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II

(Preparatory Acts)

COMMISSION

Proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

(1999/C 376 E/01)

COM(1999) 348 final — 1999/0154(CNS)

(Submitted by the Commission on 7 September 1999)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

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

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is assured. In order to establish progressively such an area, the Community is to adopt, amongst other things, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market.

(2) Differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities for rapid and simple recognition and enforcement of judgments are essential.

(3) This area is within the field of judicial cooperation in civil matters within the meaning of Article 65 of the Treaty.

(4) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore only be achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(5) On 27 September 1968 the Member States, acting under Article 293, fourth indent, of the EC Treaty, concluded the Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters [1] ('the Brussels Convention'). Work has been undertaken for the revision of that Convention, which is part of the *acquis communautaire* and has been extended to all the new Member States, and the Council has approved the content of the revised text. Continuity in the results achieved in that revision should be ensured.

(6) In order to attain the objective of free movement of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a Community legal instrument which is binding and directly applicable.

(7) The scope of this Regulation must cover all the main civil and commercial matters. The matters excluded from its scope must be as limited as possible.

(8) There must be a link between proceedings to which this Regulation applies and the territory of the Member States bound by this Regulation. Common rules should accordingly apply, in principle, when the defendant is domiciled in one of those Member States.

(9) A defendant domiciled in a third country may be subject to the rules of conflict of jurisdiction applicable in the territory of the State of the court seised, and a defendant domiciled in a Member State not bound by this Regulation must remain subject to the Brussels Convention. For the purposes of the free movement of judgments, judgments given on the basis of these rules must be recognised and enforced throughout the Community in accordance with this Regulation.

(10) The rules of jurisdiction must be highly predictable and founded on the principle jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

[1] See consolidated text in OJ C 27, 26.1.1998, p. 1.

(11) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction in view of the close link between the court and the action or in order to facilitate the sound administration of justice.

(12) In relation to insurance, employment and consumer contracts, the weaker party should be protected and there should be an exception from the general rule allowing that party in appropriate cases to bring the action in the courts for his domicile.

(13) Account must be taken of the growing development of the new communication technologies, particularly in relation to consumers; whereas, in particular, electronic commerce in goods or services by a means accessible in another Member State constitutes an activity directed to that State. Where that other State is the State of the consumer's domicile, the consumer must be able to enjoy the protection available to him when he enters into a consumer contract by electronic means from his domicile.

(14) The autonomy of the parties to a contract other than an employment, insurance or consumer contract to determine the courts having jurisdiction must be respected. Contractual clauses electing jurisdiction between parties with unequal negotiating strength must, however, be regulated.

(15) The necessary flexibility must be provided for in the general rules of this Regulation in order to take account of the specific procedural rules of certain Member States. Certain provisions of the Protocol annexed to the Brussels Convention should be incorporated in this Regulation.

(16) In the interests of the harmonious administration of justice in the Community, it is necessary to ensure that irreconcilable judgments will not be given in two Member States which have jurisdiction. There must be a clear and automatic mechanism for resolving cases of *lis pendens* and related actions and, to obviate problems flowing from national differences as to the determination of the date on which a case is regarded as pending, that date should be defined autonomously.

(17) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.

(18) By virtue of the same principle of mutual trust, the procedure for enforcement in one Member State of a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable must be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility of automatically raising any of the grounds for non-enforcement provided for by this Regulation.

(19) However, respect for the rights of the defence means that the defendant must be able to seek redress, in an adversarial procedure, against the judgment given if he believes one of the grounds for non-recognition to be present. Redress procedures must also be available to the claimant where his application for a declaration of enforceability has been rejected.

(20) Continuity between the Brussels Convention and this Regulation must be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of the Brussels Convention by the Court of Justice of the European Community [1] and the 1971 Protocol must remain applicable to cases already pending when this Regulation enters into force.

(21) In accordance with Articles 1 and 2 of the Protocols on the position of the United Kingdom and Ireland and the position of Denmark [2], those Member States are not taking part in the adoption of this Regulation. This Regulation is accordingly not binding on the United Kingdom, Ireland or Denmark and is not applicable to them.

(22) Since the Brussels Convention remains in force in relations between the Member States that are bound by this Regulation and those that are not, there must be clear rules governing the relationship between this Regulation and the Brussels Convention.

(23) Likewise for the sake of consistency, this Regulation should not affect rules governing jurisdiction and the recognition of judgments contained in specific Community instruments.

(24) Respect for international commitments entered into by the Member States means that this Regulation should not affect conventions relating to specific matters to which the Member States are parties.

(25) No later than five years after the date of the entry into force of this Regulation, the Commission must review its application and propose such amendments as may appear necessary,

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[1] See consolidated text in OJ C 27, 26.1.1998, p. 1 and p. 28.

[2] OJ C 340, 10.11.1997, p. 99 and p. 101.

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE

Article 1

This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

This Regulation shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

2. bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

3. social security;

4. arbitration.

CHAPTER II

JURISDICTION

Section 1

General provisions

Article 2

Subject to the provisions of this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that Member State.

The domicile of a company or legal person shall be determined in accordance with Article 57.

The expression 'Member State' means, unless otherwise provided, a Member State bound by this Regulation.

Article 3

Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7.

In particular the national rules of jurisdiction listed in Annex I shall not be applicable as against them.

Article 4

If the defendant is domiciled in a third country, the jurisdiction of the courts of each Member State shall, subject to the provisions of Articles 22 and 23, be determined by the law of that Member State.

As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that Member State of the rules of jurisdiction there in force, and in particular those specified in Annex I, in the same way as the nationals of that Member State.

If the defendant is domiciled in a Member State not bound by this Regulation, jurisdiction shall be governed by the Brussels Convention in the version in force in that Member State.

Section 2

Special jurisdiction

Article 5

A person domiciled in a Member State may, in another Member State, be sued:

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

   (b) unless otherwise agreed, the place of performance of the obligation in question shall be:

   — in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered;

   — in the case of the provision of services, the place in a Member State where under the contract the services were provided or should have been provided;

   (c) if point (b) does not apply, then point (a) applies;

2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or there is a risk of it occurring;

4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings.

Without prejudice to more favourable national provisions, persons domiciled in a Member State who are prosecuted in a criminal court of a Member State of which they do not have the nationality for an offence committed involuntarily may be defended by persons empowered so to act, even if they do not enter an appearance in person. However, the court seised may order the defendant to appear in person; if he does not enter an appearance, recognition or enforcement of the judgment given on the civil action without the person concerned having the possibility of arranging for his defence may be refused in the other Member States;

5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;

6. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

(a) has been arrested to secure such payment, or

(b) could have been so arrested, but bail or other security has been given.

The first subparagraph shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 6

A person domiciled in a Member State may also be sued:

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided that the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

2. as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case.

The jurisdiction conferred by the first subparagraph shall not be available in Germany or in Austria. A person domiciled in another Member State may be sued in the courts:

— of Germany, pursuant to Articles 68, 72, 73 and 74 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices,

— of Austria, pursuant to Article 21 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices;

3. on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;

4. in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of the Member State in which the property is situated.

Article 7

Where by virtue of this Regulation a court of a Member State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

Section 3

Jurisdiction in matters relating to insurance

Article 8

In matters relating to insurance, jurisdiction shall be determined by this section, without prejudice to Article 4 and Article 5(5).

Article 9

An insurer domiciled in a Member State may be sued:

1. in the courts of the Member State where he is domiciled, or

2. in another Member State, in the case of actions brought by the policy-holder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled, or

3. if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.

An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 10

In respect of liability insurance or insurance of immovable property, the insurer may be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 11

In respect of liability insurance, the insurer may, if the law of the court permits it, be joined in proceedings which the injured party had brought against the insured.

The provisions of Articles 8, 9 and 10 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

If the law governing such direct actions provides that the policy-holder or the insured may be joined as a party to the action, the court seised by virtue of the second subparagraph shall have jurisdiction over them.

The jurisdiction conferred by this Article shall not be available in Germany or in Austria. A person domiciled in another Member State may be sued in the courts:

— of Germany, pursuant to Articles 68, 72, 73 and 74 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices,

— of Austria, as provided by Article 21 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices.

Article 12

Without prejudice to the provisions of the third paragraph of Article 11, an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policy-holder, the insured or a beneficiary.

The provisions of this section shall not affect the right to bring a counterclaim in the court in which, in accordance with this section, the original claim is pending.

Article 13

The provisions of this section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen, or

2. which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this section, or

3. which is concluded between a policy-holder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that Member State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that Member State, or

4. which is concluded with a policy-holder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State, or

5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 14.

Article 14

The risks referred to in point 5 of Article 13 are the 'large risks' within the meaning of Article 5(d) of Council Directive 73/239/EEC [1] and any risk or interest connected therewith.

Section 4

Jurisdiction over consumer contracts

Article 15

In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this section, without prejudice to Article 4 and Article 5(5), if:

1. it is a contract for the sale of goods on instalment credit terms; or

2. it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or

3. in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several countries including that Member State, and the contract falls within the scope of such activities.

[1] OJ L 228, 16.8.1973, p. 3.

Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

This section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 16

A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.

Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

The first and second paragraph shall not affect the right to bring a counter-claim in the court in which, in accordance with this section, the original claim is pending.

Article 17

The provisions of this section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or

2. which allows the consumer to bring proceedings in courts other than those indicated in this section, or

3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.

Section 5

Jurisdiction over individual contracts of employment

Article 18

In matters relating to individual contracts of employment, jurisdiction shall be determined by this section, without prejudice to Article 4 and Article 5(5).

Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 19

An employer domiciled in a Member State may be sued:

1. in the courts of the Member State where he is domiciled; or

2. in another Member State:

   (a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or

   (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

Article 20

An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

The provisions of this section shall not affect the right to bring a counter-claim in the court in which, in accordance with this section, the original claim is pending.

Article 21

The provisions of this section may be departed from only by an agreement on jurisdiction which is entered into after the dispute has arisen, or which allows the employee to bring proceedings in courts other than those indicated in this section.

Section 6

Exclusive jurisdiction

Article 22

The following courts shall have exclusive jurisdiction, regardless of domicile:

1. in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated;

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;

2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;

3. in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;

4. in proceedings concerned with the registration or validity of patents, trade marks, designs and models, or other similar rights required to be deposited or registered, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place;

Without prejudice to the powers of the European Patent Office under the Convention on the grant of European patents signed at Munich on 5 October 1973, the courts of each Member State shall have sole jurisdiction, irrespective of domicile, over the registration and validity of a European patent granted by that State;

5. in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

Section 7

Prorogation of jurisdiction

Article 23

If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any dispute which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise.

Such an agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing; or

(b) in a form which accords with practices which the parties have established between themselves; or

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

Any communication by electronic means which can provide a durable record of the agreement shall be deemed to be in writing.

Where an agreement conferring jurisdiction is concluded by parties, none of whom is domiciled in a Member State, the courts of other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

Agreements conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 13 and 17 or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

Article 24

Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.

Section 8

Examination as to jurisdiction and admissibility

Article 25

Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 22, it shall declare of its own motion that it has no jurisdiction.

Article 26

Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

National provisions transposing Council Directive ... on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters shall apply in place of the second paragraph if the document instituting the proceedings or an equivalent document had to be transmitted to another Member State in accordance with those provisions.

Until such time as national provisions transposing the Directive referred to in the third paragraph enter into force, the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted to another Member State in accordance with that Convention.

Section 9

***Lis pendens* — related actions**

Article 27

Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 28

Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 29

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 30

For the purposes of this section, a court shall be deemed to be seised:

1. at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or

2. if the document has to be served before being lodged with the court at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Section 10

Provisional, including protective, measures

Article 31

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

CHAPTER III

RECOGNITION AND ENFORCEMENT

Article 32

For the purposes of this Regulation, 'judgment' means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

In Sweden, in summary proceedings for an injunction to pay (betalningsföreläggande) and assistance (handräckning), the words 'judge', 'court' and 'tribunal' shall include the public enforcement service (kronofogdemyndighet).

Section 1

Recognition

Article 33

A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in sections 2 and 3 of this Chapter, apply for a decision that the judgment is recognised.

If an incidental question of recognition is raised in a court of a Member State, that court shall have jurisdiction to rule on the existence of one of the grounds for non-recognition provided for by Articles 41 and 42.

Section 2

Enforcement

Article 34

A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

Article 35

The application shall be submitted to the court or competent authority appearing in the list in Annex II.

The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought or to the place of enforcement.

Article 36

The procedure for making the application shall be governed by the law of the Member State in which enforcement is sought.

The applicant must give an address for service of process within the area of jurisdiction of the court or competent authority applied to. However, if the law of the Member State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

The second paragraph shall not apply where the competent authority is an administrative authority.

The documents referred to in Article 50 shall be attached to the application.

Article 37

The judgment shall be declared enforceable immediately on completion of the formalities provided for in Article 50 without any review of the grounds of non-enforcement set out in Articles 41 and 42. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 38

The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State in which enforcement is sought.

The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party.

Article 39

The decision on the application for a declaration of enforceability may be appealed against by either party.

The appeal shall be lodged with the court appearing in the list in Annex III.

The appeal shall be dealt with in accordance with the rules governing procedure in adversarial proceedings.

If the party against whom enforcement is sought fails to appear before the court before which the appeal has been brought, Article 26 shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.

An appeal against the declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the period for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Article 40

The judgment given on the appeal may be contested only by the proceedings referred to in Annex IV.

Article 41

The court with which an appeal is lodged under Article 39 or Article 40 shall give its decision without delay. It shall refuse or revoke a declaration of enforceability only on one of the following grounds:

1. if the declaration of enforceability is manifestly contrary to public policy in the Member State addressed;

2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State addressed;

4. if it is irreconcilable with an earlier judgment given in another Member State or in a third country involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

Under no circumstances may the judgment of the Member State of origin be reviewed as to its substance.

Article 42

The court with which an appeal is lodged under Article 39 or Article 40 shall refuse or revoke a declaration of enforceability if the provisions of sections 3, 4 and 6 of Chapter II have been infringed.

In its examination of the grounds of jurisdiction referred to in the first paragraph, the court with which the appeal is lodged shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

Without prejudice to the first paragraph, the jurisdiction of the court of the Member State of origin may not be reviewed; the public-policy consideration referred to in Article 41(1) shall not affect the rules relating to jurisdiction.

Article 43

The court with which an appeal is lodged under Article 39 or Article 40 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

That court may also make enforcement conditional on the provision of such security as it shall determine.

Article 44

When a judgment must be declared enforceable in accordance with this Regulation, the applicant may avail himself of provisional, including protective, measures in accordance with the law of the Member State addressed without a declaration of enforceability under Article 37 being required.

The declaration of enforceability shall carry with it the power to proceed to any protective measures.

During the time specified for an appeal pursuant to the fifth paragraph of Article 39 against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Article 45

Where a judgment has been given in the Member State of origin in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or the competent authority shall give it for one or more of them.

An applicant may request a declaration of enforceability limited to parts of a judgment.

Article 46

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin.

Article 47

An applicant who, in the State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedure provided for in this section, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State addressed.

Article 48

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State in which enforcement is sought.

Article 49

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State in which enforcement is sought.

Section 3

Common provisions

Article 50

A party seeking recognition or applying for a declaration of enforceability of a judgment shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity.

A party applying for a declaration of enforceability of a judgment shall also produce the certificate referred to in Article 51, without prejudice to Article 52.

Article 51

The court or competent authority of a Member State where the judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V.

Article 52

If the certificate provided for by Article 51 is not produced, the competent court or authority may specify a time for its production or accept equivalent documents or, if it considers that it has sufficient information before it, dispense with production thereof.

If the court or competent authority so requires, a translation of the documents shall be produced; the translation shall be certified by a person qualified to do so in one of the Member States.

Article 53

No legalisation or other similar formality shall be required in respect of the documents referred to in Article 50, or in respect of a document appointing a representative *ad litem*.

CHAPTER IV

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 54

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Member State shall, in another Member State, be declared enforceable there, on application made in accordance with the procedures provided for in Articles 34 to 49. The court with which an appeal is lodged under Article 39 or 40 shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is contrary to public policy in the Member State addressed.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin.

Section 3 of Title III shall apply as appropriate.

The competent authority of a Member State where an authentic instrument was drawn up or registered shall issue, at the request of any interested party, a certificate using the standard form in Annex VI.

Article 55

A settlement which has been approved by a court in the course of proceedings and is enforceable in the Member State in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments. The competent court or authority of a Member State in which a court settlement was approved shall issue, at the request of any interested party, a certificate using the standard form in Annex V.

Arrangements relating to maintenance obligations concluded before administrative authorities or authenticated by them shall also be regarded as authentic instruments within the meaning of the first paragraph of Article 54.

CHAPTER V

GENERAL PROVISIONS

Article 56

In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of the latter Member State.

Article 57

For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its statutory seat, central administration, or principal place of business.

CHAPTER VI

TRANSITIONAL PROVISIONS

Article 58

This Regulation shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force.

However, judgments given after the date of entry into force of this Regulation in proceedings instituted before that date shall be recognised and enforced in accordance with the provisions of Chapter III if jurisdiction was founded upon rules which accorded with those provided for either in Chapter II, or in the Brussels Convention or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

CHAPTER VII

RELATIONS WITH OTHER INSTRUMENTS

Article 59

This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in Community instruments or in national legislation harmonised pursuant to such instruments.

Article 60

This Regulation shall, as between the Member States, supersede the Brussels Convention of 1968.

However, the Brussels Convention shall always be applicable:

1. where the defendant is domiciled in a Member State not bound by this Regulation and Articles 16 and 17 of the Brussels Convention confer jurisdiction on the courts of that State;

2. in matters of *lis pendens* and related actions as referred to in Articles 21 and 22 of the Brussels Convention, where claims are made in a Member State not bound by this Regulation and a Member State that is so bound.

Judgments given in a Member State, whether or not bound by this Regulation, by a court which based its jurisdiction on the Brussels Convention shall be recognised and enforced in the Member States bound by this Regulation in accordance with Chapter III of this Regulation.

Article 61

Subject to Article 58, second paragraph, and Articles 62 and 63, this Regulation shall, as between Member States, supersede the following conventions and treaty concluded between two or more of them:

— the Convention between Belgium and France on jurisdiction and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Paris on 8 July 1899,

— the Convention between Belgium and the Netherlands on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 28 March 1925,

— the Convention between France and Italy on the enforcement of judgments in civil and commercial matters, signed at Rome on 3 June 1930,

— the Convention between Germany and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 9 March 1936,

— the Convention between Belgium and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments relating to maintenance obligations, signed at Vienna on 25 October 1957,

— the Convention between Germany and Belgium on the mutual recognition and enforcement of judgments, arbitration awards and authentic instruments in civil and commercial matters, signed at Bonn on 30 June 1958,

— the Convention between the Netherlands and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 17 April 1959,

— the Convention between Germany and Austria on the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed at Vienna on 6 June 1959,

— the Convention between Belgium and Austria on the reciprocal recognition and enforcement of judgments, arbitral awards and authentic instruments in civil and commercial matters, signed at Vienna on 16 June 1959,

— the Convention between Greece and Germany for the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed in Athens on 4 November 1961,

— the Convention between Belgium and Italy on the recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at Rome on 6 April 1962,

— the Convention between the Netherlands and Germany on the mutual recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at The Hague on 30 August 1962,

— the Convention between the Netherlands and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at The Hague on 6 February 1963,

— the Convention between France and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at Vienna on 15 July 1966,

— the Convention between Spain and France on the recognition and enforcement of judgment arbitration awards in civil and commercial matters, signed at Paris on 28 May 1969,

— the Convention between Luxembourg and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at Luxembourg on 29 July 1971,

— the Convention between Italy and Austria on the recognition and enforcement of judgments in civil and commercial matters, of judicial settlements and of authentic instruments, signed at Rome on 16 November 1971,

— the Convention between Spain and Italy regarding legal aid and the recognition and enforcement of judgments in civil and commercial matters, signed at Madrid on 22 May 1973,

— the Convention between Finland, Iceland, Norway, Sweden and Denmark on the recognition and enforcement of judgments in civil matters, signed at Copenhagen on 11 October 1977,

— the Convention between Austria and Sweden on the recognition and enforcement of judgments in civil matters, signed at Stockholm on 16 September 1982,

— the Convention between Spain and the Federal Republic of Germany on the recognition and enforcement of judgments, settlements and enforceable authentic instruments in civil and commercial matters, signed at Bonn on 14 November 1983,

— the Convention between Austria and Spain on the recognition and enforcement of judgments, settlements and enforceable authentic instruments in civil and commercial matters, signed at Vienna on 17 February 1984,

— the Convention between Finland and Austria on the recognition and enforcement of judgments in civil matters, signed at Vienna on 17 November 1986,

and

— the Treaty between Belgium, the Netherlands and Luxembourg in jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 24 November 1961, in so far as it is in force.

Article 62

The Treaty and the conventions referred to in Article 61 shall continue to have effect in relation to matters to which this Regulation does not apply.

They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Regulation.

Article 63

This Regulation shall not affect any conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments. Those conventions are the following:

— Convention on the grant of European patents, signed at Munich on 5 October 1973;

— Warsaw Convention of . . .

— . . .

With a view to its uniform interpretation, the first paragraph shall be applied in the following manner:

1. this Regulation shall not prevent a court of a Member State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Member State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 26 of this Regulation;

2. judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation.

Where a convention on a particular matter to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Regulation which concern the procedure for recognition and enforcement of judgments may be applied.

Article 64

This Regulation shall not affect agreements by which Member States undertook prior to the entry into force of this Regulation pursuant to Article 59 of the Brussels Convention, not to recognise judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third country where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention.

CHAPTER VIII

FINAL PROVISIONS

Article 65

No later than five years after the entry into force of this Regulation, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, if need be, by proposals for adaptations to this Regulation.

Article 66

The Member States shall notify the Commission of the texts of their legislative provisions amending either the provisions of their legislation listed in Annex I or the courts or competent authorities indicated in Annexes II and III. The Commission shall adapt the Annexes concerned accordingly.

Article 67

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

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

ANNEX I

The rules of jurisdiction referred to in Article 3, second paragraph, (2) and 4(2) are the following:

— in Belgium: Article 15 of the Civil Code (Code civil — Burgerlijk Wetboek) and Article 638 of the Judicial Code (Code judiciaire — Gerechtelijk Wetboek),

— in the Federal Republic of Germany: Article 23 of the Code of Civil Procedure (Zivilprozeßordnung),

— in Greece, Article 40 of the Code of Civil Procedure (Κώδικας πολιτικής δικονομίας),

— in France: Articles 14 and 15 of the Civil Code (Code civil),

— in Italy: Articles 3 and 4 of Act 218 of 31 May 1995,

— in Luxembourg: Articles 14 and 15 of the Civil Code (Code civil),

— in Austria: Article 99 of the Court Jurisdiction Act (Jurisdiktionsnorm),

— in the Netherlands: Articles 126(3) and 127 of the Code of Civil Procedure (Wetboek van Burgerlijke Rechtsvordering),

— in Portugal: Article 65(1)(c), Article 65(2) and Article 65A(c) of the Code of Civil Procedure (Código de Processo Civil) and Article 11 of the Code of Labour Procedure (Código de Processo de Trabalho),

— in Finland: the second, third and fourth sentences of the first paragraph of Section 1 of Chapter 10 of the Code of Judicial Procedure (oikeudenkäymiskaari/rättegångsbalken),

— in Sweden: the first sentence of the first paragraph of Section 3 of Chapter 10 of the Code of Judicial Procedure (rättegångsbalken).

ANNEX II

The courts or competent authorities to which the applications referred to in Article 35 may be addressed are the following:

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ANNEX III

The courts to which appeals referred to in Article 39 may be addressed are the following:

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ANNEX IV

The proceedings which may be brought pursuant to Article 40 are the following

— in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, an appeal in cassation,

— in Germany, a 'Rechtsbeschwerde',

— in Austria, a 'Revisionsrekurs',

— in Portugal, an appeal on a point of law,

— in Finland, an appeal to the 'korkein oikeus/högsta domstolen',

— in Sweden an appeal to the 'Högsta domstolen'.

ANNEX V

Certificate referred to in Articles 51 and 55 of Council Regulation (EC) No ...

(English, Inglès, anglais ...)

1. Country of origin .....

2. Court or authority issuing the certificate

   2.1. Name .....

   2.2. Address .....

   2.3. Tel./Fax/E-mail .....

3. Court which delivered the judgment/approved the court settlement

   3.1. Type of court .....

   3.2. Place of court .....

4. Judgment/court settlement

   4.1. Date .....

   4.2. Reference number .....

   4.3. The Parties to the judgment/court settlement

      4.3.1. Name(s) of plaintiff(s) .....

      4.3.2. Name(s) of defendant(s) .....

      4.3.3. Name(s) of other party(ies), if any .....

   4.4. Judgment was given in default of appearance

      4.4.1. Date of service of the document instituting the proceedings .....

   4.5. Text of the order as annexed to this certificate

5. Names of parties to whom legal aid has been granted .....

The judgment/court settlement is enforceable in the State of origin (Articles 24 and 55 of the Regulation) against:

Name: .....

Done at ....., date ....

Signature and/or stamp

ANNEX VI

Certificate referred to in Article 54 of Council Regulation (EC) No ...

(English, Inglès, anglais ...)

1. Country of origin .....

2. Court or authority issuing the certificate

   2.1. Name .....

   2.2. Address .....

   2.3. Tel./Fax/E-mail .....

3. Authority which has given authenticity to the instrument

   3.1. Authority involved in the drawing up of the authentic instrument (if applicable)

      3.1.1. Name and designation of authority .....

      3.1.2. Place of authority .....

   3.2. Authority which has registered the authentic instrument (if applicable)

      3.2.1. Type of authority .....

      3.2.2. Place of authority .....

4. Authentic instrument

   4.1. Description of the instrument .....

   4.2. Date

      4.2.1. on which the instrument was drawn up .....

      4.2.2. if different: on which the instrument was registered .....

   4.3. Reference number .....

   4.4. Parties to the instrument

      4.4.1. Name of the creditor .....

      4.4.2. Name of the debtor .....

5. Text of the enforceable obligation as annexed to this certificate .....

The authentic instrument is enforceable against the debtor in the State of origin (Article 54 of the Regulation)

Name: .....

Done at ....., date ....

Signature and/or stamp

Proposal for a Council Regulation amending Regulation (EC) No 3605/93 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community

(1999/C 376 E/02)

COM(1999) 444 final — 1999/0196(CNS)

(Submitted by the Commission on 13 September 1999)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third subparagraph of Article 104(14),

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

(1) Whereas the definitions of 'government', 'deficit' and 'investment' are laid down in the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community and in Council Regulation (EC) No 3605/93 of 22 November 1993 [1] by reference to the European System of Integrated Economic Accounts; whereas Council Regulation (EC) No 2223/96 of 25 June 1996 [2] replaced that system with the European System of National and Regional Accounts in the Community (hereinafter referred to as 'ESA 95');

(2) Whereas the definition of 'government debt' laid down in the Protocol on the excessive deficit procedure and in Council Regulation (EC) No 3605/93 needs to be further amplified by a reference to the classification codes of ESA 95; whereas, in the case of financial derivatives, as defined in ESA 95, there is no nominal value identical to that for other debt instruments; whereas, therefore, financial derivatives must not be included with the liabilities making up government debt for the purposes of the Protocol on the excessive deficit procedure; whereas for liabilities denominated in foreign currency which are subject to agreements fixing the exchange rate, this rate should be taken into account in the conversion into national currency and this approach should similarly apply to agreements relating to the exchange rates between foreign currencies;

(3) Whereas the calculation of the ratios of government deficit to gross domestic product and of government debt to gross domestic product referred to in Article 104 of the Treaty should also be rendered coherent on the basis of ESA 95; whereas ESA 95 provides an appropriate, detailed definition of gross domestic product at current market prices;

(4) Whereas consolidated government interest expenditure is an important indicator for monitoring the budgetary situation in the Member States; whereas interest expenditure is intrinsically linked to government debt; whereas government debt to be reported to the Commission by the Member States has to be consolidated within the government sector; whereas the levels of government debt and of interest expenditure should be made mutually consistent; whereas the methodology of ESA 95 (point 1.58) recognises that, for certain kinds of analysis, consolidated aggregates are more significant than overall gross figures; whereas the way in which the figures on interest expenditure are to be provided to the Commission by the Member States should be clarified;

(5) Whereas the definitions and classification codes of ESA 95 may be subject to revision in the context of the necessary harmonisation of national statistics or for other reasons; whereas revisions of ESA 95 or amendments to its methodology are decided by the Council or the Commission in accordance with the rules on competence and procedure laid down in the Treaty and in Council Regulation (EC) No 2223/96;

(6) Whereas Article 8(2) of Council Regulation (EC) No 2223/96 stipulates that the former European System of Integrated Economic Accounts is to continue to be used for the purposes of the excessive deficit procedure during a transitional period until the reporting exercise of 1 September 1999,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 3605/93 is hereby amended as follows:

1. Articles 1 and 2 are replaced by the following text:

'*Article 1*

1. For the purposes of the Protocol on the excessive deficit procedure and of this Regulation, the terms given in the following paragraphs are defined according to the European System of National and Regional Accounts in the Community (hereinafter referred to as "ESA 95"), adopted by Council Regulation (EC) No 2223/96 of 25 June 1996. The codes in brackets refer to ESA 95.

[1] OJ L 332, 31.12.1993, p. 7.

[2] OJ L 310, 30.11.1996, p. 1.

2. "Government" means the sector of "general government" (S.13), that is "central government" (S.1311), "state government" (S.1312), "local government" (S.1313) and "social security funds" (S.1314), to the exclusion of commercial operations, as defined in ESA 95.

The exclusion of commercial operations means that the sector of "general government"(S.13) comprises only institutional units producing non-market services as their main activity.

3. "Government deficit (surplus)" means the net borrowing (net lending) (B.9) of the sector of "general government" (S.13), as defined in ESA 95. The interest comprised in the government deficit is the interest (D.41), as defined in ESA 95.

4. "Government investment" means the gross fixed capital formation (P.51) of the sector of "general government" (S.13), as defined in ESA 95.

5. "Government debt" means the total gross debt at nominal value outstanding at the end of the year of the sector of "general government" (S. 13), with the exception of those liabilities the corresponding financial assets of which are held by the sector of "general government" (S. 13).

Government debt is constituted by the liabilities of general government in the following categories: currency and deposits (AF.2); securities other than shares, excluding financial derivatives (AF.33) and loans (AF.4), as defined in ESA 95.

The nominal value of a liability outstanding at the end of the year is the face value.

The nominal value of an index-linked liability corresponds to its face value adjusted by the index-related increase in the value of the principal accrued to the end of the year.

Liabilities denominated in foreign currencies shall be converted to the national currency on the basis of the representative market exchange rate prevailing on the last working day of each year, except for those liabilities where the foreign exchange rate risk is covered through contractual agreements. These liabilities shall be converted into national currency at the rate agreed upon in these contracts.

Article 2

For the purposes of the Protocol on the excessive deficit procedure and of this Regulation, gross domestic product means gross domestic product at current market prices (GDP mp) (B.1*g), as defined in ESA 95.'

2. In Article 4(2) the codes for subsectors S61, S62 and S63 given at the end of the second subparagraph are replaced by the codes S.1311, S.1312, S.1313 and S.1314.

3. At the end of Article 5, the words 'and interest expenditure' are replaced by the words 'and interest expenditure (consolidated)'.

4. Article 7 is replaced by the following text:

'*Article 7*

In the event of a revision of ESA 95 or of an amendment to its methodology to be decided on by the Council or the Commission in accordance with the rules on competence and procedure laid down in the Treaty and in Regulation (EC) No 2223/96, the Commission shall introduce the new references to ESA 95 into Articles 1, 2 and 4.'

Article 2

This Regulation shall enter into force on 1 January 2000.

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

Proposal for a Council Framework Decision on combating fraud and counterfeiting of non-cash means of payment

(1999/C 376 E/03)

COM(1999) 438 final — 1999/0190(CNS)

(Submitted by the Commission on 15 September 1999)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 34(2)(b) thereof,

Having regard to the initiative of the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Fraud and counterfeiting of non-cash means of payment often operate on an international scale.

(2) The work developed by various international organisations (i.e. the Council of Europe, the Group of Eight, the OECD, Interpol and the UN) is important, but needs to be complemented by action of the European Union.

(3) The Council considers that the seriousness and development of certain forms of fraud regarding non-cash means of payment require comprehensive solutions; Recommendation No 18 of the Action Plan to combat organised crime [1], approved by the Amsterdam European Council on 16 and 17 June 1997, as well as point 46 of the Action Plan of the Council and the Commission on how to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice [2], approved by the Vienna European Council on 11 and 12 December 1998, call for an action on this subject.

(4) In accordance with the principles of subsidiarity and proportionality, the objectives of this Framework Decision, namely to ensure that fraud and counterfeiting involving all forms of non-cash means of payment are recognised as criminal offences and are subject to effective, proportionate and dissuasive sanctions in all Member States cannot be sufficiently achieved by the Member States in view of the international dimension of those offences and can therefore be better achieved by the European Union; this Framework Decision confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(5) This Framework Decision should assist in the fight against fraud and counterfeiting involving non-cash means of payment together with other instruments already agreed by the Council such as Joint Action 98/428/JHA [3] on the creation of a European judicial network, Joint Action 98/733/JHA [4] on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union, Joint Action 98/699/JHA [5] on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime, as well as the Decision of 29 April 1999 extending Europol's mandate to deal with forgery of money and means of payment [6].

(6) The Commission submitted to the Council, on 1 July 1998, the Communication entitled 'A framework for action combating fraud and counterfeit of non-cash means of payment' [7] which advocates a Union policy covering both preventive and repressive aspects of the problem.

(7) The Communication contains a draft Joint Action which is one element of that comprehensive approach, and constitutes the starting point for this Framework Decision.

(8) It is necessary that a description of the different forms of behaviour requiring criminalisation in relation to fraud and counterfeiting of non-cash means of payment should cover the whole range of activities that together constitute the menace of organised crime in this regard.

(9) It is necessary that these forms of behaviour be classified as criminal offences in all Member States, and that effective, proportionate and dissuasive sanctions be provided for natural and legal persons having committed or being liable for such offences, and that the offences in question be regarded as falling under the legislation directed against money laundering.

(10) It is necessary that Member States consult each other when two or more Member States have jurisdiction over the same offence.

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[1] OJ C 251, 15.8.1997, p. 1.

[2] OJ C 19, 23.1.1999, p. 1.

[3] OJ L 191, 7.7.1998, p. 4.

[4] OJ L 351, 29.12.1998, p. 1.

[5] OJ L 333, 9.12.1998, p. 1.

[6] OJ C 149, 28.5.1999, p. 16.

[7] COM(1998) 395 final.

(11) It is also necessary that Member States establish effective cooperation with the private services and bodies having responsibilities in the functioning and monitoring of the payment systems, and that the Member States afford each other the widest measure of mutual assistance,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

1. For the purposes of this Framework Decision, and without prejudice to more specific definitions in the Member States' legislation:

(a) 'Payment instrument' or 'non-cash payment instrument' means an instrument other than legal tender (bank notes and coins) enabling, alone or in conjunction with another (payment) instrument, the legitimate holder or payer, to obtain money or valuable consideration, to make or receive payments in respect of goods, services or any other thing of value, or to issue an order or message requesting or otherwise authorising the transfer of funds (in the form of a monetary claim on a party) to the order of a payee;

(b) 'Payment transaction' means the obtaining of money or valuable consideration, the making or receiving of payments in respect of goods, services or any other thing of value, or the issuing of an order or message requesting or otherwise authorising the transfer of funds (in the form of a monetary claim on a party) to the order of a payee, through a payment instrument;

(c) 'Device-making equipment' means any equipment (including software) designed or adapted for the access, manufacture or alteration of any, or part of any, payment instrument or payment transaction and shall include equipment designed or adapted to change or alter any information or data carried on or in any payment instrument or payment transaction;

(d) 'Legal person' means any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations;

(e) 'Money laundering' means the conduct as defined in the third indent of Article 1 of Council Directive 91/308/EEC [1].

2. For the purpose of this Framework Decision, a 'national' of a Member State shall be construed in accordance with any declaration made by that State under Article 6(1)(b) of the European Convention on Extradition of 13 December 1957.

Article 2

Description of behaviour

The measures set out in Articles 3 to 6 relate to the following types of intentional behaviour:

(a) misappropriation of a payment instrument;

(b) counterfeiting or falsification of a payment instrument;

(c) knowingly handling a payment instrument, without the holder's authorisation;

(d) knowingly possessing a misappropriated, counterfeited or falsified payment instrument;

(e) knowingly using a misappropriated, counterfeited or falsified payment instrument; or knowingly accepting a payment made in such circumstances;

(f) knowingly using unauthorised identification data for initiating or processing a payment transaction;

(g) knowingly using fictitious identification data for initiating or processing a payment transaction;

(h) manipulation of relevant data including account information, or other identification data, for initiating or processing a payment transaction;

(i) unauthorised transmission of identification data for initiating or processing a payment transaction;

(j) unauthorised making, handling, possession or use of specifically adapted equipment or elements of payment instruments for the purpose of:

— manufacturing or altering any payment instrument or part thereof;

— committing the fraudulent acts described in points (f) to (i).

The measures set out in Articles 3 to 6 also relate to involvement as accessory or instigator in the acts described in paragraph 1 or knowingly obtaining valuable consideration or a pecuniary advantage from any such acts.

[1] OJ L 166, 28.6.1991, p. 77.

Article 3

Measures to be taken at national level

1. Member States shall classify the types of behaviour set out in Article 2 as criminal offences.

2. Member States shall provide that legal persons can be held liable for the offences provided for in paragraph 1 committed for their benefit by any person, whether acting individually or as part of an organ of the legal person, who holds a leading position within the legal person, on the basis of:

(a) a power of representation of the legal person, or

(b) an authority to take decisions on behalf of the legal person, or

(c) an authority to exercise control within the legal person.

3. Member States shall provide that the penalties for the offences referred to in paragraph 1 shall:

(a) in so far as natural persons are concerned, be effective, proportionate and dissuasive criminal sanctions entailing, at least in serious cases, penalties involving privation of liberty and capable of giving rise to extradition;

(b) in so far as legal persons are concerned, be effective, proportionate and dissuasive sanctions which shall include criminal or non-criminal fines and may entail other sanctions such as:

(i) exclusion from entitlement to public benefits or aid;

(ii) temporary or permanent disqualification from the practice of commercial activities;

(iii) placing under judicial supervision;

(iv) a judicial winding-up order.

4. The offences referred to in paragraph 1 shall be considered serious crimes for the purpose of the application of Joint Action 98/699/JHA.

Article 4

Jurisdiction

1. Each Member State shall establish its jurisdiction over the offences provided for in Article 3 where:

(a) the offence is committed in whole or in part within its territory;

(b) the offender is one of its nationals.

Subject to the provisions of paragraph 2, any Member State may limit the application of its jurisdiction to the circumstances laid down in point (a). A Member State which does not apply such a limitation may nevertheless assume jurisdiction in the circumstances laid down in point (b) only in specific cases or subject to special conditions.

2. Where a Member State does not extradite its nationals, it shall establish its jurisdiction over the offences set out in Article 3 when these are committed by its own nationals outside its territory.

Each Member State shall, when one of its nationals is suspected of having committed in another Member State one of the offences provided for in Article 3 but it does not extradite that person to that other Member State solely on the grounds of his nationality, submit the case to its competent authorities for the purpose of prosecution if appropriate.

In order to enable prosecution to take place, the files, information and exhibits relating to the offence shall be transmitted in accordance with the procedures laid down in Article 6 of the European Convention on Extradition of 13 December 1957.

The requesting Member State shall be informed of the prosecution initiated and of its outcome.

Article 5

Cooperation from public and private services or bodies

1. Each Member State shall take the necessary measures to ensure that the public and private services and bodies engaged in managing, monitoring and overseeing the payment systems, will cooperate with the authorities responsible for investigation and punishment of the offences established by this Framework Decision.

In particular, the services and bodies shall:

(a) advise those authorities on their own initiative, where there are reasonable grounds for considering that one of the offences has been committed;

(b) provide those authorities with all relevant information either on request or on their own initiative.

2. As regards the processing of personal data, paragraph 1 shall be implemented so as to ensure a level of protection equivalent to the protection required by European Parliament and Council Directive 95/46/EC [1]. Data shall be used only for the purposes for which it has been transmitted.

[1] OJ L 281, 23.11.1995, p. 31.

Article 6

Cooperation between Member States

1. In accordance with the applicable conventions, multilateral or bilateral agreements or arrangements Member States shall afford each other the widest measure of mutual assistance in respect of proceedings relating to the offences provided for in this Framework Decision.

2. Where several Member States have jurisdiction in respect of offences envisaged by this Framework Decision, those States shall consult one another with a view to coordinating their action in order to prosecute effectively.

Article 7

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Framework Decision on 31 December 2000 at the latest. They shall forthwith inform the Commission thereof and provide it with copies of the measures through which the Framework Decision is implemented.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. The Commission shall submit a report to the Council on the fulfilment by Member States of their obligations under this Framework Decision, not later than two years after its entry into force.

Article 8

Entry into force

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

Article 9

Addressees

This Framework Decision is addressed to the Member States.

Proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data

(1999/C 376 E/04)

(Text with EEA relevance)

COM(1999) 337 final — 1999/0153(COD)

(Submitted by the Commission on 17 September 1999)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 286 thereof,

Having regard to the proposal from the Commission,

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) Article 286 of the Treaty requires the application to the Community institutions and bodies of the Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data.

(2) A fully-fledged system of protection of personal data not only requires the establishment of rights for data subjects and obligations for those who process personal data, but also appropriate sanctions for offenders and monitoring by an independent supervisory body.

(3) Article 286(2) of the Treaty requires the establishment of an independent supervisory body responsible for monitoring the application of such Community acts to Community institutions and bodies.

(4) Article 286(2) of the Treaty requires the adoption of any other relevant provisions as appropriate.

(5) A regulation is necessary to provide the individual with legally enforceable rights, to specify the processing obligations of the controllers within the Community institutions and bodies, and to create an independent supervisory body responsible for the external monitoring of Community processing of data.

(6) The principles of data protection must apply to any information concerning an identified or identifiable person. To determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the said person. The principles of protection should not apply to data rendered anonymous in such a way that the data subject is no longer identifiable.

(7) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1] requires Member States to protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data, in order to ensure the free flow of personal data in the Community.

(8) Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector [2] particularises and complements Directive 95/46/EC with respect to the processing of personal data in the telecommunications sector.

(9) Various other Community measures, including measures on mutual assistance between national authorities and the Commission, are also designed to particularise and complement Directive 95/46/EC in the sectors to which they relate.

(10) Consistent and homogeneous application of the rules for the protection of individuals, fundamental rights and freedoms with regard to the processing of personal data must be ensured throughout the Community.

(11) The aim is to ensure both effective compliance with the rules governing the protection of individuals' fundamental rights and freedoms and the free flow of personal data between Member States and the Community institutions and bodies or between the Community institutions and bodies for purposes connected with the exercise of their respective competences.

(12) This can best be achieved by adopting measures which are binding on the Community institutions and bodies. These measures should apply to all processing of personal data by Community institutions and bodies in the exercise of their competences under the Treaties establishing the European Communities and the Treaty on European Union.

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[1] OJ L 281, 23.11.1995, p. 31.

[2] OJ L 24, 30.1.1998, p. 1.

(13) The measures must be identical to the provisions laid down in connection with the harmonisation of national laws or the implementation of other Community policies, notably in the mutual assistance sphere. It may be necessary, however, to particularise and complement those provisions when it comes to ensuring protection in the case of the processing of personal data by the Community institutions and bodies.

(14) This holds true for the rights of the individuals whose data are being processed, for the obligations of the Community institutions and bodies doing the processing, and for the powers to be vested in the independent supervisory body responsible for ensuring that this Regulation is properly applied.

(15) Processing of personal data for the performance of the tasks carried out in the public interest by the Community institutions and bodies includes the processing of personal data necessary for the management and functioning of those institutions and bodies.

(16) It may be necessary to monitor the computer networks operated under the control of the Community institutions and bodies for the purposes of prevention of unauthorised use. The European Data Protection Supervisor should determine whether and under what conditions that is possible.

(17) Under Article 21 of Council Regulation (EC) No 322/97 of 17 February 1997 on Community statistics [1], that Regulation is to apply without prejudice to Directive 95/46/EC.

(18) For reasons of transparency, it is necessary to make public further information on the application of this Regulation, including a list of the Community institutions and bodies which are subject to this Regulation.

(19) The Working Party on the Protection of Individuals with regard to the processing of personal data set up under Article 29 of Directive 95/46/EC has delivered its opinion,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Object of the Regulation

1. In accordance with this Regulation, the institutions and bodies set up by, or on the basis of, the Treaties establishing the European Communities, hereinafter referred to as Community institutions or bodies, shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data.

2. The independent supervisory body established by this Regulation, hereinafter referred to as European Data Protection Supervisor, shall monitor the application of the provisions of this Regulation to all processing operations carried out by a Community institution or body.

Article 2

Definitions

For the purposes of this Regulation:

(a) 'personal data' shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity;

(b) 'processing of personal data' ('processing') shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

(c) 'personal data filing system' ('filing system') shall mean any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;

(d) 'controller' shall mean the Community institution or body, the Directorate General, the unit or any other organisational entity which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by a specific Community act, the controller or the specific criteria for its nomination may be designated by such Community act;

(e) 'processor' shall mean a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(f) 'third party' shall mean any natural or legal person, public authority, agency or body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorised to process the data;

[1] OJ L 52, 22.2.1997, p. 1.

(g) 'recipient' shall mean a natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not; however, authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients;

(h) 'the data subject's consent' shall mean any freely given specific and informed indication of his/her wishes by which the data subject signifies his/her agreement to personal data relating to him/her being processed;

Article 3

Scope

1. This Regulation shall apply to the processing of personal data by all Community institutions and bodies.

2. This Regulation shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system.

CHAPTER II

GENERAL RULES ON THE LAWFULNESS OF THE PROCESSING OF PERSONAL DATA

Section 1

Principles relating to data quality

Article 4

1. Personal data must be:

(a) processed fairly and lawfully;

(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of personal data for historical, statistical or scientific purposes shall not be considered as incompatible provided that the controller provides appropriate safeguards, in particular to ensure that the data shall only be processed for such purposes;

(c) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. The Community institution or body shall lay down appropriate safeguards for personal data stored for longer periods for historical, statistical or scientific use, in particular with regard to making them anonymous.

2. It shall be for the controller to ensure that paragraph 1 is complied with.

Section 2

Criteria for making data processing legitimate

Article 5

Lawfulness of processing

Personal data may be processed only if:

(a) processing is necessary for the performance of a task carried out in the public interest on the basis of a law or in the legitimate exercise of official authority vested in the Community institution or body or in a third party to whom the data are disclosed, or

(b) processing is necessary for compliance with a legal obligation to which the controller is subject, or

(c) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract, or

(d) the data subject has unambiguously given his/her consent, or

(e) processing is necessary in order to protect the vital interests of the data subject.

Article 6

Further processing for compatible purposes

1. Personal data shall only be processed for purposes other than those for which they have been collected if the change of purpose is expressly permitted by the internal rules of the Community institution or body.

2. Personal data collected for other purposes may be processed to ensure compliance with financial and budgetary regulations.

3. Personal data collected exclusively for ensuring the security or the control of the processing systems or operations shall not be used for any other purpose, with the exception of the purposes referred to in Article 18(1)(a).

Article 7

Transfer of personal data within or between Community institutions or bodies

1. Personal data shall only be transmitted within or to other Community institutions or bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient.

2. The controller and the recipient shall bear the responsibility for the legitimacy of the transmission.

The controller shall only verify the competence of the recipient and the merits of the request. If doubts arise as to the merits, the controller shall, however, also check the necessity of the transmission.

The recipient shall ensure that the necessity of the transmission can be subsequently verified.

Article 8

Transmissions to persons and bodies, other than Community institutions and bodies, located in the Member States

1. Personal data shall only be transmitted to persons and bodies located in the Member States if the recipient established the necessity of having the data communicated and if no reasons exist to assume that the data subject's legitimate interests might be prejudiced.

2. The recipient shall process the personal data only for the purposes for which they were transmitted.

Article 9

Transfer of personal data to persons and bodies, other than Community institutions and bodies, which are not subject to Directive 95/46/EC

1. Personal data shall only be transferred to persons and bodies other than Community institutions and bodies, which are not subject to national data protection law by virtue of Article 4 of Directive 95/46/EC, if an adequate level of protection is ensured in the country of the recipient or within the recipient international organisation and the data are transmitted strictly within the range of tasks covered by the competence of the controller and the requirements mentioned in Article 4(1)(b) of this Regulation are fulfilled.

2. The adequacy of the level of protection afforded by the country or international organisation in question shall be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country or international organisation of final destination, the rules of law, both general and sectoral, in force in the country or international organisation in question and the professional rules and security measures which are complied with in that country or international organisation.

3. The Community institutions and bodies shall inform the Commission and the European Data Protection Supervisor of cases where they consider the country or international organisation in question does not ensure an adequate level of protection within the meaning of paragraph 2.

4. Where the Commission, assisted by the committee set up by Article 31(1) of Directive 95/46/EC, finds that a country or an international organisation ensures or does not ensure an adequate level of protection within the meaning of paragraph 2 of this Article, the Community institutions and bodies shall take the necessary measures to comply with the Commission's decision.

That decision shall be adopted in accordance with the management procedure laid down in Article 4 of Council Decision 1999/468/EC [1] and without prejudice to Article 8 thereof.

The period provided for in Article 4(3) of Decision 1999/468/EC shall be three months.

5. By way of derogation from paragraph 1, the Community institution or body may transfer personal data if:

(a) the data subject has given his/her consent unambiguously to the proposed transfer; or

(b) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken in response to the data subject's request; or

(c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and a third party; or

(d) the transfer is necessary or legally required on important public interest grounds, or for the establishment, exercise or defence of legal claims; or

(e) the transfer is necessary in order to protect the vital interests of the data subject; or

(f) the transfer is made from a register which according to Community law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest, to the extent that the conditions laid down in Community law for consultation are fulfilled in the particular case.

[1] OJ L 184, 17.7.1999, p. 23.

6. The Community institutions and bodies shall inform the European Data Protection Supervisor of (categories of) cases where they have applied paragraph 5.

Section 3

The processing of special categories of data

Article 10

1. The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life, shall be prohibited.

2. Paragraph 1 shall not apply where:

(a) the data subject has given his/her explicit consent to the processing of those data, except where the internal rules of the Community institution or body provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject's giving his/her consent; or

(b) processing is necessary for the purposes of carrying out the obligations and specific rights of the controller in the field of employment in so far as it is authorised by Community law or rules implementing Community law, or agreed upon by the European Data Protection Supervisor, providing for adequate safeguards; or

(c) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his/her consent; or

(d) processing relates to data which are manifestly made public by the data subject or is necessary for the establishment, exercise or defence of legal claims; or

(e) processing is carried out in the course of its legitimate activities with appropriate guarantees by a non-profit seeking body which constitutes an entity integrated in a Community institution or body, not subject to national data protection law by virtue of Article 4 of Directive 95/46/EC, and with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members of this body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects.

3. Paragraph 1 shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, assessment of the medical aptitude for recruitment, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy.

4. Subject to the provision of suitable safeguards, and for reasons of substantial public interest, exemptions in addition to those laid down in paragraph 2 may be laid down by decision of the European Data Protection Supervisor.

5. Processing of data relating to offences, criminal convictions or security measures may be carried out only if authorised by Community law or other legal instruments adopted on the basis of the EU Treaty laying down suitable specific safeguards or authorised by the European Data Protection Supervisor.

6. The European Data Protection Supervisor shall determine the conditions under which a personal number or other identifier of general application in a Community institution or body may be processed.

Section 4

Information to be given to the data subject

Article 11

Information in cases of collection of data from the data subject

1. The controller must provide a data subject from whom data relating to himself/herself are collected with at least the following information, except where he/she already has it:

(a) the identity of the controller;

(b) the purposes of the processing for which the data are intended;

(c) the recipients or categories of recipients of the data;

(d) whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply;

(e) the existence of the right of access to and the right to rectify the data concerning him/her;

(f) any further information such as:

— the legal basis of the processing for which the data are intended,

— the time-limits for storing the data,

— the right to have at any time recourse to the European Data Protection Supervisor,

in so far as such further information is necessary, having regard to the specific circumstances in which the data are collected, to guarantee fair processing in respect of the data subject.

2. By way of derogation from paragraph 1, the provision of information or part of it may be deferred as long as this is necessary to attain the legitimate objective of a statistical survey in view of its subject or its nature. The information must be provided as soon as the reason for which the information is withheld ceases to exist, unless this is manifestly unreasonable or impracticable. In such cases, the information shall be provided as soon as those circumstances have disappeared at a later stage.

Article 12

Information where the data have not been obtained from the data subject

1. Where the data have not been obtained from the data subject, the controller must at the time of undertaking the recording of personal data or if a disclosure to a third party is envisaged, no later than the time when the data are first disclosed provide the data subject with at least the following information, except where he/she already has it:

(a) the identity of the controller;

(b) the purposes of the processing;

(c) the categories of data concerned;

(d) the recipients or categories of recipients;

(e) the existence of the right of access to and the right to rectify the data concerning him/her;

(f) any further information such as:

— the legal basis of the processing for which the data are intended,

— the time-limits for storing the data,

— the right to have at any time recourse to the European Data Protection Supervisor,

— the origin of the data, except where the controller can not disclose this information for reasons of professional secrecy,

in so far as such further information is necessary, having regard to the specific circumstances in which the data are processed, to guarantee fair processing in respect of the data subject.

2. Paragraph 1 shall not apply where, in particular for processing for statistical purposes or for the purposes of historical or scientific research, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Community law. In these cases the Community institution or body shall provide for appropriate safeguards.

Section 5

The data subject's right of access to data

Article 13

Right of access

Every data subject shall have the right to obtain at any time without excessive delay and free of charge from the controller:

(a) confirmation as to whether or not data related to him/her are being processed;

(b) information as to the purposes of the processing, the categories of data concerned, the recipients or categories of recipients to whom the data are disclosed;

(c) communication in an intelligible form of the data undergoing processing and of any available information as to their source;

(d) knowledge of the logic involved in any automated decision process concerning him/her.

Article 14

Rectification

The controller shall at the request of the data subject rectify without delay inaccurate or incomplete personal data.

Article 15

Blocking

1. Personal data shall be blocked where:

(a) their accuracy is contested by the data subject and neither their accuracy nor their inaccuracy can be ascertained;

(b) the controller no longer needs them for the accomplishment of his/her tasks but they have to be maintained for reasons of proof;

(c) the processing was unlawful and the data subject opposes their erasure and demands instead their blocking.

2. In automated filing systems blocking shall in principle be ensured by technical means. The fact that the personal data are blocked shall be indicated in the system in such a way that it becomes clear that the personal data cannot be used.

3. Blocked personal data shall, with the exception of their storage, only be processed if they are required for discharging the burden of proof, where the data subject has consented, or for reasons based on the legal interest of a third party.

Article 16

Erasure

1. Personal data shall be erased if their processing was unlawful, in particular when the provisions of Sections 1, 2 and 3 of Chapter II are violated.

2. Personal data shall be erased if the controller no longer needs them for the accomplishment of his/her tasks and there is no reason to believe that the data subject's interests might be prejudiced by the erasure.

Article 17

Notification to third parties

The controller shall notify third parties to whom the data have been disclosed of any rectification, erasure or blocking unless this proves impossible or involves a disproportionate effort.

Section 6

Exemptions and restrictions

Article 18

1. The Community institutions and bodies may restrict the application of Article 4(1), Article 11, Article 12(1), Article 13, Article 33 and Article 34(1) when such a restriction constitutes a necessary measure to safeguard:

(a) the prevention, investigation, detection and prosecution of criminal offences;

(b) an important economic or financial interest of a Member State or of the European Union, including monetary, budgetary and taxation matters;

(c) the protection of the data subject or of the rights and freedoms of others;

(d) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority in cases referred to in (a) and (b).

2. Articles 13 to 16 shall not apply when data are processed solely for purposes of scientific research or are kept in personal form for a period which does not exceed the period necessary for the sole purpose of creating statistics, provided that there is clearly no risk of breaching the privacy of the data subject and that the controller provides adequate legal safeguards, in particular to ensure that the data are not used for taking measures or decisions regarding a particular individual.

3. If a restriction as provided for by paragraph 1 is applied, the data subject shall be informed of the major reasons on which the application of the restriction is based and of his/her right to have recourse to the European Data Protection Supervisor.

4. As soon as the reason for which the restrictions as provided for by paragraph 1 are applied ceases to exist, the provisions referred to in paragraph 1 shall again be fully applied.

Section 7

Objections and complaints

Article 19

The data subject's right to object

The data subject shall have the right to object at any time on compelling legitimate grounds relating to his/her particular situation to the processing of data relating to him/her, except in the cases covered by Article 5, points (b), (c) and (d). Where there is a justified objection, the processing in question may no longer involve those data.

Article 20

The data subject's right to lodge complaints

The data subject shall have the right to lodge complaints at any time to the European Data Protection Supervisor.

Article 21

Automated individual decisions

No one shall be subject to a decision which produces legal effects concerning him/her or significantly affects him/her and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him/her, such as his/her performance at work, reliability or conduct, unless the decision is expressly authorised by a legal provision which also lays down measures to safeguard the data subject's legitimate interests.

Section 8

Confidentiality of processing

Article 22

Confidentiality and security of processing

Any person acting under the authority of the controller or of the processor, including the processor himself/herself, who has access to personal data shall not process them except on instructions from the controller, unless he is required to so by national law.

Article 23

Security of processing

1. Having regard to the state of the art and the cost of their implementation, the controller shall implement the technical and organisational measures necessary to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected.

2. Where personal data are manually processed, appropriate measures shall be taken in particular to prevent any unauthorised access or disclosure, alteration, destruction or accidental loss.

3. Where personal data are processed by automated means, measures shall be taken in particular to:

(a) prevent any unauthorised person from gaining access to computer systems processing personal data;

(b) prevent any unauthorised reading, reproduction, alteration or removal of storage media;

(c) prevent any unauthorised memory inputs as well as any unauthorised disclosure, alteration or erasure of stored personal data;

(d) prevent unauthorised persons from using data processing systems by means of data transmission facilities;

(e) ensure that authorised users of a data processing system can access no personal data other than those to which their access right refers;

(f) record which personal data have been communicated, at what times and to whom;

(g) ensure that it will be subsequently possible to check and verify which personal data have been processed, at what times and by whom;

(h) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;

(i) ensure that, during communication of personal data and during transport of storage media, the data cannot be read, copied, or erased without authorisation;

(j) design the organisational structure within an institution or body in such a way that it will meet the special requirements of data protection.

Article 24

Processing of personal data on behalf of controllers

1. The controller shall, where processing is carried out on his/her behalf, choose a processor providing sufficient guarantees in respect of the technical security measures and organisational measures required by Article 23 and shall ensure compliance with those measures.

2. The carrying out of processing by way of a processor shall be governed by a contract or legal act binding the processor to the controller and stipulating in particular that:

(a) the processor shall act only on instructions from the controller;

(b) the obligations set out in Article 23 shall also be incumbent on the processor.

3. For the purposes of keeping proof, the parts of the contract or the legal act relating to data protection and the requirements relating to the measures referred to in Article 23 shall be in writing or in another equivalent form.

Section 9

Data protection officer

Article 25

Appointment and tasks of the Data Protection Officer

1. Each Community institution and Community body shall appoint at least one person of appropriate rank as personal data protection officer, with the task of:

(a) ensuring that controllers and data subjects are informed of their rights and obligations;

(b) cooperating with the European Data Protection Supervisor at the latter's request or on his/her own initiative;

(c) ensuring in an independent manner the internal application of provisions of this Regulation and of all other provisions adopted to implement these rules;

(d) keeping the register of processing operations carried out by the controller, containing the items of information referred to in Article 26(2);

(e) notifying the European Data Protection Supervisor of the processing operations likely to present specific risks within the meaning of Article 28;

thereby ensuring that the rights and freedoms of the data subjects are unlikely to be adversely affected by the processing operations.

2. The Data Protection Officer shall be provided with the staff and resources required for the performance of his/her duties.

3. Further implementing rules concerning the Data Protection Officer shall be adopted by each Community institution or body on the basis of the guidelines laid down in Annex I. The implementing rules shall in particular concern the qualifications, the appointment, dismissal, independence and the tasks, duties and powers of the Data Protection Officer.

Article 26

Notification to the Data Protection Officer

1. The controller shall give prior notice to the Data Protection Officer of any processing operation or set of such operations intended to serve a single purpose or several related purposes.

2. The information to be given shall include at least the information referred to in Annex II.

Any change affecting that information shall be notified promptly to the Data Protection Officer.

Article 27

Register

A register of processing operations notified in accordance with Article 26 shall be kept by each Data Protection Officer.

The registers shall contain at least the information referred to in Article 26(2).

The registers may be inspected by any person.

Section 10

Prior checking by the European Data Protection Supervisor

Article 28

1. The European Data Protection Supervisor shall determine the processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, such as that of excluding individuals from a right, benefit or contract, or by virtue of the specific use of new technologies.

These processing operations shall include the following:

— certain processing operations involving special categories of data as referred to in Article 10;

— processing operations intended to assess the personality of the data subject, including his/her ability, efficiency and conduct.

These processing operations shall be subject to prior checks.

2. The prior checks shall be carried out by the European Data Protection Supervisor following receipt of a notification from the Data Protection Officer who, in case of doubt, shall consult the European Data Protection Supervisor.

3. The European Data Protection Supervisor shall deliver his/her opinion within two months following receipt of the notification. If the opinion has not been delivered by the end of that two-month period, it shall be deemed to be favourable.

4. The European Data Protection Supervisor shall keep a register of all processing operations that have been notified to him/her pursuant to paragraph 2. The register shall contain the information referred to in Article 26(2). It shall be open to public inspection.

5. Automated means of communication between the Community institutions or bodies such as an on-line access to databases or an interlinking shall only be established after examination by the European Data Protection Supervisor.

In the course of the examination, the European Data Protection Supervisor shall determine whether an automated communication is compatible with the legitimate interests of the data subjects and necessary in view of the tasks of the Community institutions or bodies involved.

CHAPTER III

REMEDIES AND SANCTIONS

Article 29

Remedies

1. Without prejudice to any judicial remedy, every data subject may complain to the European Data Protection Supervisor if he/she considers that his/her rights have been violated as a result of the processing of his/her personal data by a Community institution or body.

2. The Court of Justice of the European Communities and the Court of First Instance of the European Communities shall have jurisdiction to hear all disputes which relate to the provisions of this Regulation, including claims for damages.

Article 30

Sanctions

Any failure to comply with the obligations pursuant to this Regulation, whether intentionally or through negligence on his/her part, shall make an official or other servant of the European Communities liable to disciplinary action, in accordance with the rules and procedures laid down in the Staff Regulations of Officials of the Communities or in the conditions of employment applicable to them.

CHAPTER IV

PROTECTION OF PERSONAL DATA AND PRIVACY IN THE CONTEXT OF INTERNAL TELECOMMUNICATIONS NETWORKS

Article 31

Scope

In addition to the other provisions of this Regulation, this Chapter shall apply to the processing of personal data in connection with the use of telecommunications networks and terminal equipment operated under the control of a Community institution or body.

For the purpose of this Chapter, 'user' shall mean any natural person using a telecommunications network operated under the control of a Community institution or body.

Article 32

Security

1. The Community institutions and bodies shall take appropriate technical and organisational measures to safeguard the secure use of the telecommunications networks and terminal equipment, if necessary in conjunction with the providers of publicly available telecommunications services and/or the providers of public telecommunications networks. Having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.

2. In case of any particular risk of a breach of the security of the network and terminal equipment, the Community institution or body concerned shall inform the users concerning such risks and any possible remedies or alternative means of communication.

Article 33

Confidentiality of the communications

1. Community institutions and bodies shall ensure the confidentiality of communications by means of telecommunications networks and terminal equipment.

Listening, tapping, storage or other kinds of interception or surveillance of communications, by others than users, without the consent of the users concerned, shall be prohibited.

2. Paragraph 1 shall not affect any recording of communications authorised by the internal rules of the Community institutions or bodies, for the purpose of providing evidence of legal or procedural acts relevant to the official tasks of the Community institutions or bodies concerned, subject to the agreement of the European Data Protection Supervisor.

Article 34

Traffic and billing data

1. Traffic data relating to users processed and stored to establish calls and other connections over the telecommunications network shall be erased or made anonymous upon termination of the call or other connection without prejudice to the provisions of paragraphs 2, 3 and 4.

2. For the purpose of telecommunications budget and traffic management, including the verification of authorised use of the telecommunications system, traffic data as indicated in a list agreed by the European Data Protection Supervisor may be processed.

3. Processing of traffic and billing data shall be restricted to what is necessary for the purposes of the activities referred to in paragraph 2 and shall only be carried out by persons handling billing, traffic or budget management.

4. Users of the telecommunication networks shall have the right to receive non-itemised bills.

Article 35

Directories of users

1. Personal data contained in printed or electronic directories of users shall be limited to what is necessary for the specific purposes of the directory.

2. The Community institutions and bodies shall take all the necessary measures to prevent personal data contained in those directories, regardless of whether they are accessible to the public or not, from being used for direct marketing purposes.

Article 36

Presentation and restriction of calling and connected line identification

1. Where presentation of calling-line identification is offered, the calling user shall have the possibility via a simple means, free of charge, to eliminate the presentation of the calling-line identification.

2. Where presentation of calling-line identification is offered, the called user shall have the possibility via a simple means, free of charge, to prevent the presentation of the calling line identification of incoming calls.

3. Where presentation of connected line identification is offered, the called user shall have the possibility via a simple means, free of charge, to eliminate the presentation of the connected line identification to the calling user.

4. Where presentation of calling and/or connected line identification is offered, the Community institutions and bodies shall inform the users thereof and of the possibilities set out in paragraphs 1, 2 and 3.

Article 37

Exceptions

Community institutions and bodies shall ensure that there are transparent procedures governing the way in which they may override the elimination of the presentation of calling line identification:

(a) on a temporary basis, upon application of a user requesting the tracing of malicious or nuisance calls;

(b) on a per-line basis for organisational entities dealing with emergency calls, for the purpose of answering such calls.

CHAPTER V

SUPERVISORY AUTHORITY: EUROPEAN DATA PROTECTION SUPERVISOR

Article 38

Supervisory authority: European Data Protection Supervisor

1. A supervisory authority is hereby established referred to as the European Data Protection Supervisor.

2. It shall be responsible for monitoring the application of the provisions of this Regulation and any other Community act relating to the protection of natural persons with regard to the processing of personal data by a Community institution or a Community body.

Article 39

Appointment

1. On a proposal from the Commission, the European Parliament, the Council and the Commission shall appoint by common accord the European Data Protection Supervisor for a term of four years.

2. The European Data Protection Supervisor shall be chosen from among persons who belong or have belonged in their respective countries to the independent authorities supervising the processing of personal data or who are especially qualified for this office.

3. The European Data Protection Supervisor shall be eligible for reappointment.

4. The European Data Protection Supervisor shall remain in office until he/she has been replaced.

5. Apart from normal replacement or death, the duties of the European Data Protection Supervisor shall end when he/she resigns, or is compulsory retired in conformity with paragraph 6.

6. The European Data Protection Supervisor may be dismissed by the Court of Justice at the request of the European Parliament, the Council or the Commission, if he/she no longer fulfils the conditions required for the performance of his/her duties or if he/she is guilty of serious misconduct.

7. Subject to the provisions of this Chapter, the provisions of the Protocol on the Privileges and Immunities of the European Communities applicable to the Judges of the Court of Justice shall also apply to the European Data Protection Supervisor.

Article 40

Conditions of employment

1. The European Parliament, the Council and the Commission shall by common accord determine the conditions of employment of the European Data Protection Supervisor and in particular his/her salary, allowances and any other benefits in lieu of remuneration.

2. The European Parliament shall ensure that the European Data Protection Supervisor is provided with the staff and equipment necessary for the performance of his/her tasks.

3. The staff and equipment to be provided shall be itemised in a separate Chapter to the budget of the European Parliament.

4. Staff members shall be appointed by the European Data Protection Supervisor. Their superior shall be the European Data Protection Supervisor and they shall be subject exclusively to his/her direction.

5. The officials and the other staff members shall be subject to the rules and regulations applicable to officials and other servants of the European Communities.

6. In matters concerning its staff, the European Data Protection Supervisor shall have the same status as the institutions within the meaning of Article 1 of the Staff Regulations of Officials of the European Communities.

Article 41

Independence

1. The European Data Protection Supervisor shall act in complete independence in the performance of his/her duties.

2. The European Data Protection Supervisor shall, in the performance of his/her duties, neither seek nor take instruction from anybody.

3. The European Data Protection Supervisor shall refrain from any action incompatible with his/her duties and shall not, during his/her term of office, engage in any other occupation, whether gainful or not.

4. The European Data Protection Supervisor shall, after his/her term of office, behave with integrity and discretion as regards the acceptance of appointments and benefits.

Article 42

Professional secrecy

The European Data Protection Supervisor and his/her staff shall, both during and after their term of office, be subject to a duty of professional secrecy with regard to any confidential matters which have come to their knowledge in the course of the performance of their official duties.

Article 43

Duties

The European Data Protection Supervisor shall:

(a) receive and investigate complaints;

(b) supervise all processing operations involving personal data by any Community institution or body with the exception of the Court of Justice and the Court of First Instance acting in their judicial role;

(c) advise all Community institutions and bodies on all matters concerning the use of personal data, in particular before they draw up internal rules relating to the protection of individual rights and freedoms with regard to the processing of personal data;

(d) follow the development of information and communication technologies insofar as they have an impact on the protection of personal data;

(e) cooperate with the national supervisory authorities to the extent necessary for the performance of his/her duties, in particular by exchanging all useful information or requesting an authority of a Member State to exercise its powers;

(f) participate in the activities of the Working party on the Protection of Individuals with regard to the Processing of Personal Data set up by Article 29 of Directive 95/46/EC;

(g) keep a register of processing notified to him/her;

(h) carry out a prior check of processing notified to him/her.

Article 44

Consultation

1. The Community institutions and bodies shall inform the European Data Protection Supervisor when drawing up draft measures related to the processing of personal data involving a Community institution or body alone or jointly with others.

2. The European Data Protection Supervisor shall be informed by the Commission of all draft proposals for Community legislation entailing a processing of personal data.

3. The European Data Protection Supervisor may be consulted by each Community institution or body on all operations related to the processing of personal data.

Article 45

Recourse

1. Any person employed with Community institutions or bodies may on a matter affecting his/her tasks have recourse to the European Data Protection Supervisor, without acting through official channels.

2. No one shall suffer prejudice on account of a recourse or a complaint to the European Data Protection Supervisor alleging a violation of the provisions governing the processing of personal data.

Article 46

Powers

1. The European Data Protection Supervisor shall, in particular:

(a) conduct inquiries either on his/her own initiative or on the basis of complaints or recourses;

(b) be supplied without delay with all information concerning his/her enquiries;

(c) be granted at any time access to all official premises.

All controllers shall support the European Data Protection Supervisor in the performance of his/her duties.

2. The European Data Protection Supervisor shall have the power to:

(a) order the rectification, blocking erasure or destruction of all data processed in violation of the provisions governing the processing of personal data;

(b) impose a temporary or definitive ban on processing;

(c) warn or admonish the controller;

(d) report the matter to the Community institution or body concerned and if necessary to the European Parliament, the Council and the Commission;

(e) intervene in actions brought before the Court of Justice and the Court of First Instance;

(f) give advice to the data subjects and, if requested, assist them as expert in proceedings before the Court of First Instance.

3. Where the European Data Protection Supervisor establishes a violation of the provisions governing the processing of personal data, or any other irregularities in the processing, he/she shall refer the matter to the Community institution or body concerned and where appropriate make proposals for remedying those irregularities and for improving the protection of the data subjects.

4. The Community institution or body concerned shall inform the European Data Protection Supervisor of its views within a period to be specified by him/her. The reply shall also include a description of the measures taken in response to the remarks of the European Data Protection Supervisor.

5. In the event of a complaint or recourse, the European Data Protection Supervisor shall inform the persons concerned of the outcome of his/her enquiries.

6. Where the data subject has been denied access, the European Data Protection Supervisor shall only inform him/her of whether the data have been processed correctly and, if not, whether the necessary corrections have been made.

If the European Data Protection Supervisor considers that the application of the restriction to the right of confirmation provided for in Article 13(a), is deprived of its effect by providing this information, the European Data Protection Supervisor shall not inform the data subject of the outcome of his/her enquiry.

7. Actions against decisions of the European Data Protection Supervisor shall be brought before the Court of Justice or the Court of First Instance.

Article 47

Activities report

1. The European Data Protection Supervisor shall submit an annual report on his/her activities to the European Parliament and at the same time make it public.

2. The report shall be forwarded to the other institutions and bodies of the European Union and shall be discussed by the European Parliament together with their replies.

CHAPTER VI

FINAL PROVISIONS

Article 48

Transitional period

Community institutions and bodies shall ensure that processing already under way on the date this Regulation enters into force is brought into conformity with this Regulation within one year of that date.

Article 49

Entry into force

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

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

ANNEX I

1. The data protection officer shall be selected on the basis of his/her authority, his/her expert knowledge of data protection and his/her personal reliability.

2. The appointment of the data protection officer shall not entail a conflict of interests with regard to other official duties, in particular in relation to the application of the provisions of this Regulation.

3. The data protection officer shall be appointed for a term of at least two years. He/she shall be eligible for reappointment. The data protection officer may only be dismissed with the consent of the European Data Protection Supervisor, if he/she no longer fulfils the conditions required for the performance of his/her duties.

4. With respect to the performance of his/her duties, the data protection officer may not receive any instructions.

5. After his/her appointment the data protection officer shall be registered with the European Data Protection Supervisor by the institution, body (or person) which appointed him/her.

6. The data protection officer may make recommendations for the practical improvement of data protection and advise the Community institution or body which appointed him/her and the controller concerned on matters concerning the application of data protection provisions. Furthermore he/she shall, on his/her own initiative or at the request of the Community institution or body which appointed him/her, the controller, the Staff Committee concerned or data subject, investigate matters and occurrences directly relating to his/her tasks and come to his/her notice.

7. The data protection officer may be consulted by the Community institution or body which appointed him/her, by the controller concerned, by the Staff Committee concerned and by any individual, without going through the official channels, on any matter concerning the interpretation or application of the Regulation.

8. No one shall suffer prejudice on account of a matter brought to the attention of the data protection officer and suggesting a violation of the provisions of this Regulation.

9. Every controller concerned shall be required to assist the data protection officer in performing his/her duties and to give information in reply to questions. In performing his/her duties, the data protection officer shall have access at all times to the data forming the subject-matter of processing operations and to all offices, data processing installations and data carriers, and may collect the necessary information.

10. To the extent required, the data protection officer shall be relieved from other activities. The data protection officer and his/her staff, to whom Article 287 of the Treaty shall apply, shall be required not to divulge information or documents which they obtain in the course of their duties.

ANNEX II

1. The name and address of the controller.

2. The names of the persons and/or the indication of the organisational parts of an institution or body charged with the processing of personal data for a particular purpose.

3. The purpose or purposes of the processing.

4. A description of the category or categories of data subjects and of the data or categories of data relating to them.

5. The legal basis of the processing for which the data are intended.

6. The recipients or categories of recipient to whom the data might be disclosed.

7. The time limits for blocking and erasure of the different categories of data.

8. Proposed transfers of data to third countries.

9. A general description allowing a preliminary assessment to be made of the appropriateness of the measures taken pursuant to Article 23 to ensure security of processing.

Proposal for a Council Decision providing supplementary macro financial assistance to Moldova

(1999/C 376 E/05)

COM(1999) 516 final — 1999/0213(CNS)

(Submitted by the Commission on 22 October 1999)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

(1) Whereas the Commission consulted the Economic and Financial Committee before submitting its proposal;

(2) Whereas Moldova is undertaking fundamental political and economic reforms and is making substantial efforts to establish a market economy;

(3) Whereas Moldova, on the one hand, and the European Communities and their Member States on the other hand, have signed a Partnership and Cooperation Agreement, which entered into force 1 July 1998;

(4) Whereas the authorities of Moldova have agreed with the IMF on a macro-economic programme supported by a three-year Extended Fund Facility, approved in May 1996 and have expressed their intention to subsequently continue this programme in the context of a new Fund Facility;

(5) Whereas the Moldovan authorities have requested financial assistance from the International Financial Institutions, the Community and other bilateral donors; whereas over and above the extended financing by the IMF and the World Bank a substantial residual financing gap remains to be covered in the coming months to strengthen the country's reserve position and support the policy objectives attached to the authorities' reform efforts;

(6) Whereas Moldova has been particularly affected by the Russian financial crisis and is presently facing particularly difficult economic and social circumstances;

(7) Whereas financial assistance from the Community in the form of a long term loan with a substantial grace period is an appropriate measure to help the beneficiary country at this critical juncture;

(8) Whereas this assistance should be managed by the Commission;

(9) Whereas the Treaty does not provide, for the adoption of this decision, powers other than those of Article 308,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Community shall make available to Moldova a long-term loan facility of a maximum amount of EUR 15 million with a grace period of five years and a maximum maturity of ten years, with a view to ensuring a sustainable balance of payments situation, strengthening the country's reserves position and comforting the implementation of the necessary structural reforms.

2. To this end, the Commission is empowered to borrow, on behalf of the European Community, the necessary resources that will be placed at the disposal of Moldova in the form of a loan.

3. This loan will be managed by the Commission in close consultation with the Economic and Financial Committee and in a manner consistent with any agreement reached between the IMF and Moldova.

Article 2

1. The Commission is empowered to agree with the Moldovan authorities, after consulting the Economic and Financial Committee, the economic policy conditions attached to the loan. These conditions shall be consistent with the agreement referred to in Article 1(3).

2. The Commission shall verify at regular intervals, in collaboration with the Economic and Financial Committee, and in coordination with the IMF, that economic policy in Moldova is in accordance with the objectives of this loan and that its conditions are being fulfilled.

Article 3

1. Subject to the provisions of Article 2, the loan shall be made available to Moldova in a single tranche on the basis of a satisfactory track record on the implementation of an upper credit tranche arrangement agreed with the IMF.

2. The funds shall be paid to the National Bank of Moldova.

Article 4

1. The borrowing and lending operations referred to in Article 1 shall be carried out using the same value date and must not involve the Community in the transformation of maturities, in any exchange or interest rate risk, or any other commercial risk.

2. The Commission shall take the necessary steps, if Moldova so requests, to ensure that an early repayment clause is included in the loan terms and conditions.

3. At the request of Moldova, and when circumstances permit an improvement in the interest rate of the loans, the Commission may refinance all or part of its initial borrowings or restructure the corresponding financial conditions. Refinancing or restructuring operations shall be carried out in accordance with the conditions set out in paragraph 1 and shall not have the effect of extending the average maturity of the borrowing concerned or increasing the amount, expressed at the current exchange rate, of capital outstanding at the date of the refinancing or restructuring.

4. All related costs incurred by the Community in concluding and carrying out the operation shall be borne by Moldova.

5. The Economic and Financial Committee shall be kept informed of the developments in the operations referred to in paragraph 2 and 3 at least once a year.

Article 5

At least once a year the Commission shall address a report to the European Parliament, which will include an evaluation of the implementation of this decision.

ANNEX

BUDGETARY RESOURCES NECESSARY FOR THE PROVISIONING OF THE GUARANTEE FUND IN 1999 AND MARGIN UNDER THE RESERVE FOR LOANS AND LOAN GUARANTEES IN FAVOUR OF THIRD COUNTRIES

(EUR million)

Operations	Basis of the calculation [1]	Provisioning of the Fund [2]	Reserve Margin
			346,0 [3]
Operations decided			
EIB/New mandates [4]			
— CEEC	872,9	122,2	223,8
— ALA	218,1	30,5	193,3
— South Africa	143,5	20,1	173,2
— MED	351,4	49,2	124,0
— Former Yugoslav Republic of Macedonia	38,5	5,4	118,6
— Bosnia	42,0	5,9	112,7
EIB/Old protocols [2]			
— Syria	– 30	– 4,2	116,9
Macro-financial assistance			
— Albania III	20	2,8	114,1
— Bosnia I	20	2,8	111,3
Operations proposed			
— EIB/Turkey [5]	105	14,7	96,6
— EIB/Croatia [6]	35	4,9	91,7
Macro-financial assistance			
— Bulgaria IV [7]	100	14,0	77,7
— Romania IV [7]	200	28,0	49,7
— Former Yugoslav Republic of Macedonia [7]	50	7,0	42,7
— Tajikistan [7]	75	10,5	32,2
— Moldova III [7]	15	2,1	30,1

[1] The provisioning basis is calculated by applying the relevant guarantee cover rate, namely 70 % (EIB loans new mandates), 75 % (EIB loans old protocols) or 100 % (macro-financial assistance loan).

[2] In accordance with the provisioning rules in Council Regulation (EC, Euratom) No 2728/94 of 31 October 1994, the Fund having reached its target amount on 31 December 1997, the provisioning rate has been reduced to 14 %.

[3] Amount of the Reserve for loans and loan guarantees in favour of third countries for 1999 under the financial perspective.

[4] Annual amounts of loans scheduled to be signed in 1999 and correction of amounts already provisioned in the Fund to take account of actual signings at the end of 1998: transfer 5/99 to the Guarantee Fund.

[5] Proposal for a Council Regulation on a special financial cooperation measure for Turkey (COM(95) 389/3).

[6] EC/Croatia cooperation agreement (SEC(95) 180/final).

[7] Commission proposal.

Proposal for a Council Regulation

on information measures relating to the common agricultural policy

(1999/C 376 E/06)

COM(1999) 536 final — 1999/0209(CNS)

(Submitted by the Commission on 26 October 1999)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Articles 32 to 38 of the Treaty provide for the implementation of a common agricultural policy.

(2) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy [1] stipulates that measures intended to provide information on the common agricultural policy are to be financed by the EAGGF Guarantee Section.

(3) Article 22(1) of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities [2] stipulates that the implementation of appropriations entered for significant Community action requires a basic act. Under the Interinstitutional Agreement of 13 October 1998 on legal bases and implementation of the budget, a basic act is also needed for the measures covered by this Regulation.

(4) The issues surrounding the common agricultural policy and its development should be explained to both farmers and other parties directly concerned, as well as the general public.

(5) The priority measures which the Community may support should be defined.

(6) Organisations representing those active in farming and in rural areas, particularly farmers' organisations, consumers' associations and environmental protection associations play a vital role in informing their members about the common agricultural policy and relaying to the Commission the opinions of the parties concerned in general and farmers in particular.

(7) Since the common agricultural policy is the first and most extensive of the Community's integrated policies, it should be explained to the general public. Other parties likely to be able to present information projects that will help achieve this goal should therefore be eligible to make proposals.

(8) The Commission must have the necessary resources to implement the information actions it wishes to realise in the area of agriculture.

(9) Although activities that can be assisted under other Community programmes should not be financed under this Regulation, the complementarity of such activities with other Community initiatives should nevertheless be encouraged.

(10) Since the measures required for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [3], they should be adopted by use of the management procedure provided for in Article 4 of that Decision.

HAS ADOPTED THIS REGULATION:

Article 1

The Community may finance information measures relating to the common agricultural policy that aim, in particular, at:

(a) helping to explain, implement and develop this policy,

(b) promoting the European model of agriculture and helping people understand it,

(c) informing farmers and other parties active in rural areas,

(d) raising public awareness of the issues and objectives of the CAP.

These actions aim to supply coherent, objective and comprehensive information in order to give an overall picture of this policy.

Article 2

1. The measures referred to in Article 1 may be:

(a) annual work programmes presented, in particular, by farmers' or rural development organisations, consumers' associations and environmental protection associations,

[1] OJ L 160, 26.6.1999, p. 103.

[2] OJ L 356, 31.12.1977, p. 1. Regulation as last amended by Regulation (EC, ECSC, Euratom) No 2779/98 (OJ L 347, 23.12.1998, p. 3).

[3] OJ L 184, 17.7.1999, p. 23.

(b) specific measures presented by any party other than those referred to in (a), in particular the public authorities of the Member States, the media and universities.

(c) activities implemented at the Commission's initiative, in particular measures of mutual benefit to the Commission and the target groups of the measures referred to in Article 1.

2. The maximum financing rate for the measures referred to in paragraph 1(a) and (b) shall be 75% of eligible costs

3. The following measures may not receive Community financing as provided for in Article 1:

(a) measures which are required by law,

(b) measures already receiving financing under another Community operation.

4. In order to implement measures as referred to in paragraph 1(c), the Commission may have recourse to any technical and administrative assistance it might need.

Article 3

1. Measures eligible under Article 2 shall include, in particular, talks, seminars, publications, media actions and productions, participation in international events and programmes for the exchange of experiences.

2. Measures as referred to in Article 2 shall be selected on the basis of general criteria such as:

(a) the quality of the project,

(b) cost effectiveness.

Article 4

Community financing shall not exceed the annual appropriations decided by the budgetary authority.

Article 5

The Commission shall ensure that the Community measures and projects implemented under this Regulation are consistent with and complement other Community action.

Article 6

The Commission shall monitor and check the activities financed by the Community to ensure that they are properly and efficiently implemented. The Commission's representatives shall be authorised to make on-the-spot checks on such activities, including by sampling.

Article 7

The Commission, where it judges it to be appropriate, evaluate the measures financed under this Regulation.

Article 8

The Commission shall present a report on the implementation of this Regulation to the European Parliament and the Council every two years. The first report must be presented not later than 31 December 2001.

Article 9

1. For the purpose of implementing this Regulation, the Commission shall be assisted in accordance with the procedure provided for in paragraph 2 by the Committee for the European Agricultural Guidance and Guarantee Fund set up by Regulation (EEC) No 729/70 [1].

2. Where this paragraph is referred to, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply.

The period provided for in Article 4(3) of Decision 1999/468/EC shall be one month.

Article 10

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

It shall apply from 1 January 2000.

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

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[1] OJ L 94, 28.4.1970, p. 13.

Proposals for European Parliament and Council Regulation establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97

(1999/C 376 E/07)

COM(1999) 487 final — 1999/0204(COD)

(Submitted by the Commission on 27 October 1999)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152 thereof,

Having regard to the proposal from the Commission,

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

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) Article 19 of Council Regulation (EC) No 820/97 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products [1], lays down that a compulsory beef labelling system shall be introduced, which shall be obligatory in all Member States, from 1 January 2001 onwards. On the basis of a Commission proposal, the same Article also states that the general rules for that compulsory system shall be decided before that date.

(2) It is appropriate to include those general rules into Regulation (EC) No 820/97. For reasons of clarity that Regulation should be repealed and replaced by a new Regulation.

(3) As a consequence of the instability in the market in beef and beef products caused by the bovine spongiform encephalopathy crisis, the improvement in the transparency of the conditions for the production and marketing of the products concerned, particularly as regards traceability, has exerted a positive influence on consumption of beef. To maintain and strengthen this consumer confidence in beef, it is necessary to develop the framework in which the information is made available to consumers on the label.

(4) To this end it is essential to establish, on the one hand, an efficient system for the identification and registration of bovine animals at the production stage and, on the other hand, a specific Community labelling system in the beef sector based on objective criteria at the marketing stage.

(5) By means of the guarantees provided for such an improvement, certain public interest requirements will also be attained, in particular the protection of human and animal health. Therefore, the appropriate legal basis for this Regulation is Article 152 of the Treaty.

(6) As a result, consumer confidence in the quality of beef and beef products will be encouraged.

(7) Article 3(1)(c) of Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market [2] states that animals for intra-Community trade must be identified in accordance with the requirements of Community rules and be registered in such a way that the original or transit holding, centre or organisation can be traced, and that before 1 January 1993 these identification and registration systems are to be extended to the movements of animals within the territory of each Member State.

(8) Article 14 of Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC [3] states that the identification and registration as provided for in Article 3(1)(c) of Directive 90/425/EEC of such animals must, except in the case of animals for slaughter and registered equidae, be carried out after the said checks have been made.

(9) The management of certain Community aid schemes in the field of agriculture requires the individual identification of certain types of livestock. The identification and registration systems must, therefore, be suitable for the application and control of such measures.

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[1] OJ L 117, 7.5.1997, p. 1. Regulation as amended by Regulation (EC) No [. . .].

[2] OJ L 224, 18.8.1990, p. 29. Directive as last amended by Directive 92/118/EEC (OJ L 62, 15.3.1993, p. 49)

[3] OJ L 268, 24.9.1991, p. 56; Directive as last amended by Directive 96/43/EC (OJ L 162, 1.7.1996, p. 1).

(10) It is necessary to ensure the rapid and efficient exchange of information between Member States for the correct application of this Regulation. Community provisions have been established by Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs or agriculture matters [1] and by Council Directive 89/608/EEC of 21 November 1989 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of legislation on veterinary and zootechnical matters [2].

(11) The current rules concerning the identification and the registration of bovine animals have been laid down in Council Directive 92/102/EEC of 27 November 1992 on the identification and registration of animals [3] and Council Regulation (EC) No 820/97. Experience has shown that the implementation of that Directive for bovine animals has not been entirely satisfactory and needs further improvement. It is therefore necessary to adopt a specific regulation for bovine animals in order to reinforce the provisions of the Directive.

(12) For the introduction of an improved identification system to be accepted, it is essential not to impose excessive demands on the producer in terms of administrative formalities. Feasible time limits for its implementation must be laid down.

(13) For the purpose of rapid and accurate tracing of animals for reasons relating to the control of Community aid schemes, each Member State must create a computerised data base which will record the identity of the animal, all holdings on its territory and the movements of the animals, in accordance with the provisions of Council Directive 97/12/EC of 17 March 1997 amending and updating Directive 64/432/EEC on health problems affecting intra-Community trade in bovine animals and swine [4], which clarifies the health requirements concerning this data base.

(14) Steps must be taken to ensure that the technical conditions exist to guarantee the best communication possible by the producer with the data base and a comprehensive use of data bases.

(15) In order to permit movements of bovine animals to be traced, animals must be identified by an eartag applied in each ear and in principle accompanied by a passport throughout any movement. The characteristics of the eartag and of the passport must be determined on a Community basis. In principle a passport must be issued for each animal to which an eartag has been allocated.

(16) Animals imported from third countries pursuant to Directive 91/496/EEC must be subject to the same identification requirements.

(17) Every animal must keep its eartag throughout its life.

(18) The Commission is examining on the basis of work performed by the Joint Research Centre the feasibility of using electronic means for the identification of animals.

(19) Keepers of animals, with the exception of transporters, must maintain an up-to-date register of the animals on their holdings. The characteristics of the register must be determined on a Community basis. The competent authority must have access to these registers on request.

(20) Member States may spread the costs arising from the application of these measures over the entire beef sector.

(21) The authority or authorities responsible for the application of each Title in this Regulation should be designated.

(22) In the context of the labelling system set up by this Regulation, beef shall be taken to mean certain products referred to in Article 1(1) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [5].

(23) A compulsory beef labelling system shall be introduced which is obligatory in all Member States. Under this compulsory system, operators and organisations marketing beef shall indicate on the label information about certain characteristics of the beef and the point of slaughter of the animal or animals from which that beef was derived.

(24) The compulsory beef labelling system shall be reinforced from 1 January 2003. Under this compulsory system, operators and organisations marketing beef shall, in addition, indicate on the label information concerning origin, in particular where the animal or animals from which the beef was derived were born, reared and slaughtered.

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[1] OJ L 144, 2.6.1981, p. 1. Regulation as last amended by Regulation (EC) No 515/97 (OJ L 82, 22.3.1997, p. 1).

[2] OJ L 351, 2.12.1989, p. 34.

[3] OJ L 355, 5.12.1992, p. 32. Directive as last amended by the Act of Accession of Austria, Finland and Sweden.

[4] OJ L 109, 25.4.1997, p. 1.

[5] OJ L 160, 26.6.1999, p. 21.

(25) The date of 1 January 2003 is the earliest date by which it is feasible to introduce the compulsory labelling of origin. The principal reason for not introducing compulsory labelling of origin before 1 January 2003 is that full information on movements made by bovine animals in the Community is only required for animals born after 1 January 1998.

(26) In terms of the public interest requirement, the compulsory beef labelling system shall also apply to beef imported into the Community. However, provision must be made for the fact that not all the information required for the indication of origin on the label may be available to a third country operator or organisation. It is therefore necessary to state the minimum information that shall be indicated on the label by third countries.

(27) For operators or organisations producing and marketing minced beef, beef trimmings or cut beef and operators or organisations exporting beef from third countries to the Community, who may not be in a position to provide all the information required under the compulsory beef labelling system, exceptions ensuring a certain minimum number of indications must be provided.

(28) The objective of labelling is to give the maximum transparency in the marketing of beef. It is therefore appropriate that those operators and organisations that choose to market their beef under a label which ensures traceability to the individual animal, should be permitted to label beef with a specific logo.

(29) For all indications other than those falling under the compulsory beef labelling system, a Community framework for such beef labelling is also required. The diversity of descriptions of marketed beef in the Community means that the establishment of a voluntary beef labelling system is most appropriate. An efficient labelling system depends on the possibility of tracing back any labelled beef to the animal or animals of origin. The labelling arrangements of an operator or organisation shall be valid only once a specification has been submitted to the competent authority within a certain delay. In order to identify correctly the person responsible for the information on the label, operators and organisations shall be entitled to label beef only if the label contains their name or their identifying logo. In order to ensure that labelling specifications may be recognised across the Community, it is necessary to provide for the mutual exchange of information between Member States.

(30) Operators and organisations importing beef from third countries into the Community may also wish to label their products according to the voluntary beef labelling system. Provisions should thus be made for imported beef to be included in that system. These provisions must ensure that labelling arrangements relating to imported beef are of equivalent reliability to those set up for Community beef.

(31) The change from the arrangements in Title II of Regulation (EC) No 820/97 to those in this Regulation could give rise to difficulties that are not dealt with in this Regulation. In order to deal with that eventuality, provision should be made for the Commission to adopt the necessary transitional measures. The Commission should also be authorised to solve specific practical problems.

(32) With a view to guaranteeing the reliability of the arrangements provided for by this Regulation, it is necessary to oblige the Member States to carry out adequate and efficient control measures. These controls shall be without prejudice to any controls that the Commission may carry out by analogy with Article 9 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests [1]. The competent authorities of the Member States shall be authorised to withdraw their approval of any specification in the event of irregularities.

(33) Appropriate penalties should be laid down in the event of a breach of the provisions of this Regulation.

HAVE ADOPTED THIS REGULATION:

TITLE I

IDENTIFICATION AND REGISTRATION OF BOVINE ANIMALS

Article 1

1. Each Member State shall establish a system for the identification and registration of bovine animals (hereinafter referred to as 'animals'), in accordance with this Title.

2. This Title shall apply without prejudice to Community rules for disease eradication or control purposes and without prejudice to Directive 91/496/EEC and Regulation (EEC) No 3508/92. However, those provisions of Directive 92/102/EEC, which relate specifically to bovine animals shall no longer apply from the date on which those animals must be identified in accordance with this Title.

Article 2

For the purposes of this Title:

— 'animal' shall mean a bovine animal within the meaning of Article 2 of Directive 97/12/EC,

[1] OJ L 312, 23.12.1995, p. 1. Regulation as last amended by Regulation (EC) No 1036/1999 (OJ L 127, 21.5.1999, p. 4).

— 'holding' shall mean any establishment, construction or, in the case of an open-air farm, any place situated within the territory of the same Member State, in which animals covered by this Regulation are held, kept or handled,

— 'keeper' shall mean any natural or legal person responsible for animals, whether on a permanent or on a temporary basis, including during transportation or at a market,

— 'competent authority' shall mean the central authority or authorities in a Member State responsible for, or entrusted with, carrying out veterinary checks and implementing this Title or, in the case of the monitoring of premiums, the authorities entrusted with implementing Regulation (EC) No 3508/92.

Article 3

The system for the identification and registration of bovine animals shall comprise the following elements:

(a) eartags to identify animals individually;

(b) computerised databases;

(c) animal passports;

(d) individual registers kept on each holding.

The Commission and the competent authority of the Member State concerned shall have access to all information under this Title. The Member States and the Commission shall take the measures necessary to ensure access to this data for all parties concerned, including consumer organisations having a particular interest which are recognised by the Member State, provided that the data confidentiality and protection prescribed by national law are ensured.

Article 4

1. All animals on a holding born after 1 January 1998 or intended for intra-Community trade after 1 January 1998 shall be identified by an eartag approved by the competent authority, applied to each ear. Both eartags shall bear the same unique identification code, which makes it possible to identify each animal individually together with the holding on which it was born. By way of derogation from the above requirement, animals born before 1 January 1998 which are intended for intra-Community trade after that date may be identified in accordance with Directive 92/102/EEC until 1 September 1998. By way of further derogation from the above requirement, animals born before 1 January 1998 which are intended for intra-Community trade after that date with a view to immediate slaughter may be identified in accordance with Directive 92/102/EEC until 1 September 1999. Bovine animals intended for cultural and sporting events (with the exception of fairs and exhibitions) may, instead of by an eartag, be identified by an identification system offering equivalent guarantees that has been recognised by the Commission.

2. The eartag shall be applied within a period to be determined by the Member State as from the birth of the animal and in any case before the animal leaves the holding on which it was born. That period may not be longer than 30 days up to and including 31 December 1999, and not longer than 20 days thereafter.

However, at the request of a Member State and in accordance with the procedure referred to in Article 10, the Commission may determine the circumstances in which Member States may extend the maximum period.

No animal born after 1 January 1998 may be moved from a holding unless it is identified in accordance with this Article.

3. Any animal imported from a third country which has passed the checks laid down in Directive 91/496/EEC and which remains within Community territory shall be identified on the holding of destination by an eartag complying with the requirements of this Article, within a period to be determined by the Member State of at most 20 days of undergoing the aforesaid checks, and in any event before leaving the holding.

However, it is not necessary to identify the animal if the holding of destination is a slaughterhouse situated in the Member State where such checks are carried out and the animal is slaughtered within 20 days of undergoing the checks.

The original identification established by the third country shall be recorded in the computerised database provided for in Article 5 or, if this is not yet fully operational, in the registers provided for in Article 3, together with the identification code allocated to it by the Member State of destination.

4. Any animal from another Member State shall retain its original eartag.

5. No eartag may be removed or replaced without the permission of the competent authority.

6. The eartags shall be allocated to the holding, distributed and applied to the animals in a manner determined by the competent authority.

7. Not later than 31 December 2001 the Parliament and Council, acting on the basis of a report from the Commission accompanied by any proposals and in accordance with the procedure provided for in Article 95 of the Treaty, shall decide on the possibility of introducing electronic identification arrangements in the light of progress achieved in this field.

Article 5

The competent authority of the Member States shall set up a computerised database in accordance with Articles 14 and 18 of Directive 97/12/EC.

The computerised databases shall become fully operational no later than 31 December 1999, after which they shall store all data required pursuant to the aforementioned Directive.

Article 6

1. As from 1 January 1998, the competent authority shall, for each animal which has to be identified in accordance with Article 4, issue a passport within 14 days of the notification of its birth, or, in the case of animals imported from third countries, within 14 days of the notification of its re-identification by the Member State concerned in accordance with Article 4(3). The competent authority may issue a passport for animals from another Member State under the same conditions. In such cases, the passport accompanying the animal on its arrival shall be surrendered to the competent authority, which shall return it to the issuing Member State.

However, at the request of a Member State and in accordance with the procedure referred to in Article 10, the Commission may determine the circumstances under which the maximum period may be extended.

2. Whenever an animal is moved, it shall be accompanied by its passport.

3. By way of derogation from the first sentence of paragraph 1 and from paragraph 2, Member States:

— which have a computerised database which the Commission deems to be fully operational before 1 January 2000 in accordance with Article 5 may determine that a passport is to be issued only for animals intended for intra-Community trade and that those animals shall be accompanied by their passports only when they are moved from the territory of the Member State concerned to the territory of another Member State, in which case the passport shall contain information based on the computerised database.

  In these Member States, the passport accompanying an animal imported from another Member State shall be surrendered to the competent authority on its arrival,

— may until 1 January 2000 authorise the issue of collective animal passports for herds moved within the Member State concerned provided that such herds have the same origin and destination and are accompanied by a veterinary certificate.

4. In the case of the death of an animal, the passport shall be returned by the keeper to the competent authority within seven days after the death of the animal. If the animal is sent to the slaughterhouse, the operator of the slaughterhouse shall be responsible for returning the passport to the competent authority.

5. In the case of animals exported to third countries, the passport shall be surrendered by the last keeper to the competent authority at the place where the animal is exported.

Article 7

1. With the exception of transporters, each keeper of animals shall:

— keep an up-to-date register,

— once the computerised database is fully operational, report to the competent authority all movements to and from the holding and all births and deaths of animals on the holding, along with the dates of these events, within 15 days and, as from 1 January 2000, within seven days of the event occurring. However, at the request of a Member State and in accordance with the procedure referred to in Article 10, the Commission may determine the circumstances in which Member States may extend the maximum period.

2. Where applicable and having regard to Article 6, each animal keeper shall complete the passport immediately on arrival and prior to departure of each animal from the holding and ensure that the passport accompanies the animal.

3. Each keeper shall supply the competent authority, upon request, with all information concerning the origin, identification and, where appropriate, destination of animals, which he has owned, kept, transported, marketed or slaughtered.

4. The register shall be in a format approved by the competent authority, kept in manual or computerised form, and be available at all times to the competent authority, upon request, for a minimum period to be determined by the competent authority but which may not be less than three years.

Article 8

Member States shall designate the authority responsible for ensuring compliance with this Title. They shall inform each other and the Commission of the identity of this authority.

Article 9

Member States may charge to keepers as referred to in Article 2 the costs of the systems referred to in Article 3 and of the controls referred to in this Title.

Article 10

Without prejudice to Article 8 of Council Decision 1999/468/EC [2], the Commission shall adopt detailed rules for the implementation of this Title in accordance with the procedure laid down in Article 13 of Council Regulation (EC) 1258/1999 [3]. These detailed rules shall cover in particular:

(a) provisions concerning eartags;

(b) provisions concerning the passport;

(c) provisions concerning the register;

(d) minimum level of controls to be carried out;

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[2] OJ L 184, 17.7.1999, p. 23.

[3] OJ L 160, 26.6.1999, p. 103.

(e) application of administrative sanctions;

(f) transitional measures required to facilitate the application of the present Title.

TITLE II

LABELLING OF BEEF AND BEEF PRODUCTS

Article 11

An operator or an organisation, as defined in Article 12, which:

— is required, by virtue section I of this Title, to label beef at the point of sale and/or,

— wishes, by virtue of section II of this Title, to label beef at the point of sale in such a way as to provide information, other than that laid down by Article 13, concerning certain characteristics or production conditions of the labelled meat or of the animal from which it derives,

shall do so in accordance with this Title.

However, this Title shall apply without prejudice to the provisions laid down in Council Directive 79/112/EEC.

Article 12

For the purposes of this Title, the following definitions shall apply:

— 'beef' shall mean all products falling within CN codes 0201, 0202, 0206 10 95 and 0206 29 91,

— 'labelling' shall mean the attachment of a label to an individual piece or pieces of meat or to their packaging material, including the supply of information to the consumer at the point of sale,

— 'organisation' shall mean a group of operators from the same or different parts of the beef trade.

Section I

Compulsory EC beef labelling system

Article 13

General rules

1. Operators and organisations marketing beef in the Community shall label it in accordance with the provisions of this Article.

The compulsory labelling system shall ensure a link between, on the one hand, the identification of the carcass, quarter or pieces of meat and, on the other hand, the individual animal or, where this is sufficient to enable the accuracy of the information on the label to be checked, the group of animals concerned.

2. The label shall contain the following indications:

— a reference number or reference code ensuring the link between the meat and the animal or animals. This number may be the identification number of the individual animal from which the beef was derived or the identification number relating to a group of animals,

— the approval number of the slaughterhouse at which the animal or group of animals was slaughtered and the region or Member State or third country in which the slaughterhouse is established. The indication shall read: 'Slaughtered in [name of the region or Member State or third country] [approval number]',

— the approval number of the de-boning hall at which the carcass or group of carcasses were de-boned and the region or Member State or third country in which the de-boning hall is established. The indication shall read: 'De-boned in: [name of the region or Member State or third country] [approval number]',

— the category of animal or animals from which the beef was derived,

— date of slaughter of the animal or group of animals from which the beef was derived,

— ideal minimum maturation period of the beef.

3. However, Member States where sufficient details are available in the identification and registration system for bovine animals, provided for in Title I, may decide that, for beef from animals born, raised and slaughtered in the same Member State, supplementary items of information must also be indicated on labels.

4. A compulsory system as provided for in paragraph 3 must not lead to any disruption of trade between the Member States.

The implementation arrangements applicable in those Member States intending to apply the provisions of paragraph 3 shall require prior approval from the Commission.

5. As from 1 January 2003, operators and organisations shall indicate also on the labels:

— Member State, region or holding, or third country, of birth,

— all Member States, regions or holdings, or third countries, where fattening took place,

— Member State, region or slaughterhouse, or third country, where slaughter took place,

— Member State, region or de-boning hall, or third country, where de-boning took place.

However, where the beef is derived from animals born, raised, slaughtered and de-boned:

— in the same Member State, the indication may be given as either 'Origin: [name of Member State]', or 'Origin: EC';

— in more than one Member State, the indication may be given as either 'Origin: EC', or 'Origin: more than one Member State of the EC';

— in one or more Member State and one or more third country, the indication may be given as 'Origin: EC and Non-EC';

— in one or more third country, the indication may be given as either 'Origin: [name of third country or countries]', or 'Origin: Non-EC'.

Article 14

Derogations from the Compulsory labelling system

1. By way of derogation from Article 13(2), the first three indents of Article 13(5) and Article 13(6), an operator or organisation producing minced beef, beef trimmings or cut beef shall at least indicate on the label the Member States, regions or de-boning halls, or third countries, where production of the beef took place.

Where this beef is produced:

— in the same region or Member State, the indication may be given as either 'Produced in: [name of region or Member State]', or 'Produced in the EC',

— in more than one Member State, the indication may be given as either 'Produced in: [names of Member States]' or 'Produced in the EC',

— in one or more Member State and one or more third country, the indication may be given as either 'Produced in: [names of Member States and third countries]' or 'Produced in EC and Non-EC countries',

— in one or more third country, the indication may be given as either 'Produced in: [name of third country or countries]', or 'Produced in Non-EC countries',

2. By way of derogation from the sixth indent of Article 13(2), an operator or organisation may label veal without indicating the minimum maturation of the meat.

Article 15

Compulsory labelling for beef from third countries

By way of derogation from Article 13, beef imported into the Community, for which all the information provided for in Article 13 is not available, shall be labelled with the indication: 'Origin: Non-EC' or 'Slaughtered in: [name of third country]'.

Article 16

Beef traceable to the individual animal

An operator or organisation that ensures a link between the identification of the beef and the individual animal from which the beef was derived, shall be entitled to label beef with a specific logo.

Section II

Voluntary labelling system

Artikel 17

General rules

1. For labels containing indications other than those provided for in Section I of this Title, each operator or organisation shall submit a specification for information to the competent authority of each Member State in which production or sale of the beef in question takes place. Such prior notification shall be made at least one month before labelling of beef takes place. The competent authority may also establish specifications to be used in the Member State concerned, provided that use thereof is not compulsory.

Voluntary labelling specifications shall indicate:

— the information to be included on the label,

— the measures to be taken to ensure the accuracy of the information,

— the control system which will be applied at all stages of production and sale, including the controls to be carried out by an independent body recognised by the competent authority and designated by the operator or the organisation. These bodies shall comply with the criteria set out in European Standard EN/45011,

— in the case of an organisation, the measures to be taken in relation to any member which failed to comply with the specifications.

Member States may decide that controls by an independent body can be replaced by controls by a competent authority. The competent authority shall in that case have at its disposal the qualified staff and resources necessary to carry out the requisite controls.

The costs of controls provided for under this Title shall be borne by the operator or organisation using the labelling system.

2. A specification shall also ensure a link between, on the one hand, the identification of the carcass, quarter or pieces of meat and, on the other hand, the individual animal or, where this is sufficient to enable the accuracy of the information on the label to be checked, the animals concerned.

3. A label shall provide information that:

— has been the subject of prior notification to the competent authority;

— is correct and verifiable in accordance with the specification as transmitted to the competent authority;

— is clear, not misleading and is common to any beef which is mixed from different animals.

4. If, within one month from the day following the date of submission of the specification, the competent authority has not raised objection to nor requested supplementary information on the specification, the operator or organisation concerned shall be entitled to label beef, in accordance with the specification, provided that the label contains its name or logo.

5. Where the production and/or sale of beef takes place in two or more Member States, the competent authorities of the Member States shall:

— assist one another mutually to ensure effective interchange of information on the labelling specifications operating in any other Member State;

— recognise the specifications operating in any other Member State.

Article 18

Voluntary labelling system for beef from third countries

1. Where the production of beef takes place, in full or in part, in a third country, operators and organisations shall be entitled to label beef according to this Section on condition that they have previously submitted their specifications to the competent authority, designated for that purpose by each third country concerned, and that the competent authority has not raised objection nor requested further information on the specification within one month of having received the specification.

2. The validity within the Community of any specification operating in a third country shall be subject to prior notification by the third country to the Commission of:

— the competent authority which has been designated;

— the procedures and criteria to be followed by the competent authority when examining the specification;

— each operator and organisation whose specification was accepted by the competent authority.

The Commission shall transmit these notifications to the Member States.

Where, on the basis of the above notifications, the Commission reaches the conclusion that the procedures and/or criteria applied in a third country are not equivalent to the standards set out in this Regulation, the Commission shall, after consultation with the third country concerned, decide that specifications from that third country shall not be valid within the Community.

Article 19

Sanctions

Without prejudice to any action taken by the organisation itself or the independent control body provided for in Article 17, where it is shown that an operator or organisation has failed to comply with the specification referred to in Article 17(1), the Member State may impose supplementary conditions to be respected if its label is to be maintained.

Section III

General Provisions

Article 20

Detailed rules

1. Without prejudice to Article 8 of Council Decision 1999/468/EC, the Commission shall adopt, in accordance with the procedure laid down in Article 43 of Council Regulation (EC) No 1254/1999, detailed rules for the application of this Title and, in particular,

— definition of the maximum number of animals in a group, referred to in Article 13,

— definition of the categories of animals, referred to in the fourth indent of Article 13(2),

— definition of the minced beef, beef trimmings or cut beef, referred to in Article 14(1),

— definition of the logo, referred to in Article 16,

— definition of specific indications that may be put on labels.

2. The Commission shall also adopt, in accordance with the same procedure:

(a) measures required to facilitate the transition from the application of Regulation (EC) No 820/97 to application of the present Title;

(b) measures required to resolve specific practical problems. Such measures, if duly justified, may derogate from certain parts of this Title.

Article 21

Designation of competent authorities

Member States shall designate the competent authority or authorities responsible for implementing this Title, no later than six months after the entry into force of this Regulation.

TITLE III

COMMON PROVISIONS

Article 22

1. Member States shall take all the necessary measures to ensure compliance with the provisions of this Regulation. The controls provided for shall be without prejudice to any controls, which the Commission may carry out by analogy with Article 9 of Regulation (EC, Euratom) No 2988/95.

Any sanctions imposed by the Member State shall be proportionate to the gravity of the breach. The sanctions may involve, where justified, a restriction on movement of animals to or from the holding of the keeper concerned.

2. Whenever uniform application of the requirements of this Regulation renders it necessary, veterinary experts from the Commission may, in conjunction with the competent authorities:

(a) verify that the Member States are complying with the said requirements;

(b) make on-the-spot checks to ensure that the checks are carried out in accordance with this Regulation.

3. A Member State in whose territory an inspection is made shall provide the veterinary experts from the Commission with any assistance they may require in the performance of their tasks.

The outcome of the checks made must be discussed with the competent authority of the Member State concerned before a final report is drawn up and circulated.

4. Where the Commission deems that the outcome of checks so justifies, it shall review the situation within the Standing Veterinary Committee. It may adopt the necessary decisions in accordance with the procedure laid down in Article 22A.

5. The Commission shall monitor developments; in the light of such developments and in accordance with the procedure laid down in Article 22A it may amend or repeal the decisions referred to in paragraph 3.

6. Detailed rules for the application of this Article shall be adopted, where necessary, in accordance with the procedure laid down in Article 22A.

Article 22A

1. The Commission shall be assisted by the Standing Veterinary Committee established by Decision 68/361/EEC in accordance with the procedure laid down in paragraph 2 below.

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 205(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. If the European Parliament indicates, in a Resolution setting out the grounds on which it is based, that draft implementing measures, the adoption of which is contemplated and which have been submitted to a committee pursuant to the present Regulation adopted under Article 251 of the Treaty, would exceed the implementing powers provided for in this Regulation, the Commission shall re-examine the draft measures. Taking the Resolution into account and within the time-limits of the procedure under way, the Commission may submit new draft measures to the committee, continue with the procedure or submit a proposal to the European Parliament and the Council on the basis of the Treaty. The Commission shall inform the European Parliament and the committee of the action which it intends to take on the Resolution of the European Parliament and of its reasons for doing so.

4. The Commission shall, without prejudice to paragraph 3, adopt the measures envisaged if they are in accordance with the opinion of the committee.

5. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken and shall inform the European Parliament.

6. If the European Parliament considers that a proposal submitted by the Commission pursuant to the Regulation adopted in accordance with the procedure laid down in Article 251 of the Treaty exceeds the implementing powers provided for in this Regulation, it shall inform the Council of its position.

7. The Council may, where appropriate in view of any such position, act by qualified majority on the proposal, within three months from the date of referral to the Council.

If within that period the Council has indicated by qualified majority that it opposes the proposal, the Commission shall re-examine it. It may submit an amended proposal to the Council, re-submit its proposal or present a legislative proposal on the basis of the Treaty.

If on the expiry of that period the Council has neither adopted the proposed implementing act nor indicated its opposition to the proposal for implementing measures, the proposed implementing act shall be adopted by the Commission.

Article 23

1. Regulation (EC) No 820/97 is hereby repealed.

2. References to Regulation (EC) No 820/97 shall be construed as references to this Regulation and should be read in accordance with the correlation table in Annex I.

Article 24

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

It shall be applicable from [one month after the day of its entry into force].

ANNEX

CORRELATION TABLE

Regulation (EC) No 820/97	This Regulation
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8	Article 8
Article 9	Article 9
Article 10	Article 10
Article 11	Article 24
Article 12	Article 11
Article 13	Article 12
Article 14(1)	Article 17(1)
Article 14(2)	Article 17(2)
Article 14(3)	Article 17(5)
Article 14(4)	Article 17(4)
Article 15	Article 18
Article 16(1)	Article 17(3)
Article 16(2)	Article 17(3)
Article 16(3)	Article 13(2), first indent
Article 17	Article 19
Article 18	Article 20
Article 19	—
Article 20	Article 21
Article 21	Article 22
Article 22	Article 24

Proposal for a European Parliament and Council Regulation amending Council Regulation (EC) No 820/97, establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products

(1999/C 376 E/08)

COM(1999) 487 final — 1999/0205(COD)

(Submitted by the Commission on 27 Oktober 1999)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152 thereof,

Having regard to the proposal from the Commission,

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

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) Article 19 of Council Regulation (EC) No 820/97, establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products [1], lays down that a compulsory beef labelling system shall be introduced, which shall be obligatory in all Member States, from 1 January 2000 onwards. On the basis of a Commission proposal, the same Article also states that the general rules for that compulsory system shall be decided before that date.

(2) The Commission has submitted to the Council a proposal for a regulation replacing Regulation (EC) No 820/97 and including the general rules for the compulsory beef labelling system. The procedures required for the adoption of that regulation are not likely to be completed before 1 January 2000.

(3) In principle, the consequence of not adopting a new regulation would be that the compulsory system, based on origin, would immediately come into force with no general rules to guide it. This would create a very uncertain and unsatisfactory situation for beef operators not only in the Community but also in third countries.

(4) Such an unsatisfactory situation can be avoided by prolonging the current voluntary arrangements laid down in Council Regulation (EC) No 820/97 and by delaying the entry into force of the compulsory labelling system laid down in Article 19 of the same Regulation, by one year.

(5) The primary aim of the beef labelling system is protection of public health since it is intended to maintain and strengthen consumer confidence in beef which had been gravely affected by the BSE crisis. The appropriate legal basis for this Regulation is therefore Article 152 of the Treaty.

(6) It is therefore necessary to amend Council Regulation (EC) No 820/97.

HAVE ADOPTED THIS REGULATION:

Article 1

Article 19 Council Regulation (EC) No 820/97 is hereby replaced by the following:

'*Article 19*

1. A compulsory beef-labelling system shall be introduced which shall be obligatory in all Member States from 1 January 2001 onwards. However, this compulsory system shall not exclude the possibility for a Member State to decide to apply the system merely on an optional basis to beef sold in that same Member State. The labelling system provided for in this Regulation shall apply until 31 December 2000.

On the basis of the report provided for in paragraph 3, the Parliament and the Council, in accordance with the procedure provided for in Article 152 of the Treaty, shall therefore take a decision before 1 January 2001 on the general rules for a compulsory beef-labelling system to apply as from that date, in accordance with the Community's international commitments.

2. Save where otherwise decided by the Parliament and the Council, the labelling system compulsory as from 1 January 2001 shall, in accordance with the Community's international commitments, in addition to the labelling information referred to in Article 16(3), also require indication of the Member State or third country where the animal from which the beef is derived was born, the Member States or third countries where the animal was raised and the Member State or third country where the animal was slaughtered.

3. Member States shall submit to the Commission, by 1 May 1999, reports on the implementation of the labelling system for beef. The Commission shall submit to the European Parliament and the Council a report on the situation regarding the implementation of beef labelling systems in the different Member States.

4. However, Member States where there is a sufficiently developed identification and registration system for bovine animals may before 1 January 2001 impose a compulsory labelling system for beef from animals born, fattened and slaughtered on their territory. Furthermore, they may decide that one or more of the items of information referred to in Article 16(1) and (2) must be indicated on labels.

[1] OJ L 117, 7.5.1997, p. 1.

5. A compulsory system as provided for in paragraph 4 must not lead to any disruption of trade between the Member States. The implementation arrangements applicable in those Member States intending to apply the provisions of paragraph 4 shall require prior approval from the Commission.

6. By 1 January 2001, the Parliament and the Council, in accordance with the procedure provided for in Article 152 of the Treaty, shall take a decision as to whether compulsory indication of data other than those provided for in paragraph 2 and extension of the scope of this Regulation to products other than those indicated in the first indent of Article 13 are possible and desirable.'

Article 2

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

It shall be applicable from 1 January 2000.

Proposal for a Council Regulation (EC) establishing a Community framework for the collection and management of the fisheries data needed to conduct the common fisheries policy

(1999/C 376 E/09)

(Text with EEA relevance)

COM(1999) 541 final — 1999/0218(CNS)

(Submitted by the Commission on 27 October 1999)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

(1) Whereas Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture [1] as last amended by Regulation (EC) No 1181/98 [2], provides for regular assessments by the Scientific, Technical and Economic Committee for Fisheries (hereinafter referred to as the STECF) of the situation as regards fishery resources, and its economic implications;

(2) Whereas the United Nations Food and Agriculture Organisation's Code of Conduct for Responsible Fisheries and the Agreement relating to the Conservation and Management of Straddling Fish Stocks both emphasise the need to develop research and data collection with a view to improving scientific knowledge;

(3) Whereas the Community must take part in the efforts undertaken in international waters to conserve fishery resources, notably in accordance with the provisions adopted by the regional fishery organisations;

(4) Whereas to conduct the scientific evaluations needed for the common fisheries policy (hereinafter referred to as the CFP) complete data must be collected on the biology of the fish stocks, on the fleets and their activities and on economic and social issues;

(5) Whereas the collection of this specific information should be coordinated with statistical data;

(6) Whereas priorities must be established at Community level, as must the procedures for data collection and processing within the Community, in order to ensure that the entire system is consistent and to optimise its cost-effectiveness by creating a stable multiannual framework;

(7) Whereas, rather than basic detailed data, scientific analyses primarily require aggregated data obtained by grouping and processing the detailed data at an appropriate level,

(8) Whereas the existing regulations in this area, in particular Council Regulations (EEC) Nos 3759/92 [3], 2847/93 [4] and (EC) Nos 685/95 [5] and 779/97 [6] and Commission Regulations (EC) Nos 2090/98 [7], 2091/98 [8] and 2092/98 [9] include provisions on the collection and management of data relating to fishing vessels, their activities and catches and on price monitoring, all of which must be taken into account if a comprehensive system is to be established;

(9) Whereas the existing regulations do not cover all the activities for which data should be collected with a view to complete and reliable scientific analysis; whereas the regulations currently relate to data on an individual or global level but not data aggregated at the appropriate level for scientific evaluation; whereas new provisions must therefore be introduced to produce multiannual sets of aggregated data that can be accessed by the appropriate authorised users;

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[1] OJ L 389, 31.12.1992, p. 1.

[2] OJ L 164, 9.6.1998, p. 1.

[3] Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organisation of the market in fishery and aquaculture products (OJ L 388, 31.12.1992, p. 1).

[4] Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ L 261, 20.10.1993, p. 1) as last amended by Regulation (EC) No 2346/98 (OJ L 358, 31.12.1998, p. 5).

[5] Council Regulation (EC) No 685/95 of 27 March 1995 on the management of the fishing effort relating to certain Community fishing areas and resources (OJ L 71, 31.3.1995, p. 5).

[6] Council Regulation (EC) No 779/97 of 24 April 1997 introducing arrangements for the management of fishing effort in the Baltic Sea, (OJ L 113, 30.4.1997, p. 1).

[7] Commission Regulation (EC) No 2090/98 of 30 September 1998 concerning the fishing vessel register of the Community (OJ L 266, 1.10.1998, p. 36).

[8] Commission Regulation (EC) No 2091/98 of 30 September 1998 concerning the segmentation of the Community fishing fleet and fishing effort in relation to the multiannual guidance programmes (OJ L 266, 1.10.1998, p. 36).

[9] Commission Regulation (EC) No 2092/98 of 30 September 1998 concerning the declaration of fishing effort relating to certain Community fishing areas and resources (OJ L 266, 1.10.1998, p. 47).

(10) Whereas the evaluation of the sector's resources and economic situation requires biological data to be collected covering all catches, including discards, evaluations of available stocks which are independent of the commercial fisheries for a set of resources, the collection of information on catch capacities and the fishing efforts used, and data explaining price formation and enabling the economic situation of fishing enterprises and the processing industry to be assessed, as well as job trends in these sectors;

(11) Whereas, while priority must be given to the data strictly required for scientific evaluations, an extended programme to improve these evaluations must also be encouraged;

(12) Whereas the scientific community, those working in the fishing industry and the other groups concerned must be involved in drawing up the rules on data collection and management; whereas the appropriate bodies in which to gather the opinions required are the STECF, set up by Article 16 of Regulation (EEC) No 3760/92 and the Advisory Committee on Fisheries (hereinafter referred to as the ACF), set up by Commission Decision No 128/71/EEC [1];

(13) Whereas the Community programmes to collect and manage fisheries data must be implemented under the direct responsibility of the Member States; whereas they must accordingly draw up their national programmes in line with the Community programmes;

(14) Whereas the implementation of the national programmes to collect and manage fisheries data will require significant expenditure; whereas the worth of these programmes is only fully felt at Community level; whereas there should therefore be provision for a Community contribution to the Member States' costs; whereas this contribution is governed by Decision No . . . /1999/EC (Decision on assistance for data collection and studies);

(15) Whereas the aggregated data referred to in this Regulation must be fed into computerised databases so that they are accessible to authorised users and can be exchanged; whereas the transmission of specific scientific data is provided for by international organisations, in particular the International Council for the Exploration of the Sea and regional fisheries organisations;

(16) Whereas a procedure should be laid down for adopting detailed rules for the application of this Regulation, especially with a view to specifying the data that must be collected, as well as rules on the organisation of data handling and on transmission of the aggregated data and access thereto;

(17) Whereas the conduct of the collection and management programmes must be regularly evaluated; whereas the possibility of extending the activities covered should be examined in the medium term,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation establishes a Community framework for the collection and management of the data needed to evaluate the situation as regards fishery resources and the fishing industry.

The Member States shall be responsible for collecting the data.

Article 2

For the purposes of this Regulation:

(a) 'multiannual datasets' means data measuring the changes in a parameter over a number of years

(b) 'aggregated data' means the output resulting from the processing of data from a group of vessels for a given period and, where appropriate, for a specific geographic sector, with a view to obtaining an estimate representative of the whole.

(c) 'time-space grid' means the combination of a geographical area cut into equal sectors and a regular time interval.

TITLE I

General principles of data collection and management

Article 3

1. Member States shall establish multiannual datasets suitable for scientific analysis which incorporate biological and economic information and comprised of aggregated data. The methods used shall be stable in time and standardised across the Community and shall comply with relevant international provisions.

2. Without prejudice to their current data collection obligations under Community law, and in particular the Regulations referred to in points 2 and 3 of Article 4, the Member States shall:

(a) establish data collection programmes supplementary to these obligations, or for spheres of activity not covered by these obligations and based on sampling where necessary,

(b) specify the procedures that will produce aggregated data,

(c) ensure that the data used to produce aggregated data will remain available for any recalculations.

[1] Commission Decision of 25 February 1971 setting up an Advisory Committee on Fisheries (OJ L 68, 22.3.1971, p. 18) as last amended by Decision 1999/478/EC (OJ L 187, 20.7.1999, p. 70).

Article 4

The Member States shall collect data:

1. making it possible to discover or estimate the total volume of catches per stock, including discards where appropriate and, where necessary, to classify these catches by vessel group, geographic area and time period. The catches shall be subject to biological sampling. In addition, the Member States shall undertake scientific research at sea to evaluate the abundance and distribution of stocks independently of the data provided by the commercial fisheries in the case of stocks for which such evaluations are possible and useful;

2. needed to evaluate changes in fishing power and the activities of the various fishing fleets. To this end, summaries shall be prepared using the data collected under Council Regulations (EEC) No 2847/93 and (EC) Nos 685/95 and 779/97 and Commission Regulations (EC) Nos 2090/98, 2091/98 and 2092/98 and additional information shall be collected by the Member States, as needed;

3. that allow the prices associated with the various catches, and their formation, to be monitored. The data collected under Regulation (EEC) No 3759/92 shall be grouped and summarised. Additional data shall be collected to reflect all landings at ports inside and outside the Community, as well as imports;

4. needed to evaluate the economic state of the industry:

   (a) as regards the fishing fleets:

      — the income from sales and other revenue (subsidies, interest received, etc.)

      — the production costs

      — data enabling the jobs at sea to be classified.

   (b) as regards the fish processing industry:

      — production expressed in volume and value terms for product categories to be determined

      — the number of enterprises, and the number of jobs

      — changes in production costs, and their composition.

TITLE II

Procedure for establishing the content of Community and national programmes

Article 5

1. In accordance with the procedure laid down in Article 18 of Regulation (EEC) No 3760/92, the Commission shall define a minimum Community programme covering the information absolutely needed for scientific evaluations, and an extended Community programme that shall include, in addition to the information contained in the minimum programme, information likely to improve the scientific evaluations substantially. The programmes shall be drawn up for six-year periods, the first of which shall cover the years 2000 to 2005 inclusive.

2. Both the minimum and extended programmes shall specify, in particular:

(a) the headings covered, i.e.:

   — a list of the stocks involved,

   — the zones and resources to be covered by the scientific research at sea mentioned in point 1 of Article 4,

   — the parameters to be taken into account for monitoring changes in fishing power,

   — the fish species whose prices at unloading must be monitored, and any separation of a species into commercial categories,

   — the accounting headings or groups of headings that are relevant for the economic monitoring of fishing enterprises and the processing industry,

   — the type of jobs that should be monitored.

(b) the level of aggregation of the information collected:

   — the time-space grids, defining the size of the reference sectors and the time intervals to be used,

   — identification of the groups of vessels and/or ports, as well as the sectors of the fish processing industry; the vessel groups shall correspond to the subsegments of the Multiannual Guidance Programmes (MGPs) and be consistent across headings.

(c) where appropriate, the objectives quantified in terms of the precision of the evaluation or the intensity of the sampling programmes.

Article 6

1. Each Member State shall draw up for six-year periods and for the first time for the years 2000 to 2005 inclusive, a national programme of collection and management of data. The programme shall describe both the collection of the detailed data and the processing needed to produce aggregated data in accordance with the principles set out in Article 3. It shall specify the links between it and the Community programmes drawn up under Article 5.

2. Each Member State shall guarantee the reliability and stability of the data collection and processing procedures. It shall provide the Commission with the information needed to evaluate the means employed and the effectiveness of the procedures. Where they exist, appropriate international or European definitions and classification systems shall be used to collect and analyse the data.

3. Each Member State shall as far as possible include in its national programme the elements relating to it under the minimum Community programme as defined in Article 5.

4. Member States may apply to the Community for financial assistance for those parts of their national programmes that correspond to the minimum Community programme. Community financial assistance may also be sought for additional elements of the national programme corresponding to the extended Community programme, provided that the provisions concerning the minimum programme have been fully met.

The Community financial assistance shall be decided in accordance with the detailed rules laid down in Decision No . . . /1999/EC (Decision on financial assistance for data collection and studies).

Article 7

1. Member States shall ensure that the aggregated data relating to Community programmes are fed into computerised databases.

2. The data covered by this Regulation may be sent by the Member States to the competent international organisations, in accordance with their specific rules and the provisions adopted under Article 8(2)(b). The Commission shall be informed of any data transmissions and shall receive an electronic copy of the data, should it request one.

3. The Commission shall have computer access to all aggregated data relating to the Community programmes and may make the data available to the STECF.

4. Data transmitted or collected in whatever form under this Regulation shall be covered by professional secrecy and shall qualify for the same protection as that granted to similar data by the national legislation of the Member States who receive them, and by the corresponding provisions applying to the Community institutions.

TITLE III

Final provisions

Article 8

1. Detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 18 of Regulation (EEC) No 3760/92.

2. The detailed rules of application shall concern in particular:

(a) the programmes referred to in Article 5(1);

(b) the organisation of data handling:

— the rules on data transmission, including the transmission of scientific data to international organisations,

— the criteria for interrogating databases and the minimum standards needed to ensure authorised users have access to the data,

— the data that will be, where appropriate, grouped under the Commission's direct responsibility,

— the provisions guaranteeing confidentiality in accordance with Article 7(4).

3. Without prejudice to paragraph 1, the programmes referred to in Article 5(1) shall be adopted after the STECF and the ACF have been consulted.

Article 9

1. The Commission, in association with the STECF and the ACF, shall annually examine the progress of the national programmes in the Management Committee for Fisheries and Aquaculture.

2. On the basis of information supplied by the Member States, and having consulted the STECF, the Commission shall present to the European Parliament and the Council, at three-yearly intervals and for the first time by 31 December 2002, a report evaluating the measures taken by each Member State, the appropriateness of the methods used and the results achieved as regards the data collection and management referred to in this Regulation.

3. By 31 December 2002 the Commission shall review whether it is appropriate to extend the range of data collected under this Regulation. To this end the Member States and the Commission may undertake studies and exploratory projects in areas that are significant for the CFP yet not covered by Article 4, in particular aquaculture, the relationship of fisheries' and aquaculture with the environment and the capacity of fishing and aquaculture industries to create jobs. These studies and projects may receive Community financial assistance in accordance with the detailed rules laid down in Decision No . . . /1999/EC (Decision on financial assistance for data collection and studies).

4. On the basis of the report and analyses provided for in paragraphs 2 and 3, and taking account of the changing needs of the CFP, the Commission shall decide, by 31 December 2002, whether an amendment to this Regulation is needed.

Article 10

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

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

Proposal for a Council Decision on the conclusion of an agreement between the European Community and the Kingdom of Norway on the participation of Norway in the work of the European Monitoring Centre for Drugs and Drug Addiction

(1999/C 376 E/10)

(Text with EEA relevance)

COM(1999) 496 final — 1999/0203(CNS)

(Submitted by the Commission on 28 October 1999)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 in conjunction with the second sentence of the first sub-paragraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Council Regulation (EEC) No 302/93 of 8 February 1993 on the establishment of a European Monitoring Centre for Drugs and Drug Addiction [1], as amended by Regulation (EC) No 3294/94 [2], provides, in its Article 13, that the Centre is to be open to the participation of non-Community countries which share the Community's interests and those of its Member States in the Centre's objectives and work.

(2) The agreement between the Community and Norway on the participation of the latter in the European Monitoring Centre for Drugs and Drug Addiction, negotiated, on behalf of the European Community, by the Commission should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The agreement between the European Community and the Kingdom of Norway on the participation of Norway in the work of the European Monitoring Centre for Drugs and Drug Addiction is approved on behalf of the Community.

The text of the agreement is attached to this Decision.

Article 2

The President of the Council is authorised to designate the person who shall be empowered to sign the agreement in order to bind the Community and to give the notification by means of the diplomatic note provided for in Article 12 of the agreement.

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[1] OJ L 36, 12.2.1993, p. 1.

[2] OJ L 341, 30.12.1994, p. 7.

Draft — Agreement between the European Community and the Kingdom of Norway on the participation of Norway in the work of the European Monitoring Centre for Drugs and Drug Addiction

THE CONTRACTING PARTIES,

Aware of the need for international cooperation to combat the threat of drugs and drug addiction in society;

Reaffirming the very close cultural, commercial and social links historically established between the European Union and Norway, especially the economic, political and juridical links established through the European Economic Area Agreement;

Considering that the European Community concluded, by Decision 90/611/EEC [1], the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances, hereinafter referred to as the Vienna Convention, and deposited a declaration of competence regarding Article 27 thereof [2]; and considering that Norway ratified the Vienna Convention on 14 November 1994;

Considering that the European Community has established, by Council Regulation (EEC) No 302/93 [3] ('the Regulation'), the European Monitoring Centre for Drugs and Drug Addiction ('the Centre');

Whereas the Regulation provides in its Article 13 that the Centre shall be open to the participation of those non-Community countries which share the Community's interests and those of its Member States; whereas Norway has made a request to participate;

Whereas Norway shares the aims and objectives laid down for the Centre in the Regulation;

Whereas Norway subscribes to the description of the tasks of the Centre and to its work method and priority areas as described in the Regulation;

Whereas there exists in Norway an institution suitable to be linked to the European information network on drugs and drug addiction;

HAVE DECIDED TO CONCLUDE THE FOLLOWING AGREEMENT:

Article 1

Norway shall participate fully in the work of the Centre, on the terms set out in this Agreement.

Article 2

European information network on drugs and drug addiction (Reitox)

1. Norway shall be linked to the European information network on drugs and drug addiction (Reitox).

2. Norway shall notify the Centre of the main elements of its national information network within 28 days of the entry into force of this Agreement, including its national monitoring centre, and name any other specialised centres which could make a useful contribution to the Centre's work.

3. A specialised centre shall be designated in Norway as a national focal point, by a unanimous decision of the members of the Management Board.

Article 3

Management Board

The Management Board of the Centre shall invite a representative of Norway to participate in its meetings. The representative shall participate fully without the right to vote. Nevertheless, the Management Board may convoke exceptionally a meeting restricted to representatives of Member States and of the European Commission on issues of interest particular to the Community and its Member States.

The Management Board, in session with representatives of Norway, will lay down the detailed arrangements concerning the participation of Norway in the work of the Centre.

[1] OJ L 326, 24. 11.1990, p. 56.

[2] OJ L 326, 24.11.1990, p. 57.

[3] OJ L 36, 12.2.1993, p. 1.

Article 4

Scientific Committee

The Management Board of the Centre shall invite a representative of Norway to participate fully in the meetings of the Scientific Committee without the right to vote.

Article 5

Budget

Norway will make a payment to the Centre equivalent to 5,5 % of the European Union's subsidy excluding the subsidy to the National focal points of the Reitox network.

Article 6

Protection and confidentiality of data

1. Where on the basis of this Agreement personal data which do not enable natural persons to be identified are forwarded by the Centre to Norwegian authorities in accordance with national law, such data may be used only for the stated purpose and under the conditions prescribed by the forwarding authority.

2. Data on drugs and drug addiction provided to the Norwegian authorities by the Centre may be published subject to compliance with Community and Norwegian rules on the dissemination and confidentiality of information. Personal data may not be published or made accessible to the public.

3. Designated specialised centres in Norway shall be under no obligation to provide information classified as confidential under Norwegian legislation.

4. In relation to data supplied by the Norwegian authorities to the Centre, the latter will be bound by the rules laid down in Article 6 of the Regulation.

Article 7

Legal status

The Centre shall have legal personality under Norwegian law and shall enjoy in Norway the most extensive legal capacity accorded to legal persons under Norwegian law.

Article 8

Liability

The liability of the Centre shall be governed by the rules laid down in Article 16 of the Regulation.

Article 9

Court of Justice

Norway recognises the jurisdiction of the Court of Justice of the European Communities over the Centre, as laid down in Article 17 of the Regulation.

Article 10

Privileges

Norway shall grant privileges and immunities to the Centre equivalent to those contained in the Protocol on the Privileges and Immunities of the European Communities.

Article 11

Staff regulations

By way of derogation from Article 12(2)(a) of the Conditions of employment of other servants of the European Communities, Norwegian nationals enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Centre.

Article 12

Entry into force

This Agreement shall enter into force on the first day of the second month following the date of receipt of the latter diplomatic note confirming that legal requirements of the respective Contracting Party concerning the entry into force of the Agreement have been fulfilled.

Article 13

Validity and termination

1. This agreement is concluded for an unlimited period.

2. Either Contracting Party may denounce this Agreement by a written notification to the other Contracting Party. The Agreement shall cease to be in force twelve months after the date of such notification.

Declaration by the Commission of the European Communities

The Commission will invite the European Monitoring Centre for Drugs and Drug Addiction, while preparing the budget, to take the fullest account of the comments made by Norway concerning its own contribution.