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I

(Information)

COUNCIL

COMMON POSITION (EC) No 48/98

adopted by the Council on 4 June 1998

with a view to adopting Council Regulation (EC) No .../98, of ... establishing common rules and procedures to apply to shipments to certain non-OECD countries of certain types of waste

(98/C 333/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 113 and 130s(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee [1],

Acting in accordance with the procedure laid down in Article 189c of the Treaty [2],

Whereas Article 1(3)(a) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community [3] excludes from the scope of application of that Regulation shipments of waste destined for recovery only and listed in Annex II thereto, except as provided for in, *inter alia,* Article 17(1), (2) and (3);

Whereas, in accordance with Article 17(1) of Regulation (EEC) No 259/93, the Commission has notified to every country to which the OECD Council Decision of 30 March 1992 on the control of transfrontier movements of waste destined for recovery operation does not apply the list of waste set out in Annex II to the said Regulation and has requested confirmation that such waste is not subject to control in the country of destination, or has asked that such countries indicate whether such waste should be subject to the control procedures which apply to waste listed in Annex III or IV to the said Regulation or to the procedure laid down in Article 15 thereof;

Whereas certain countries have indicated that such waste should be subject to one or other of those control procedures and the Commission on 20 July 1994, pursuant to the provisions of Article 17(3) of the said Regulation adopted Decision 94/575/EC [4] to determine the appropriate control procedures;

Whereas the second subparagraph of Article 17(1) of Regulation (EEC) No 259/93 provides that if such confirmation is not received, the Commission is to make appropriate proposals to the Council; whereas it is therefore necessary to establish, on a Community-wide basis, a system to regulate trade in such waste from the Community by establishing the appropriate common rules and procedures relating to exports thereof;

Whereas, in the case of countries which have replied that they do not wish to receive some or all types of waste

(1) OJ C 214, 10.7.1998, p. 74.
(2) Opinion of the European Parliament of 17 July 1997 (OJ C 286, 22.9.1997, p. 231), Council Common Position of 4 June 1998 and European Parliament Decision of ... (not yet published in the Official Journal).
(3) OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Regulation (EC) No 120/97 (OJ L 22, 24.1.1997, p. 14).
(4) OJ L 220, 25.8.1994, p. 15.

listed in Annex II to the said Regulation, their will must be respected and therefore those types of waste cannot be exported to those countries;

Whereas, in the case of countries which have not replied, silence cannot be taken as implying consent and therefore it is appropriate to adopt a similar regulatory framework in order to enable such countries to evaluate such shipments on a case-by-case basis;

Whereas, in the case of countries which have replied that they do not wish to receive some or all types of waste listed in Annex II or have not replied, the possibility exists that they will change their position, or will reply in the future, and a mechanism must, therefore, exist within a comitology procedure, to change this Regulation;

Whereas the Commission will, as soon as possible, and at the latest before 1 July 1998, review and amend Annex II to Regulation (EEC) No 259/93 taking into full consideration those wastes featuring on the list of wastes adopted in accordance with Article 1(4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste [1], and any list of wastes characterised as hazardous for the purposes of the Basle Convention, and will adapt Regulation (EEC) No 259/93 accordingly;

Whereas with regard to shipments to ACP countries, Article 39 of the Fourth ACP-EC Convention prohibits exports of all waste listed in Annexes I and II of the Basle Convention; whereas, furthermore, certain items of such waste can be found in Annex II to Regulation (EEC) No 259/93; whereas, in these circumstances and in order to respect the Community's international obligations shipments of such items to ACP countries have to be prohibited;

Whereas it must be made clear that such items are excluded from the scope of this Regulation;

Whereas the arrangements covered by this Regulation should be subject to periodic review by the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

The export of waste listed in Annex II to Regulation (EEC) No 259/93 and mentioned in Annex A to this Regulation to countries listed in said Annex A shall be prohibited.

Article 2

The control procedure laid down in Article 15 of Regulation (EEC) No 259/93 shall apply to exports to the countries listed in Annex B to this Regulation with respect to those categories of waste destined for recovery only and listed in Annex II to Regulation (EEC) No 259/93.

Article 3

In accordance with Article 39 of the Fourth ACP-EC Convention shipments of waste listed in Annex C to this Regulation to ACP countries are prohibited.

Article 4

1. On request by the country of destination the control procedure applicable to that country under this Regulation shall be amended in accordance with this Article.

2. The Commission shall determine, in accordance with the procedure laid down in Article 18 of Council Directive 75/442/EEC of 15 July 1975 on waste [2], which of the control procedures shall apply, that is to say:

(i) the procedure applicable to wastes listed in Annex III or Annex IV to Regulation (EEC) No 259/93, or

(ii) the procedure laid down in Article 15 of Regulation (EEC) No 259/93, or

(iii) none of the procedures referred to in paragraphs (i) and (ii) above.

3. The Commission shall inform the Member States of the change of position of a country of destination within 21 days of receipt of the request from that country and shall submit its proposed determination to the committee established under said Article 18 of Directive 75/442/EEC as soon as possible with three months of receipt of the request.

4. Furthermore, where there is any other exceptional change of circumstances, for example war, natural disaster or a trade embargo decided by the United Nations, which would affect the control procedure applicable under this Regulation, this control procedure may be amended. The Commission may determine, after consultation with the country of destination, as appropriate, and in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC, which of the procedures referred to in paragraph (2) of this Article shall apply.

5. The Commission shall, in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC, regularly review Annexes A, B and C of this Regulation, in order to bring them into line with the amendments made to the Annexes to Regulation (EEC)

[1] OJ L 377, 31.12.1991, p. 20. Directive amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p. 28).

[2] OJ L 194, 25.7.1975, p. 39. Directive as last amended by Commission Decision 96/350/EC (OJ L 135, 6.6.1996, p. 32).

No 259/93 or, in relation to said Annex C, any changes to Annexes I and II of the Basle Convention or to the Fourth ACP-EC Convention.

Article 5

The control procedures established by this Regulation shall be subject to periodic review by the Commission and for the first time no later than 31 December 1998, taking into account the experience gained. If the results of the review lead to the conclusion that it would be appropriate, the Commission may, without prejudice to the provisions of Article 4, make new proposals to the Council.

Article 6

This Regulation shall enter into force on the 90th 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.

Done at . . .

For the Council

The President

ANNEX A

Countries and territories which have indicated to the Commission that they do not wish to receive shipments for recovery of certain types of waste listed in Annex II to Council Regulation (EEC) No 259/93 [1]

ALBANIA: All types **except:**

1. in section GA ('Metal and metal-alloy wastes in metallic, non-dispersible form'):

   (a) the following ferrous waste and scrap of iron and steel:

GA 040	7204 10	waste and scrap of cast iron
GA 050	7204 21	waste and scrap of stainless steel
GA 060	7204 29	waste and scrap of other alloy steels
GA 070	7204 30	waste and scrap of tinned iron or steel
GA 080	7204 41	turnings, shavings, chips, milling waste, filings, trimmings and stampings, whether or not in bundles
GA 090	7204 49	other ferrous scrap and waste
GA 100	7204 50	remelting scrap ingots
GA 110	ex 7302 10	used iron and steel rails

   (b) the following waste and scrap of non-ferrous metals and their alloys:

GA 120	7404 00	copper waste and scrap
GA 150	7802 00	lead waste and scrap
GA 160	7902 00	zinc waste and scrap
GA 170	8002 00	tin waste and scrap

2. in section GB ('Metal bearing wastes arising from melting, smelting and refining of metals'):

GB 010	2620 11	hard zinc spelter
GB 020		zinc containing drosses:
GB 021		— galvanising slab zinc top dross (> 90 % Zn)
GB 022		— galvanising slab zinc bottom dross (> 92 % Zn)
GB 023		— zinc die casting dross (> 85 % Zn)
GB 024		— hot dip galvanisers slab zinc dross (batch) (> 92 % Zn)
GB 025		— zinc skimmings
GB 030		aluminium skimmings
GB 040	ex 2620 90	slag from precious metals and copper processing for further refining

3. in section GC ('Other wastes containing metals'):

GC 060	2618 00	granulated slag arising from the manufacture of iron and steel

4. all types in section GE ('Glass waste in non-dispersible form')

5. in section GG ('Other wastes containing principally inorganic constituents, which may contain metals and organic materials'):

GG 070	3103 20	basic slag arising from the manufacture of iron or steel suitable for phosphate fertiliser and other use
GG 080	ex 2621 00	slag from copper production, chemically stabilised, having a high iron content (above 20 %) and processed according to industrial specifications (e.g. DIN 4301 and DIN 8201) mainly for construction and abrasive applications

[1] Further updating of Annexes A and B could be necessary in view of future changes in the position of countries of destination. These changes will be reflected in the final text of the Regulation.

6. all types in section GI ('Paper, paperboard and paper product waste')

7. in section GJ ('Textile waste'):

GJ 020	5103	waste of wool or of fine or coarse animal hair, including yarn waste but excluding garnetted stock:
GJ 021	5103 10	— noils of wool or of fine animal hair
GJ 022	5103 20	— other waste of wool or of fine animal hair
GJ 023	5103 30	— waste of coarse animal hair
GJ 030	5202	cotton waste (including yarn waste and garnetted stock):
GJ 031	5202 10	— yarn waste (including thread waste)
GJ 032	5202 91	— garnetted stock
GJ 033	5202 99	— other

ANDORRA: All types

BAHAMAS: All types

BARBADOS: All types

BELIZE: All types

BENIN: All types

BHUTAN: All types

BOLIVIA: All types

BOTSWANA: All types

BRAZIL: All types **except:**

1. in section GA ('Metal and metal-alloy wastes in metallic, non dispersible form'):

(a) the following ferrous waste and scrap of iron and steel:

GA 040	7204 10	waste and scrap of cast iron
GA 050	7204 21	waste and scrap of stainless steel
GA 060	7204 29	waste and scrap of other alloy steels
GA 070	7204 30	waste and scrap of tinned iron or steel
GA 080	7204 41	turnings, shavings, chips, milling waste, filings, trimmings and stampings, whether or not in bundles
GA 090	7204 49	other ferrous scrap and waste
GA 100	7204 50	remelting scrap ingots

(b) the following waste and scrap of non-ferrous metals and their alloys:

GA 120	7404 00	copper waste and scrap
GA 130	7503 00	nickel waste and scrap
GA 140	7602 00	aluminium waste and scrap
GA 150	7802 00	lead waste and scrap
GA 160	7902 00	zinc waste and scrap
GA 190	ex 8102 91	molybdenum waste and scrap
GA 200	ex 8103 10	tantalum waste and scrap
GA 210	8104 20	magnesium waste and scrap
GA 250	ex 8108 10	titanium waste and scrap
GA 280	ex 8111 00	manganese waste and scrap
GA 300	ex 8112 20	chromium waste and scrap
GA 320	ex 8112 40	vanadium waste and scrap

2. in section GC ('Other wastes containing metals'):

GC 060	2618 00	granulated slag arising from the manufacture of iron and steel
GC 070	ex 2619 00	slag arising from the manufacture of iron and steel [1]

[1] This entry covers the use of such slag as a source of titanium dioxide and vanadium.

BURKINA FASO:	All types
CAPE VERDE:	All types
CHAD:	All types
CHILE:	All types

CHINA:

1. in section GA ('Metal and metal-alloy wastes in metallic, non-dispersible form'):

   (a) the following waste and scrap of non-ferrous metals and their alloys:

GA 390	ex 2844 30	thorium waste and scrap
GA 420	ex 2805 30	rare earths waste and scrap

2. In section GC ('Other wastes containing metals'):

GC 050		spent catalysts:
GC 051		— fluid catalytic cracking (FCC) catalysts
GC 052		— precious metal bearing catalysts
GC 053		— transition metal catalysts (e.g. chromium, cobalt, copper, iron, nickel, manganese, molybdenum, tungsten, vanadium, zinc)
GC 060	2618 00	granulated slag arising from the manufacture of iron and steel
GC 070	ex 2619 00	slag arising from the manufacture of iron and steel [1]

3. ALL types of waste in section GD ('Wastes from mining operations: these wastes to be in non-dispersable form')

4. ALL types of waste in section GG ('Other wastes containing principally inorganic constituents, which may contain metals and organic materials')

5. in section GJ ('Textile wastes'):

GJ 120	6309 00	worn clothing and other worn textile articles
GJ 130	ex 6310	used rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables of textile materials:
GJ 131	ex 6310 10	— sorted
GJ 132	ex 6310 90	— other

6. in section GM ('Wastes arising from the agro-food industries'):

GM 110	ex 0511 91	Fish waste

7. ALL types in section GO ('Other wastes containing principally organic constituents, which may contain metals and inorganic materials')

COLOMBIA:

1. in section GA ('Metal and metal-alloy wastes in metallic, non-dispersible form'):

   (a) the following waste and scrap of non-ferrous metals and their alloys:

GA 120	7404 00	copper waste and scrap
GA 130	7503 00	nickel waste and scrap
GA 140	7602 00	aluminium waste and scrap
GA 150	7802 00	lead waste and scrap
GA 160	7902 00	zinc waste and scrap
GA 170	8002 00	tin waste and scrap
GA 180	ex 8101 91	tungsten waste and scrap
GA 190	ex 8102 91	molybdenum waste and scrap
GA 200	ex 8103 10	tantalum waste and scrap

[1] This entry covers the use of such slag as a source of titanium dioxide and vanadium.

GA 210	8104 20	magnesium waste and scrap
GA 220	ex 8105 10	cobalt waste and scrap
GA 230	ex 8106 00	bismuth waste and scrap
GA 240	ex 8107 10	cadmium waste and scrap
GA 250	ex 8108 10	titanium waste and scrap
GA 260	ex 8109 10	zirconium waste and scrap
GA 270	ex 8110 00	antimony waste and scrap
GA 280	ex 8111 00	manganese waste and scrap
GA 290	ex 8112 11	beryllium waste and scrap
GA 300	ex 8112 20	chromium waste and scrap
GA 310	ex 8112 30	germanium waste and scrap
GA 320	ex 8112 40	vanadium waste and scrap
	ex 8112 91	wastes and scrap of:
GA 330		— hafnium
GA 340		— indium
GA 350		— niobium
GA 360		— rhenium
GA 370		— gallium
GA 380		— thallium
GA 390	ex 2844 30	thorium waste and scrap
GA 400	ex 2804 90	selenium waste and scrap
GA 410	ex 2804 50	tellurium waste and scrap
GA 420	ex 2805 30	rare earths waste and scrap

2. in section GB ('Metal bearing wastes arising from melting, smelting and refining of metals'):

GB 040	ex 2620 90	Slag from precious metals and copper processing for further refining

3. in section GC ('Other wastes containing metals'):

GC 070	ex 2619 00	Slag arising from the manufacture of iron and steel [1]

4. in section GD ('Waste from mining operations: these wastes to be in non-dispersible form'):

GD 040	ex 2529 30	leucite, nepheline and nepheline syenite waste
GD 050	ex 2529 10	feldspar waste
GD 060	ex 2529 21 ex 2529 22	fluospar waste

5. in section GG ('Other wastes containing principally inorganic constituents, which may contain metals and organic materials'):

GG 030	ex 2621	bottom ash and scag tap from coal fired power plants
GG 040	ex 2621	coal fired power plants fly ash
GG 060	ex 2803	spent activated carbon
GG 070	3103 20	basic slag arising from the manufacture of iron or steel suitable for phosphate fertiliser and other use
GG 080	ex 2621 00	slag from copper production, chemically stabilised, having a high iron content (above 20 %) and processed according to industrial specifications (e.g. DIN 4301 and DIN 8201) mainly for construction and abrasive applications
GG 100		limestone from the production of calcium cyanamide (having a pH less than 9)

[1] This entry covers the use of such slag as a source of titanium dioxide and vanadium.

6. in section GH ('Solid plastic waste'):

GH 013	ex 3915 30	waste, parings and scrap of plastics of polymers vinyl chloride
GH 015	ex 3915 90	waste, parings and scrap of plastics of resins or condensation products e. g.: — urea formaldehyde resins — phenol formaldehyde resins — melamine formaldehyde resins — epoxy resins — alkyd resins — polyamides

7. in section GJ ('Textile wastes'):

GJ 050	ex 5302 90	tow and waste (including yarn waste and garnetted stock) of true hemp *(Cannabis sativa L.)*

8. in section GK ('Rubber wastes'):

GK 020	4012 20	used pneumatic tyres
GK 030	ex 4017 00	waste and scrap of hard rubber (e. g. ebonite)

9. in section GO ('Other wastes containing principally organic constituents, which may contain metals and inorganic materials'):

GO 040	waste photografic film base and waste photografic film not containing silver
GO 050	single use cameras without batteries

COMOROS:	All types
COSTA RICA:	All types
DOMINICA:	All types
DJIBOUTI:	All types
EGYPT:	All types
FIJI:	All types
GAMBIA:	All types
GHANA:	All types
GUYANA:	All types
KIRIBATI:	All types
KUWAIT:	All types
LEBANON:	All types
MALAWI:	All types
MALDIVES:	All types
MOLDOVA:	All types
MONGOLIA:	All types
MOZAMBIQUE:	All types
MYANMAR:	All types
NIGERIA:	All types
NICARAGUA:	All types
NIGER:	All types

PAKISTAN:

1. in section GK ('Rubber wastes'):

GK 020	4012 20	used pneumatic tyres

2. in section GM ('Waste arising from agro-food industries'):

GM 070	ex 2307	wine lees

3. in section GN ('Waste arising from tanning and fellmongery operations and leather use'):

GN 010	ex 0502 00	'waste of pigs', hogs' or boars' bristles and hair or of badger hair and other brush-making hair'

PAPUA NEW GUINEA: All types

PARAGUAY: All types **except:**

1. all types in section GI ('Paper, paperboard and paper product wastes')

2. in section GJ ('Textile wastes'):

GJ 012	5003 90	other silk waste
GJ 031	5202 10	yarn waste (including thread waste) of cotton waste
GJ 032	5202 91	garnetted stock of cotton waste

3. in section GL ('Untreated cork and wood wastes'):

GL 020	4501 90	cork waste; crushed, granulated or ground cork

PERU: All types

REPUBLIC OF KOREA: All types **except:**

1. in section GA ('Metal and metal-alloy waste in metallic non-dispersible form'):

GA 120	7404 00	copper waste and scrap
GA 130	7503 00	nickel waste and scrap
GA 140	7602 00	aluminium waste and scrap
GA 160	7902 00	zinc waste and scrap
GA 170	8002 00	tin waste and scrap
GA 240	ex 8107 10	cadmium waste and scrap

2. Section GH ('Solid plastic wastes')

3. in section GK ('Rubber wastes'):

GK 010	4004 00	waste, parings and scrap of rubber (other than hard rubber) and granules obtained therefrom
GK 030	ex 4017 00	waste and scrap of hard rubber (for example, ebonite)

SÃO TOME-AND-PRINCIPE: All types **except:**

in section GJ ('Textile wastes'):

GJ 111	5505 10	waste (including noils, yarn waste and waste and garnetted stock) of synthetic fibres
GJ 120	6309 00	worn clothing and other worn textile articles
GJ 130	ex 6310	used rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables of textile materials:
GJ 131	ex 6310 10	— sorted
GJ 132	ex 6310 90	— other

SAUDI ARABIA: All types

SENEGAL: All types

SEYCHELLES: All types

SINGAPORE: All types **except:**

1. in section GA ('Metal and metal-alloy wastes in metallic, non-dispersible form'):

   (a) the following waste and scrap of precious metals and their alloys:

GA 010	ex 7112 10	— of gold
GA 020	ex 7112 20	— of platinum (the expression 'platinum' includes platinum, iridium, osmium, palladium, rhodium and rutherium)
GA 030	ex 7112 90	— of other precious metals, e. g.; silver

   NB: Mercury is specifically excluded as a contaminant of these metals or their alloys or amalgams.

   (b) the following ferrous waste and scrap of iron or steel:

GA 040	7204 10	— waste and scrap of cast iron
GA 050	7204 21	— waste and scrap of stainless steel
GA 060	7204 29	— waste and scrap of of other alloy steels

   (c) the following waste and scrap of non-ferrous metals and their alloys:

GA 120	7404 00	copper waste and scrap
GA 130	7503 00	nickel waste and scrap
GA 140	7602 00	aluminium waste and scrap
GA 150	ex 7802 00	lead waste and scrap
GA 170	8002 00	tin waste and scrap
GA 190	ex 8102 91	molybdenum waste and scrap
GA 250	ex 8108 10	titanium waste and scrap
GA 260	ex 8109 10	zirconium waste and scrap
GA 280	ex 8111 00	manganese waste and scrap
GA 300	ex 8112 20	chromium waste and scrap
GA 320	ex 8112 40	vanadium waste and scrap
GA 350	ex 8112 91	waste and scrap of niobium

2. in section GC ('Other wastes containing metals'):

GC 060	2618 00	granulated slag arising from the manufacture of iron and steel
GC 070	ex 2619 00	slag arising from the manufacture of iron and steel [1]

3. in section GD ('Waste from mining operations: these wastes to be in non-dispersible form'):

GD 020	ex 2514 00	slate waste, whether or not roughly trimmed or merely cut by sawing or otherwise

ST LUCIA: All types

ST VINCENT AND THE GRENADINES: All types

VANUATU: All types

WESTERN SAMOA: All types

TAIWAN:

in section GA ('Metal and metal-alloy wastes in metallic, non-dispersible form'):

GA 090	7204 49	Other ferrous scrap and waste

TANZANIA: All types

TUVALU: All types

UGANDA: All types

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[1] This entry covers the use of such slag as a source of titanium dioxide and vanadium.

ANNEX B

Countries and territories which have not responded to the Commission's communication on shipments for recovery of certain types of waste listed in Annex II to Council Regulation (EEC) No 259/93 [1]

AFGHANISTAN:	All types	KENYA:	All types
ALGERIA:	All types	KYRGYSTAN:	All types
ANGOLA:	All types	LAOS:	All types
ANTIGUA AND BARBUDA:	All types	LESOTHO:	All types
ARMENIA:	All types	MALI:	All types
AZERBAIJAN:	All types	MAURITANIA:	All types
BAHRAIN:	All types	MOROCCO:	All types
BANGLADESH:	All types	NAMIBIA:	All types
BRUNEI:	All types	NEPAL:	All types
BURUNDI:	All types	OMAN:	All types
CAMBODIA:	All types	PANAMA:	All types
CAMEROON:	All types	QATAR:	All types
CENTRAL AFRICAN REPUBLIC:	All types	RUSSIAN FEDERATION:	All types
CONGO:	All types	RWANDA:	All types
DEMOCRATIC REPUBLIC OF THE CONGO:	All types	ST. KITTS AND NEVIS:	All types
COTE d'IVOIRE:	All types	SOLOMON ISLANDS:	All types
DOMINICAN REPUBLIC:	All types	SUDAN:	All types
ECUADOR:	All types	SWAZILAND:	All types
EL SALVADOR:	All types	SYRIA:	All types
EQUITORIAL GUINEA:	All types	TAJIKISTAN:	All types
ERITREA:	All types	TONGA:	All types
ETHIOPIA:	All types	TURKMENISTAN:	All types
GABON:	All types	UKRAINE:	All types
GUATEMALA:	All types	UZBEKISTAN:	All types
GUINEA:	All types	VATIKAN CITY:	All types
GUINEA-BISSAU:	All types	VENEZUELA:	All types
HAITI:	All types	VIETNAM:	All types
HONDURAS:	All types	YEMEN:	All types
KAZAKHSTAN:	All types	ZIMBABWE:	All types

[1] Further updating of Annexes A and B could be necessary in view of future changes in the position of countries of destination. These changes will be reflected in the final text of the Regulation.

ANNEX C[1]

Green list		Basle Convention
GA 150	waste and scrap of lead	Y 31
GA 240	waste and scrap of cadmium	Y 26
GA 270	waste and scrap of antimony	Y 27
GA 290	waste and scrap of beryllium	Y 20
GA 380	waste and scrap of of thallium	Y 30
GA 400	waste and scrap of selenium	Y 25
GA 410	waste and scrap of tellurium	Y 28

[1] Drawn up on . . . (date of adoption of the Regulation).

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 13 June 1995 the Commission forwarded to the Council its initial proposal for a Council Regulation establishing common rules and procedures to apply to the shipments to certain non-OECD countries of certain types of waste, based on Article 113 of the EC Treaty [1].

2. On 20 January 1997 the Council concluded that Article 130s(1) jointly with Article 113 was the appropriate legal basis for the present Regulation. Following this change of legal basis the European Parliament was consulted and delivered its opinion on 17 July 1997 [2], proposing 10 amendments.

   The Economic and Social Committee delivered its opinion on 29 April 1998 [3].

3. The Commission, further to the European Parliament's opinion, submitted its amendment proposal to the Council on 28 January 1998 [4].

4. On 4 June 1998 the Council adopted a Common Position in accordance with Article 189c of the Treaty.

II. OBJECTIVE

5. The proposal, drawn up in accordance with Article 17(1) of Council Regulation (EEC) No 259/93, aims at defining the procedures to be followed with non-OECD countries which have either indicated that they do not wish to receive shipments for recovery of certain types of waste appearing on the 'Green list' of Regulation (EEC) No 259/93 or have not responded to the Commission's communication on shipments for recovery of certain types of waste appearing on the Green list of Regulation (EEC) No 259/93.

III. ANALYSIS OF THE COMMON POSITION

6. Although the Common Position is largely based on the Commission's amended proposal, in examining this proposal and reaching its common position the Council has tried to retain procedures that are better suited to the needs and circumstances of non-OECD countries.

   The *main changes to the text of the proposal* are the following:

   Article 2

   The so-called 'Red list' (Annex IV to Regulation (EEC) No 259/93) procedure proposed by the Commission appears to be needlessly cumbersome and the Council prefers to retain the more flexible procedure laid down in Article 15 of Regulation (EEC) No 259/93.

   Article 3

   In order to make this Regulation as self-contained as possible it was deemed useful to list (in a new Annex C) the wastes which may not be exported to ACP countries under Article 39 of the ACP-EC (Lomé) Convention.

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[1] Doc. COM(94) 678 final.
[2] OJ C 286, 22.9.1997, p. 231.
[3] OJ C 214, 10.7.1998, p. 74.
[4] Doc. COM(97) 685 final.

Articles 4 and 5

These two Articles have been re-arranged in order to make a clear distinction between:

— amendments of control procedures resulting from a change of position of a country of destination (Article 4(1), (2) and (3) or from a change of circumstances affecting this country (Article 4(4), and review (Article 4(5)) of Annexes A, B and C, in accordance with the (comitology) procedure laid down in Article 18 of Directive 75/442/EEC,

— and periodic review of the control procedure established by this Regulation, which may lead to new proposals to the Council (Article 5).

Article 6

The date of entry into force of this Regulation has been slightly postponed (from 20 to 90 days following its publication in the *Official Journal of the Communities*) to take into account the time necessary for its implementation.

Annexes

Annexes A and B may need to be further updated in view of future changes in the positions of countries of destination.

COMMON POSITION (EC) No 49/98

adopted by the Council on 4 June 1998

with a view to adopting Council Directive 98/ /EC, of . . . on the landfill of waste

(98/C 333/02)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189c of the Treaty [3],

(1) Whereas the Council resolution of 7 May 1990 [4] on waste policy welcomes and supports the Community strategy document and invites the Commission to propose criteria and standards for the disposal of waste by landfill;

(2) Whereas the Council resolution of 9 December 1996 on waste policy considers that, in the future, only safe and controlled landfill activities should be carried out throughout the Community;

(3) Whereas the prevention, recycling and recovery of waste should be encouraged as should the use of recovered materials and energy so as to safeguard natural resources and obviate wasteful use of land;

(4) Whereas further consideration should be given to the issues of incineration of municipal and non-hazardous waste, composting, biomethanisation, and the processing of dredging sludges;

(5) Whereas under the polluter pays principle it is necessary, *inter alia,* to take into account any damage to the environment produced by a landfill;

(6) Whereas, like any other type of waste treatment, landfill should be adequately monitored and managed to prevent or reduce potential adverse effects on the environment and risks to human health;

(7) Whereas it is necessary to take appropriate measures to avoid the abandonment, dumping or uncontrolled disposal of waste; whereas, accordingly, it must be possible to monitor landfill sites with respect to the substances contained in the waste deposited there; whereas such substances should, as far as possible, react only in foreseeable ways;

(8) Whereas both the quantity and hazardous nature of waste intended for landfill should be reduced where appropriate; whereas the handling of waste should be facilitated and its recovery enhanced; whereas the use of treatment processes should therefore be encouraged to ensure that landfill is compatible with the objectives of this Directive; whereas sorting is included in the definition of treatment;

(9) Whereas Member States should be able to apply the principles of proximity and self-sufficiency for the elimination of their waste at Community and national level, in accordance with Council Directive 75/442/EEC of 15 July 1975 on waste [5]; whereas the objectives of this Directive must be pursued and clarified through the establishment of an adequate, integrated network of disposal plants based on a high level of environmental protection;

(10) Whereas disparities between technical standards for the disposal of waste by landfill and the lower costs associated with it might give rise to increased disposal of waste in facilities with low standards of environmental protection and thus create a potentially serious threat to the environment, owing to transport of waste over unnecessarily long distances as well as to inappropriate disposal practices;

(11) Whereas it is therefore necessary to lay down technical standards for the landfill of waste at Community level in order to protect, preserve and improve the quality of the environment in the Community;

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(1) OJ C 156, 24.5.1997, p. 10.
(2) OJ C 355, 21.11.1997, p. 4.
(3) Opinion of the European Parliament of 19 February 1998 (OJ C 80, 16.3.1998, p. 204), Council Common Position of 4 June 1998 and European Parliament Decision of . . . (not yet published in the Official Journal).
(4) OJ C 122, 18.5.1990, p. 2.
(5) OJ L 194, 25.7.1975, p. 39. Directive as last amended by Commission Decision 96/350/EC (OJ L 135, 6.6.1996, p. 32).

(12) Whereas it is necessary to indicate clearly the requirements with which landfill sites must comply as regards location, conditioning, management, control, closure and preventive and protective measures to be taken against any threat to the environment in the short as well as in the long-term perspective, and more especially against the pollution of groundwater by leachate infiltration into the soil;

(13) Whereas in view of the foregoing it is necessary to define clearly the classes of landfill to be considered and the types of waste to be accepted in the various classes of landfill;

(14) Whereas sites for temporary storage of waste should comply with the relevant requirements of Directive 75/442/EEC;

(15) Whereas the recovery, in accordance with Directive 75/442/EEC, of inert or non-hazardous waste which is suitable, through their use in redevelopment/restoration and filling-in work, or for construction purposes may not constitute a landfilling activity;

(16) Whereas measures should be taken to reduce the production of methane gas from landfills, *inter alia*, in order to reduce global warming, through the reduction of the landfill of biodegradable waste and the requirements to introduce landfill gas control;

(17) Whereas the measures taken to reduce the landfill of biodegradable waste should also aim at encouraging the separate collection of biodegradable waste, sorting in general, recovery and recycling;

(18) Whereas, because of the particular features of the landfill method of waste disposal, it is necessary to introduce a specific permit procedure for all classes of landfill in accordance with the general licensing requirements already set down in Directive 75/442/EEC and the general requirements of Directive 96/61/EC concerning integrated pollution prevention and control [1]; whereas the landfill site's compliance with such a permit must be verified in the course of an inspection by the competent authority before the start of disposal operations;

(19) Whereas, in each case, checks should be made to establish whether the waste may be placed in the landfill for which it is intended, in particular as regards hazardous waste;

(20) Whereas, in order to prevent threats to the environment, it is necessary to introduce a uniform waste acceptance procedure on the basis of a classification procedure for waste acceptable in the different categories of landfill, including in particular standardised limit values; whereas to that end a consistent and standardised system of waste characterisation, sampling and analysis must be established in time to facilitate implementation of this Directive; whereas the acceptance criteria must be particularly specific with regard to inert waste;

(21) Whereas, pending the establishment of such methods of analysis or of the limit values necessary for characterisation, Member States may for the purposes of this Directive maintain or draw up national lists of waste which is acceptable or unacceptable for landfill, or define criteria, including limit values, similar to those laid down in this Directive for the uniform acceptance procedure;

(22) Whereas for certain hazardous waste to be accepted in landfills for non-hazardous waste acceptance criteria should be developed by the technical committee;

(23) Whereas it is necessary to establish common monitoring procedures during the operation and aftercare phases of a landfill in order to identify any possible adverse environmental effects of the landfill and take the appropriate corrective measures;

(24) Whereas it is necessary to define when and how a landfill should be closed and the obligations and responsibility of the operator on the site during the aftercare period;

(25) Whereas landfill sites that have been closed prior to the date of transposition of this Directive should not be subject to its provisions on closure procedure;

(26) Whereas the future conditions of operation of existing landfills should be regulated in order to take the necessary measures, within a specified period of time, for their adaptation to this Directive on the basis of a site-conditioning plan;

(27) Whereas for operators of existing landfills having, in compliance with binding national rules equivalent to those of Article 14 of this Directive, already submitted the documentation referred to in Article 14(a) of this Directive prior to its entry into force and for which the competent authority authorised the continuation of their operation,

[1] OJ L 257, 10.10.1996, p. 26.

there is no need to resubmit this documentation nor for the competent authority to deliver a new authorisation;

(28) Whereas the operator should make adequate provision by way of a financial security or any other equivalent to ensure that all the obligations flowing from the permit are fulfilled, including those relating to the closure procedure and aftercare of the site;

(29) Whereas measures should be taken to ensure that the price charged for waste disposal in a landfill covers all the costs involved in the setting up and operation of the facility, including as far as possible the financial security or its equivalent which the site operator must provide, and the estimated cost of closing the site including the necessary aftercare;

(30) Whereas, when a competent authority considers that a landfill is unlikely to cause a hazard to the environment for longer than a certain period, the estimated costs to be included in the price to be charged by an operator may be limited to that period;

(31) Whereas it is necessary to ensure the proper application of the provisions implementing this Directive throughout the Community, and to ensure that the training and knowledge acquired by landfill operators and staff afford them the necessary skills;

(32) Whereas the Commission must establish a standard procedure for the acceptance of waste and set up a standard classification of waste acceptable in a landfill in accordance with the committee procedure laid down in Article 18 of Directive 75/442/EEC;

(33) Whereas adaptation of the Annexes to this Directive to scientific and technical progress and the standardisation of the monitoring, sampling and analysis methods must be adopted under the same committee procedure;

(34) Whereas the Member States must send regular reports to the Commission on the implementation of this Directive paying particular attention to the national strategies to be set up pursuant to Article 5; whereas on the basis of these reports the Commission shall report to the European Parliament and the Council,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Overall objective

1. With a view to meeting the requirements of Directive 75/442/EEC, and in particular Articles 3 and 4 thereof, the aim of this Directive is, by way of stringent operational and technical requirements on the waste and landfills, to provide for measures, procedures and guidance to prevent or reduce as far as possible negative effects on the environment, in particular the pollution of surface water, groundwater, soil and air, and on the global environment, including the greenhouse effect, as well as any resulting risk to human health, from landfilling of waste, during the whole life cycle of the landfill.

2. In respect of the technical characteristics of landfills, this Directive contains, for those landfills to which Directive 96/61/EC is applicable, the relevant technical requirements in order to elaborate in concrete terms the general requirements of that Directive. The relevant requirements of Directive 96/61/EC shall be deemed to be fulfilled if the requirements of this Directive are complied with.

Article 2

Definitions

For the purposes of this Directive:

(a) 'waste' means any substance or object which is covered by Directive 75/442/EEC;

(b) 'municipal waste' means waste from households, as well as other waste which, because of its nature or composition, is similar to waste from households;

(c) 'hazardous waste' means any waste which is covered by Article 1(4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste [1];

(d) 'non-hazardous waste' means waste which is not covered by paragraph (c);

(e) 'inert waste' means waste that does not undergo any significant physical, chemical or biological transformations. Inert waste will not dissolve, burn or otherwise physically or chemically react,

[1] OJ L 377, 31.12.1991, p. 20. Directive as last amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p. 28).

biodegrade or adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm human health. The total leachability and pollutant content of the waste and the ecotoxicity of the leachate must be insignificant, and in particular not endanger the quality of surface water and/or groundwater;

(f) 'underground storage' means a permanent waste storage facility in a deep geological cavity such as a salt or potassium mine;

(g) 'landfill' means a waste disposal site for the deposit of the waste onto or into land (i.e. underground), including:

— internal waste disposal sites (i.e. landfill where a producer of waste is carrying out its own waste disposal at the place of production), and

— a permanent site (i.e. more than one year) which is used for temporary storage of waste,

but excluding:

— facilities where waste is unloaded in order to permit its preparation for further transport for recovery, treatment or disposal elsewhere, and

— storage of waste prior to recovery or treatment for a period less than three years as a general rule, or

— storage of waste prior to disposal for a period less than one year;

(h) 'treatment' means the physical, thermal, chemical or biological processes, including sorting, that change the characteristics of the waste in order to reduce its volume or hazardous nature, facilitate its handling or enhance recovery;

(i) 'leachate' means any liquid percolating through the deposited waste and emitted from or contained within a landfill;

(j) 'landfill gas' means the gases generated from the landfilled waste;

(k) 'eluate' means the solution obtained by a laboratory leaching test;

(l) 'operator' means the natural or legal person responsible for a landfill in accordance with the internal legislation of the Member State where the landfill is located; this person may change from the preparation to the aftercare phase;

(m) 'biodegradable waste' means any waste that is capable of undergoing anaerobic or aerobic decomposition, such as food and garden waste, and paper and paperboard;

(n) 'holder' means the producer of the waste or the natural or legal person who is in possession of it;

(o) 'applicant' means any person who applies for a landfill permit under this Directive;

(p) 'competent authority' means that authority which the Member States designate as responsible for performing the duties arising from this Directive;

(q) 'liquid waste' means any waste in liquid form including waste waters but excluding sludge;

(r) 'isolated settlement' means a settlement:

— with no more than 500 inhabitants per municipality or settlement and no more than five inhabitants per square kilometre, and

— where the distance to the nearest urban agglomeration with at least 250 inhabitants per square kilometre is not less than 50 km, or with difficult access by road to those nearest agglomerations, due to harsh meteorological conditions during a significant part of the year.

Article 3

Scope

1. Member States shall apply this Directive to any landfill as defined in Article 2(g).

2. Without prejudice to existing Community legislation, the following shall be excluded from the scope of this Directive:

— the spreading of sludges, including sewage sludges, and sludges resulting from dredging operations, and similar matter on the soil for the purposes of fertilisation or improvement,

— the use of inert waste which is suitable, in redevelopment/restoration and filling-in work, or for construction purposes, in landfills,

— the deposit of non-hazardous dredging sludges alongside small waterways from where they have been dredged out and of non-hazardous sludges in surface water including the bed and its subsoil,

— the deposit of unpolluted soil or of non-hazardous inert waste resulting from prospecting and extraction, treatment, and storage of mineral resources as well as from the operation of quarries.

3. Without prejudice to Directive 75/442/EEC Member States may declare at their own option, that the deposit of non-hazardous waste, to be defined by the committee established under Article 17 of this Directive, other than inert waste, resulting from prospecting and extraction, treatment and storage of mineral resources as well as from the operation of quarries and which are deposited in a manner preventing environmental pollution or harm to human health, can be exempted from the provisions in Annex I, points 2, 3.1, 3.2 and 3.3 of this Directive.

4. Without prejudice to Directive 75/442/EEC Member States may declare, at their own option, parts or all of Articles 6(d), 7(i), 8(a)(iv), 10, 11(1)(a), (b) and (c), 12(a) and (c), Annex I, points 3 and 4, Annex II (except point 3, level 3, and point 4) and Annex III, points 3 to 5 to this Directive not applicable to:

(a) landfill sites for non-hazardous or inert wastes with a total capacity not exceeding 15 000 tonnes or with an annual intake not exceeding 1 000 tonnes serving islands, where this is the only landfill on the island and where this is exclusively destined for the disposal of waste generated on that island. Once the total capacity of that landfill has been used, any new landfill site established on the island shall comply with the requirements of this Directive;

(b) landfill sites for non-hazardous or inert waste in isolated settlements if the landfill site is destined for the disposal of waste generated only by that isolated settlement.

Not later than two years after the date laid down in Article 18(1), Member States shall notify the Commission of the list of islands and isolated settlements that are exempted. The Commission shall publish the list of islands and isolated settlements.

5. Without prejudice to Directive 75/442/EEC Member States may declare, at their own option, that underground storage as defined in Article 2(f) of this Directive can be exempted from the provisions in Article 13(d) and in Annex I, point 2, except first indent, points 3 to 5, and in Annex III, points 2, 3 and 5 to this Directive.

Article 4

Classes of landfill

Each landfill shall be classified in one of the following classes:

— landfill for hazardous waste,

— landfill for non-hazardous waste,

— landfill for inert waste.

Article 5

Waste and treatment not acceptable in landfills

1. Member States shall set up a national strategy for the implementation of the reduction of biodegradable waste going to landfills, not later than two years after the date laid down in Article 18(1) and notify the Commission of this strategy. This strategy should include measures to achieve the targets set out in paragraph 2 by means of in particular, recycling, composting, biogas production or materials/energy recovery. Within 30 months of the date laid down in Article 18(1) the Commission shall provide the European Parliament and the Council with a report drawing together the national strategies.

2. This strategy shall ensure that:

(a) not later than five years after the date laid down in Article 18(1), biodegradable municipal waste going to landfills must be reduced to 75 % of the total amount (by weight) of biodegradable municipal waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data is available;

(b) not later than eight years after the date laid down in Article 18(1), biodegradable municipal waste going to landfills must be reduced to 50 % of the total amount (by weight) of biodegradable municipal waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data is available;

(c) not later than 15 years after the date laid down in Article 18(1), biodegradable municipal waste going to landfills must be reduced to 35 % of the total amount (by weight) of biodegradable municipal waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data is available.

Two years before the date referred to in paragraph (c) the Council shall re-examine the above target, on the basis of a report from the Commission on the practical experience gained by Member States in the pursuance of the targets laid down in paragraphs (a) and (b) accompanied, if appropriate, by a proposal with a view to confirming or amending this target in order to ensure a high level of environmental protection.

Member States which, in 1995 or the latest year before 1995 for which standardised Eurostat data is available, put more than 80 % of their collected municipal waste to landfill may postpone the attainment of one or more targets set out in paragraphs (a), (b), or (c) by a period not exceeding four years. Member States intending to

make use of this provision shall inform the Commission of their decision in advance. The Commission shall inform other Member States of these decisions.

The implementation of the provisions set out in the preceding subparagraph may in no circumstances lead to the attainment of the target set out in paragraph (c) at a date later than four years after the date set out in paragraph (c).

3. Member States shall take measures in order that the following wastes are not accepted in a landfill:

(a) liquid waste;

(b) waste which, in the conditions of landfill, is explosive, corrosive, oxidising, highly flammable or flammable, as defined in Annex III to Directive 91/689/EEC;

(c) hospital and other clinical wastes arising from medical or veterinary establishments, which are infectious as defined (property H9 in Annex III) by Directive 91/689/EEC and waste falling within category 14 (Annex I.A) of that Directive;

(d) whole used tyres from two years from the date laid down in Article 18(1), excluding tyres used as engineering material, and shredded used tyres five years from the date laid down in Article 18(1) (excluding in both instances bicycle tyres and tyres with an outside diameter above 1 400 mm);

(e) any other type of waste which does not fulfil the acceptance criteria determined in accordance with Annex II.

4. The dilution or mixture of waste solely in order to meet the waste acceptance criteria is prohibited.

Article 6

Waste to be accepted in the different classes of landfill

Member States shall take measures in order that:

(a) only waste that has been subject to treatment is landfilled. This provision may not apply to inert waste for which treatment is not technically feasible, nor to any other waste for which such treatment does not contribute to the objectives of this Directive, as set out in Article 1, by reducing the quantity of the waste or the hazards to human health or the environment;

(b) only hazardous waste that fulfils the criteria set out in accordance with Annex II is assigned to a hazardous landfill;

(c) landfill for non-hazardous waste may be used for:

  (i) municipal waste;

  (ii) non-hazardous waste of any other origin, which fulfil the criteria for the acceptance of waste at landfill for non-hazardous waste set out in accordance with Annex II;

  (iii) stable, non-reactive hazardous wastes (e.g. solidified, vitrified), with leaching behaviour equivalent to those of the non-hazardous wastes referred to in point (ii), which fulfil the relevant acceptance criteria set out in accordance with Annex II. These hazardous wastes shall not be deposited in cells destined for biodegradable non-hazardous waste;

(d) inert waste landfill sites shall be used only for inert waste.

Article 7

Application for a permit

Member States shall take measures in order that the application for a landfill permit must contain at least particulars of the following:

(a) the identity of the applicant and of the operator when they are different entities;

(b) the description of the types and total quantity of waste to be deposited;

(c) the proposed capacity of the disposal site;

(d) the description of the site, including its hydrogeological and geological characteristics;

(e) the proposed methods for pollution prevention and abatement;

(f) the proposed operation, monitoring and control plan;

(g) the proposed plan for the closure and aftercare procedures;

(h) where an impact assessment is required under Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [1], the information provided by the developer in accordance with Article 5 of that Directive;

[1] OJ L 175, 5.7.1985, p. 40. Directive as amended by Directive 97/11/EC (OJ L 73, 14.3.1997, p. 5).

(i) the financial security by the applicant, or any other equivalent provision, as required under Article 8(a)(iv) of this Directive.

Following a successful application for a permit, this information shall be made available to the competent national and Community statistical authorities when requested for statistical purposes.

Article 8

Conditions of the permit

Member States shall take measures in order that:

(a) the competent authority does not issue a landfill permit unless it is satisfied that:

(i) without prejudice to Article 3(4) and (5), the landfill project complies with all the relevant requirements of this Directive, including the Annexes;

(ii) the management of the landfill site will be in the hands of a natural person who is technically competent to manage the site; professional and technical development and training of landfill operators and staff are provided;

(iii) the landfill shall be operated in such a manner that the necessary measures are taken to prevent accidents and limit their consequences;

(iv) adequate provisions, by way of a financial security or any other equivalent, on the basis of modalities to be decided by Member States, has been or will be made by the applicant prior to the commencement of disposal operations to ensure that the obligations (including aftercare provisions) arising under the permit issued under the provisions of this Directive are discharged and that the closure procedures required by Article 13 are followed. This security or its equivalent shall be kept as long as required by maintenance and aftercare operation of the site in accordance with Article 13(d). Member States may declare, at their own option, that this point does not apply to landfills for inert waste;

(b) the landfill project is in line with the relevant waste management plan or plans referred to in Article 7 of Directive 75/442/EEC;

(c) prior to the commencement of disposal operations, the competent authority shall inspect the site in order to ensure that it complies with the relevant conditions of the permit. This will not reduce in any way the responsibility of the operator under the conditions of the permit.

Article 9

Content of the permit

Specifying and supplementing the provisions set out in Article 9 of Directive 75/442/EEC and Article 9 of Directive 96/61/EC, the landfill permit shall state at least the following:

(a) the class of the landfill;

(b) the list of defined types and the total quantity of waste which are authorised to be deposited in the landfill;

(c) requirements for the landfill preparations, landfilling operations and monitoring and control procedures, including contingency plans (Annex III, point 4.B), as well as provisional requirements for the closure and aftercare operations;

(d) the obligation on the applicant to report at least annually to the competent authority on the types and quantities of waste disposed of and on the results of the monitoring programme as required in Articles 12 and 13 and Annex III.

Article 10

Cost of the landfill of waste

Member States shall take measures to ensure that all of the costs involved in the setting up and operation of a landfill site, including as far as possible the cost of the financial security or its equivalent referred to in Article 8(a)(iv), and the estimated costs of the closure and aftercare of the site for a period of at least 30 years shall be covered by the price to be charged by the operator for the disposal of any type of waste in that site. Member States shall ensure the collection of any necessary cost information.

Article 11

Waste acceptance procedures

1. Member States shall take measures in order that prior to accepting the waste at the landfill site:

(a) before or at the time of delivery, or of the first in a series of deliveries, provided the type of waste remains unchanged, the holder or the operator can show, by means of the appropriate documentation, that the waste in question can be accepted at that site according to the conditions set in the permit, and that it fulfils the acceptance criteria set out in Annex II;

(b) the following reception procedures are respected by the operator:

— checking of the waste documentation, including those documents required by Article 5(3) of Directive 91/689/EEC and, where they apply, those required by Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community [1],

— visual inspection of the waste at the entrance and at the point of deposit and, as appropriate, verification of conformity with the description provided in the documentation submitted by the holder. If representative samples have to be taken in order to implement Annex II, point 3, level 3, the results of the analyses shall be kept and the sampling shall be made in conformity with Annex II, point 5. These samples shall be kept at least one month,

— keeping a register of the quantities and characteristics of the waste deposited, indicating origin, date of delivery, identity of the producer or collector in the case of municipal waste, and, in the case of hazardous waste, the precise location on the site. This information shall be made available to the competent national and Community statistical authorities when requested for statistical purposes;

(c) the operator of the landfill shall always provide written acknowledgement of receipt of each delivery accepted on the site;

(d) without prejudice to the provisions of Regulation (EEC) No 259/93, if waste is not accepted at a landfill the operator shall notify without delay the competent authority of the non-acceptance of the waste.

2. For landfill sites which have been exempted from provisions of this Directive by virtue of Article 3(4) and (5), Member States shall take the necessary measures to provide for:

— regular visual inspection of the waste at the point of deposit in order to ensure that only non-hazardous waste from the island or the isolated settlement is accepted at the site; and

— a register on the quantities of waste that are deposited at the site be kept.

Member States shall ensure that information on the quantities and, where possible, the type of waste going to such exempted sites forms part of the regular reports to the Commission on the implementation of the Directive.

[1] OJ L 30, 6.2.1993, p. 1. Regulation as amended by Regulation (EC) No 120/97 (OJ L 22, 24.1.1997, p. 14).

Article 12

Control and monitoring procedures in the operational phase

Member States shall take measures in order that control and monitoring procedures in the operational phase meet at least the following requirements:

(a) the operator of a landfill shall carry out during the operational phase a control and monitoring programme as specified in Annex III;

(b) the operator shall notify the competent authority of any significant adverse environmental effects revealed by the control and monitoring procedures and follow the decision of the competent authority on the nature and timing of the corrective measures to be taken. These measures shall be undertaken at the expense of the operator.

At a frequency to be determined by the competent authority, and in any event at least once a year, the operator shall report, on the basis of aggregated data, all monitoring results to the competent authorities for the purpose of demonstrating compliance with permit conditions and increasing the knowledge on waste behaviour in the landfills;

(c) the quality control of the analytical operations of the control and monitoring procedures and/or of the analyses referred to in Article 11(1)(b) are carried out by competent laboratories.

Article 13

Closure and aftercare procedures

Member States shall take measures in order that, in accordance, where appropriate, with the permit:

(a) a landfill or part of it shall start the closure procedure:

(i) when the relevant conditions stated in the permit are met, or

(ii) under the authorisation of the competent authority, at the request of the operator, or

(iii) by reasoned decision of the competent authority;

(b) a landfill or part of it may only be considered as definitely closed after the competent authority has carried out a final on-site inspection, has assessed all the reports submitted by the operator and has communicated to the operator its approval for the closure. This shall not in any way reduce the responsibility of the operator under the conditions of the permit;

(c) after a landfill has been definitely closed, the operator shall be responsible for its maintenance, monitoring and control in the aftercare phase for as long as may be required by the competent authority, taking into account the time during which the landfill could present hazards.

The operator shall notify the competent authority of any significant adverse environmental effects revealed by the control procedures and shall follow the decision of the competent authority on the nature and timing of the corrective measures to be taken;

(d) for as long as the competent authority considers that a landfill is likely to cause a hazard to the environment, the operator of the site shall be responsible for monitoring and analysing landfill gas and leachate from the site and the groundwater regime in the vicinity of the site in accordance with Annex III.

Article 14

Existing landfill sites

Member States shall take measures in order that landfills which have been granted a permit, or which are already in operation at the time of transposition of this Directive, may not continue to operate unless the steps outlined below are accomplished as soon as possible and within eight years after the date laid down in Article 18(1) at the latest:

(a) within a period of one year after the date laid down in Article 18(1), the operator of a landfill shall prepare and present to the competent authorities, for their approval, a conditioning plan for the site including the particulars listed in Article 8 and any corrective measures which the operator considers will be needed in order to comply with the requirements of this Directive with the exception of the requirements in Annex I, point 1;

(b) following the presentation of the conditioning plan, the competent authorities shall take a definite decision on whether operations may continue on the basis of the said conditioning plan and this Directive. Member States shall take the necessary measures to close down as soon as possible, in accordance with Articles 7(g) and 13, sites which have not been granted, in accordance with Article 8, a permit to continue to operate;

(c) on the basis of the approved site-conditioning plan, the competent authority shall authorise the necessary work and shall lay down a transitional period for the completion of the plan. Any existing landfill shall comply with the requirements of this Directive with the exception of the requirements in Annex I, point 1 within eight years after the date laid down in Article 18(1);

(d) (i) within one year after the date laid down in Article 18(1), Articles 4, 5, and 11 and Annex II shall apply to landfills for hazardous waste;

(ii) within three years after the date laid down in Article 18(1), Article 6 shall apply to landfills for hazardous waste.

Article 15

Obligation to report

At intervals of three years Member States shall send to the Commission a report on the implementation of this Directive, paying particular attention to the national strategies to be set up in pursuance of Article 5. The report shall be drawn up on the basis of a questionnaire or outline drafted by the Commission in accordance with the procedure laid down in Article 6 of Directive 91/692/EEC [1]. The questionnaire or outline shall be sent to Member States six months before the start of the period covered by the report. The report shall be sent to the Commission within nine months of the end of the three-year period covered by it.

The Commission shall publish a Community report on the implementation of this Directive within nine months of receiving the reports from the Member States.

Article 16

Committee

Any amendments necessary for adapting the Annexes to this Directive to scientific and technical progress and any proposals for the standardisation of control, sampling and analysis methods in relation to the landfill of waste shall be adopted by the Commission, assisted by the committee established by Article 18 of Directive 75/442/EEC and in accordance with the procedure set out in Article 17 of this Directive. Any amendments to the Annexes shall only be made in line with the principles laid down in this Directive as expressed in the Annexes. To this end, as regards Annex II, the following shall be observed by the committee: taking into account the

[1] OJ L 377, 31.12.1991, p. 48.

general principles and general procedures for testing and acceptance criteria as set out in Annex II, specific criteria and/or test methods and associated limit values should be set for each class of landfill, including if necessary specific types of landfill within each class, including underground storage. Proposals for the standardisation of control, sampling and analysis methods in relation to the Annexes of this Directive shall be adopted by the Commission, assisted by the committee, within two years after the entry into force of this Directive.

The Commission, assisted by the committee, will adopt provisions for the harmonisation and regular transmission of the statistical date referred to in Articles 5, 7 and 11 of this Directive, within two years after the entry into force of this Directive, and for the amendments of such provisions when necessary.

Article 17

Committee procedure

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

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

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

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

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

Article 18

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 entry into force. They shall forthwith inform the Commission thereof.

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

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

Article 19

Entry into force

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

Article 20

Addressees

This Directive is addressed to the Member States.

Done at . . .

For the Council
The President

ANNEX I

GENERAL REQUIREMENTS FOR ALL CLASSES OF LANDFILLS

1. Location

1.1. The location of a landfill must take into consideration requirements relating to:

(a) the distances from the boundary of the site to residential and recreation areas, waterways, water bodies and other agricultural or urban sites;

(b) the existence of groundwater, coastal water or nature protection zones in the area;

(c) the geological and hydrogeological conditions in the area;

(d) the risk of flooding, subsidence, landslides or avalanches on the site;

(e) the protection of the natural or cultural patrimony in the area.

1.2. The landfill can be authorised only if the characteristics of the site with respect to the abovementioned requirements, or the corrective measures to be taken, indicate that the landfill does not pose a serious environmental risk.

2. Water control and leachate management

Appropriate measures shall be taken, with respect to the characteristics of the landfill and the meteorological conditions, in order to:

— control water from precipitations entering into the landfill body,

— prevent surface water and/or groundwater from entering into the landfilled waste,

— collect contaminated water and leachate. If an assessment based on cnsideration of the location of the landfill and the waste to be accepted shows that the landfill poses no potential hazard to the environment, the competent authority may decide that this provision does not apply,

— treat contaminated water and leachate collected from the landfill to the appropriate standard required for their discharge.

The above provisions may not apply to landfills for inert waste.

3. Protection of soil and water

3.1. A landfill must be situated and designed so as to meet the necessary conditions for proventing pollution of the soil, groundwater of surface water and ensuring efficient collection of leachate as and when required according to section 2. Protection of soil, groundwater and surface water is to be achieved by the combination of a geological barrier and a bottom liner during the operational/active phase and by the combination of a geological barrier and a top liner during the passive phase/post closure.

3.2. The geological barrier is determined by geological and hydrogeological conditions below and in the vicinity of a landfill site providing sufficient attenuation capacity to prevent a potential risk to soil and groundwater.

The landfill base and sides shall consist of a mineral layer which satisfies permeability and thickness requirements with a combined effect in terms of protection of soil, groundwater and surface water at least equivalent to the one resulting from the following requirements:

— landfill for hazardous waste: $K \leq 1{,}0 \times 10^{-9}$ m/s; thickness ≥ 5 m

— landfill for non-hazardous waste: $K \leq 1{,}0 \times 10^{-9}$ m/s; thickness ≥ 1 m

— landfill for inert waste: $K \leq 1{,}0 \times 10^{-7}$ m/s; thickness ≥ 1 m

m/s = meter/second

Where the geological barrier does not naturally meet the above conditions it can be completed aftificially and reinforced by other means giving equivalent protection. An artificially established geological barrier should be no less than 0,5 metres thick.

3.3. In addition to the geological barrier described above a leachate collection and sealing system must be added in accordance with the following principles so as to ensure that leachate accumulation at the base of the landfill is kept to a minimum:

Leachate collection and bottom sealing

Landfill category	Non hazardous	Hazardous
Artificial sealing liner	Required	Required
Drainage layer $\geq$ 0,5 m	Required	Required

Member States may set general or specific requirements for inert waste landfills and for the characteristics of the abovementioned technical means.

If the competent authority after a consideration of the potential hazards to the environment finds that the prevention of leachate formation is necessary, a surface sealing may be prescribed. Recommendations for the surface sealing are as follows:

Landfill category	Non hazardous	Hazardous
Gas drainage layer	Required	Not required
Artificial sealing liner	Not required	Required
Impermeable mineral layer	Required	Required
Drainage layer $>$ 0,5 m	Required	Required
Topsoil cover $>$ 1 m	Required	Required

3.4. If, on the basis of an assessment of environmental risks taking into account, in particular, Directive 80/68/EEC[1], the competent authority has decided, in accordance with section 2 (Water control and leachate management), that collection and treatment of leachate is not necessary or it has been established that the landfill poses no potential hazard to soil, groundwater or surface water, the requirements in paragraphs 3.2 and 3.3 may be reduced accordingly. In the case of landfills for inert waste these requirements may be adapted by national legislation.

3.5. The method to be used for the determination of the permeability coefficient for landfills, in the field and for the whole extension of the site, is to be developed and approved by the committee set up under Article 17 of this Directive.

4. **Gas control**

4.1. Appropriate measures shall be taken in order to control the accumulation and migration of landfill gas (Annex III).

4.2. Landfill gas shall be collected from all landfills receiving biodegradable waste and the landfill gas must be treated and used. If the gas collected cannot be used to produce energy, it must be flared.

4.3. The collection, treatment and use of landfill gas under paragraph 4.2 shall be carried on in a manner which minimises damage to or deterioration of the environment and risk to human health.

[1] OJ L 20, 26.1.1980, p. 43. Directive as last amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

5. **Nuisances and hazards**

Measures shall be taken to minimise nuisances and hazards arising from the landfill through:

— emissions of odours and dust,

— wind-blown materials,

— noise and traffic,

— birds, vermin and insects,

— formation of aerosols,

— fires.

The landfill shall be equipped so that dirt originating from the site is not dispersed onto public roads and the surrounding land.

6. **Stability**

The emplacement of waste on the site shall take place in such a way as to ensure stability of the mass of waste and associated structures, particularly in respect of avoidance of slippages. Where an artificial barrier is established it must be ascertained that the geological substratum, considering the morphology of the landfill, is sufficiently stable to prevent settlement that may cause damage to the barrier.

7. **Barriers**

The landfill shall be secured to prevent free access to the site. The gates shall be locked outside operating hours. The system of control and access to each facility should contain a programme of measures to detect and discourage illegal dumping in the facility.

ANNEX II

WASTE ACCEPTANCE CRITERIA AND PROCEDURES

1. Introduction

This Annex describes:

— general principles for acceptance of waste at the various classes of landfills. The future waste classification procedure should be based on these principles,

— guidelines outlining preliminary waste acceptance procedures to be followed until a uniform waste classification and acceptance procedure has been developed. This procedure will, together with the relevant sampling procedures, be developed by the technical committee referred to in Article 16 of this Directive. The technical committee shall develop criteria which have to be fulfilled for certain hazardous waste to be accepted in landfills for non-hazardous waste. These criteria should, in particular, take into account the short-, medium- and long-term leaching behaviour of such waste. These criteria shall be developed within two years of the entry into force of this Directive. The technical committee shall also develop criteria which have to be fulfilled for waste to be accepted in underground storage. These criteria must take into account, in particular, that the waste is not to be expected to react with each other and with the rock.

This work by the technical committee, with the exception of proposals for the standardisation of control, sampling and analysis methods in relation to the Annexes of this Directive which shall be adopted within two years after the entry into force of this Directive, shall be completed within three years from the entry into force of this Directive and must be carried out having regard to the objectives set forth in Article 1 of this Directive.

2. General principles

The composition, leachability, long-term behaviour and general properties of a waste to be landfilled must be known as precisely as possible. Waste acceptance at a landfill can be based either on lists of accepted or refused waste, defined by nature and origin, and on waste analysis methods and limit values for the properties of the waste to be accepted. The future waste acceptance procedures described in this Directive shall as far as possible be based on standardised waste analysis methods and limit values for the properties of waste to be accepted.

Before the definition of such analysis methods and limit values, Member States should at least set national lists of waste to be accepted or refused at each class of landfill, or define the criteria required to be on the lists. In order to be accepted at a particular class of landfill, a type of waste must be on the relevant national list or fulfil criteria similar to those required to be on the list. These lists, or the equivalent criteria, and the analysis methods and limit values shall be sent to the Commission within six months of the transposition of this Directive or whenever they are adopted at national level.

These lists or acceptance criteria should be used to establish site-specific lists, i.e. the list of accepted waste specified in the permit in accordance with Article 9 of this Directive.

The criteria for acceptance of waste on the reference lists or at a class of landfill may be based on other legislation and/or on waste properties.

Criteria for acceptance at a specific class of landfill must be derived from considerations pertaining to:

— protection of the surrounding environment (in particular groundwater and surface water),

— protection of the environmental protection systems (e.g. liners and leachate treatment systems),

— protection of the desired waste-stabilisation processes within the landfill,

— protection against human-health hazards.

Examples of waste property-based criteria are:

— requirements on knowledge of total composition,

— limitations on the amount of organic matter in the waste,

— requirements or limitations on the biodegradability of the organic waste components,

— limitations on the amount of specified, potentially harmful/hazardous components (in relation to the abovementioned protection criteria),

— limitations on the potential and expected leachability of specified, potentially harmful/hazardous components (in relation to the abovementioned protection criteria),

— ecotoxicological properties of the waste and the resulting leachate.

The property-based criteria for acceptance of waste must generally be most extensive for inert waste landfills and can be less extensive for non-hazardous waste landfills and least extensive for hazardous waste landfills owing to the higher environmental protection level of the latter two.

3. **General procedures for testing and acceptance of waste**

The general characterisation and testing of waste must be based on the following three level hierarchy:

Level 1: Basic characterisation. This constitutes a thorough determination, according to standardised analysis and behaviour-testing methods, of the short- and long-term leaching behaviour and/or characteristic properties of the waste.

Level 2: Compliance testing. This constitutes periodical testing by similar standardised analysis and behaviour-testing methods to determine whether a waste complies with permit conditions and/or specific reference criteria. The tests focus on key variables and behaviour identified by basic characterisation.

Level 3: On-site verification. This constitutes rapid check methods to confirm that a waste is the same as that which has been subjected to compliance testing and that which is described in the accompanying documents. It may merely consist of a visual inspection of a load of waste before and after unloading at the landfill site.

A particular type of waste must normally be characterised at level 1 and pass the appropriate criteria in order to be accepted on a reference list. In order to remain on a site-specific list, a particular type of waste must at regular intervals (e.g. annually) be tested at level 2 and pass the appropriate criteria. Each waste load arriving at the gate of a landfill must be subjected to level 3 verification.

Certain waste types may be exempted permanently or temporarily from testing at level 1. This may be due to impracticability of testing, to unavailability of appropriate testing procedures and acceptance criteria or to overriding legislation.

4. **Guidelines for preliminary waste acceptance procedures**

Until this Annex is fully completed only level-3 testing is mandatory and level 1 and level 2 applied to the extent possible. At this preliminary stage waste to be accepted at a particular class of landfill must either be on a restrictive national or site-specific list for that class of landfill or fulfil criteria similar to those required to get on the list.

The following general guidelines may be used to set preliminary criteria for acceptance of waste at the three major classes of landfill or the corresponding lists:

— inert waste landfills: only inert waste as defined in Article 2(e) can be accepted on the list,

— non-hazardous waste landfills: in order to be accepted on the list a waste type must not be covered by Directive 91/689/EEC,

— hazardous waste landfills: a preliminary rough list for hazardous waste landfills would consist of only those waste types covered by Directive 91/689/EEC. Such waste types should, however, not be accepted on the list without prior treatment if they exhibit total contents or leachability of potentially hazardous components that are high enough to constitute a short-term occupational or environmental risk or to prevent sufficient waste stabilisation within the projected lifetime of the landfill.

5. **Sampling of waste**

Sampling of waste may pose serious problems with respect to representation and techniques owing to the heterogeneous nature of many wastes. A European standard for sampling of waste will be developed. Until this standard is approved by Member States in accordance with Article 17 of this Directive, the Member States may apply national standards and procedures.

ANNEX III

CONTROL AND MONITORING PROCEDURES IN OPERATION AND AFTER-CARE PHASES

1. Introduction

The purpose of this Annex is to provide the minimum procedures for monitoring to be carried out to check:

— that waste has been accepted for disposal in accordance with the criteria set for the category of landfill in question:

— that the processes within the landfill proceed as desired,

— that the environmental protection systems are functioning fully as intended,

— that the permit conditions for the landfill are fulfilled.

2. Meteorological data

Under their reporting obligation (Article 15), Member States should supply data on the collection method for meteorological data. It is up to Member States to decide how the data should be collected (*in situ*, national meteorological network, etc.).

Should Member States decide that water balances are an effective tool for evaluating whether leachate is building up in the landfill body or whether the site is leaking, it is recommended that the following data are collected from monitoring at the landfill or from the nearest meteorological station, as long as required by the competent authority in accordance with Article 13(c) of this Directive:

	Operation phase	Aftercare phase
1.1. Volume of precipitation	Daily	Daily, added to monthly values
1.2. Temperature (min., max., 14.00 CET)	Daily	Monthly average
1.3. Direction and force of prevailing wind	Daily	Not required
1.4. Evaporation (lysimeter) [1]	Daily	Daily, added to monthly values
1.5. Atmospheric humidity (14.00 CET)	Daily	Monthly average

[1] Or through other suitable methods.

3. Emission data: water, leachate and gas control

Sampling of leachate and surface water if present must be collected at representative points. Sampling and measuring (volume and composition) of leachate must be performed separately at each point at which leachate is discharged from the site. Reference: general guidelines on sampling technology, ISO 5667-2 (1991).

Monitoring of surface water if present shall be carried out at not less than two points, one upstream from the landfill and one downstream.

Gas monitoring must be representative for each section of the landfill.

The frequency of sampling and analysis is listed in the following table.

For leachate and water, a sample, representative of the average composition, shall be taken for monitoring.

	Operating phase	Aftercare phase [3]
2.1. Leachate volume	Monthly [1] [3]	Every six months
2.2. Leachate composition [2]	Quarterly [3]	Every six months
2.3. Volume and composition of surface water [7]	Quarterly [3]	Every six months
2.4. Potential gas emissions and atmospheric pressure [4] (CH_4, CO_2, O_2, H_2S, H_2 etc.)	Monthly [3] [5]	Every six months [6]

[1] The frequency of sampling could be adapted on the basis of the morphology of the landfill waste (in tumulus, buried, etc). This has to be specified in the permit.
[2] The parameters to be measured and the substances to be analysed vary according to the composition of the waste deposited; they must be laid down in the permit document and reflect the leaching characteristics of the wastes.
[3] If the evaluation of data indicates that longer intervals are equally effective, they may be adapted. For leachates, conductivity must always be measured at least once a year.
[4] These measurements are related mainly to the content of organic material in the waste.
[5] CH_4, CO_2, O_2, regularly, other gases as required, according to the composition of the waste deposited, with a view to reflecting its leaching properties.
[6] Efficiency of the gas extraction system must be checked regularly.
[7] On the basis of the characteristics of the landfill site, the competent authority may determine that these measurements are not required, and will report accordingly in the way laid down in Article 15 of the Directive.

2.1 and 2.2 apply only where leachate collection takes place (see Annex I(2)).

4. **Protection of groundwater**

A. SAMPLING

The measurements must be such as to provide information on groundwater likely to be affected by the discharging of waste, with at least one measuring point in the groundwater inflow region and two in the outflow region. This number can be increased on the basis of a specific hydrogeological survey and the need for an early identification of accidental leachate release in the groundwater.

Sampling must be carried out in at least three locations before the filling operations in order to establish reference values for future sampling. Reference Sampling groundwaters, ISO 5667, Part 11, 1993.

B. MONITORING

The parameters to be analysed in the samples taken must be derived from the expected composition of the leachate and the groundwater quality in the area. In selecting the parameters for analysis, account should be taken of mobility in the groundwater zone. Parameters could include indicator parameters in order to ensure an early recognition of change in water quality [1].

	Operation phase	Aftercare phase
Level of groundwater	Every six months [1]	Every six months [1]
Groundwater composition	Site-specific frequency [2] [3]	Site-specific frequency [2] [3]

[1] If there are fluctuating groundwater levels, the frequency must be increased.
[2] The frequency must be based on possibility for remedial actions between two samplings if a trigger level is reached, i.e. the frequency must be determined on the basis of knowledge and the evaluation of the velocity of groundwater flow.
[3] When a trigger level is reached (see C), verification is necessary by repeating the sampling. When the level has been confirmed, a contingency plan (laid down in the permit) must be followed.

C. TRIGGER LEVELS

Significant adverse environmental effects, as referred to in Articles 12 and 13 of this Directive, should be considered to have occurred in the case of groundwater, when an analysis of a groundwater

[1] Recommended parameters: pH, TOC, phenols, heavy metals, fluoride, AS, oil/hydrocarbons.

sample shows a significant change in water quality. A trigger level must be determined taking account of the specific hydrogeological formations in the location of the landfill and groundwater quality. The trigger level must be laid down in the permit whenever possible.

The observations must be evaluated by means of control charts with established control rules and levels for each downgradient well. The control levels must be determined from local variations in groundwater quality.

5. **Topography of the site: data on the landfill body**

	Operating phase	After-care phase
5.1. Structure and composition of landfill body [1]	Yearly	
5.2. Settling behaviour of the level of the landfill body	Yearly	Yearly reading

[1] Data for the status plan of the concerned landfill: surface occupied by waste, volume and composition of waste, methods of depositing, time and duration of depositing, calculation of the remaining capacity still available at the landfill.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 14 March 1997 the Commission submitted a proposal for a Directive [1], based on Article 130s(1), on the landfill of waste.

2. The European Parliament delivered its opinion on 19 February 1998 [2] at a first reading, proposing 29 amendments. Following receipt of that opinion the Commission submitted an amended proposal [3] on 26 March 1998.

   The Economic and Social Committee delivered its opinion on 1 October 1997.

3. On 4 June 1998 the Council adopted its Common Position in accordance with Article 189c of the Treaty.

II. PURPOSE

4. With the aim of preventing or reducing as far as possible negative effects on the environment from landfilling of waste, as well as any resulting risks to human health, during the whole life cycle of the landfill, this proposal establishes in the form of a framework Directive and on the basis of a classification of waste and of landfills for hazardous, non-hazardous and inert wastes,

   — the procedures for issuing a permit for the acceptance of waste at a landfill, the control and monitoring procedures in the operational phase and the closure procedure,

   — the technical conditions to be met by sites and facilities which are to serve as landfills, and the waste to be accepted in the different classes of landfill,

   — the authorisation procedures for the opening of a landfill,

   — the targets to be achieved by national strategies for the implementation of the reduction of biodegradable municipal waste going to landfills.

III. ANALYSIS OF THE COMMON POSITION

General comments

5. In view of the above objective, aware of the part played by local, natural conditions in the establishment and operation of landfills and taking into consideration particular conditions prevailing in Member States as regards their production of waste and their current waste disposal practices, the Council has endeavoured to retain the provisions which guarantee a high level of health and environmental protection without seeking to impose systematic harmonisation, which would have been ineffective or even inapplicable. In compliance with the principle of subsidiarity and in the light of the above consideration, the provisions adopted essentially resulted in amendment of the Commission proposal to improve comprehensibility and flexibility. These changes relate chiefly to the scope, the strategy for the reduction of biodegradable waste going to landfills, and the timetable for existing landfills.

6. On the basis of the above guidelines the Council was able to include — verbatim, in substance or in part:

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[1] OJ C 156, 24.5.1997, p. 10.
[2] OJ C 80, 16.3.1998, p. 204.
[3] OJ C 126, 24.4.1998, p. 11.

— the European Parliament amendments the Commission had incorporated into its amended proposal, with the exception of amendments 1, 6, 10, 11, 19, 21, 24, 26 and 29,

— amendments 2, 3, 7, 12 and 31, which the Commission had not incorporated in its amended proposal.

Specific comments

(The references below relate, save where otherwise indicated, to the text of the amended proposal. References to the common position are given in bold type.)

The main modifications made by the Council to the Commission's amended proposal are the following:

(i) *Article 1*

Instead of listing all the different phases in the life cycle of a landfill the Council found it more satisfactory to refer, in this general Article, to the 'whole life cycle of the landfill'.

Given the similarity of the overall objective of this Directive to that of Directive 96/61/EC (the IPPC Directive) the Council considered it useful to clarify their mutual relationship in the **second paragraph of Article 1.** Accordingly the second sentence of Article 3(1) has been deleted.

(ii) *Article 2*

In **Article 2(b),** the words 'commercial, industrial, institutional and . . .' have been deleted, since the origin of waste is not decisive in the structure of the Directive.

The definition of hazardous waste (**paragraph (c)**) has been made more consistent by referring directly to the basis provision in Community law, i.e. Article 1(4) of Directive 91/689/EEC.

Definitions (f) and (g): in order to bring clarity when reflecting the substance of amendments 10 and 12 and in the light of their differentiated treatment under **Article 3,** the Council was of the view that a distinction should be made between 'landfill' (**g**) and 'underground storage' (**f**). Furthermore, to take into account certain recovery and treatment processes, it was deemed appropriate to extend to three years the period of storage prior to recovery or treatment.

Definition (h) (treatment) includes 'thermal processes' as distinct from 'physical processes'.

Definition (q) (liquid waste): as it did not appear feasible to base a definition of liquid waste on their content of solid matter the Council has retained the definition originally proposed by the Commission.

Definition (r) (isolated settlement) has been made more specific by referring to the meteorological conditions which affect these settlements.

(iii) *Article 3*

While the deposit of non-hazardous inert waste resulting from mining activities or the operation of quarries are entirely excluded from the scope of the Directive (paragraph 2, fourth indent) the Council was of the view that non-hazardous non-inert waste resulting from mining activities or the operation of quarries can be exempted only from certain provisions (**paragraph 3**). In the same way, only limited exemptions reflecting the characteristics of underground storages may be granted to these sites (**paragraph 4**).

Although the total capacity under which a site for non-hazardous or inert waste may be exempted from certain provisions has been raised from 10 000 to 15 000 tonnes (**paragraph 4(a)**), it has been clarified that these exemptions apply only to existing landfills.

(iv) *Article 5*

Although broadly supportive of the approach advocated by the Commission as regards the reduction of biodegradable waste going to landfills the Council felt that the strategies to be set up by Member States to that effect should not be limited to municipal waste but cover all biodegradable waste (**paragraph 1**) and that the first target for biodegradable municipal waste shall be mandatory (**paragraph 2(a)**).

The report on national strategies shall be presented within 30 months of the date of transposition of the Directive, i.e. six months after the setting up of their strategies by Member States (**paragraph 1**), which is equivalent to the delay foreseen in the amended proposal.

As regards subsequent targets the moderately delayed timetable which appears in **paragraph 2** could facilitate the development of alternative disposal practices and should enable Member States to achieve these targets. In order to take into account the uncertainties which could affect the third target, a review clause has been inserted.

(v) *Article 6*

Paragraph (c)(iii) foresees that waste, which following appropriate treatment is stable and non-reactive, i.e. no longer exhibits hazardous properties, and which fulfils specific acceptance criteria, may be deposited in landfill for non-hazardous waste.

(vi) *Article 8*

A provision relating to the prevention of accidents has been inserted (**paragraph (a)(iii)**). Given their intrinsic low risk, landfills for inert waste may be exempted from the requirement on financial security (**paragraph (a)(iv)**).

(vii) *Article 10*

Given the uncertainty affecting the determination of the cost of the financial security or its equivalent and because of the various ways in which a landfill can be administered it is only possible to try to include as far as possible this cost in the price to be charged at a landfill.

(viii) *Article 11*

Given the nature of the sites (isolated settlement etc.) covered by the register and the fact that there is already an obligation of reporting on these sites on a national basis, the added-value of having each register accessible to the public is doubtful.

(ix) *Article 13*

Amendment 24 has not been retained as it does not add anything to the ability of competent authorities to set the period during which the operator shall be responsible for the monitoring of the landfill.

(x) *Articles 14 and 18*

It seemed unrealistic, given administrative practices, the technical delays involved in the conditioning of existing sites and the redirecting of waste following the closure of a landfill, to prescribe an overall time-limit of five years and to specify intermediate deadlines. The Council thought it was more realistic to adopt a maximum total time limit of 10 years after entry into force of the Directive (introductory passage to **Article 14**) while setting a closer deadline for landfill for hazardous waste (one year after transposition, **Article 14(d)**) for the implementation of certain provisions.

Amendment 26 has not been retained as it does not add anything to existing obligations under Directive 75/442/EEC.

The same assessment of the inevitable administrative delay involved in transposing such a technical Directive led the Council to opt for a transposition period of two years (**Article 18(1)**).

(xi) *Article 15*

The reporting obligation (**Article 15**) reflects, *inter alia*, amendment 7 according to which Member States must report on the implementation of Article 5. This obligation is also mentioned in **recital 34**.

(xii) *Annexes*

Annex I:

— given the diversity of local conditions it does not seem appropriate to impose a uniform minimum distance between landfills and residential sites; this requirement has therefore not been retained in **section 1.1 paragraph (a)**,

— the reference to the framework Directive on water has been omitted as this Directive is not yet adopted.

Annex II:

Its introduction has been expanded in order to list the various acceptance criteria which the technical committee will have to establish.

(xiii) **Preamble**

Given that a recital on the Council resolution of 1996 and related recitals are already included in the preamble, it does not seem appropriate to include, out of context, a recital on the hierarchy of waste management.

Recital 4 reflects the substance of amendments 2, 3 and 5.

COMMON POSITION (EC) No 50/98

adopted by the Council on 16 June 1998

with a view to adopting Council Decision 98/ /EC, of . . . amending Decision 93/389/EEC for a monitoring mechanism of Community CO_2 and other greenhouse gas emissions

(98/C 333/03)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure referred to Article 189c of the Treaty [3],

Whereas all Member States and the Community are Parties to the United Nations Framework Convention on Climate Change (UNFCCC) which, from its entry into force on 21 March 1994, commits all Parties to develop, periodically update, publish and report to the Conference of the Parties national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies agreed on by the Conference of the Parties;

Whereas that same Convention commits all Parties to formulate, implement, publish and regularly update national, and where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol;

Whereas the First Conference of the Parties to the UNFCCC decided that Annex I Parties to the said Convention should submit to the secretariat national inventory data on emissions by sources and removals by sinks on an annual basis and that the Guidelines for national greenhouse gas inventories and Technical Guidelines for assessing climate change impacts and adaptations adopted by the Intergovernmental Panel on Climate Change should be used in preparing their reports pursuant to the Convention;

Whereas it is necessary to amend Decision 93/389/EEC [4] to allow for the updating of the monitoring process, in particular the post — 2000 monitoring of greenhouse gas emission limitations and reductions and its application to all anthropogenic greenhouse gas emissions not controlled by the Montreal Protocol, in line with the obligations of the UNFCCC and taking into account the requirements of the Kyoto Protocol to that Convention, adopted by the Third Conference of the Parties to the UNFCCC on 10 December 1997;

Whereas it is vital to be able to assess accurately and regularly the extent of progress being made towards the Community's commitments under the UNFCCC and the Kyoto Protocol to that Convention;

Whereas the Community considers the monitoring mechanism to be an essential instrument in the assessment of this progress;

Whereas the provisions of the monitoring mechanism established under Decision 93/389/EEC need to apply equally to anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol and the monitoring process should continue to be updated to reflect further decisions in the framework of the Kyoto Protocol;

Whereas it is recognised that the 31 July deadline for reporting inventories provided for by Decision 93/389/EEC is difficult to meet for all Member States;

Whereas at its meeting of 22 and 23 June 1995 the Council reaffirmed the determination of the Community to meet its commitments under the Convention and confirmed its conclusions of 29 October 1990, 15 and 16 December 1994 and 9 March 1995;

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[1] OJ C 120, 18.4.1998, p. 22.

[2] OJ L 89, 19.3.1997, p. 7.

[3] Opinion of the European Parliament of 18 September 1997 (OJ C 304, 6.10.1997, p. 109), Council Common Position of 16 June 1998 and European Parliament Decision of . . . (not yet published in the Official Journal).

[4] OJ L 167, 9.7.1993, p. 31.

Whereas Decision 93/389/EEC should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Articles 1 to 8 of Decision 93/389/EEC shall be replaced by the following:

'Article 1

This Decision establishes a mechanism for:

— monitoring all anthropogenic greenhouse gas emissions not controlled by the Montreal Protocol in the Member States, and

— evaluating progress towards meeting commitments in respect of these emissions.

Article 2

National programmes

1. The Member States shall devise, publish and implement national programmes for limiting and/or reducing their anthropogenic emissions by sources and enhancing removals by sinks of all greenhouse gases not controlled by the Montreal Protocol in order to contribute to:

— the stabilisation of CO_2 emissions by 2000 at 1990 levels in the Community as a whole, assuming that other leading countries undertake commitments along similar lines, and on the understanding that Member States which start from relatively low levels of energy consumption and therefore low emissions measured on a per capita or other appropriate basis are entitled to have CO_2 targets and/or strategies corresponding to their economic and social development, while improving the energy efficiency of their economic activities, as agreed at the Council meetings of 29 October 1990, 13 December 1991 and 15 and 16 December 1994,

— the fulfilment of the Community's commitments relating to the limitation and/or reduction of all greenhouse gas emissions not controlled by the Montreal Protocol under the UN Framework Convention on Climate Change and under the Kyoto Protocol,

— transparent and accurate monitoring of the actual and projected progress of Member States, including the contribution made by Community measures, in meeting any agreed national contributions to the Community's commitments under the UN Framework Convention on Climate Change and under the Kyoto Protocol.

These programmes shall be periodically updated.

2. Each Member State shall include in its national programme:

(a) estimates of the effect of policies and measures on emissions and removals and incorporation of these in projections for CO_2 and other geenhouse gases not controlled by the Montreal Protocol between the base year and 2000, in line with the reporting requirements under the UN Framework Convention on Climate Change;

(b) as a minimum for the six greenhouse gases listed in Annex A to the Kyoto Protocol (carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF_6)),

— its 1990 base year anthropogenic emissions of carbon dioxide, methane and nitrous oxide in accordance with Article 3(1),

— its 1990 and/or 1995 base year anthropogenic emissions of hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride determined in accordance with Article 3(1),

— inventories of its anthropogenic emissions by sources and removal by sinks, determined in accordance with Article 3(1),

— details of national policies and measures implemented or committed to since the base year which contribute significantly to its efforts to reduce emissions and enhance sinks of greenhouse gases, organised by gas and by sector and including the objective of the measure, the type of policy instrument used by measure, the status of implementation of the policy or measure as well as, where possible, intermediate indicators of progress for policies and measures,

— measures being taken or envisaged for the implementation of relevant Community legislation and policies,

— estimates of the effect of policies and measures on emissions and removals and incorporation of these in projections:

(i) for the greenhouse gases listed in Annex A to the Kyoto Protocol between the base year and the period 2008 to 2012, and

(ii) to the extent possible, for the greenhouse gases listed in Annex A to the Kyoto Protocol between the base year and 2005,

in accordance with the procedure set out in Article 8, on the basis of standard procedural guidelines, including information for a quantitative understanding of the key assumptions used to develop the said projections and the methodology used for the provision of the estimates,

— an assessment of the economic impact of the above measures, to the extent possible;

(c) information on the following gases: carbon monoxide (CO), nitrogen oxides (NO_x), non-methane volatile organic compounds (NMVOCs) and sulphur oxides, in line with the reporting requirements under the UNFCCC, including:

— data on emissions,

— a description of policies and measures being taken or envisaged for the limitation and/or reduction of the emissions of these gases,

— as far as possible, estimates for emissions projections at regular intervals in the future and as being agreed on in accordance with the procedure set out in Article 8, on the basis of standard procedural guidelines, including information for a quantitative understanding of the key assumptions and the methodology used for the provision of the estimates.

Article 3

Inventories and data reporting

1. Member States shall determine their anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, as specified in Article 2(2), in accordance with the methodologies accepted by the IPCC and agreed on by the Conference of the Parties. They shall be revised, in accordance with the procedure under Article 8, as appropriate, to take fully into account any relevant future decisions by the Conference of the Parties.

2. Member States shall each year, not later than 31 December, report to the Commission their anthropogenic CO_2 emissions and CO_2 removal by sinks for the previous calendar year.

Member States shall also report national inventory data on emissions by sources and removals by sinks of the other greenhouse gases referred to in Article 2(2) on an annual basis. They shall report to the Commission by 31 December their final data for the previous year but one, and provisional data for the previous year.

Member States shall also report by 31 December on the most recent projected emissions by sources and removals by sinks of the greenhouse gases listed in Annex A to the Kyoto Protocol for the period 2008 to 2012 and, as far as possible, for 2005.

The Commission shall take further steps to promote the comparability and transparency of national inventories and reporting.

3. The Commission shall, in cooperation with the Member States, establish, on the basis of the information provided by them, inventories of anthropogenic greenhouse gas emissions and removal by sinks in the Community. The Commission shall circulate to all Member States by 1 March these inventories based on data received in accordance with paragraph 2.

Article 4

Procedures and methods for evaluation

In accordance with the procedure referred to in Article 8, the Commission shall establish procedures and methods for the evaluation of national programmes as referred to in Article 6 and the frequency of updating by the Member States.

Article 5

Evaluation of national programmes and of the state of emissions in the Community

1. Member States shall forward to the Commission their existing national programmes not already forwarded, or updates of programmes already forwarded, within three months of receiving notification of this Decision.

Future national programmes and their updates shall be forwarded to the Commission within three months of their adoption.

2. The Commission shall forward to the other Member States the national programmes received within one month of their reception.

3. The Commission shall evaluate the national programmes, in order to assess whether progress in the Community as a whole is sufficient to ensure fulfilment of the commitments referred to in Article 2(1).

4. The Commission shall report to the European Parliament and the Council the results of its evaluation within six months of the reception of the national programmes.

The European Environment Agency will assist in compiling this report as appropriate, in accordance with its annual work programme.

Article 6

Evaluation of progress

The Commission shall assess annually in consultation with Member States whether the actual and projected progress of Member States, including the contribution made by Community measures, towards fulfilling the Community's commitments under the UNFCCC and the Kyoto Protocol is sufficient to ensure that the Community and its Member States are on course to fulfil their commitments and shall report to the European Parliament and the Council, on the basis of information received under Articles 2, 3 and 5. The Commission's report shall be made available to the European Parliament and the Council even in the case of incomplete data being received from Member States, and the Commission may include in this case the best available data in the report, in consultation with the Member State concerned.

Article 7

Other greenhouse gases

(deleted)

Article 8

Committee

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

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

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

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

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

Article 2

This Decision shall enter into force on 1 January 1999.

Article 3

This Decision is addressed to the Member States.

Done at . . .

For the Council
The President

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 4 September 1996 the Commission submitted to the Council a proposal based on Article 130s(1) of the EC Treaty, for a Council Decision amending Decision 93/389/EEC for a monitoring mechanism of Community CO_2 and other greenhouse gas emissions.

2. The Economic and Social Committee delivered its opinion on 17 October 1996.

3. The European Parliament deliverd its opinion on 18 September 1997.

4. The Commission forwarded an amended proposal to the Council on 3 March 1998.

5. The Council adopted its Common Position on 16 June 1998 in accordance with Article 189c of the Treaty.

II. OBJECTIVE

The Common Position aims at amending Council Decision 93/389/EEC, so as:

— to update the Community monitoring mechanism for all greenhouse gas emissions not controlled by the Montreal Protocol for the period post — 2000, also taking into account the requirements of the Kyoto Protocol adopted at the Third Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) on 11 December 1997, and

— to evaluate progress made within the Community towards fulfilling the commitments regarding those emissions under the Framework Convention on Climate Change and the Kyoto Protocol to that Convention.

III. ANALYSIS OF THE COMMON POSITION

GENERAL COMMENTS

The Council was guided by the following two main considerations in elaborating the Common Position:

— firstly, updating the monitoring mechanism on the basis of the Commission proposal, and making it technically consistent with the requirements of the Kyoto Protocol, which was meanwhile adopted (on 11 December 1997),

— and secondly, making the monitoring mechanism a useful instrument for evaluating the progress made within the Community towards meeting the commitments deriving from both the UNFCCC and the Kyoto Protocol.

The Common Position incorporates, in whole or in part, an important number of European Parliament's amendments, which were incorporated in the Commission's amended proposal. There are no European Parliament's amendments that the Commission rejected and the Council included in its Common Position. Further indications are given under 'Specific comments' below, including on additional technical substantive changes introduced by the Council in the text of the Common Position as a consequence of the adoption of the Kyoto Protocol.

SPECIFIC COMMENTS

Preamble

The preamble now includes two new 'whereas' clauses (respectively, the fifth and sixth 'whereas' clauses) on the basis of the amendments of the European Parliament. Furthermore, the 'whereas' referring mainly to the different phases in the process leading to the adoption of the Kyoto Protocol were eliminated and replaced with shorter wording referring to the outcome of that process, i.e. the requirements contained in the Kyoto Protocol.

In addition to other minor adjustments (such as the deadline for reporting inventories (now, 31 December) and further dates of previous Council conclusions) to ensure consistency with the modified Articles, a reference was also introduced to the possible future updating of the monitoring mechanism to reflect further decisions in the framework of the Kyoto Protocol.

Article 1

Article 1 was modified so as to be brought in line with the contents and objective of the Common Position (see Section II).

Article 2

The main modifications introduced in this Article concerning the 'national programmes' principally aim at taking into account the outcome of the Kyoto negotiations meanwhile concluded and in particular the requirements deriving from the Kyoto Protocol for the Community and its Member States. The monitoring mechanism as updated will, in fact, also contribute to the evaluation of progress made by the Community and its Member States towards fulfilling the UNFCCC and the Protocol's commitments. This Article was reorganised also to make a distinction between the requirements of the UNFCCC and of the Kyoto Protocol.

— *Paragraph 1*

this paragraph was modified so as to include, in its first indent, reference to Council conclusion of 15 and 16 December 1994, for reasons of completeness.

The second indent was slightly adjusted and the third indent was added to reflect the broadened objective of the Common Position: they now refer respectively to the fulfilment of the Community's commitments relating to greenhouse gas emissions under the UNFCCC and the Kyoto Protocol, and to the transparent and accurate monitoring of the actual and projected progress of Member States (including the contribution made by Community measures) in meeting their national contributions to those commitments,

— *Paragraph 2*

this paragraph (and in particular subparagraph (b)) was also amended so as to bring it in line technically with the requirements of the Kyoto Protocol, in particular as far as the commitment period (2008 to 2012), the basket of gases (the six gases listed in Annex A to the Protocol) and the base year (1990 or 1995 for the three additional gases) are concerned. Information to be given under the FCCC for the other greenhouse gases is referred to under subparagraph (c).

Furthermore, on the basis of the European Parliament's amendments, it is indicated that data and information will need to be submitted by the Member States on the basis of standard procedural guidelines.

Article 3

The main amendments in this Article concerning national inventories and data reporting include the following:

— *in paragraph 1:* reference was added to IPCC methodologies and subsequent relevant decisions by the Conference of the Parties to the Climate Change Convention, so as to ensure compatibility of methodologies in establishing inventories and reporting relevant data,

— *in paragraph 2:*

(a) modification of the deadlines (31 December) for submitting information and data to the Commission, also to make those deadlines compatible with the further requirements of the UNFCCC and other major international conventions on air pollution;

(b) reference to reporting on the most recent projected emissions for the gases covered by the Kyoto Protocol for the prescribed commitment period (2008 to 2012) and, as far as possible, for 2005;

(c) reference to further steps to be taken by the Commission to ensure the compatibility and transparency of the information provided by Member States (notably, national inventories and communications). This reference was added taking partially into account an amendment proposed by the European Parliament; the further reference to common modelling guidelines that was included in the Commission's amended proposal was not retained by the Council,

— *in paragraph 3:* modification of the deadline (1 March) for the Commission to circulate to the Member States the above-mentioned information.

Article 5

The Council incorporated the European Parliament's amendment (as also accepted by the Commission in its amended proposal) for retaining this Article. The text of this Article was however modified in the Common Position (and its title adjusted), so as to include further updates of the national programmes.

Other changes introduced by the Council included the following:

— the delay for the Commission to forward to the other Member States the national programmes received was reduced to one month,

— a reference was added to the European Environment Agency, which will assist, as appropriate, in the compilation of the evaluation report to be presented by the Commission to the Council and the European Parliament.

Article 6

The text of this Article was modified to make it consistent with the amended wording of Article 2(1).

The Article now includes an annual assessment by the Commission on actual and projected progress of Member States, including the contribution made by Community measures, towards fulfilling the commitments under the UNFCCC and the Kyoto Protocol, and a report to the European Parliament and the Council.

The last part of this Article was added taking into account an amendment proposed by the European Parliament. It refers to the fact that the above-mentioned report shall be made available even in case of incomplete data received from the Member States; in such event the Commission may include the best available data, in consultation with the Member State concerned. The Common Position differs in this from the European Parliament's amendment and the Commission amended proposal which requested to make explicit reference to such absence of data in the report.

Article 7

This Article (Other greenhouse gases) was deleted, as proposed by the Commission.

Article 8

The Common Position envisages a regulatory committee (Procedure IIIa) instead of a committee of an advisory nature (Procedure I) as the European Parliament had proposed and the Commission had accepted in its amended proposal.

The Commission expressed reluctance to change the type of committee, but in the end accepted the modification introduced by the Council.

Article 9

For reasons of clarity and legal certainty, a date for the entry into force of the Decision (1 January 1999) was introduced.

The Commission accepted the modifications incorporated by the Council in its Common Position.

COMMON POSITION (EC) No 51/98

adopted by the Council on 24 September 1998

with a view to adopting European Parliament and Council Directive 98/ /EC, of ... on certain aspects of the sale of consumer goods and associated guarantees

(98/C 333/04)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3],

(1) 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 transactions by persons acting in the course of a business but also transactions by 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 uniform minimum set of fair rules governing the sale of consumer goods;

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

(3) 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; whereas the artificial reconstruction of frontiers and the compartmentalisation of markets should be prevented; whereas the opportunities available to consumers have been greatly broadened by new communication technologies which allow ready access to distribution systems in other Member States or in non-member countries; whereas, in the absence of minimum harmonisation of the rules governing the sale of consumer goods, the development of the sale of goods through the medium of new distance communication technologies risks being impeded;

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

(5) 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;

(6) Whereas the goods must, above all, conform with the contractual specifications; whereas the principle of conformity with the contract may be considered as common to the different national legal traditions; whereas in certain national legal traditions it may not be possible to rely solely on this principle to ensure a minimum level of protection for the consumer; whereas under such legal traditions, in particular, additional national provisions may be useful to ensure that the consumer is protected in cases where the parties have agreed no specific contractual terms or where the parties have concluded contractual terms or agreements which directly or indirectly waive or restrict the rights of the consumer and which, to the extent that these rights result from this Directive, are not binding on the consumer;

(7) Whereas, in order to facilitate the application of the principle of conformity with the contract, it is useful to introduce a rebuttable presumption of conformity with the contract covering the most common situations; whereas that presumption does not restrict the principle of freedom of contract;

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[1] OJ C 307, 16.10.1996, p. 8, and OJ C 148, 14.5.1998, p. 12.

[2] OJ C 66, 3.3.1997, p. 5.

[3] Opinion of the European Parliament of 10 March 1998 (OJ C 104, 6.4.1998, p. 30), Council Common Position of 24 September 1998 and European Parliament Decision of ... (not yet published in the Official Journal).

whereas, furthermore, in the absence of specific contractual terms, as well as where the minimum protection clause is applied, the elements mentioned in this presumption may be used to determine the lack of conformity of the goods with the contract; whereas the quality and performance which consumers can reasonably expect will depend on the nature of the goods, including whether they are new or second-hand; whereas the elements mentioned in the presumption are cumulative; whereas, if the circumstances of the case render any particular element manifestly inappropriate, the remaining elements of the presumption nevertheless still apply;

(8) 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, as provided for by national law, to pursue remedies against the producer, a previous seller in the same chain of contracts or any other intermediary, unless he has renounced that entitlement; whereas the rules governing against whom and how the seller may pursue such remedies are to be determined by national law;

(9) Whereas, in the case of non-conformity of the goods with the contract, consumers should be entitled to have the goods restored to conformity with the contract free of charge, choosing either repair or replacement, or, failing this, to have the price reduced or the contract rescinded;

(10) Whereas the consumer in the first place may require the seller to repair the goods or to replace them unless those remedies are impossible or disproportionate; whereas whether a remedy is disproportionate should be determined objectively; whereas a remedy would be disproportionate if it imposed, in comparison with the other remedy, unreasonable costs; whereas, in order to determine whether the costs are unreasonable, the costs of one remedy should be significantly higher than the costs of the other remedy;

(11) Whereas in cases of a lack of conformity, the seller may always offer the consumer, by way of settlement, any available remedy; whereas it is for the consumer to decide whether to accept or reject this proposal;

(12) Whereas the references to the time of delivery do not imply that Member States have to change their rules on the passing of the risk;

(13) Whereas Member States may provide that any reimbursement to the consumer may be reduced to take account of the use the consumer has had of the goods since they were delivered to him; whereas the detailed arrangements whereby rescission of the contract is effected may be laid down in national law;

(14) Whereas the specific nature of second-hand goods makes it generally impossible to replace them; whereas therefore the consumer's right of replacement is generally not available for these goods; whereas for such goods, Member States may enable the parties to agree a shortened period of liability;

(15) Whereas it is appropriate to limit in time the period during which the seller is liable for any lack of conformity which exists at the time of delivery of the goods; whereas Member States may also provide for a limitation on the period during which consumers can exercise their rights, provided such a period does not expire within two years from the time of delivery; whereas where, under national legislation, the time when a limitation period starts is not the time of delivery of the goods, the total duration of the limitation period provided for by national law may not be shorter than two years from the time of delivery;

(16) Whereas Member States may provide for suspension or interruption of the period during which any lack of conformity must become apparent and of the limitation period, where applicable and in accordance with their national law, in the event of repair, replacement or negotiations between seller and consumer with a view to an amicable settlement;

(17) Whereas Member States should be allowed to set a period within which the consumer must inform the seller of any lack of conformity; whereas Member States may ensure a higher level of protection for the consumer by not introducing such an obligation; whereas in any case consumers throughout the Community should have at least two months in which to inform the seller that a lack of conformity exists;

(18) Whereas Member States should guard against such a period placing at a disadvantage consumers shopping across borders; whereas all Member States should inform the Commission of their use of this provision; whereas the Commission should monitor the effect of the varied application of this provision on consumers and on the internal market; whereas information on the use made of this provision by a Member State should be available to the other Member States and to consumers and consumer organisations throughout the Community; whereas a summary of the situation in all Member States should therefore be published in

the *Official Journal of the European Communities;*

(19) Whereas, for certain categories of goods, it is current practice for sellers and producers to offer guarantees on goods against any defect which becomes apparent within a certain period; whereas this practice can stimulate competition; whereas, while such guarantees are legitimate marketing tools, they should not mislead the consumer; whereas, to ensure that consumers are not misled, guarantees should contain certain information, including a statement that the guarantee does not affect the consumer's legal rights;

(20) Whereas the parties may not, by common consent, restrict or waive the rights granted to consumers, since otherwise the legal protection afforded would be thwarted; whereas this principle should apply also to clauses which imply that the consumer was aware of any lack of conformity of the consumer goods existing at the time the contract was concluded; whereas the protection granted to consumers under this Directive should not be reduced on the grounds that the law of a non-member State has been chosen as being applicable to the contract;

(21) 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 this trend and the experience acquired in implementing this Directive, it may be necessary to envisage more far-reaching harmonisation, notably by providing for the producer's direct liability for defects for which he is responsible;

(22) Whereas Member States should be allowed to adopt or maintain in force more stringent provisions in the field covered by this Directive to ensure an even 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 certain aspects of 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.

2. For the purposes of this Directive:

(a) 'consumer' shall mean any natural person who, in the contracts covered by this Directive, is acting for purposes which are not related to his trade, business or profession;

(b) 'consumer goods' shall mean any tangible movable item, with the exception of:

— goods sold by way of execution or otherwise by authority of law,

— water and gas where they are not put up for sale in a limited volume or set quantity,

— electricity;

(c) 'seller' shall mean any natural or legal person who, under a contract, sells consumer goods in the course of his trade, business or profession;

(d) 'producer' shall mean the manufacturer of consumer goods, the importer of consumer goods into the territory of the Community or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the consumer goods;

(e) 'guarantee' shall mean any undertaking by a seller or producer to the consumer, given without extra charge, to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising;

(f) 'repair' shall mean, in the event of lack of conformity, bringing consumer goods into conformity with the contract of sale.

3. Member States may provide that the expression 'consumer goods' does not cover second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person.

4. Contracts for the supply of consumer goods to be manufactured or produced shall also be deemed contracts of sale for the purpose of this Directive unless the consumer has to supply a substantial part of the materials necessary for manufacture or production.

Article 2

Conformity with the contract

1. The seller must deliver goods to the consumer which are in conformity with the contract of sale.

2. Consumer goods are presumed to be in conformity with the contract if they:

(a) 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;

(b) are fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract except where the circumstances show that the consumer did not rely on the seller's explanations;

(c) are fit for the purposes for which goods of the same type are normally used;

(d) show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling.

3. There shall be deemed not to be a lack of conformity for the purposes of this Article if, at the time the contract was concluded, the consumer was aware, or could not reasonably be unaware of, the lack of conformity.

4. The seller shall not be bound by public statements, as referred to in paragraph 2(d) if he:

— shows that he was not, and could not reasonably have been, aware of the statement in question,

— shows that by the time of conclusion of the contract the statement had been corrected, or

— shows that the decision to buy the consumer goods could not have been influenced by the statement.

5. Any lack of conformity resulting from incorrect installation of the consumer goods shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract of sale of the goods and the goods were installed by the seller or under his responsibility.

Article 3

Rights of the consumer

1. The seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered.

2. In the case of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity free of charge by repair or replacement, in accordance with paragraph 3, or to have an appropriate reduction made in the price or the contract rescinded with regard to those goods, in accordance with paragraphs 4 and 5.

3. In the first place, the consumer may require the seller to repair the goods or he may require the seller to replace them, in either case free of charge, unless this is impossible or disproportionate.

A remedy shall be deemed to be disproportionate if it imposes costs on the seller which, in comparison with the alternative remedy, are unreasonable, taking into account:

— the value the goods would have if there were no lack of conformity,

— the significance of the lack of conformity, and

— whether the alternative remedy could be completed without significant inconvenience to the consumer.

Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.

4. If the consumer is entitled to require neither repair nor replacement, or if the seller has not completed the remedy within a reasonable time and without any significant inconvenience to the consumer, the consumer may require an appropriate reduction of the price or have the contract rescinded.

5. The consumer is not entitled to have the contract rescinded if the lack of conformity is minor.

Article 4

Right of redress

Where the final seller is liable to the consumer because of a lack of conformity resulting from an act 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 person or persons liable in the contractual chain unless he has renounced that entitlement. The person or persons liable

against whom the final seller may pursue remedies, together with the relevant actions and conditions of exercise, shall be determined by national law.

Article 5

Time limits

1. The seller shall be held liable under Article 3 where the lack of conformity becomes apparent within two years as from delivery of the goods. If, under national legislation, the rights laid down in Article 3(2) are subject to a limitation period, that period shall not expire within a period of two years from the time of delivery.

2. Member States may provide that, in order to benefit from his rights, the consumer must inform the seller of the lack of conformity within a period of two months from the date on which he detected such lack of conformity.

Member States shall inform the Commission of their use of this paragraph. The Commission shall monitor the effect of the existence of this option for the Member States on consumers and on the internal market.

Not later than ...[1], the Commission shall prepare a report on the use made by Member States of this paragraph. This report shall be published in the *Official Journal of the European Communities*.

3. Unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods 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.

Article 6

Guarantees

1. A guarantee shall be legally binding on the offerer under the conditions laid down in the guarantee statement and the associated advertising.

2. The guarantee shall:

— state that the consumer has legal rights under applicable national legislation governing the sale of consumer goods and make clear that those rights are not affected by the guarantee,

— set out in plain intelligible language the contents of the guarantee and 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.

3. On request from the consumer, the guarantee shall be made available in writing or feature in another durable medium available and accessible to him.

4. Within its own territory, the Member State in which the consumer goods are marketed may, in accordance with the rules of the Treaty, provide that the guarantee be drafted in one or more languages which it shall determine from among the official languages of the Community.

5. Should a guarantee infringe the requirements of paragraphs 2, 3 or 4, the validity of this guarantee shall in no way be affected, and the consumer can still rely on the guarantee and require that it be honoured.

Article 7

Binding nature

1. Any contractual terms or agreements concluded with the seller before the lack of conformity is brought to the seller's attention which directly or indirectly waive or restrict the rights resulting from this Directive shall, as provided for by national law, not be binding on the consumer.

Member States may provide that, in the case of second-hand goods, the seller and consumer may agree contractual terms or agreements which have a shorter time period for the liability of the seller than that set down in Article 5(1). Such period may not be less than one year.

2. Member States shall take the necessary measures to ensure that consumers are not deprived of the protection afforded by this Directive as a result of opting for the law of a non-member State as the law applicable to the contract where the contract has a close connection with the territory of the Member States.

Article 8

National law and minimum protection

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

[1] 42 months after entry into force of this Directive.

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 9

Transposition

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

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

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

Article 10

Review

The Commission shall, not later than . . .[2], review the application of this Directive and submit to the European Parliament and the Council a report. The report shall examine, *inter alia*, the case for introducing the producer's direct liability and, if appropriate, shall be accompanied by proposals.

Article 11

Entry into force

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

Article 12

This Directive is addressed to the Member States.

Done at . . .

For the European Parliament	*For the Council*
The President	*The President*

[1] 36 months after entry into force of this Directive.

[2] Seven years after entry into force of this Directive.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 23 August 1996, the Commission sent the Council a proposal, based on Article 100a of the EC Treaty, on the sale of consumer goods and associated guarantees.

2. The European Parliament and the Economic and Social Committee delivered their opinions on 10 March 1998 and 27 November 1996 respectively.

3. On 1 April 1998, the Commission forwarded an amended proposal to Council.

4. On 24 September 1998, the Council adopted its Common Position in accordance with Article 189b(2), second subparagraph of the Treaty.

II. OBJECTIVE

The future Directive is designed to provide a uniform minimum level of consumers' legal rights to remedies in the event of non-conformity of a product with the contract of sale existing at the time of delivery and to ensure transparency of guarantees offered voluntarily by sellers and manufacturers. It only covers goods and sales between professional sellers and non-professional consumers.

III. ANALYSIS OF THE COMMON POSITION

General

The Council sought to increase consumer protection in an area which is the main source of consumer complaints regarding transactions, in particular transboundary transactions in the single market. In doing so it also aimed at striking a reasonable balance between the interests of consumers and sellers in order to allow them to profit entirely and equitably from the internal market. The Council accepted or took account of a number of the amendments of the European Parliament.

Articles

(the reference texts are the Common Position and the Commission amended proposal)

Article 1: Scope and definitions

— *paragraph 1:* scope

the Council added the terms 'on certain aspects' for the sake of clarity. The title of the draft Directive was completed accordingly

— *paragraph 2:* definitions including exceptions

in the definition of 'consumer' (2a), the Council accepted amendment 11 and deleted therefore the term 'directly' proposed by the Commission.

Regarding 'consumer goods' (2b), the Council added 'tangible' and felt that three exceptions plus the one in new paragraph 3 are useful clarifications, while the explicit mention of buildings was regarded as unnecessary.

As for the 'seller' (2c), the reference to 'exchange for another asset' would have posed problems in several Member States and was therefore deleted.

The definition of the manufacturer or rather the 'producer' (2d) was accepted, while the one of the 'manufacturer's representative' was not retained because of the differences in Member States' legislation regarding the issue of representation.

Regarding 'guarantees' (2e), the Council preferred this more neutral notion to 'commercial guarantee' as the adjective would have caused confusion in some Member States. For the sake of clarity, the Council retained the definition as initially proposed by the Commission and amended it slightly. For the same reason, the definition of 'repair' (2f) was added

— *paragraph 3:* second-hand goods sold at public auctions

the optional exemption in this paragraph is designed to take account of the specific situation in some Member States

— *paragraph 4:* supply of consumer goods to be manufactured or produced

the Council accepted amendment 17 and added an element it regarded as relevant in this context.

Article 2

In *paragraph 2b,* the Council preferred the Commission's original proposal which originates from the Vienna Convention.

In *paragraph 2d,* the Council accepted part of amendment 20. For reasons of applicability, it inserted elements of the Commission's initial proposal and replaced 'entitled to expect' by 'can reasonably expect'.

In *paragraph 3,* the Council took over amendment 21 with slight changes.

In *paragraph 5,* the Council could support the principle of amendment 23 regarding the installation instructions but felt that this issue should be re-examined at the second reading, taking into account the condition that the product should be designed for installation by the consumer (and not by a professional) and that the written installation instructions should be appropriate for the average consumer.

Recital 7 explains the concept of Article 2.

Article 3

In *paragraph 1* the Council followed the European Parliament and transferred the last part of Article 3(1) to Article 2(3). It moved the issue of time limits to Article 5.

Paragraph 2 of the Commission proposal was transferred to Article 2.

As regards the hierarchy of consumers' rights, the Council largely followed in *paragraph 3* the concept of the European Parliament with, in particular, the following differences or nuances:

The Council felt that the criterion of proportionality, explained further in recital 10, was more appropriate with a view to existing national law than the criterion of 'economically appropriate'. In this spirit of proportionality, it excluded the rescission of the contract in cases of a minor lack of conformity. The issue of recommencement or suspension of the time limit in the case of replacement or repair (amendments 29 and 33) is left to Member States as stated in recital 16. Recital 13 makes it clear that Member States are also free to adopt rules on the reimbursement in the case of goods already used by the consumer as well as on the detailed arrangements of the rescission of the contract.

Paragraph 4 of Article 3 makes it clear that the consumer may require an appropriate reduction of the price or have the contract rescinded:

— if the consumer is entitled to neither repair nor replacement, or

— if the seller has not completed the remedy within a reasonable time, or

— if the seller has not completed the remedy with no significant inconvenience to the consumer [1].

Recital 11 makes it clear that the seller may of course always offer the consumer any available remedy which the consumer is free to accept or reject.

As for second-hand goods, recital 14 states that replacement is generally not available for these goods (see also Article 7 and recital 20).

Regarding the issue of payment by instalments (amendment 32), the Council considered that this is a matter of consumer credit rules.

Article 4

The Council accepted the term 'person liable', but preferred leaving the issue of contractual safeguard clauses also to Member States.

Article 5

The Council concentrated the time limits in this Article and added in *paragraph 1* as an important element of consumer protection, a reference to the limitation period. As recital 15 explains, such limitation periods may not be less than two years (but can of course continue to be 10 years or more, according to existing national law), and may not be less than two years from the time of delivery where such a period starts in some Member States before that time.

In paragraph 2, the Council added the possibility for Member States to provide a notification obligation which, in the existing law and practice of some Member States, is the basis of a considerably more advantageous system for consumers, for example the system in which the limitation period of two years does not begin until notification is made.

In order to prevent problems for the functioning of the single market which might arise from this possibility being given to Member States, the Council accompanied this clause by a scheme of information and monitoring including a report by the Commission.

Article 6

As for *paragraph 1,* the Council concluded after thorough discussion, that the criterion of the 'more advantageous position' was not applicable and deleted it.

In *paragraph 2,* first indent, the Council accepted the reference to the legal rights of the consumer. It added as an important clarification in *paragraph 5* the provision that the guarantee is still valid even if it infringes the requirements set out in this Article.

Article 7

This Article also covers second-hand goods in order to take account of their specific nature (see also Articles 2 and 3 and recitals 6, 7, 14 and 20).

[1] At the second reading, it may be useful to review some of the translations of this paragraph.

Article 9

Given the complexity of the matter covered by this Directive, the Council chose a transposition period of three years.

Article 10

The Council carefully examined the question of producer liability, addressed by the European Parliament in particular in amendments 16, 18, 25 and 48. It felt that this was an important aspect of consumer protection, but shared the Commission's view that further study was necessary before considering the integration of this aspect into the Directive. It provided therefore for a revision clause including the reference to proposals by the Commission (see also recital 21).

As regards amendment 43, the Council felt that this issue was too complex and should instead be covered by the Commission action plan on extra-judicial procedures.

COMMON POSITION (EC) No 52/98

adopted by the Council on 24 September 1998

with a view to adopting European Parliament and Council Decision No /98/EC, of . . . on the coordinated introduction of a third-generation mobile and wireless communications system (UMTS) in the Community

(98/C 333/05)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Articles 57, 66 and 100a thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Having regard to the opinion of the Committee of the Regions [3],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [4],

(1) Whereas on 29 May 1997 the Commission presented to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions a communication on the further development of mobile and wireless communications;

(2) Whereas on 15 October 1997 the Commission presented a Communication on strategy and policy orientations with regard to the further development of mobile and wireless communications (UMTS);

(3) Whereas on 1 December 1997 the Council invited the Commission to submit, by early 1998, a proposal for a European Parliament and Council Decision which would enable orientations to be established on the substance of the issue and facilitate, within the existing Community legal framework, the early licensing of UMTS services and, if appropriate and on the basis of the existing allocation of competences, in respect of coordinated allocation of frequencies in the Community and pan-European roaming; whereas on 29 January 1998 the European Parliament adopted a resolution expressing its strong support for the Commission's communication of 15 October 1997;

(4) Whereas a new generation of innovative systems needs to be developed for the provision of wireless wideband multimedia services, including Internet and other Internet Protocol (I/P) based services, for the provision of flexible and personalised services and for the support of high volume data rates, each combining the use of terrestrial fixed and mobile as well as satellite components; whereas this Decision will apply to satellite components without prejudice to Parliament and Council Decision 710/97/EC of 24 March 1997 on a coordinated authorisation approach in the field of satellite personal-communication services in the Community [5]; whereas there is a need to ensure rapid market access for seamless, global coverage and low cost and innovative service offering through a sufficient level of competition;

(5) Whereas in 1992 the International Telecommunications Union (ITU) World Administrative Radio Conference (WARC 92) identified the frequency spectrum for the development of both the satellite and terrestrial parts of the Future Public Land Mobile Telecommunications System (FPLMTS), later renamed IMT-2000; whereas, according to ITU Resolution 212 and to the World Radiocommunications Conference in 1995 (WRC 95), the initial implementation of the terrestrial element should take place around the year 2000;

(6) Whereas the concept of Universal Mobile Telecommunications System (UMTS) in the Community needs to be compatible with the third-generation mobile system concept called International Mobile Telecommunications-2000 (IMT 2000) developed by the ITU at world level on the basis of ITU Resolution 212;

(7) Whereas mobile and wireless communications are of strategic importance both for the development of the Community telecommunications industry and the information society as well as for the economy

[1] OJ C 131, 29.4.1998, p. 9.
[2] Opinion delivered on 29 April 1998 (OJ C 214, 10.7.1998, p. 92).
[3] OJ C . . .
[4] Opinion of the European Parliament of 18 June 1998 (OJ C 210, 6.7.1998), Council Common Position of 24 September 1998 and European Parliament Decision of . . . (not yet published in the Official Journal).
[5] OJ L 105, 23.4.1997, p. 4.

and employment in the Community as a whole; whereas on 3 December 1997 the Commission adopted a Green Paper on the convergence of the telecommunications, media and information technology sectors, and the implications for regulation; whereas on the basis of the consultations resulting from that Green Paper, the Commission will take into consideration the impact of convergence on UMTS considering, in particular, the review of Community telecommunications regulation by 1999;

(8) Whereas in order to create a favourable climate for investment and deployment of UMTS and to allow the development of Community-wide as well as pan-European and global services with the widest possible territorial coverage, early and specific action at Community level is necessary; whereas Member States should allow the rapid and coordinated introduction of compatible UMTS networks and services in the Community on the basis of internal market principles and pursuant to European standards for UMTS approved or developed by the European Telecommunications Standards Institute (ETSI), where available, including in particular a common, open and internationally competitive air-interface standard; whereas diverging national laws, regulations and administrative action would hinder or prevent the provision of Community-wide and global UMTS services and the free movement of related equipment;

(9) Whereas Community legislation, including the competition rules, apply to this sector, in particular: Commission Directive 96/2/EC of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and personal communications [1], Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets [2], European Parliament and Council Directive 97/13/EC of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services [3], European Parliament and Council Directive 97/33/EC of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) [4] and European Parliament and Council Directive 97/66/EC of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector [5]; whereas the list of conditions which may be attached to authorisations for UMTS pursuant to Directive 97/13/EC is without prejudice to measures taken by Member States in accordance with public interest requirements recognised by the Treaty, in particular Articles 36 and 56, especially in relation to public security including the investigation of criminal activities;

(10) Whereas organisations providing UMTS networks or services over those networks should be able to enter the market without unnecessary constraints or excessive fees to allow for a dynamic market and a broad competitive service offering;

(11) Whereas pursuant to Community law, in particular European Parliament and Council Directive 97/13/EC and Commission Directive 96/2/EC: firstly, individual licences should be limited to the establishment and/or the operation of UMTS networks, secondly, the number of UMTS licences may be limited only for reasons of demonstrated lack of frequency spectrum capacity and thirdly, licences should be granted on the basis of objective, non-discriminatory, detailed and proportionate criteria, regardless of whether or not individual applicants for licences are existing operators of other systems;

(12) Whereas licences should allow, and Member States should encourage, transnational roaming in order to secure Community-wide and pan-European services; whereas there should be cooperation with the European Conference of Postal and Telecommunications Administrations (CEPT) through the European Committee for Telecommunications Regulatory Affairs (ECTRA) for UMTS; whereas in particular mandates may be issued, when necessary, to establish a one-stop shopping procedure for services;

(13) Whereas the amount of spectrum made available will have a direct impact on how competitive the market will be; whereas estimated demand should therefore be taken into account when determining the amount of spectrum to be allocated; whereas sufficient spectrum must be allocated and cleared sufficiently in advance to foster a broad competitive offering of mobile multimedia services;

(14) Whereas spectrum allocation is most efficiently pursued in the context of the CEPT by the European Radiocommunications Committee (ERC); whereas it should be ensured that appropriate and timely regulatory measures are taken to achieve the implementation in the Community of ERC decisions if necessary; whereas Member States should be encouraged to provide the Commission

(1) OJ L 20, 26.1.1996, p. 59.
(2) OJ L 74, 22.3.1996, p. 13.
(3) OJ L 117, 7.5.1997, p. 15.
(4) OJ L 199, 26.7.1997, p. 32.
(5) OJ L 24, 30.1.1998, p. 1.

with regular information as to the implementation of ERC measures; whereas complementary Community action may be required to ensure the timely implementation of CEPT decisions within Member States;

(15) Whereas sufficient spectrum will be necessary to foster the development of a market with a broad competitive offering of mobile multimedia services; whereas on 30 June 1997 the ERC adopted Decision ERC/DEC/(97)07 on the frequency bands for the introduction of UMTS which entered into force on 1 October 1997;

(16) Whereas this ERC decision has designated the frequency bands 1900—1980 MHz, 2010—2025 MHz and 2110—2170 MHz to terrestrial UMTS applications, and accommodates UMTS satellite component applications within the bands 1980—2010 MHz and 2170—2200 MHz; whereas sufficient spectrum must be allocated within the bands identified by WARC 92 according to the increasing needs for this spectrum before UMTS services are commercially deployed; whereas additional frequency spectrum may become necessary within a few years;

(17) Whereas at ITU level the review of spectrum and regulatory issues relating to UMTS and the facilitation of multimode terminal operation and worldwide roaming of IMT-2000 have been included in the next WRC agenda in order to identify additional frequency spectrum to satisfy market demand by 2005—2010; whereas therefore European common positions need to be developed and promoted at global level with the participation of all parties interested;

(18) Whereas spectrum availability and appropriate pricing, coverage and quality will be essential aspects to the success of UMTS development; whereas any spectrum pricing method should not adversely impact on the competitive structure of the market, and respect the public interest, while ensuring efficient use of the spectrum as a valuable resource;

(19) Whereas specific cooperation among operators may be necessary to provide coverage of less-populated areas; whereas this Decision does not prevent Member States from imposing appropriate forms of national roaming between authorised operators on their territory to the extent needed to ensure balance and non-discriminatory competition;

(20) Whereas a proposal was presented by the Commission for a Council and European Parliament Directive on connected telecommunications equipment and the mutual recognition of the conformity of equipment to replace European Parliament and Council Directive 98/13/EC of 12 February 1998 relating to telecommunications terminal equipment and satellite earth station equipment, including the mutual recognition of their conformity [1]; whereas appropriate harmonised standards developed by ETSI and recognised under Directive 98/13/EC will ensure free movement of terminal equipment including for UMTS;

(21) Whereas the second generation cellular digital mobile communications systems were originally defined in Council Directive 87/372/EEC of 25 June 1987 on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community [2] as operating in the 900 MHz bands; whereas DCS-1800 has to be considered as part of the GSM family and of such second generation; whereas the Community should build on the success of the current generation of mobile digital technology including GSM both in Europe and in the world, taking into consideration interworking between UMTS and second-generation systems; whereas there should be, pursuant to Community law, no discrimination between GSM operators and new entrants in UMTS markets; whereas UMTS should develop in one seamless environment including full roaming with GSM as well as between the terrestrial and satellite components of UMTS networks, which is likely to make hybrid terminals such as dual mode/band GSM/UMTS terminals and terrestrial/satellite terminals necessary;

(22) Whereas it is important for UMTS networks to provide secure and reliable communications and ensure high level security, including protection against fraudulent use, at least commensurate with that of second-generation mobile communications;

(23) Whereas UMTS aims at a global market; whereas a common European UMTS standard should be adopted and proposed as a member of the 'IMT 2000 family concept' developed by the ITU in order to increase the chances of UMTS being adopted in markets outside Europe; whereas the deadlines set by the ITU therefore need to be met within the

[1] OJ L 74, 12.3.1998, p. 1.
[2] OJ L 196, 17.7.1987, p. 85.

Community and the final ITU technical requirements to be taken into account;

(24) Whereas while voluntary application of standards remains the general rule, recourse to mandatory standards may be required for interfaces and situations where necessary to ensure interoperability and facilitate roaming of mobile networks and services; whereas harmonised standards are adopted by standardisation bodies such as ETSI, which facilitates regulatory action;

(25) Whereas in 1995 the Commission granted to ETSI a general standardisation mandate related to UMTS pursuant to Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations [1] and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of information technology and telecommunications [2], and may issue further mandates in the future;

(26) Whereas social and societal effects should be taken into account in the transition towards the wireless information society; whereas development of UMTS and relevant standards should be coordinated with related efforts, such as the development of a Community-wide information society, support of training on UMTS related technologies, access for elderly and disabled persons and research into the possible health hazards of mobile communications;

(27) Whereas Community undertakings should benefit fully from international trade agreements such as agreements signed within the World Trade Organisation (WTO), including those relating to tariffs, such as in the Information Technology Agreement, and from the Istanbul Convention on the elimination of customs duties on personal effects and professional equipment and have effective market access under the specific terms and conditions, including national treatment, binding on the member countries of the WTO; whereas the Commission may take all necessary actions to implement international agreements; whereas these may need to be supplemented by specific bilateral or multilateral agreements and negotiations which the Commission may start on the basis of mandates from the Council;

(28) Whereas in implementing this Decision, the Commission should be assisted by the Licensing Committee established by Directive 97/13/EC; whereas in implementing this Decision the Commission, assisted by the Committee, should cooperate closely with relevant outside bodies,

HAVE ADOPTED THIS DECISION:

Article 1

Purpose

The aim of this Decision shall be to facilitate the rapid and coordinated introduction of compatible UMTS networks and services in the Community on the basis of internal market principles and in accordance with commercial demand.

Article 2

Definition

For the purpose of this Decision, 'Universal mobile telecommunications system (UMTS)' shall mean a third-generation mobile and wireless communications system capable of supporting in particular innovative multimedia services, beyond the capability of second generation systems such as GSM, and capable of combining the use of terrestrial and satellite components. This system shall at least be capable of supporting the characteristics referred to in Annex I.

Article 3

Coordinated authorisation approach

1. Member States shall take all actions necessary in order to allow, in accordance with Article 10 of Directive 97/13/EC, the coordinated and progressive introduction of the UMTS services on their territory by 1 January 2002 at the latest and in particular shall establish an authorisation system for UMTS no later than 1 January 2000.

2. Member States shall be granted on request an additional implementation period of up to 12 months beyond the dates referred to in paragraph 1 for establishing an authorisation system and the introduction of UMTS services, to the extent justifiable by exceptional technical difficulties in achieving the necessary adjustments in their frequency plan. Such a request must be filed before 1 January 2000. The Commission shall assess such requests and take a reasoned decision within a period of three months. Any information provided shall be made available to any interested party on demand having regard to legitimate interests in the protection of business and security secrets.

[1] OJ L 109, 26.4.1983, p. 8. Directive as last amended by Commission Decision 96/139/EC (OJ L 32, 10.2.1996, p. 31).
[2] OJ L 36, 7.2.1987, p. 31.

3. When preparing and applying their authorisation systems, Member States shall ensure, in compliance with Community legislation, that the provision of UMTS is organised:

— in frequency bands which are harmonised by CEPT in accordance with the procedure laid down in Article 5,

— pursuant to European standards for UMTS approved or developed by ETSI, where available, including in particular a common, open and internationally competitive air-interface standard. Member States shall ensure that licences allow transnational roaming in the Community.

4. Given that, in line with efficient use of radio frequencies, it may be necessary to limit the number of UMTS systems authorised in Member States, if it is established in accordance with the procedure laid down in Article 17 of Directive 97/13/EC and in conjunction with CEPT, that potential types of systems are incompatible, Member States shall coordinate their approach with a view to authorising compatible types of UMTS systems in the Community.

Article 4

Roaming rights and obligations

1. Member States shall encourage organisations providing UMTS networks to negotiate among themselves cross-border roaming agreements to ensure seamless Community-wide service coverage.

2. Member States may where necessary take action, in accordance with Community law, to ensure the coverage of less-populated areas.

Article 5

Cooperation with CEPT

1. The Commission shall, in accordance with the procedure laid down in Article 16 of Directive 97/13/EC give CEPT/ERC and CEPT/ECTRA mandates, *inter alia,* to harmonise frequency use. Those mandates shall define the tasks to be performed and lay down a timetable.

2. The timetable for the first mandates is that set out in Annex II.

3. On the completion of the mandates, it shall be decided in accordance with the procedure laid down in Article 17 of Directive 97/13/EC whether the result of the work done pursuant to the mandates shall be made applicable in the Community.

4. Notwithstanding paragraph 3, if the Commission or any Member State considers that work done pursuant to the mandate given to the CEPT/ECTRA or CEPT/ERC is not progressing satisfactorily having regard to the timetable laid down, it may refer the matter to the Licensing Committee, which shall act in accordance with the procedure laid down in Article 17 of Directive 97/13/EC.

Article 6

Cooperation with ETSI

The Commission shall take all necessary measures, where appropriate in cooperation with ETSI, to promote a common and open standard for the provision of compatible UMTS services throughout Europe, in accordance with market requirements, taking into account the need to present a common standard to the ITU as an option for the world-wide ITU IMT 2000 recommendation.

Article 7

The committee

In the implementation of this Decision the Commission shall be assisted by the Licensing Committee set up by Article 14 of Directive 97/13/EC.

Article 8

Exchange of information

1. The Commission shall regularly inform the committee of the outcome of consultations with the representatives of organisations providing telecommunications services or networks, users, consumers, manufacturers and trade unions.

2. The committee shall, taking into account the Community's telecommunications policy, encourage the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities regarding the authorisation of UMTS services.

Article 9

International Aspects

1. The Commission shall take all necessary measures to facilitate the introduction of UMTS services and the free circulation of UMTS equipment in non-member countries.

2. For this purpose, the Commission shall seek the implementation of international agreements applicable to UMTS, and shall, in particular and where necessary, submit proposals to the Council for appropriate mandates for the negotiation of bilateral and multilateral agreements with non-member countries and international organisations. The Council shall decide by qualified majority.

3. Measures taken pursuant to this Article shall be without prejudice to the Community's and Member States' obligations pursuant to relevant international agreements.

Article 10

Notification

Member States shall give the Commission such information as it may require for the purpose of verifying the implementation of this Decision.

Article 11

Confidentiality

The provisions of Article 20 of Directive 97/13/EC shall apply to information pursuant to this Decision.

Article 12

Report

The Commission shall keep developments in the field of UMTS under review and report to the European Parliament and to the Council within two years on the effectiveness of action taken pursuant to this Decision.

Article 13

Implementation

Member States shall take all measures necessary, by law or administrative action, for the measures provided for in, or agreed on pursuant to, this Decision to be implemented.

Article 14

Duration

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Communities* and shall remain in force for four years after that date.

Article 15

Addressees

This Decision is addressed to the Member States.

Done at . . .

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

CHARACTERISTICS WHICH UMTS IS TO BE CAPABLE OF SUPPORTING

System capabilities needed to accommodate service features

1. Multimedia capability; full mobility and low mobility applications in different geographical environments beyond the capability of the second-generation systems such as GSM.

2. Efficient access to the Internet, Intranets and other Internet Protocol (I/P) based services.

3. High-quality speech transmission commensurate with that of fixed networks.

4. Service portability across distinct UMTS environments where appropriate (e.g. public/private/business; fixed/mobile).

5. Operation in one seamless environment including full roaming with GSM as well as between the terrestrial and satellite components of UMTS networks.

Radio access networks

— new terrestrial air interface for access to all services including to packet data based services, supporting asymmetric traffic and allowing for band width/data rate on demand in harmonised frequency bands,

— good overall spectral efficiency inlcuding the use of paired and unpaired frequency.

Core network

— call handling, service control and location and mobility management including full roaming functionality based on an evolution of existing core network systems, for example on an evolved GSM core network, taking the convergence between mobile/fixed networks into account.

ANNEX II

Timetable

From February 1999 issue mandates to CEPT on further spectrum allocation including availability of additional spectrum beyond WARC-92 FPLMTS bands for UMTS.

From February 1999 issue mandates to CEPT to establish one-stop-shopping procedure for services where necessary.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 11 February 1998 the Commission submitted a proposal for a European Parliament and Council Decision on the coordinated introduction of mobile and wireless communications (UMTS) in the Community.

2. The European Parliament delivered its first-reading opinion on 18 June 1998; the Economic and Social Committee delivered its opinion on 29 April 1998. The Committee of the Regions expressed a view on the proposal on (16 September 1998).

3. On 24 September 1998 the Council adopted its Common Position in accordance with Article 189b of the Treaty.

II. OBJECTIVE

The aim of the Decision is to facilitate, within the Community's existing legal framework, the rapid and coordinated introduction of third-generation mobile and wireless communications networks and services, with particular reference to wide-band wireless multimedia services, including Internet services, flexible and personalised services supporting high volume data rates combining the use of terrestrial fixed and mobile as well as satellite components.

III. ANALYSIS OF THE COMMON POSITION

A. General remarks

The Common Position generally accords with the Commission's proposal and the position taken by the European Parliament.

Where it made changes to the Commission proposal, and also in its attitude towards the European Parliament's amendments, the Council was guided mainly by a concern to:

— clarify the scope of certain provisions,

— make the text more flexible to take account of the variety of situations and the complexity of the work of the national authorities responsible for issuing authorisations,

— ensure greater consistency between the provisions of the new Decision and existing Community regulations in the field of telecommunications,

— clarify and simplify the wording of the Decision.

B. Specific remarks

1. *Main changes made to the Commission proposal*

(a) Coordinated introduction by Member States (Article 3)

The text of Article 3 has been made somewhat more flexible so that the Member States' freeing of the frequency bands to be used for future mobile and wireless communications can be carried out properly. If they have exceptional technical difficulties in adjusting their national frequency plans, Member States can obtain an extra period of up to 12 months beyond the deadlines of 1 January 2000 and 1 January 2002 which have been set for establishing an authorisation system and introducing UMTS services (paragraph 2).

Paragraph 1 has been slightly amended to give a better idea of the obligations arising from the Directive on general authorisations and individual licences in

the field of telecommunications services [1] (use of the expression 'coordinated and progressive introduction of the UMTS services').

(b) Characteristics of the UMTS (Article 2 and Annex I)

Following the Parliament, the Council adopted the principle of a list of the minimum characteristics that must be presented by the UMTS. But it reformulated the list, which appears in Annex I, in the light of the most recent discussions of the ETSI, and it was concerned to point out in a recital (22) that it was important for UMTS networks to be able to provide secure and reliable communications with a high level of security.

The Council saw no need to give a definition of 'terminals', this being an area which, it considered, should be left to market forces. But the Council thought this was the most appropriate development here and indicated as much in a recital (21).

(c) Roaming rights and obligations (Article 4)

The Council considered that the aim of seamless Community-wide service coverage should in principle be achieved under the impetus of market forces alone. It therefore thought it sufficient for Member States to encourage organisations providing UMTS networks to negotiate the appropriate roaming agreements.

(d) Cooperation with CEPT (Article 5)

The wording adopted by the Council is modelled on the approach taken on the same subject in European Parliament and Council Decision No 710/97/EC on satellite personal-communication services [2]; this involves greater flexibility in the drawing up of the mandates to be given to CEPT.

2. *Council position* vis-à-vis *the European Parliament*

(a) Amendments incorporated in the Common Position wholly or in part

The Council adopted Amendments 1, 5, 8, 9 and 11, sometimes with slight changes to the wording [3].

The Council also adopted the first part of Amendment 3 concerning Recital 16. However, as it preferred to delete the reference to certain frequency bands from this recital, the second part of the amendment became redundant and could not be incorporated.

With regard to Amendment 6, the new wording of Article 3(3) takes account of the European Parliament's wish for it to be specified that authorisations for UMTS services must be given by Member States in compliance with Community legislation.

The principle of Amendment 7 was incorporated in the new wording of Article 3(4), which was aligned on Article 10 of the Directive on general authorisations and individual licences.

(b) Rejected amendments

By not accepting Amendments 4 and 10 the Council endorsed the position of the Commission.

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[1] Council Directive 97/13/EC (OJ L 117, 7.5.1997, p. 15).
[2] OJ L 105, 23.4.1997, p. 4.
[3] These amendments concern, respectively, Recital 10, Articles 2 and 9, and Annex I.

COMMON POSITION (EC) No 53/98

adopted by the Council on 24 September 1998

with a view to adopting European Parliament and Council Regulation (EC) No .../98, of ... amending Regulation (EEC) No 2913/92 with regard to the external transit procedure

(98/C 333/06)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 28, 100a and 113 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3],

(1) Whereas the external transit procedure as governed by Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [4] is primarily designed to facilitate trade in non-Community goods in the Community customs territory; whereas the need for recourse to that procedure for the export of Community goods must be evaluated in relation to very different situations; whereas it is necessary, in any case, to prevent products covered by or benefiting from export measures from either evading or benefiting unjustifiably from such measures, by ensuring that the Community customs legislation taken as a whole guarantees control and monitoring at least equivalent to that offered by the external Community transit procedure; whereas, if the possibility to use this procedure in some of those situations is maintained, definition of such situations should be a matter for the committee procedure;

(2) Whereas it is necessary to define the way in which the customs authorities discharge the procedure, in relation to the place, the time and the conditions under which this procedure ends, in order to establish more clearly the scope and limits of the obligations of the holder of the external transit procedure and to ensure that, in the absence of information capable of establishing that the procedure has ended, the holder remains fully liable;

(3) Whereas it is necessary for the rules for the guarantee in transit to be better defined, including recourse to the different forms of guarantee and the cases for a guarantee waiver, in particular following amendment of the scope of maritime transit; whereas, to ensure an adequate protection of the financial interests of the Member States and the Community without imposing a disproportionate burden on users, this guarantee and the calculation of its amount must be based both on the reliability of the operator and the risks attached to the goods; whereas a more logical and better structured presentation of the provisions is desirable with regard to the guarantee in transit;

(4) Whereas, in order to safeguard the revenue of the European Community and of the Member States and to curb fraudulent practices in the transit procedure, arrangements involving graduated measures for application of the comprehensive guarantee are advisable; whereas in the first place a ban on reducing the comprehensive guarantee may be considered where there is an increased risk of fraud and loss of revenue is therefore to be feared; whereas where it is established that especially critical exceptional situations exist, which may arise in particular from the activities of organised crime, it should instead also be possible temporarily to prohibit the application of the comprehensive guarantee itself; whereas account should be taken in the application of these graduated measures of the particular situation of the economic operators who meet specific criteria to be determined; whereas, where an individual guarantee has to be provided instead of the comprehensive guarantee, the burdens entailed for operators should be

[1] OJ C 337, 7.11.1997, p. 52.
[2] OJ C 73, 9.3.1998, p. 17.
[3] Opinion of the European Parliament of 13 May 1998 (OJ C 167, 1.6.1998), Council Common Position of 24 September 1998 and European Parliament Decision of ... (not yet published in the Official Journal).
[4] OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 82/97 (OJ L 17, 21.1.1997, p. 1).

reduced by means of the greatest possible simplification;

(5) Whereas the simplified procedures having an exclusively national, bilateral or multilateral scope introduced by the Member States under Article 97(2) of the Community Customs Code, hereafter referred to as 'the Code', vary greatly in nature and may in some cases conflict with the proper application of the Community transit procedures and the need for equal treatment of economic operators; whereas, without calling into question the benefits this system offers to these operators, a communication to the Commission of the simplified procedures introduced by each Member State on this basis must be provided for, in order to ensure the transparency of these measures and to evaluate their compatibility with the rules which govern Community transit procedures and in particular the guarantee;

(6) Whereas security systems for Community transit procedures cover both customs debt and other charges which may be incurred in respect of the goods, and constitute a special case since the procedures are international in nature and the sum required needs to be tailored to an extent to the risks and to the principal's reliability; whereas, therefore, there is a need to adapt in consequence Article 192 of the Code;

(7) Whereas under the current wording of Article 215 of the Code it is possible to determine where the customs debt is incurred, but it does not indicate that this place determines the authority responsible for the entry into the accounts of the debt; whereas, moreover, where a customs procedure is not discharged, the rule for determining that place must be amended to reflect the need to establish, as far as possible, the place where the events from which the customs debt arises actually occurred;

(8) Whereas simplification and clarification of the rules for the benefit of both operators and customs officials form an essential part of the action plan for customs transit in Europe; whereas these rules must also be applied to the provisions determined in accordance with the committee procedure;

(9) Whereas this amendment of the code together with the corresponding amendments to its implementing provisions must be such as to facilitate the introduction in due course of a new computerised system of transit for the benefit of both the public interests at stake in transit operations and economic operators,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2913/92 is hereby amended as follows:

1. Article 91(1)(b) shall be replaced by the following:

'(b) Community goods, in cases and under conditions determined in accordance with the committee procedure, in order to prevent products covered by or benefiting from export measures, from either evading or benefiting unjustifiably from such measures.';

2. Article 92 shall be replaced by the following:

'Article 92

1. The external transit procedure shall end and the obligations of the holder shall be met when the goods placed under the procedure and the required documents are produced at the customs office of destination in accordance with the provisions of the procedure in question.

2. The customs authorities shall discharge the procedure when they are in a position to establish, on the basis of a comparison of the data available to the office of departure and those available to the customs office of destination, that the procedure has ended correctly.';

3. Article 94 shall be replaced by the following:

'Article 94

1. The principal shall provide a guarantee in order to ensure payment of any customs debt or other charges which may be incurred in respect of the goods.

2. The guarantee shall be either:

(a) an individual guarantee covering a single transit operation; or

(b) a comprehensive guarantee covering a number of transit operations where the principal has been authorised to use such a guarantee by the customs authorities of the Member State where he is established.

3. The authorisation referred to in paragraph 2(b) shall be granted only to persons who:

(a) are established in the Community,

(b) are regular users of Community transit procedures or who are known to the customs authorities to have the capacity to fulfil their obligations in relation to these procedures, and

(c) have not committed serious or repeated offences against customs or tax laws.

4. Persons who satisfy the customs authorities that they meet higher standards of reliability may be authorised to use a comprehensive guarantee for a reduced amount or to have a guarantee waiver. The additional criteria for this authorisation shall include:

(a) the correct use of the Community transit procedures during a given period,

(b) cooperation with the customs authorities, and

(c) in respect of the guarantee waiver, a good financial standing which is sufficient to fulfil the commitments of the said persons.

The detailed rules for authorisations granted under this paragraph shall be determined in accordance with the Committee procedure.

5. The guarantee waiver authorised in accordance with paragraph 4 shall not apply to external Community transit operations involving goods which, as determined in accordance with the Committee procedure, are considered to present increased risks.

6. In line with the principles underlying paragraph 4, recourse to the comprehensive guarantee for a reduced amount may, in the case of external Community transit, be temporarily prohibited by the Committee procedure as an exceptional measure in special circumstances.

7. In line with the principles underlying paragraph 4, recourse to the comprehensive guarantee may, in the case of external Community transit, be temporarily prohibited by the Committee procedure in respect of goods which, under the comprehensive guarantee, have been identified as being subject to large-scale fraud.';

4. Article 95 shall be replaced by the following:

'*Article 95*

1. Except in cases to be determined where necessary in accordance with the committee procedure, no guarantee need be furnished for:

(a) journeys by air;

(b) the carriage of goods on the Rhine and the Rhine waterways;

(c) carriage by pipeline;

(d) operations carried out by the railway companies of the Member States.

2. The cases in which the furnishing of a guarantee in respect of the carrriage of goods on waterways other than those referred to in paragraph 1(b) may be waived shall be determined in accordance with the Committee procedure.';

5. Article 97 shall be replaced by the following:

'*Article 97*

1. The detailed rules for the operation of the procedure and the exemptions shall be determined in accordance with the committee procedure.

2. Provided that the implementation of Community measures applying to goods is guaranteed:

(a) Member States have the right, by bilateral or multilateral arrangement, to establish between themselves simplified procedures consistent with criteria to be set according to the circumstances and applying to certain types of goods traffic or specific undertakings;

(b) each Member State shall have the right to establish simplified procedures in certain circumstances for goods not required to move in the territory of another Member State.

3. Simplified procedures established under paragraph 2 shall be communicated to the Commission.';

6. In Article 192(1), the introductory sentence shall be replaced by the following:

'1. Where customs legislation makes it compulsory for security to be provided, and subject to the specific provisions laid down for transit in accordance with the committee procedure, the customs authorities shall fix the amount of such security at a level equal to:';

7. Article 215 shall be replaced by the following:

'*Article 215*

1. A customs debt shall be incurred:

— at the place where the events from which it arises occur,

— if it is not possible to determine that place, at the place where the customs authorities conclude that the goods are in a situation in which a customs debt is incurred,

— if the goods have been entered for a customs procedure which has not been discharged, and the place cannot be determined pursuant to the first or second indent within a period of time determined, if appropriate, in accordance with the Committee procedure, at the place where the goods were either placed under the procedure concerned or were introduced into the

Community customs territory under that procedure.

2. Where the information available to the customs authorities enables them to establish that the customs debt was already incurred when the goods were in another place at an earlier date, the customs debt shall be deemed to have been incurred at the place which may be established as the location of the goods at the earliest time when existence of the customs debt may be established.

3. The customs authorities referred to in Article 217(1) are those of the Member State where the customs debt is incurred or is deemed to have been incurred in accordance with this Article'.

Article 2

This Regulation shall enter into force on the third 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.

Done at . . .

For the European Parliament	*For the Council*
The President	*The President*

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 29 September 1997, the Commission submitted a proposal, based on Articles 28, 100a and 113 of the EC Treaty, amending Regulation (EEC) No 2913/92 establishing the Community Customs Code (transit) [1].

2. The European Parliament and the Economic and Social Committee gave their opinions on 13 May 1998 and 10 and 11 December 1997 respectively [2].

3. On 24 September 1998, the Council adopted its Common Position in accordance with Article 189b of the Treaty.

II. OBJECTIVE

The Commission proposal forms part of the reform of transit procedures and follows the Commission's action plan for transit in Europe, which was drawn up partly in response to the findings of the European Parliament's temporary committee of enquiry into Community transit procedures. The amendment to the Community Customs Code is only part of a wider reform, the bulk of which will consist in the overhaul of the implementing provisions of the Code, the revision of the Convention on Common Transit concluded with the EFTA and Visegrad countries, the computerisation of transit procedures and operational improvements to procedures.

III. ANALYSIS OF THE COMMON POSITION

1. The Council has been examining the proposal since the end of 1997 and has amended it fairly substantially. Essentially, the amendments correspond very closely to the amendments submitted by the European Parliament and the amended proposal subsequently submitted by the Commission.

2. With regard to Amendment 1 (accepted by the Commission), the Council did not consider this new recital necessary, since it was general in scope and therefore did not apply specifically and exclusively to transit decisions.

3. With regard to Amendment 2 (accepted by the Commission), the Council followed the Parliament's amendment to a very large extent; only editorial amendments have been made to the new text of Article 91(1)(b).

4. With regard to Amendment 3, which was not included in the amended Commission proposal, the Council has followed the Parliament's approach and introduced a new paragraph 2 in Article 92 which defines the discharge of the external transit procedure and involves the office of departure and the office of destination.

5. With regard to Amendment 4, which was included in the amended Commission proposal, the Council has very largely accepted the text of the new Article 94, as amended by the Parliament. The changes made by the Council to that amendment are essentially editorial in the case of paragraphs 1, 2, 3 and 4; however, paragraphs 3 and 4 contain more detailed provisions which, via the committee procedure, will improve the targeting of undertakings which can benefit from the comprehensive guarantee system, possibly for a reduced amount or with a guarantee waiver. These additional details are also based on the amendment proposed by Parliament in its paragraph 6.

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[1] OJ C 337, 7.11.1997, p. 52.
[2] OJ C 37, 1.3.1998, p. 17.

New provisions have been entered in paragraphs 5, 6 and 7.

Paragraph 5 deals with the fact that the guarantee waiver cannot be granted for goods which, as determined by the Committee procedure, are considered to present increased risks.

Paragraph 6 opens up the possibility, in exceptional circumstances, of temporarily prohibiting, by the committee procedure, any reduction in the comprehensive guarantee.

In the case of sensitive goods which in the past have been the subject of major fraud, paragraph 7 makes it possible to prohibit temporarily the use of the comprehensive guarantee and hence require an individual guarantee.

This grading of the measures concerning the use of the comprehensive guarantee is explained in a new third recital for the Regulation. The recital explains both the progressive nature of the measures which can be taken and how they should be applied with reference to the principles set out in Article 94(4), namely, taking account of the particular situation of certain commercial operators who comply with criteria to be determined. This recital also lays down the principle of having simplified administrative procedures for operators from whom an individual guarantee is temporarily required.

6. With regard to Amendment 5, accepted by the Commission, the Council has followed Parliament's opinion very precisely, subject to a purely editorial change to the new paragraph 2.

7. With regard to Amendment 6, accepted by the Commission, the Council has similarly followed Parliament's opinion in leaving Article 96 unchanged.

8. With regard to Amendment 7, which was not included by the Commission in its amended proposal, the Council has very precisely followed Parliament's amendment for the new paragraphs 1, 2 and 4. However, the Council has not adopted the Parliament's amendment which would have introduced a new paragraph 3, in view of the limited scope of bilateral and multilateral arrangements as regards simplified procedures, which, moreover, must in any case be communicated to the Commission.

   Finally, attention should be drawn to the amendments made by the Council to Article 192(1) and Article 215 of the Code, which in substance largely match the initial Commission proposal; these points had not been amended by the Parliament.

IV. CONCLUSION

The Council considers that the Common Position adopted with a view to adopting this Regulation on transit meets the objectives as described in Section II, in particular as an important instrument in the fight against fraud.

With these objectives in mind, the Council has adopted the major part of the European Parliament's amendments.