qualities of the goods which the seller has held out to the consumer as a sample or model;</p> <p>(b) they are fit for the purposes for which goods of the same type are normally used;</p> <p>(c) they are fit for any particular purpose for which the consumer requires them and which he had made known to the seller at the time of conclusion of the contract, except where the circumstances show that the buyer did not rely on the seller's explanations;</p> <p>(d) their quality and performance are satisfactory given the nature of the goods and the price paid and taking into account the public statements made about them by the seller, the producer or his representative.</p> <p>3. Any lack of conformity resulting from incorrect installation of the goods shall be considered to be equivalent to lack of conformity of the goods with the contract, if the goods were installed by the seller or under his responsibility.</p> | <p>Unchanged</p> <p>(c) they are fit for any particular purpose for which the consumer requires them and which he had made known to the seller at the time of conclusion of the contract;</p> <p>(d) their quality and performance are such as consumers were entitled to expect, partly on the grounds of the public statements made about the product in advertising or labelling by the seller, the producer or his representative.</p> <p>3. Goods shall be deemed to be in conformity with the contract as defined in this Article if at the time of purchase the consumer agreed to conclude the contract although aware of the lack of conformity.</p> <p>4. Any lack of conformity resulting from incorrect installation of the goods shall be considered to be equivalent to lack of conformity of the goods with the contract, if the goods were installed by the seller or under his responsibility. This shall apply equally if the product is installed by the consumer and the incorrect installation is due to a lack of conformity in the written installation instructions.</p> |
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*Article 3***Obligations of the seller**

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| <p>1. The seller shall be liable to the consumer for any lack of conformity which exists when the goods are delivered to the consumer and which becomes manifest within a period of two years unless, at the moment of conclusion of the contract of sale, the consumer knew or could not be unaware of the lack of conformity.</p> | <p>1. The seller shall be liable to the consumer for any lack of conformity which exists when the goods are delivered to the consumer and which becomes manifest within a period of two years.</p> |
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2. When the goods are not in conformity with the public statements made by the producer or his representative, the seller shall not be liable if:

- the seller shows that he did not know and could not reasonably know the statement in question,
- the seller shows that at the time of sale he corrected the statement, or
- the seller shows that the decision to buy the goods could not have been influenced by the statement.

3. Until proof of the contrary any lack of conformity which becomes manifest within six months of delivery shall be presumed to have existed at the time of delivery, unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity.

4. When a lack of conformity is notified to the seller, pursuant to Article 4, the consumer shall be entitled to ask the seller either to repair the goods free of charge within a reasonable period, or to replace the goods, when this is possible, or to demand an appropriate price reduction or rescission of the contract. Exercise of the right of rescission or replacement of the good is limited to one year.

Member States may provide that the scope of the rights referred to in the first subparagraph be limited in the case of a minor lack of conformity.

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Unchanged

- the seller shows that he did not know and could not know the statement in question,

Unchanged

4. When a lack of conformity is notified to the seller, the seller must without unreasonable delay offer to repair the goods free of charge within a reasonable period, or to replace the goods. The consumer shall have the right to choose either of these claims unless, in view of the particular nature of the case, only one specific claim appears economically appropriate having regard to the seller's interests, and reasonable to the consumer. The consumer need not accept an offer to repair the goods when this results in a reduction in their value; in such a case he may demand a replacement.

If neither of these is possible, or if the lack of conformity is not made good after the attempted repair, the purchaser shall have the right to demand an appropriate reduction of the purchase price or rescission of the contract.

5. The same provisions shall apply to goods supplied by way of replacement as to newly purchased goods.

Where the goods are replaced, the guarantee period pursuant to paragraph 1 shall recommence. Where a defect is remedied, this guarantee period shall recommence in respect of the remedied defect.

6. The seller shall bear any costs incurred, such as for transport, travelling, labour or materials.

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5. When the final seller is liable to the consumer because of a lack of conformity resulting from an act of commission or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the final seller shall be entitled to pursue remedies against the responsible person, under the conditions laid down by national law.

*Article 4***Obligations of the consumer**

1. In order to benefit from the rights referred to in Article 3(4) the consumer must notify the seller of any lack of conformity within a period of one month from the date on which he detected the lack of conformity or ought normally to have detected it.

2. Notifications made pursuant to paragraph 1 shall interrupt the limitation period provided for in Article 3(4).

*Article 5***Guarantees**

1. Any guarantee offered by a seller or producer shall legally bind the offerer under the conditions laid down in the guarantee document and the associated advertising and must place the beneficiary in a more advantageous position than that resulting from the rules governing the sale of consumer goods set out in the national provisions applicable.

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7. When the final seller is liable to the consumer because of a lack of conformity resulting from an act of commission or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the final seller shall be entitled to pursue remedies against the persons liable, under the conditions laid down by national law.

*Article 4***Payment by instalments**

If the seller and consumer agree to payment by instalments, such payments may be suspended until a lack of contractual conformity is put right.

*Article 5***Suspension of periods of liability**

Where the consumer notifies the seller of a lack of conformity, the period under Article 3(1) shall be suspended until the seller's obligations are fulfilled. If the consumer has recourse to an existing extrajudicial complaints system in the Member States or takes legal action, the period under Article 3(1) shall likewise be suspended until a decision is taken under the extrajudicial complaints system or a judicial decision is made.

Deleted

*Article 6***Commercial guarantees**

1. Any guarantee offered shall legally bind the offerer under the conditions laid down in the guarantee document and the associated advertising and must place the beneficiary in a more advantageous position than that resulting from the rules governing the sale of consumer goods set out in the national provisions applicable.

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2. The guarantee must feature in a written document which must be freely available for consultation before purchase and must clearly set out the essential particulars necessary for making claims under the guarantee, notably the duration and territorial scope of the guarantee, as well as the name and address of the guarantor.

AMENDED PROPOSAL

2. The guarantee must feature in a written document which must be freely available for consultation before purchase and must clearly set out the essential particulars necessary for making claims under the guarantee, notably the duration and territorial scope of the guarantee, the name and address of the person to be contacted, the procedure to be followed in order to make a claim under the guarantee, as well as the name and address of the guarantor. It must also advise consumers that they have legal rights and that the guarantee does not affect those rights in any way. A guarantee only on specific parts of the product must clearly indicate this limitation, otherwise the limitation shall be invalid.

*Article 7***Consumer information**

Member States shall provide measures to inform consumers of the national law adopted to transpose this Directive and shall where appropriate ask professional organisations to inform consumers of their rights.

Article 8

In the annex of Directive 98/.../EC of the European Parliament and the Council on actions for restraint to protect the interests of consumers⁽¹⁾, the following is added: '10) Directive 98/.../EC on the sale of consumer goods and associated guarantees'.

*Article 6***Binding nature of the provisions**

1. Any contractual terms or agreements concluded with the seller before notification of the lack of conformity which waive or restrict the rights resulting from this Directive shall not be binding on the consumer.

2. Member States shall take the necessary measures to ensure that, irrespective of the law applicable to the contract, and when the contract has a close connection with the territory of the Member States, consumers are not deprived of the protection afforded by this Directive.

Article 9

Unchanged

2. Member States shall take the necessary measures to ensure that consumers are not deprived of the protection afforded by this Directive if the law of a third country has been chosen as the law to be applied to the contract and the contract has a close connection with the territory of the Member States.

⁽¹⁾ OJ L ..., ... 1998, p. ...

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*Article 7**Article 10***National law and minimum protection**

1. The rights resulting from this Directive shall be exercised without prejudice to other rights which the consumer may rely on under the national rules governing contractual or non-contractual liability.

Unchanged

2. Member States may adopt or maintain in force more stringent provisions, compatible with the Treaty, in the field covered by this Directive, to ensure a higher level of consumer protection.

*Article 8**Article 11***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than [two years after its publication in the *Official Journal of the European Communities*]. They shall immediately inform the Commission thereof.

Unchanged

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 provisions of national law which they adopt in the field covered by this Directive.

*Article 9**Article 12***Entry into force**

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Unchanged

*Article 10**Article 13*

This Directive is addressed to the Member States.

Unchanged

Proposal for a Council Directive on the harmonization of examination requirements for safety advisers for the transport of dangerous goods by road, rail or inland waterways

(98/C 148/12)

(Text with EEA relevance)

COM(1998) 174 final — 98/0106(SYN)

(Submitted by the Commission on 19 March 1998)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75(1)(c) 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 and in co-operation with the European Parliament,

Whereas the improvement of transport safety and the protection of the environment especially within the transport of dangerous goods by road, rail and inland waterways are important issues, whereas the human element is relevant in the safe operation of the modes of transport;

Whereas under the terms of Council Directive 96/35/EC of 3 June 1996 on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway⁽¹⁾ all companies whose activity includes the transport of dangerous goods including loading or unloading connected with such transport, are obliged to appoint one or more safety advisers; whereas Council Directive 96/35/EC does not contain any detailed provisions on the harmonization of examination requirements and examination bodies;

Whereas the Member States must set up a common framework for the examination and the conditions for the examination bodies in order to guarantee a certain level of quality and to facilitate the mutual recognition of the certificates throughout the Community;

Whereas the provisions of the Directive aim to harmonize the examination requirements; whereas the examination shall take the form of a written examination and consist of questions based on topics laid down in Annex II of Directive 96/35/EC and a case study where the candidates can demonstrate that they have the capacity to fulfill the tasks of a safety adviser;

Whereas Member States may provide that safety advisers working for undertakings whose activities are concerned only with specific dangerous goods shall be examined only on the subject matters related to their activities, whereas the EC certificate will clearly indicate the limited validation;

Whereas the examination carried out by the examination bodies shall be subject to approval by the competent authority of the Member States, whereas Member States shall define the conditions of examination bodies in order to guarantee a high level of quality of the services, whereas the examination bodies shall be technically competent and reliable;

Whereas Member States shall assist one another in the implementation of this Directive;

Whereas the Commission shall be assisted by a consultative committee provided by Council Decision 87/373/EEC of 13 July 1987;

⁽¹⁾ OJ L 145, 19.6.1996, p. 10.

HAS ADOPTED THIS DIRECTIVE:

CHAPTER II

CHAPTER I

EXAMINATIONS

SCOPE AND DEFINITIONS

Article 3

Article 1

Scope

1. This Directive lays down the compulsory examination requirements to be met for the appointment of safety advisers for the transport of dangerous goods in accordance with Directive 96/35/EC.

2. Member States shall take all necessary and appropriate measures to ensure that safety advisers are examined in conformity with the requirements provided by the present Directive.

Article 2

Definitions

For the purposes of this Directive:

- ‘safety adviser for the transport of dangerous goods’, hereinafter referred to as ‘adviser’, shall mean any person specified in Article 2 letter b) of Directive 96/35/EC;
- ‘dangerous goods’ shall mean goods defined in Article 2 of Directive 94/55/EC⁽¹⁾ and Article 2 of Directive 96/46/EC⁽²⁾ on the approximation of the laws of Member States with regard to the transport of dangerous goods by road and rail;
- ‘initial training’ shall mean the training, after which successful conclusion pursuant to Article 5 of Directive 96/35/EC a vocational-certificate is issued;
- ‘undertaking’ shall mean the undertakings specified in Article 2 letter a) of Directive 96/35/EC;
- ‘examination’ shall mean the examinations specified in Article 5 paragraph 2 of Directive 96/35/EC;
- ‘examination body’ shall mean any institution approved by Member State’s competent authority to conduct out examinations.

1. After completion of the initial training, an examination shall be held in accordance with Article 5, paragraphs 2 and 4 of Directive 96/35/EC.

2. In the examination, the candidates shall demonstrate that they have sufficient knowledge to be awarded the vocational certificate.

3. For this purpose the competent authority, or the examination body approved by that authority, shall prepare a catalogue of questions in which at least the subjects specified in Annex II of Directive 96/35/EC are covered. Questions in the examination shall be drawn from this catalogue.

4. The examination shall take the form of a written examination.

5. (a) Each candidate shall be asked questions on the subject matters covered by Annex II of Directive 96/35/EC as follows:

1. three questions on each subject listed below:
 - general preventative and safety measures,
 - the classification of dangerous goods,
 - general packaging requirements, to include tankers, tank-containers, tank-wagons etc.,
 - danger markings and labels,
 - references in transport documents,
 - handling and stowage,
 - crews: vocational training,
 - vehicle papers, means of transport certificates,
 - safety instructions,
 - requirements relating to transport equipment;
2. two questions on each subject listed below:
 - the method of consignment and restrictions on dispatch,
 - prohibitions and precautions relating to mixed loading,
 - the segregation of substances,
 - limits on the quantities carried and exempted quantities,

⁽¹⁾ OJ L 319, 12.12.1994, p. 4. Directive amended by Commission Directive 96/86/EC (OJ L 335, 24.12.1996, p. 43).

⁽²⁾ OJ L 235, 17.9.1996, p. 25. Directive amended by Commission Directive 96/87/EC (OJ L 335, 24.12.1996, p. 45).

- cleaning and/or degassing before loading and after unloading,
 - traffic and/or navigation regulations and restrictions,
 - operational and accidental discharges of pollutants;
3. one question on each subject listed below:
- the transport of passengers,
 - surveillance obligations: parking.
- (b) Each candidate shall be given a case study linked to Annex I of Directive 96/35/EC where they can demonstrate that they have the ability to fulfill the tasks of an adviser.

Article 4

1. Notwithstanding Article 3 paragraph 5, Member States may provide that advisers working for undertakings as defined in Article 2 whose activities are concerned only with specific dangerous goods, namely Class 1 (Explosives), Class 2 (Gases), Class 7 (Radioactive material) or mineral oil products (UN numbers 1202, 1203, 1223), shall be tested, in accordance with Annex II of Directive 96/35/EC only on the subject matters related to their activities. The EC certificate of training issued in accordance with Annex III of Directive 96/35/EC will clearly indicate that it is valid only for the specific dangerous goods in accordance with this Article for which the adviser has been examined.

2. Before deciding on the conditions of examination according to paragraph 1, Member States shall communicate those conditions to the Commission. Such conditions may only be adopted by Member States if they are approved in accordance with the procedure laid down in Article 8.

CHAPTER III

TASKS OF THE COMPETENT AUTHORITY, REQUIREMENTS APPLICABLE TO EXAMINATION BODIES

Article 5

Member States shall appoint examination bodies, with respect to EC law, on the basis of:

- (a) the qualifications and fields of activity of the examination body;
- (b) a detailed program specifying the subjects examined and indicating the planned test methods, the duration of the written examination and the pass mark.

Article 6

1. Written examinations shall be set by the examination body. The examination body shall be subject to approval by the competent authority or a designated representative of the Member State.

2. The approval shall be given by the competent authority or a designated representative of the Member State in written form only and may be for a limited period of time.

3. Where approval is not time-limited the competent authority or a designated representative of the Member State shall regularly review that approval.

Article 7

Member States shall assist one another in the implementation of this Directive and shall exchange information on the catalogue of questions, as referred to in Article 3 paragraph 3.

CHAPTER IV

FINAL PROVISIONS

Article 8

1. The Commission shall be assisted by the Committee on the transport of dangerous goods set up by Article 9 of Directive 94/55/EC, hereinafter referred to as 'the Committee', which shall be composed of representatives of the Member States and chaired by a representative of the Commission.

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

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

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

Article 9

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.

When the Member States adopt those measures they shall include references to this Directive or shall accompany them with such references on their official publication. The Member States shall lay down the manner in which such references shall be made.

Member States shall apply these provisions from 1 January 2000.

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

3. 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 30 June 1998 and shall notify any subsequent changes as soon as possible.

Article 10

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

Article 11

This Directive is addressed to the Member States.
