

English edition

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Price: EUR 24,50 <sup>(l)</sup> Text with EEA relevance

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

## II

(Preparatory Acts)

## COMMISSION

**Amended proposal for a European Parliament and Council Regulation (EC) amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code**

(2000/C 248 E/01)

COM(1999) 236 final — 98/0134(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 2 June 1999)

## INITIAL PROPOSAL

## AMENDED PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

HAVE ADOPTED THIS REGULATION:

## Article 1(4): Article 62(3)

'3. Exceptions to the requirement established in paragraph 2 may be laid down in accordance with the committee procedure, in particular where the declaration is made electronically.

Deleted

However, the right of access without prior warning of the national authorities or, where appropriate, of Community authorities, together with the obligation on the part of the operator to keep the proof for a minimum period shall be guaranteed. Implementing measures shall also be defined in accordance with the committee procedure.'

## Article 1(4a)(new): Article 77(2)

4(a) In Article 77, the present text becomes paragraph 1 and the following paragraph 2 is added:

'2. Where the customs declaration is made electronically, exceptions to the requirement laid down in Article 62(2) may be made in accordance with the Committee procedure.

However, the right of access without prior warning of the national authorities or, where appropriate, of Community authorities, together with the obligation on the part of the operator to keep the proof for a minimum period shall be guaranteed. Implementing measures shall also be defined in accordance with the Committee procedure.'

## Article 1(5): Article 115(4)

'4. paragraph 1 may be adopted in accordance with the Committee procedure.'

'4. Measures aimed at prohibiting, imposing conditions for or facilitating recourse to paragraph 1 may be adopted in accordance with the Committee procedure.'

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INITIAL PROPOSALAMENDED PROPOSAL

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## Article 1(7): Article 118(4)

'4. Specific time limits may be laid down in accordance with the committee procedure.'

Deleted

## Article 1(21a)(new: Article 220(2)(b)

The following is added to Article 220(2)(b):

'where the preferential status of the goods is established on the basis of a system of administrative cooperation involving the authorities of a third country, the issuance of a certificate by those authorities, should it prove to be incorrect, shall constitute an error within the meaning of the previous paragraph which could not reasonably have been detected, unless the exporter gave an incorrect account of the facts to the authorities in question; such an error shall be established, in particular, if the person liable provides proof that the exporter gave a correct account of the facts to the authorities issuing the certificate; the person liable may not, however, plead good faith if the Commission has published a notice in the *Official Journal of the European Communities* stating that there are grounds for doubt concerning the proper application of the preferential arrangements by the beneficiary country, unless that person has shown due care in obtaining other proof of the origin of the goods which gives grounds for preferential treatment; it falls to the Member States to take all appropriate steps to establish any liability on the part of the person liable for duty.'

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**Amended proposal for a Council Regulation (EC) on Community Design (¹)**

(2000/C 248 E/02)

(Text with EEA relevance)

COM(1999) 310 final — 93/0463(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 21 June 1999)

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(¹) OJ C 29, 31.1.1994, p. 20.

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**INITIAL PROPOSAL**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal (¹) from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee (²),

(1) Whereas the objectives of the Community as laid down in the Treaty include establishing an ever closer union among the peoples of Europe, fostering closer relations between the States belonging to the Community, and ensuring the economic and social progress of the Community countries by common action to eliminate the barriers which divide Europe; whereas to that end the Treaty provides for the establishment of an internal market and includes the abolition of obstacles to the free movement of goods and the institution of a system ensuring that competition in the common market is not distorted; whereas a unified system for obtaining a Community design to which uniform protection is given with uniform effect throughout the entire territory of the Community would further those objectives;

(2) Whereas only the Benelux countries have introduced a uniform design protection law; whereas the only other design protection that exists in the Community is a matter for the relevant national law and is confined to the territory of the Member State concerned; whereas there is no such relevant law in any one Member State at the present time; whereas identical designs may be protected differently in different Member States and for the benefit of different owners; whereas this inevitably leads to conflicts in the course of trade between Member States;

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**AMENDED PROPOSAL**

Unchanged

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

Unchanged

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(¹) OJ C 29, 31.1.1994, p. 20.

(²) OJ C 110, 2.5.1995, p. 12.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

(3) Whereas the substantial differences between Member States' design laws prevent and distort Community-wide competition between the producers of protected goods, because in comparison with domestic trade in, and competition between, products incorporating a design, trade and competition within the Community are prevented and distorted by the large number of applications, offices, procedures, laws, nationally circumscribed exclusive rights and the combined administrative expense with correspondingly high costs and fees for the applicant;

(4) Whereas the effect of design protection being limited to the territory of the individual Member States whether or not their laws are approximated, leads to a possible division of the internal market with respect to products incorporating a particular design in areas with different right owners, and hence constitutes an obstacle to the free movement of goods;

(5) Whereas this calls for the creation of a Community design right which is directly applicable in each Member State, and of a Community design authority with Community-wide powers, because only in this way will it be possible to obtain, through one application made to in accordance with a single procedure under one law, one design right for one area encompassing all Member States;

(6) Whereas it is thus for the Community to adopt measures to achieve those objectives, which cannot be achieved by the Member States acting individually and which by reason of the scale and the effects of the creation of a Community design right and a Community design authority can only be achieved by the Community;

(7) Whereas superior design is an important attribute of Community industries in competition with industries from other countries, and is in many cases decisive in the commercial success of the associated product; whereas enhanced protection for industrial design not only promotes the contribution of individual designers to the sum of Community excellence in the field, but also encourages innovation and development of new products and investment in their production; whereas a more accessible design-protection system adapted to the needs of the internal market is therefore essential for Community industries;

(8) Whereas such a design-protection system would constitute the prerequisite for seeking corresponding design protection in the most important export markets of the Community;

(5) Whereas this calls for the creation of a Community design right which is directly applicable in each Member State, and of a Community design authority with Community-wide powers, because only in this way will it be possible to obtain, through one application made to the Office for Harmonisation in the Internal Market (trade marks and design) in accordance with a single procedure under one law, one design right for one area encompassing all Member States;

Unchanged

(9) Whereas the substantive provisions of this regulation on design law, should be aligned with similar provisions in Directive 98/71/EC on the legal protection of designs <sup>(1)</sup>.

<sup>(1)</sup> OJ L 289, 28.10.1998, p. 28.

## INITIAL PROPOSAL

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(10) Whereas technological innovation should not be hampered by granting design protection to features dictated solely by a technical function; whereas it is understood that this does not entail that a design must have an aesthetic quality; whereas, likewise, the interoperability of products of different makes should not be hindered by extending protection to the design of mechanical fittings; whereas features of a design which are excluded from protection for those reasons should not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection;

(11) Whereas the mechanical fittings of modular products may nevertheless constitute an important element of the innovative characteristics of modular products and present a major marketing asset and therefore should be eligible for protection;

(12) Whereas full-scale approximation of the laws of the Member States on the use of protected design of component parts of complex products for repair purposes could not be achieved through Directive 98/71/EC on the legal protection of designs; whereas, within the framework of the Conciliation procedure on the said Directive, the Commission undertook to review the consequences of the provisions of the Directive three years after the implementation date of the Directive for, in particular, the industrial sectors which are most affected by the ongoing discussions on the issue of a repair clause for component parts of complex products; whereas, under these circumstances, it is appropriate to exclude the design of component parts of complex products from protection under this Regulation until the Council has decided its policy on this issue on the basis of a Commission proposal.

(13) Whereas the provisions of this Regulation are without prejudice to the application of the competition rules pursuant to Articles 81 and 82 of the Treaty.

(14) Whereas a Community design right should, serve the needs of all sectors of industry in the Community; whereas those sectors are many and varied.

(15) Whereas some of the sectors produce large numbers of designs for products frequently having a short market life where protection without the burden of registration formalities is an advantage and the duration of protection is of lesser significance; whereas on the other hand, there are sectors of industry which value the advantages of registration for the greater legal certainty it provides and which require the possibility of a longer term of protection corresponding to the foreseeable market life of their products.

(16) Whereas this calls for two forms of protection, one being a short-term unregistered design right and the other being a longer term registered design right.

Unchanged

(14) Whereas a Community design right should, as far as possible, serve the needs of all sectors of industry in the Community; whereas those sectors are many and varied.

Unchanged

## INITIAL PROPOSAL

## AMENDED PROPOSAL

(17) Whereas a registered Community design right requires the creation and maintenance of a register in which will be registered all those applications which comply with formal conditions and which have been accorded a date of filing; whereas the registration system should not be based upon substantive examination as to compliance with requirements for protection prior to registration, thereby keeping to a minimum the registration and other procedural burdens on applicants.

(18) Whereas a Community design right shall not be upheld unless the design is new in the sense that it is not identical to any other design previously made available to the public, and unless it also possesses an individual character in comparison with other designs.

(19) Whereas it is also necessary to allow the designer or his successor in title to test the products embodying the design in the market place before deciding whether the protection resulting from a registered Community design is desirable; whereas it is therefore necessary to provide that disclosures of the design by the designer or his successor in title, or abusive disclosures during a period of 12 months prior to the date of the filing of the application for a registered Community design should not be prejudicial in assessing the novelty or the individual character of the design in question;

(20) Whereas the exclusive nature of the right conferred by the registered Community design is consistent with its greater legal certainty; whereas it is appropriate that the unregistered Community design should, however, constitute a right only to prevent copying; whereas this right should also extend to trade in products embodying infringing designs.

(21) Whereas the enforcement of these rights is to be left to national laws and it is necessary therefore to provide for some basic uniform sanctions in all Member States; whereas these should make it possible, irrespective of the jurisdiction under which enforcement is sought, to stop the infringing acts.

(22) Whereas a procedure for hearing actions concerning validity of a registered Community design in a single place would bring savings in costs and time compared with procedures involving different national courts; whereas, if the single place were to be a court in the country where the design right holder is domiciled, undue costs and difficulties could still be encountered by a challenger to validity from another country.

(17) Whereas a registered Community design right requires the creation and maintenance of a register in which will be registered all those applications which comply with formal conditions and which have been accorded a date of filing; whereas the registration system should in principle not be based upon substantive examination as to compliance with requirements for protection prior to registration, thereby keeping to a minimum the registration and other procedural burdens on applicants.

Unchanged

(deleted)

## INITIAL PROPOSAL

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(23) Whereas it is necessary to provide safeguards including a right of appeal to a Board of Appeal, and ultimately to the Court of Justice of the European Communities; whereas such a procedure would assist the development of uniform interpretation of the requirements governing the validity of Community designs.

Unchanged

(24) Whereas it is a fundamental objective that the procedure for obtaining a registered Community design should present the minimum cost and difficulty to applicants, so as to make it readily available to small and medium-sized enterprises as well as to individual designers.

(25) Whereas sectors of industry producing large numbers of possibly short-lived designs over short periods of time of which only some may be eventually commercialised will find advantage in the unregistered Community design; whereas there is also a need for these sectors to have easier recourse to the registered Community design; whereas the option of combining a number of designs in one multiple application would satisfy that need.

(26) Whereas the normal publication following registration of a Community design could in some cases destroy or jeopardise the success of a commercial operation involving the design; whereas the facility of an adjournment of publication for a reasonable time affords a solution in such cases.

(27) Whereas it is essential that the rights conferred by the Community designs be enforced in an efficient manner throughout the territory of the Community; whereas specific rules concerning litigation based on Community designs must be provided in order to guarantee such a result; whereas for infringement actions and for actions for a declaration of invalidity a limitation in the number of national courts having jurisdiction may promote the specialisation of the judges; whereas to that end Member States should designate Community Design Courts.

(28) Whereas the litigation system should avoid as far as possible 'forum shopping'; whereas it is therefore necessary to establish clear rules of international jurisdiction.

(29) Whereas this Regulation does not preclude the application to designs protected by Community designs or other relevant laws of the Member States, such as those relating to design protection acquired by registration or those relating to unregistered design rights, trade marks, patents and utility models, unfair competition or civil liability;

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(30) Whereas, pending harmonisation of copyright law, it is important to establish the principle of cumulation of protection under the Community design and under copyright law, whilst leaving Member States free to establish the extent of copyright protection and the conditions under which such protection is conferred,

HAS ADOPTED THIS REGULATION:

## TITLE I

## GENERAL PROVISIONS

*Article 1***Community design**

1. Designs which comply with the conditions contained in this Regulation, hereinafter referred to as 'Community designs', shall be protected by a Community system of rights.

2. A design shall be protected under the terms of this Regulation:

(a) by an 'unregistered Community design'

(a) by an 'unregistered Community design', if made available to the public in the manner provided for in this Regulation;

(b) by a 'registered Community design', if registered in the manner provided for in this Regulation.

Unchanged

3. A Community design shall have a unitary character. It shall have equal effect throughout the Community; it shall not be registered, transferred or surrendered or be the subject of a decision declaring it invalid, save in respect of the whole Community. This principle and its implications shall apply unless otherwise provided in this Regulation.

*Article 2***Office**

The Office for Harmonisation in the Internal Market (trademarks and designs), hereinafter referred to as 'the Office', instituted by Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, hereinafter referred to as the 'Regulation on the Community Trademark', shall carry out the tasks entrusted to it by this Regulation.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

## TITLE II

Unchanged

## THE LAW RELATING TO DESIGNS

## Section 1

## Requirements for protection

## Article 3

## Definitions

For the purposes of this Regulation:

- (a) 'design' means the appearance of the whole or a part of a product resulting from the features of, the lines, contours, colours, shape and/or materials of the product itself and/or its ornamentation;
- (b) 'product' means any industrial or handicraft item, including *inter alia* parts intended to be assembled into a complex packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs.

(a) design means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape and/or materials of the product itself and/or its ornamentation;

(b) 'product' means any industrial or handicraft item, including *inter alia* parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs.

(c) 'complex product' means a product which is composed of multiple components, which can be replaced permitting disassembly and re-assembly of the product.

## Article 4

## requirements

1. A design shall be protected by a Community design to the extent that it is new and has individual character.
2. A design a product which constitutes a part of a complex shall only be considered to be new and to have individual character:

2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:

- (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter, and
- (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

3. 'Normal use' within the meaning of paragraph (2)(a) shall mean any use other than maintenance, servicing or repair.

## Article 5

## Novelty

Unchanged

A design shall be considered to be new if no identical design has been made available to the public:

- (a) in case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public,

## INITIAL PROPOSAL

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(b) in case of a registered Community design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

Designs shall be deemed to be identical if their features differ only in immaterial details.

*Article 6***Individual character**

1. A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design

Unchanged

1. A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public:

(a) in case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public,

(b) in case of a registered Community design, before the date of filing the application for registration of the design for which protection is claimed, or, if a priority is claimed, before the date of priority.

2. (deleted)

3. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

*Article 7***Date of reference**

(deleted)

*Article 8**Article 8***Disclosure**

1. For the purpose of applying Articles 5 and 6, a design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, before the date referred to in Articles 5(a) and 6(1)(a) or in Articles 5(b) and 6(1)(b), as the case may be, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

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2. A disclosure shall not be taken into consideration for the purpose of applying Articles 5 and 6 if a design for which protection is claimed under a Registered Community design has been made available to the public:

- (a) by the designer, his successor in title, or a third person as a result of information provided or action taken by the designer or his successor in title; and
- (b) during the 12-month period preceding the date of filing of the application or, if priority is claimed, the date of priority.

3. Paragraph 2 shall also apply if the design has been made available to the public as a consequence of an abuse in relation to the designer or his successor in title.

*Article 9***and designs of interconnections**

1. A Community design right shall not subsist in features of appearance

2. A Community design right shall not subsist in must necessarily be reproduced in exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected another product

3. Notwithstanding paragraph 2 a Community design right shall under the conditions set out in Articles 5 and 6 subsist in a design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

*Article 10***Designs contrary to public policy**

A Community design right shall not subsist in a design which is contrary to public policy or to accepted principles of morality.

*Article 9***Designs dictated by their technical function and designs of interconnections**

1. A Community design right shall not subsist in features of appearance of a product which are solely dictated by its technical function.

2. A Community design right shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

Unchanged

*Article 10***Designs contrary to public policy or morality**

Unchanged

## INITIAL PROPOSAL

## AMENDED PROPOSAL

*Article 10a***Transitional provision**

1. Until such time as amendments to this Regulation are adopted on a proposal from the Commission on this subject, a Community design shall not exist in a design applied to or incorporated in a product, which constitutes a component part of a complex product upon whose appearance the design is dependent.

2. The proposal from the Commission, referred to in paragraph 1, shall be submitted together with, and take into consideration, any changes which the Commission shall propose on the same subject pursuant to Article 18 of Directive 98/71/EC on the legal protection of designs (1).

**Section 2****Scope and term of protection***Article 11***Scope of protection**

1. The scope of the protection conferred by a Community design shall include any design which produce on the informed user a overall impression.

2. In assess the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration.

*Article 12***Commencement and term of protection of the unregistered Community design**

1. A design which meets the requirements under Section 1 shall be protected by an unregistered Community design for a period of three years as from the date

1. The scope of the protection conferred by a Community design shall include any design which does not produce on the informed user a different overall impression.

2. In assessing the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration.

(Unchanged)

1. A design which meets the requirements under Section 1 shall be protected by an unregistered Community design for a period of three years as from the date on which the design was first made available to the public within the Community.

2. For the purpose of applying paragraph 1 a design shall be deemed to have been made available to the public within the Community if it has been published following registration or otherwise, exhibited, used in trade or otherwise disclosed therein, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

(1) OJ L 289, 28.10.1998, p. 28.

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INITIAL PROPOSAL

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*Article 13***Commencement and term of protection of the registered Community design**

Upon registration by the Office, a design which meets the requirements under Section 1 shall be protected by a registered design for a period of five years as from the date of the filing of the application.

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AMENDED PROPOSAL

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Unchanged

Upon registration by the Office, a design which meets the requirements under Section 1 shall be protected by a registered Community design for a period of five years as from the date of the filing of the application. The right holder may have the term of protection renewed for one or more periods of five years each, up to a total term of 25 years from the date of filing.

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Section 3**Entitlement to the Community design***Article 14***Right to the Community design**

1. The right to the Community design shall vest in the designer or his successor in title.

2. a design is developed by an employee in the execution of his duties or following the instructions given by his employer, the right to the Community design shall vest in the employer, unless otherwise provided by contract.

Unchanged

2. However, where a design is developed by an employee in the execution of his duties or following the instructions given by his employer, the right to the Community design shall vest in the employer, unless otherwise provided by contract.

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Article 15**Plurality of designers**

If two or more persons have jointly developed a design, the right to the Community design shall vest in them jointly.

If two or more persons have jointly developed a design, the right to the Community design shall vest in them jointly. The conditions of exercise of this right shall be established by contractual agreement between co-owners or, failing this, by application of the law of the Member State where the exercise of the right is carried out.

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Article 16**Claims relating to the entitlement to a Community design**

1. If the right to an unregistered Community design is claimed by, or a registered Community design has been registered in the name of, a person who is not entitled to it under Article 14, the person entitled to it under that provision may, without prejudice to any other remedy which may be open to him, claim the Community design.

1. If the right to an unregistered Community design is claimed by, or a registered Community design has been registered in the name of, a person who is not entitled to it under Article 14, the person entitled to it under that provision may, without prejudice to any other remedy which may be open to him, claim to become recognised as the legitimate holder of the Community design.

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2. Where a person is jointly entitled to a Community design, that person may, in accordance with paragraph 1, claim to joint holder.

3. may be instituted only within a period of not more than two years after the date the Community design. This provision shall not apply if the Community design at the time when such design to him.

4. In case of a registered Community design, the shall be entered in the register:

2. Where a person is jointly entitled to a Community design, that person may, in accordance with paragraph 1, claim to become recognised as joint holder.

3. Legal proceedings under paragraph 1 may be instituted only within a period of not more than two years after the date on which the Community design came into existence. This provision shall not apply if the person who is not entitled to the Community design was in bad faith at the time when such design came into existence or was assigned to him.

4. In case of a registered Community design, the following shall be entered in the register:

- (a) the mention that legal proceedings under paragraph 1 have been instituted;
- (b) the final decision or any other termination of the proceedings;
- (c) any change in the ownership of the registered Community design resulting from the final decision.

## Article 17

## Unchanged

**Effects of a judgment on entitlement to a registered Community design**

1. Where there is a complete change of ownership of a registered Community design as a result of legal proceedings under Article 16(1), licences and other rights shall lapse upon the entering in the register of the person entitled.

2. If, before the institution of the legal proceedings under Article 16(1) has been registered, the holder of the registered Community design or a licensee has exploited the design within the Community or made serious and effective preparations to do so, he may continue such exploitation provided that he requests within the period prescribed by the implementing Regulation a non-exclusive licence from the new holder whose name is entered in the register. The licence shall be granted for a reasonable period and upon reasonable terms.

3. Paragraph 2 shall not apply if the right holder or the licensee was acting in bad faith at the time when he began to exploit the design or to make preparations to do so.

## Article 18

**Presumption in favour of the registered person**

The person in whose name the registered Community design, shall be deemed to be the person entitled in any proceedings before the Office.

The person in whose name the registered Community design is registered or, prior to registration, the person in whose name the application is filed, shall be deemed to be the person entitled in any proceedings before the Office.

## INITIAL PROPOSAL

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*Article 19***Right of the designer**

The designer shall have the right, as against the applicant for or the holder of a registered Community design, to be cited as such before the Office in the register. If the design is the result of team-work, the of the team may replace the citation of the individual designers.

## Section 4

**Effects of the Community design***Article 20***Rights conferred by the Community design**

The designer shall have the right, as against the applicant for or the holder of a registered Community design, to be cited as such before the Office and in the register. If the design is the result of team-work, the citation of the team may replace the citation of the individual designers.

Unchanged

1. A registered Community design shall confer on its holder the exclusive right to use it and to prevent any third party not having his consent from using it. The aforementioned use shall cover, in particular, the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

2. An unregistered Community design shall, however, confer on its holder the right to prevent the acts mentioned in paragraph 1 only if the use contested results from copying in bad faith the design protected.

3. Paragraph 2 shall also apply to a registered Community design subject to deferment of publication as long as the relevant entries in the Register and the file have not been made available to the public in accordance with Article 52 paragraph 4.

*Article 21*

(deleted)

**Rights conferred by the registered Community design***Article 22*

Unchanged

**Limitation of the rights conferred by a Community design**

1. The rights conferred by a Community design shall not be exercised in respect of:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes;

Unchanged

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(c) acts of reproduction for the purpose of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.

2. In addition, the rights conferred by a Community design shall not

- (a) the equipment on ships and aircraft registered in country when these temporarily enter the territory of the Community;
- (b) the importation in the Community of spare parts and accessories for the purpose of repairing such craft;
- (c) the execution of repairs on such craft.

## Article 23

**Use of a registered Community design for repair purposes**

## Article 24

**Exhaustion**

The rights conferred by a Community design shall not extend to acts relating to a product in which a design included within the scope of protection of the Community design is incorporated or to which it is applied, when the product has been put on the market in the Community by the holder of the Community design or with his consent.

## Article 25

**Rights of prior use in respect of a registered Community design**

The rights conferred by a registered Community design shall not become effective against any third person who can establish that:

- (a) before the date of filing the application; or
- (b) if a priority is claimed, before the date of priority,

he has, in good faith, commenced use within the Community — or has made serious preparations to that end — of a design included within the scope of protection of the registered Community design, which has been developed independently of the latter and which at such a person shall be entitled to exploit the design for the needs of the undertaking in which the use was effected or anticipated. That right cannot be transferred separately from the undertaking.

2. In addition, the rights conferred by a Community design shall not be exercised in respect of:

- (a) the equipment on ships and aircraft registered in another country when these temporarily enter the territory of the Community;

Unchanged

(deleted)

## Article 24

**Exhaustion of rights**

Unchanged

he has, in good faith, commenced use within the Community — or has made serious preparations to that end — of a design included within the scope of protection of the registered Community design, which has been developed independently of the latter and which at the date of filing or at the date of priority of the Community design, had not yet been made available to the public within the meaning of Article 12 paragraph 2. Such a person shall be entitled to exploit the design for the needs of the undertaking in which the use was effected or anticipated. That right cannot be transferred separately from the undertaking.

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## Section 5

Unchanged

**Invalidity***Article 26***Declaration of invalidity**

3. even after the Community design has lapsed or has been surrendered.

1. A registered Community design shall be declared invalid on application to the Office in accordance with the procedure in Titles VII and VIII or by a Community design Court on the basis of a counterclaim in infringement proceedings.

2. An unregistered Community design shall be declared invalid by a Community design Court on application to such a Court or on the basis of a counterclaim in infringement proceedings.

3. A Community design may be declared invalid even after the Community design has lapsed or has been surrendered.

*Article 27*

Unchanged

**Grounds for invalidity**

1. A Community design may be declared invalid only in the following cases:

(a) if the design

(a) if the design is not a design within the meaning of Article 3(a),

(b) if it does not fulfil the requirements of Articles 4 to 10a,

(c) if the right holder in the Community design is, by virtue of a court decision,

(c) if the right holder in the Community design is, by virtue of a court decision, not entitled to it under Articles 14 and 15,

(d) if the Community design is in conflict with a prior design which has been made available to the public after the date of filing of the application or, if priority is claimed, the date of priority of the Community design, and which is protected from a date prior to the said date by a registered Community design or an application for such a design, or by a registered design right of a Member State, or by an application for such a right,

(e) if a distinctive sign is used in a subsequent design, and Community law or the law of the Member State governing that sign confers on the right holder of the sign the right to prohibit such use,

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(f) if the design constitutes an unauthorised use of a work protected under the copyright law of a Member State,

(g) if the design constitutes an improper use of any of the items listed in Article 6ter of the Paris Convention for the Protection of Industrial Property, or of badges, emblems and escutcheons other than those covered by Article 6ter of the said Convention and which are of particular public interest in a Member State,

2. The ground provided for in paragraph 1(c) may be invoked solely by the person who is entitled to the Community design under Articles 14 and 15.

3. The grounds provided for in paragraph 1(d), (e) and (f) may be invoked solely by the applicant for or holder of the conflicting right. If the conflicting right is a right of a Member State and that Member State has availed itself of this option, the ground provided for in paragraph 1(d) may be also invoked by an appropriate authority designated by that Member State.

4. The ground provided for in paragraph 1(g) may be invoked solely by the person or entity concerned by the use. If the Member State whose public interest is at stake has availed itself of this option, this ground may be also invoked by an appropriate authority designated by that Member State.

5. By derogation from Article 1 paragraph 3, where the design is in breach of Article 10 and in the cases specified in paragraph 1(d), (e), (f) and (g), if the ground for invalidation obtains only in respect of one or some Member States, invalidity shall be declared only in respect of such a Member State or States.

6. A registered Community design which has been declared invalid pursuant to paragraph 1(b), (e), (f) or (g) may be maintained in an amended form, if in that form it complies with the requirements for protection and the identity of the design is retained. Maintenance in an amended form may include registration accompanied by a partial disclaimer by the holder of the registered Community design or entry in the Register or of a court decision declaring the partial invalidity of the registered Community design.

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*Article 28*

Unchanged

**Effects of invalidity**

1. A Community design which has been declared invalid shall be deemed not to have had, from the outset, the effects specified in this Regulation.

2. Subject to the national provisions relating either to claims for compensation for damage caused by negligence or lack of good faith on the part of the holder of the Community design, or to unjust enrichment, the retroactive effect of invalidity of the Community design shall not affect:

- (a) any decision on infringement which has acquired the authority of a final decision and been enforced prior to the invalidity decision;
- (b) any contract concluded prior to the invalidity decision, in so far as it has been performed before the decision; however, repayment, to an extent justified by the circumstances, of sums paid under the relevant contract, may be claimed on grounds of equity.

## TITLE III

## COMMUNITY DESIGNS AS OBJECTS OF PROPERTY

*Article 29***Dealing with Community designs as national design rights**

1. Save where Articles 30 to 34 provide otherwise, a Community design as an object of property shall be dealt with in its entirety, and for the whole area of the Community, as a national design right of the Member State in which:

- (a) the holder has his seat or his domicile on the relevant date; or
- (b) where subparagraph (a) does not apply, the holder has an establishment on the relevant date.

2. In the case of a registered Community design, paragraph 1 shall apply according to the entries in the register.

3. In the case of joint holders, if two or more of them fulfil the condition under paragraph 1(a) or, where that provision does not apply, the condition under paragraph 1(b), the Member State referred to in paragraph 1 shall be determined:

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- (a) in the case of an unregistered Community design, by reference to the relevant joint holder designated by them by common agreement;
- (b) in the case of a registered Community design, by reference to the first of the relevant joint holders in the order in which they are mentioned in the register.

4. Where paragraphs 1, 2 and 3 do not apply, the Member State referred to in paragraph 1 shall be the Member State in which the Office is situated.

**Article 30****Transfer****Article 30****Transfer of the registered Community design**

The transfer of a registered Community design shall be subject to the following provisions:

Unchanged

- (a) at the request of one of the parties, a transfer shall be entered in the register and published;
- (b) until such time as the transfer has been entered in the register, the successor in title may not invoke the rights arising from the registered Community design;
- (c) where there are time limits to be observed in dealings with the Office, the successor in title may make the corresponding statements to the Office once the request for registration of the transfer has been received by the Office;
- (d) all documents which require notification to the holder of the registered Community design shall be addressed to the person registered as holder or his representative, if one has been appointed.
- (d) all documents which by virtue of Article 70 require notification to the holder of the registered Community design shall be addressed by the Office to the person registered as holder or his representative, if one has been appointed.

**Article 31**

Unchanged

**Rights *in rem* on a registered Community design**

1. A registered Community design may be given as security or be the subject of rights *in rem*.
2. At the request of one of the parties, rights mentioned in paragraph 1 shall be entered in the register and published.

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*Article 32***Levy of execution on a registered Community design**

1. A registered Community design may be levied in execution.
2. As regards the procedure for levy of execution in respect of a registered Community design, the courts and authorities of the Member State determined in accordance with Article 29 shall have exclusive jurisdiction.
3. On request of one of the parties, levy of execution shall be entered in the register and published.

*Article 33***Bankruptcy or like proceedings**

1. Until such time as common rules for the Member States in this field enter into force, the only Member State in which a Community design may be involved in bankruptcy or like proceedings shall be that in which such proceedings are first brought under national law or conventions applicable in this field.
2. Where a registered Community design is involved in bankruptcy or like proceedings, an entry to that effect shall be made in the register at the request of the competent national authority and shall be published.

*Article 34***Licensing**

1. A Community design may be licensed for the whole or part of the Community. A licence may be exclusive or non-exclusive.

1(a). The holder may invoke the rights conferred by the Community design against a licensee who contravenes any provision in his licensing contract with regard to its duration, the form in which the design may be used, the range of the products for which the license granted and the quality of the products manufactured by the licensee.

Unchanged

2. Without prejudice to the provisions of the licensing contract, the licensee may bring proceedings for infringement of a Community design only if the right holder consents thereto. However, the holder of an exclusive licence may bring such proceedings if the right holder in the Community design, having been given notice to do so, does not himself bring infringement proceedings within an appropriate period.

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3. A licensee shall, for the purpose of obtaining compensation for damage suffered by him, be entitled to intervene in an infringement action brought by the right holder in a Community design.

4. In the case of a registered Community design, the grant or transfer of a licence in respect of such right shall, at the request of one of the parties, be entered in the register and published.

*Article 35***Effects vis-à-vis third parties**

1. The effects vis-à-vis third parties of the legal acts referred to in Articles 30, 31, 32 and 34 shall be governed by the law of the Member State determined in accordance with Article 29.

2. However, as regards registered Community designs, legal acts referred to in Article 30, 31 and 34 shall have effect only vis-à-vis third parties in all the Member States after entry in the register. Nevertheless, such an act, before it is so entered, shall have effect vis-à-vis third parties who have acquired rights in the registered Community design after the date of that act but who knew of the act at the date on which the rights were acquired.

3. Paragraph 2 shall not apply to a person who acquires the registered Community design or a right relating to it by way of transfer of the whole of the undertaking or by any other universal succession.

4. Until such time as common rules for the Member States in the field of bankruptcy enter into force, the effects vis-à-vis third parties of bankruptcy or like proceedings shall be governed by the law of the Member State in which such proceedings are first brought under national law or the conventions applicable in this field.

*Article 36***The application for a registered Community design as an object of property**

1. An application for a registered Community design as an object of property shall be dealt with in its entirety, and for the whole area of the Community, as a national design right of the Member State determined in accordance with Article 29.

2. Articles 30 to 35 shall apply *mutatis mutandis* to applications for registered Community designs. Where the effect of one of these provisions is conditional upon an entry in the register, that formality shall have to be performed upon registration of the resulting registered Community design.

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## TITLE IV

## APPLICATION FOR A REGISTERED COMMUNITY DESIGN

## Section 1

**Filing of applications and the conditions which govern them***Article 37***Filing of applications**

1. An application for a registered Community design shall be filed, at the option of the applicant:

(a) at the Office; or

(b) at the central industrial property office of a Member State, or

(c) at the Benelux Design Office.

2. Where the application is filed at the central industrial property office of a Member State or at the Benelux Design Office, that office shall take all steps to forward the application to the Office within two weeks after filing. It may charge the applicant a fee which shall not exceed the administrative costs of receiving and forwarding the application. As soon as the Office has received an application which has been forwarded by a central industrial property office or by the Benelux Design Office, it shall inform the applicant accordingly, indicating the date of its receipt at the Office.

3. No less than ten years after the entry into force of this Regulation, the Commission shall draw up a report on the operation of the system of filing applications for registered Community designs, accompanied by any proposals for revision that it may deem appropriate.

*Article 38***Forwarding of the application***Article 39***Conditions with which applications must comply**

1. An application for a registered Community design shall contain:

(a) a request for registration,

Unchanged

*Article 37***Filing and forwarding of applications**

(c) in the Benelux countries, at the Benelux Design Office.

2. Where the application is filed at the central industrial property office of a Member State or at the Benelux Design Office, that office shall take all steps to forward the application to the Office within two weeks after filing. It may charge the applicant a fee which shall not exceed the administrative costs of receiving and forwarding the application. As soon as the application has been forwarded, it shall inform the applicant accordingly. As soon as the Office has received an application which has been forwarded by a central industrial property office of a Member State or by the Benelux Design Office, it shall inform the applicant accordingly, indicating the date of its receipt at the Office.

Unchanged

(deleted)

Unchanged

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(b) information identifying the applicant,  
(c) a representation of the design suitable for reproduction.

1(a) contain:

(a) an indication of the products in which the design is intended to be incorporated or to which it is intended to be applied;  
(b) the classification of the products in which the design is intended to be incorporated or to which it is intended to be applied according to class.

1(a) The application shall further contain:

Unchanged

(b) the classification of the products in which the design is intended to be incorporated or to which it is intended to be applied according to class;  
(c) the citation of the designer or of the team of designers or a statement under the applicant's responsibility that the designer or the team of designers has waived the right to be cited.

2. (deleted)

3. In addition, the application may contain

Unchanged

4. (deleted)

Unchanged

5. The application shall be subject to the payment of the registration fee and the publication fee. Where a request for deferment under paragraph 3(b) is filed, the publication fee shall be replaced by the fee for deferment of publication.

6. The application shall comply with the conditions laid down in the implementing Regulation.

7. The information contained in the elements mentioned in paragraph 1(a) (a) and (b) and in paragraph 3(a) does not affect the scope of protection of the design as such.

Article 40

**Multiple applications**

1. Several designs may be combined in one multiple application for registered Community designs. Except in cases of ornamentation, this possibility is subject to the condition that the products in which the designs are intended to be incorporated or to which they are intended to be applied all belong to the same class.

Unchanged

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2. Besides the fees referred to in Article 39 the multiple application shall be subject to payment of an additional registration fee and an additional publication fee. Where the multiple application contains a request for deferment of publication, the additional publication fee shall be replaced by the additional fee for deferment of publication. The additional fees shall correspond to a percentage of the basic fees for each additional design.

3. The multiple application shall comply with the conditions of presentation laid down in the implementing Regulation.

*Article 41***Date of filing**

1. The date of filing of an application for a registered Community design shall be the date on which documents containing the information specified in Article 39(1) are filed with the Office by the applicant, or, if the application has been filed with the central industrial property office of a Member State or with the Benelux Design Office, with that office.

2. Besides the fees referred to in Article 39(5), the multiple application shall be subject to payment of an additional registration fee and an additional publication fee. Where the multiple application contains a request for deferment of publication, the additional publication fee shall be replaced by the additional fee for deferment of publication. The additional fees shall correspond to a percentage of the basic fees for each additional design.

Unchanged

*Article 42***Classification**

For the purpose of this Regulation, use shall be made of the classification for designs provided for in the Annex to the Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on 8 October 1968.

2. By derogation from paragraph 1, the date of filing of an application filed with the central industrial property office of a Member State or with the Benelux Design Office and reaching the Office more than two months after the date on which documents containing the information specified in Article 39(1) have been filed, shall be the date of receipt of such documents by the Office.

Unchanged

**Section 2****Priority***Article 43***Right of priority**

1. A person who has duly filed an application for a design in or for any State party to the Paris Convention for the Protection of Industrial Property, hereinafter referred to as 'the Paris Convention', or his successors in title, shall enjoy, for the purpose of filing an application for a registered Community design in respect of the same design, a right of priority of six months from the date of filing of the first application.

1. A person who has duly filed an application for a design right in or for any State party to the Paris Convention for the Protection of Industrial Property, hereinafter referred to as 'the Paris Convention', or to the Agreement establishing the World Trade Organization or his successors in title, shall enjoy, for the purpose of filing an application for a registered Community design in respect of the same design, a right of priority of six months from the date of filing of the first application.

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2. Every filing that is equivalent to a lawful national filing under the national law of the State where it took place or under bilateral or multilateral agreements shall be recognised as giving rise to a right of priority.

3. Lawful national filing means any filing that is sufficient to establish the date on which the application was filed, whatever may be the outcome of the application.

4. A subsequent application for a design which was the subject of a previous first application, and which is filed in or in respect of the same State, shall be considered as the first application for the purpose of determining priority, provided that, at the date of the filing of the subsequent application, the previous application has been withdrawn, abandoned or refused without being open to public inspection and without leaving any right outstanding, and has not served as a basis for claiming priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

5. If the first filing has been made in a State which is not a party to the Paris Convention, paragraphs 1 to 4 shall apply only in so far as that State, according to published findings, grants, on the basis of a filing made at the Office and subject to conditions equivalent to those laid down in this Regulation, a right of priority having equivalent effect.

Unchanged

4. A subsequent application for a design right which was the subject of a previous first application, and which is filed in or in respect of the same State, shall be considered as the first application for the purpose of determining priority, provided that, at the date of the filing of the subsequent application, the previous application has been withdrawn, abandoned or refused without being open to public inspection and without leaving any right outstanding, and has not served as a basis for claiming priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

5. If the first filing has been made in a State which is not a party to the Paris Convention, or to the Agreement establishing the World Trade Organization, paragraphs 1 to 4 shall apply only in so far as that State, according to published findings, grants, on the basis of a filing made at the Office and subject to conditions equivalent to those laid down in this Regulation, a right of priority having equivalent effect.

## Article 44

**Claiming priority**

An applicant for a registered Community design desiring to take advantage of the priority of a previous application shall file a declaration of priority and a copy of the previous application. If the language of the latter is not one of the languages of the Office, the latter may require a translation of the previous application in one of the languages of the Office.

Unchanged

## Article 45

**Effect of priority right**

The effect of the right of priority shall be that the date of priority shall count as the date of the filing of the application for a registered Community design for the purpose of Articles 5, 6, 8, 25, 27

The effect of the right of priority shall be that the date of priority shall count as the date of the filing of the application for a registered Community design for the purpose of Articles 5, 6, 8, 25, 27 (1)(d) and 52(1).

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*Article 46***Equivalence of Community filing with national filing**

An application for a registered Community design which has been accorded a date of filing shall, in the Member States, be equivalent to a lawful national filing, including where appropriate the priority claimed for the said application.

Unchanged

*Article 47***Exhibition priority**

1. If an applicant for a registered Community design has displayed products in which the design is incorporated, or to which it is applied, at an official or officially recognised international exhibition falling within the terms of the Convention on International Exhibitions signed in Paris on 22 November 1928 and last revised on 30 November 1972, he may, if he files the application within a period of six months from the date of the first display of such products, claim a right of priority from that date within the meaning of Article 45.

2. An applicant who wishes to claim priority pursuant to paragraph 1 must file evidence of the display of the products in which the design is incorporated or to which it is applied under the conditions laid down in the implementing Regulation.

3. An exhibition priority granted in a Member State or in a third country does not extend the period of priority laid down in Article 43.

## TITLE V

## REGISTRATION PROCEDURE

*Article 48***Examination as to formal requirements****Examination as to formal requirements for filing**

1. The office shall examine whether the application complies with the laid down in Article 39(1) for the accordance of a date of filing.

2. The Office shall examine whether:

(a) the application complies with the other laid down in Article 39 and, in the case of a multiple application, Article 40;

1. The office shall examine whether the application complies with the requirements laid down in Article 39(1) for the accordance of a date of filing.

2. The Office shall examine whether:

(a) the application complies with the other requirements laid down in Article 39 and, in the case of a multiple application, Article 40;

(b) the application meets the formal requirements laid down in the implementing Regulation for the implementation of Articles 39 and 40;

(c) the requirements of Article 81(2) are satisfied;

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(d) the fees referred to in Article 39(5) and, in the case of a multiple application, Article 40(2), have been paid;

(e) the requirements concerning the claim to priority are satisfied, if a priority is claimed.

*Article 49***Remediable deficiencies**

3. If the deficiencies or the default in payment are not remedied within the prescribed period, the Office shall refuse the application.

4. shall result in the loss of the right of priority for the application.

(d) the fees referred to in Article 39(5) and, in the case of a multiple application, Article 40(2), have been paid;

Unchanged

1. Where, in carrying out the examination under Article 48 the Office notes that there are deficiencies which may be corrected, the Office shall request the applicant to remedy them within the prescribed period.

2. If the deficiencies concern the requirements referred to in Article 39(1) and the applicant complies with the Office's request in due time, the Office shall allow as the date of filing the date on which the deficiencies are remedied. If the deficiencies are not remedied within the prescribed period, the application shall not be dealt with as an application for a registered Community design.

3. If the deficiencies concern the requirements referred to in Article 48(2)(a) to (c) or the payment of the fees referred to in Article 48(2)(d) and the applicant complies with the Office's request in due time, the Office shall allow as the date of filing the date on which the deficient application was originally filed. If the deficiencies or the default in payment are not remedied within the prescribed period, the Office shall refuse the application.

4. If the deficiencies concern the requirements referred to in Article 48(2)(e), failure to remedy them within the prescribed period shall result in the loss of the right of priority for the application.

*Article 49a***Examination of grounds for non-registrability**

1. Where the Office, in carrying out the examination pursuant to Article 48, finds that the design for which protection is sought

- (a) does not fulfil the requirement under Article 3, or
- (b) is contrary to public policy or to accepted principles of morality,

the application shall be refused.

2. The application shall not be refused before the applicant has been allowed the opportunity of withdrawing or amending the application or of submitting his observations.

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*Article 50***Registration**

The registration shall bear the date on which the date of filing was accorded.

If the requirements that an application for a registered Community design must satisfy have been fulfilled and to the extent that the application has not been refused as a result of a procedure under Article 49a, the Office shall register the application in the Community design register as a registered Community design. The registration shall bear the date on which the date of filing was accorded.

*Article 51***Publication**

Upon registration, the Office shall publish the registered Community design in the Community design Bulletin as mentioned in Article 77

Upon registration, the Office shall publish the registered Community design in the Community design Bulletin as mentioned in Article 77(1). The contents of the publication shall be set out in the implementing Regulation.

*Article 52***Deferment of publication**

1. The applicant for a registered Community design may request, when filing the application, that the publication of the registered Community design be deferred for a period of 30 months from the date of filing the application or, if a priority is claimed, from the date of priority.

2. Upon such request, where the registered Community design shall be registered, but neither the representation of the design nor any file relating to the application shall, subject to Article 78(2), be open to public inspection.

3. The Office shall publish in the Community Design Bulletin a mention of the deferment of the publication of the registered Community design. The mention shall be accompanied by information identifying the right holder in the registered Community design, the date of filing the application and any other particulars prescribed by the implementing Regulation.

4. At the expiry of the period of deferment, or at any earlier date on request by the right holder, the Office shall open to public inspection all the entries in the register and the file relating to the application and shall publish the registered Community design in the Community Design Bulletin, provided that, within the time limit laid down in the implementing Regulation the publication fee and, in the event of a multiple application, the additional publication fee are paid.

Unchanged

1. The applicant for a registered Community design may request, when filing the application, that the publication of the registered Community design be deferred for a period of 30 months from the date of filing the application or, if a priority is claimed, from the date of priority.

2. Upon such request, where the conditions set out in Article 50 are satisfied, the registered Community design shall be registered, but neither the representation of the design nor any file relating to the application shall, subject to Article 78(2), be open to public inspection.

Unchanged

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If the right holder fails to comply with these requirements, the registered Community design shall, unless surrendered in accordance with the provisions of Article 55, be deemed from the outset not to have had the effects specified in this Regulation.

5. In the case of a multiple application, the provisions of may be applied to only some of the designs included therein.

6. The institution of legal proceedings on the basis of a registered Community design during the period of deferment of publication shall be subject to the condition that the information contained in the register and in the file relating to the application has been communicated to the person against whom the action is brought.

5. In the case of a multiple application, the provisions of paragraph 4 may be applied to only some of the designs included therein.

Unchanged

## TITLE VI

**TERM OF PROTECTION OF THE REGISTERED COMMUNITY DESIGN**

*Article 53*

(deleted)

**Term of protection**

*Article 54*

Unchanged

**Renewal**

1. Registration of the registered Community design shall be renewed at the request of the right holder or of any person expressly authorised by him, provided that the renewal fee has been paid.

2. The Office shall inform the right holder in the registered Community design and any person having a registered right in respect of the registered Community design, of the expiry of the registration in good time before the said expiry. Failure to give such information shall not involve the responsibility of the Office.

3. The request for renewal shall be submitted and the renewal fee paid within a period of six months before the last day of the month in which protection ends. Failing this, the request may be submitted and the fee paid within a further period of six months from the day referred to in the first sentence, provided that an additional fee is paid within this further period.

4. Renewal shall take effect from the day following the date on which the existing registration expires. The renewal shall be registered.

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## TITLE VII

**SURRENDER AND INVALIDITY OF THE REGISTERED  
COMMUNITY DESIGN***Article 55***Surrender**

1. The surrender of a registered Community design shall be declared to the Office in writing by the right holder. It shall not have effect until it has been registered.

2. Surrender shall be registered only with the agreement of the holder of a right entered in the register. If a licence has been registered, surrender shall be entered in the register only if the right holder in the registered Community design proves that he has informed the licensee of his intention to surrender; this entry shall be made on expiry of the period prescribed by the implementing Regulation.

*Article 56***Application for a declaration of invalidity**

1. Any natural or legal person may submit to the Office an application for a declaration of invalidity of a registered Community design.

2. The application shall be filed in a written reasoned statement. It shall not deem to have been filed until the fee has been paid.

3. The application for a declaration of invalidity shall not be admissible if an application relating to the same subject matter and cause of action, and involving the same parties, has been adjudicated on by a Community Design Court and has acquired the authority of a final decision.

*Article 57***Examination of the application**

1. If the application for a declaration of invalidity is admissible, the Office shall examine whether the grounds for invalidity referred to in Article 27 prejudice the maintenance of the registered Community design.

1. Any natural or legal person may submit to the Office an application for a declaration of invalidity of a registered Community design. However,

- (a) in the case envisaged in Article 27(1) (c) (e) or (f), the application may be filed only by the person or persons entitled, and
- (b) in the case of Article 27(1) (d) by the right holder of the earlier right, and
- (c) in the case envisaged in Article 27(1) (g), by the person or persons or entities concerned by the use.

Unchanged

1. If the Office finds that the application for a declaration of invalidity is admissible, the Office shall examine whether the grounds for invalidity referred to in Article 27 prejudice the maintenance of the registered Community design.

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2. In the examination of the application, which shall be conducted in accordance with the implementing Regulation, the Office shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Office, on communications by the other parties or those issued by itself.

3. The decision declaring the registered Community design invalid shall be entered in the register upon becoming final.

*Article 58***Participation in the proceedings of the alleged infringer**

1. An application for a declaration of invalidity of a registered Community design filed, and as long as no final decision has been taken by an Invalidity Division, any third party who proves that proceedings for infringement of the same design have been instituted against him may in the invalidity proceedings within three months of the date on which the infringement proceedings were instituted. The same shall apply in respect of any third party who proves both that the right holder of the design has requested that he cease an alleged infringement of the design and that he has instituted proceedings for a court ruling that he is not infringing the design.

2. The request to be joined as a party shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the fee referred to in Article 56(2) has been paid. Thereafter the request shall, subject to any exceptions laid down in the implementing Regulation, be treated as an application for a declaration of invalidity.

Unchanged

1. In the event of an application for a declaration of invalidity of a registered Community design being filed, and as long as no final decision has been taken by an Invalidity Division, any third party who proves that proceedings for infringement of the same design have been instituted against him may be joined as a party in the invalidity proceedings on request submitted within three months of the date on which the infringement proceedings were instituted. The same shall apply in respect of any third party who proves both that the right holder of the Community design has requested that he cease an alleged infringement of the design and that he has instituted proceedings for a court ruling that he is not infringing the Community design.

2. The request to be joined as a party shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the invalidity fee referred to in Article 56(2) has been paid. Thereafter the request shall, subject to any exceptions laid down in the implementing Regulation, be treated as an application for a declaration of invalidity.

## TITLE VIII

Unchanged

**APPEALS FROM DECISIONS OF THE OFFICE***Article 59***Decisions subject to appeal**

1. An appeal shall lie from decisions of the Administration and Legal Division and Invalidity Divisions. It shall have suspending effect.

2. A decision which does not terminate proceedings as regards one of the parties can only be appealed against if joined with the final decision, unless the decision allows separate appeal.

1. An appeal shall lie from decisions of the examiners of the Administration of Trade marks and Designs and Legal Division and Invalidity Divisions. It shall have suspending effect.

Unchanged

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*Article 60***Persons entitled to appeal and to be parties to appeal proceedings**

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

*Article 61***Time limit and form of appeal**

Notice of appeal must be filed in writing at the Office within two months after the date of notification of the decision appealed against. The notice shall not be deemed to have been filed until after the appeal fee has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed.

*Article 62***Interlocutory revision**

1. If the department whose decision is contested considers the appeal to be admissible and well founded, it shall amend its decision. This shall not apply where the appellant is opposed by another party to the proceedings.
2. If the decision is not amended within one month after receipt of the statement of grounds, the appeal shall be remitted to the Board of Appeal without delay and without comment as to its merits.

*Article 63***Examination of appeals**

1. If the appeal is admissible, the Board of Appeal shall examine whether the appeal is to be allowed.
2. In the examination of the appeal, the Board of Appeal shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Board of Appeal, on communications from the other parties or those issued by itself.

*Article 64***Decisions in respect of appeals**

1. Following the examination as to the merits of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed against or remit the case to that department for further action.
2. If the Board of Appeal remits the case for further action to the department whose decision was appealed against, that department shall be bound by the ratio decidendi of the Board of Appeal, in so far as the facts are the same.

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3. The decisions of the Boards of Appeal shall take effect only as from the date of expiration of the period referred to in Article 65(5) or, if an action has been brought before the Court of Justice within that period, as from the date of dismissal of such action.

*Article 65***Actions before the Court of Justice**

1. Actions may be brought before the Court of Justice against decisions of the Office taken by the Boards of Appeal on appeals.

2. The action may be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty, of this Regulation or of any rule of law relating to their application or misuse of power.

3. The Court of Justice has jurisdiction to annul or alter the contested decision.

4. The action shall be open to any party to proceedings before the Board of Appeal adversely affected by its decision.

5. The action shall be brought before the Court of Justice within two months of the date of notification of the decision of the Board of Appeal.

6. The Office shall be required to take the necessary measures to comply with the judgement of the Court of Justice.

## TITLE IX

## PROCEDURE BEFORE THE OFFICE

## Section 1

**General provisions***Article 66***Statement of reasons on which decisions are based**

Decisions of the Office shall state the reasons on which they are based. They shall be based only on reasons or evidence on which the parties concerned have had an opportunity to present their comments.

*Article 67***Examination of the facts by the Office of its own motion**

1. In proceedings before it the Office shall examine the facts of its own motion; however, in proceedings relating to a declaration of invalidity, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought,

1. In proceedings before it the Office shall examine the facts of its own motion; however, in proceedings relating to a declaration of invalidity, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought, except to the extent that the grounds of invalidity specified in Articles 27(1)(a), 10 and 10a are involved.

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2. The Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

Unchanged

*Article 68***Oral proceedings**

1. If the Office considers that oral proceedings would be expedient, they shall be held either at the instance of the Office or at the request of any party to the proceedings.

2. Oral proceedings, including delivery of the decision, shall be public, unless the Office decides otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

*Article 69***Taking of evidence**

1. In any proceedings before the Office the means of giving or obtaining evidence shall include the following:

- (a) hearing the parties;
- (b) requests for information;
- (c) the production of documents and items of information;
- (d) hearing the witnesses;
- (e) opinions by experts;
- (f) statements in writing, sworn or affirmed or having a similar effect under the law of the State in which the statement is drawn up.

2. The relevant department of the Office may commission one of its members to examine the evidence adduced.

3. If the Office considers it necessary for a party, witness or expert to give evidence orally, it shall issue a summons to the person concerned to appear before it.

4. The parties shall be informed of the hearing of a witness or expert before the Office. They shall have the right to be present and to put questions to the witness or expert.

*Article 70***Notification**

The Office shall, as a matter of course, notify those concerned of decisions and summonses and of any notice or other communication from which a time limit is reckoned, or of which those concerned must be notified under other provisions of this Regulation or of the Implementing Regulation, or of which notification has been ordered by the President.

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## Article 71

**Restitutio in integrum**

1. The applicant for or right holder of a registered Community design or any other party to proceedings before the Office who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit in dealings with the Office shall, upon application, have his rights re-established if the non-observance in question has the direct consequence, by virtue of the provisions of this Regulation, of causing the loss of any rights or means of redress.
2. The application must be filed in writing within two months of the removal of the cause of non-compliance with the time limit. The omitted act must be completed within this period. The application shall only be admissible within the year immediately following the expiry of the infringed time limit. In the case of non-submission of the request for renewal of registration or of non-payment of a renewal fee, the further period of six months provided for in the second sentence of Article 54(3) shall be deducted from the period of one year.
3. The application must state the grounds on which it is based and must set out the facts on which it relies. It shall not be deemed to be filed until the fee for the re-establishment of rights has been paid.
4. The department of the Office empowered to decide on the omitted act shall decide upon the application.
5. The provisions of this Article shall not be applicable to the time limits referred to in paragraph 2 and in Article 43(1).
6. Where the applicant for or right holder in a registered Community design has his rights re-established, he may not invoke his rights vis-à-vis a third party who, in good faith, during the period between the loss of rights in the application or in the registered Community design and publication of the mention of re-establishment of those rights, has put products on the market in which a design is incorporated or to which it is applied, which is comprised within the scope of protection of the registered Community design.
7. A third party who may avail himself of the provisions of paragraph 6 may bring third party proceedings against the decision re-establishing the rights of the applicant for or right holder in the registered Community design within a period of two months as from the date of publication of the mention of re-establishment of those rights.
8. Nothing in this Article shall limit the right of a Member State to grant *restitutio in integrum* in respect of time limits provided for in this Regulation and to be complied with vis-à-vis the authorities of such State.

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*Article 72***Reference to general principles**

In the absence of procedural provisions in this Regulation, the implementing Regulation, the fees Regulations or the rules of procedure of the Boards of Appeal, the Office shall take into account the principles of procedural law generally recognised in the Member States.

*Article 73***Termination of financial obligations**

1. Rights of the Office to payment of a fee shall be extinguished after four years from the end of the calendar year in which the fee fell due.
2. Rights against the Office for the refunding of fees or sums of money paid in excess of a fee shall be extinguished after four years from the end of the calendar year in which the right arose.
3. The periods laid down in paragraphs 1 and 2 shall be interrupted, in the case covered by paragraph 1, by a request for payment of the fee and, in the case covered by paragraph 2, by a reasoned claim in writing. On interruption it shall begin again immediately and shall end at the latest six years after the end of the year in which it originally began, unless in the meantime judicial proceedings to enforce the right have begun; in such case the period shall end no earlier than one year after the judgement has acquired the authority of a final decision.

**Section 2****Costs***Article 74***Allocation of costs**

1. The losing party in proceedings for a declaration of invalidity of a registered Community design or appeal proceedings shall bear the fees incurred by the other party as well as all costs incurred by him essential to the proceedings, including travel and subsistence and the remuneration of an agent, adviser or advocate, within the limits of scales set for each category of costs under the conditions laid down in the implementing Regulation.
2. However, where each party succeeds on some and fails on other heads, or if reasons of equity so dictate, the Invalidity Division or Board of Appeal shall decide a different apportionment of costs.
3. The party who terminates the proceedings by surrendering the registered Community design or by not renewing its registration or by withdrawing the application for a declaration of invalidity or the appeal, shall bear the fees and the costs incurred by the other party as stipulated in paragraph 1 and 2.

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4. Where a case does not proceed to judgement, the costs shall be in the discretion of the Invalidity Division or Board of Appeal.

5. Where the parties conclude before the Invalidity Division or Board of Appeal a settlement of costs differing from that provided for in paragraphs 1 to 4, the body concerned shall take note of that agreement.

6. On request, the registry of the Invalidity Division or Board of Appeal shall fix the amount of the costs to be paid pursuant to the preceding paragraphs. The amount so determined may be reviewed by a decision of the Invalidity Division or Board of Appeal on a request filed within the period prescribed by the implementing Regulation.

*Article 75***Enforcement of decisions fixing the amount of costs**

1. Any final decision of the Office fixing the amount of costs shall be enforceable.

2. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without any other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Office and to the Court of Justice.

3. When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

4. Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the Member State concerned shall have jurisdiction over complaints that enforcement is being carried out improperly.

**Section 3****Information of the public and of the official authorities of the Member States***Article 76***Register**

The Office shall keep a register to be known as the Community design register, which shall contain those particulars of which the registration is provided for by this Regulation or by the implementing Regulation. The register shall be open to public inspection, except to the extent that Article 52(2) provides otherwise in relation to entries relating to registered Community designs subject to deferment of publication.

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*Article 77***Periodical publications**

1. This Office shall periodically publish a Community design Bulletin containing entries open to public inspection in the register as well as other particulars the publication of which is prescribed by this Regulation or by the implementing Regulation.

2. Notices and information of a general character issued by the President of the Office, as well as any other information relevant to this Regulation or its implementation.

2. Notices and information of a general character issued by the President of the Office, as well as any other information relevant to this Regulation or its implementation, shall be published in the 'Official Journal of the Office for Harmonization in the Internal Market (trademarks and designs)', referred to in Article 85 of the Regulation on the Community Trademark.

*Article 78***Inspection of files**

1. The files relating to applications for registered Community designs which have not yet been published or the files relating to registered Community designs which are subject to deferment of publication in accordance with Article 52 or which, being subject to such deferment, have been surrendered before or on the expiry of that period, shall not be made available for inspection without the consent of the applicant for or the right holder in the registered Community design.

2. Any person who can establish a legitimate interest may inspect a file without the consent of the applicant for or right holder in the registered Community design prior to the publication or after the surrender of the latter in the case provided for pursuant to paragraph 1. This shall in particular apply if the interested person proves that the applicant for, or the right holder in, a registered Community design has taken steps with a view to invoking against him the right under the registered Community design.

3. Subsequent to the publication of the registered Community design, the file may be inspected on request.

4. However, where a file is inspected pursuant to paragraph 2 or 3, certain documents in the file may be withheld from inspection in accordance with the provisions of the implementing Regulation.

Unchanged

*Article 79***Administrative co-operation**

Unless otherwise provided in this Regulation or in national laws, the Office and the courts or authorities of the Member States shall on request give assistance to each other by communicating information or opening files for inspection. Where the Office opens files to inspection by courts, Public Prosecutors' Offices or central industrial property offices, the inspection shall not be subject to the restrictions laid down in Article 78.

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*Article 80***Exchange of publications**

1. The Office and the central industrial offices of the Member States shall despatch to each other on request and for their own use one or more copies of their respective publications free of charge.
2. The Office may conclude agreements to the exchange or supply of publications.

**Section 4****Representation***Article 81***General principles of representation**

1. Subject to the provisions of paragraph 2, no person shall be compelled to be represented before the Office.
2. Without prejudice to the second sentence of paragraph 3, natural or legal persons not having either their domicile or their principal place of business or a real and effective industrial or commercial establishment in the Community must be represented before the Office in accordance with Article 82(1) in all proceedings before the Office established by this Regulation, other than in filing an application for a registered Community design.
3. Natural or legal persons having their domicile or principal place of business or a real and effective industrial or commercial establishment in the Community may be represented before the Office by one of their employees, who must file with it a signed authorisation for inclusion in the files, the details of which are set out in the implementing Regulation. An employee of a legal person to which this paragraph applies may also represent other legal persons which have economic connections with the first legal person, even if those other legal persons have neither their domicile nor their principal place of business nor a real and effective industrial or commercial establishment within the Community.

*Article 82***Professional representatives**

1. Representation of natural or legal persons before the may only be undertaken by:
  - (a) any legal practitioner qualified in one of the Member States and having his place of business within the Community, to the extent that he is entitled, within the said State, to act as a representative in industrial property matters; or

1. Representation of natural or legal persons in proceedings before the Office under this Regulation may only be undertaken by:

Unchanged

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(b) any professional representatives whose

(b) any professional representatives whose name has been entered on the list of professional representatives referred to in Article 89(1) (b) of Regulation (EC) No 40/94 of 20.12.1993 on the Community trade mark, or

(c) persons whose names are entered on the special list of professional representatives for design matters referred to in paragraph 4.

2. The persons referred to in paragraph 1(c) shall only be entitled to represent third persons in proceedings on design matters before the Office.

3. The implementing Regulation shall provide whether and under what conditions representatives must file with the Office a signed authorisation for insertion on the files.

4. Any natural person may be entered on the special list of professional representatives in design matters, if he fulfils the following conditions:

(a) He must be a national of one of the Member States;

Unchanged

(c) he must be entitled to represent natural or legal persons

(b) he must have his place of business or employment in the Community;

(c) in design matters before the central industrial property office of a Member. Where, in that State, the entitlement is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list before the central industrial property office of the said State for at least five years. However, persons whose professional qualification to represent natural or legal persons in design matters, before the central industrial property office of one of the Member States is officially recognised in accordance with the regulations laid by such State, shall not be subject to the condition of having exercised the profession.

5. Entry shall be effected upon request, accompanied by a certificate furnished by the central industrial property office of the Member State concerned, which must indicate that the conditions laid down are fulfilled.

6. The President of the Office may grant exemption from:

in design matters before the central industrial property office of a Member. Where, in that State, the entitlement to represent in design matters is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list must have habitually acted in design matters before the central industrial property office of the said State for at least five years. However, persons whose professional qualification to represent natural or legal persons in design matters, before the central industrial property office of one of the Member States is officially recognised in accordance with the regulations laid by such State, shall not be subject to the condition of having exercised the profession.

5. Entry on the list referred to in paragraph 4 shall be effected upon request, accompanied by a certificate furnished by the central industrial property office of the Member State concerned, which must indicate that the conditions laid down in the said paragraph are fulfilled.

Unchanged

(a) the requirement of paragraph 4(a) in special circumstances.

(b) the requirement of paragraph 4(c), second sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.

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7. The conditions under which a person may be removed from the list shall be laid down in the implementing Regulation.

Unchanged

## TITLE X

**JURISDICTION AND PROCEDURE IN LEGAL ACTIONS  
RELATING TO COMMUNITY DESIGNS****Section 1****Jurisdiction and Enforcement***Article 83***Application of the Convention on Jurisdiction and Enforcement**

1. Unless otherwise specified in this Regulation, the Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, signed in Brussels on 27 September 1968, as amended by the Conventions on the Accession to that Convention of the States acceding to the European Communities, the whole of which Convention and of which Conventions of Accession are hereinafter referred to as the 'Convention on Jurisdiction and Enforcement', shall apply to proceedings relating to Community designs and applications for registered Community designs, as well as to proceedings relating to actions on the basis of Community designs and national design rights enjoying simultaneous protection.

1(a) The provisions of the Convention on Jurisdiction and Enforcement which are rendered applicable by the preceding paragraph shall have effect in respect of any Member State solely in the text which is in force in respect of that State at any given time.

2. In the event of proceedings in respect of the actions and claims referred to in Article 85:

Unchanged

(a) Articles 2, 4, 5(1), (3), (4) and (5), and 24 of the Convention on Jurisdiction and Enforcement shall not apply;

(a) Articles 2, 4, 5(1), (3), (4) and (5), Articles 16(4) and 24 of the Convention on Jurisdiction and Enforcement shall not apply;

(b) Articles 17 and 18 of that Convention shall apply subject to the limitations in Article 86 (4) of this Regulation;

Unchanged

(c) the provisions of Title II of that Convention which are applicable to persons domiciled in a Member State shall also be applicable to persons who do not have a domicile in any Member State but have an establishment therein.

3. (deleted)

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*Article 83a***Transitional provision**

The provisions of the Convention on Jurisdiction and Enforcement rendered applicable by virtue of Article 83 shall not have effect in respect of any Member State for which that Convention has not yet entered into force. Until such entry into force proceedings referred to in Article 83 (1) shall be governed in such a Member State by any bilateral or multi-lateral convention governing its relationship with another Member State concerned, or, if no such convention exists, by its domestic law on jurisdiction, recognition and enforcement of decisions.

**Section 2****Disputes concerning the infringement and validity of Community designs***Article 84***Community design Courts**

1. The Member States shall designate in their territories as limited a number as possible of national courts and tribunals of first and second instance (Community Design Courts), which shall perform the functions assigned to them by this Regulation.
2. Each Member State shall communicate to the Commission within three years of the entry into force of this Regulation a list of Community Design Courts, indicating their names and their territorial jurisdiction.
3. Any change made after communication of the list referred to in paragraph 2 in the number, the names or territorial jurisdiction of the Community Design Courts shall be notified without delay by the Member State concerned to the Commission.
4. The information referred to in paragraphs 2 and 3 shall be notified by the Commission to the Member States and published in the Official Journal of the European Communities.
5. As long as a Member State has not communicated the list as stipulated in paragraph 2, jurisdiction for any proceedings resulting from an action covered by Article 85 for which the courts of that State have jurisdiction pursuant to Article 86, shall lie with that court of the State in question which would have jurisdiction *ratione loci* and *ratione materiae* in the case of proceedings relating to a national design right of that State.

*Article 85***Jurisdiction over infringement and validity**

The Community design Courts shall have exclusive jurisdiction:

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- (a) for infringement actions and if they are permitted under national law actions in respect of threatened infringement of Community designs;
- (b) for actions for declaration of non-infringement of Community designs, if they are permitted under national law;
- (c) for actions for a declaration of invalidity of an unregistered Community design;
- (d) for counter-claims for a declaration of invalidity of a Community design raised in connection with actions under (a).

*Article 86***International jurisdiction**

1. Subject to the provisions of this Regulation and to any provisions of the Convention on Jurisdiction and Enforcement applicable by virtue of Article 83, proceedings in respect of the actions and claims referred to in Article 85 shall be brought in the courts of the Member State in which the defendant is domiciled or, if he is not domiciled in any of the Member States, in which he has an establishment.

2. If the defendant is neither domiciled nor has an establishment in any of the Member States, such proceedings shall be brought in the courts of the Member State in which the plaintiff is domiciled or, if he is not domiciled in any of the Member States, in which he has an establishment.

3. If neither the defendant nor the plaintiff is so domiciled or has such an establishment, such proceedings shall be brought in the courts of the Member States where the Office is situated.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3:

- (a) Article 17 of the Convention on Jurisdiction and Enforcement shall apply if the parties agree that a different Community design Court shall have jurisdiction;
- (b) Article 18 of that Convention shall apply if the defendant enters an appearance before a different Community design Court.

5. Proceedings in respect of the actions and claims referred to in Article 85(a) and (d) may also be brought in the courts of the Member State in which the act of infringement has been committed or threatened.

*Article 87***Extent of jurisdiction on infringement**

1. A Community design Court whose jurisdiction is based on Article 86(1), (2), (3) or (4) shall have jurisdiction in respect of acts of infringement committed or threatened within the territory of any of the Member States.

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2. A Community design Court whose jurisdiction is based on Article 86(5) shall have jurisdiction only in respect of acts of infringement committed or threatened within the territory of the Member State in which that court is situated.

*Article 88***Action or counter-claim for a declaration of invalidity of a Community design**

1. An action or a counter-claim for a declaration of invalidity of a Community design may only be based on the grounds for invalidity mentioned in Article 27.

2. The action or the counterclaim may be brought:

- (a) in the cases specified in Article 27(1)(c), (e) and (f) only by the person entitled to the right in question,
- (b) in the case specified in Article 27(1)(g), only by the person or entity concerned by the use,
- (c) in the case specified in Article 27(1)(d), only by the right holder of the earlier right.

3. If the counter-claim is brought in a legal action to which the right holder of the Community design is not already a party, he shall be informed thereof and may be joined as a party to the action in accordance with the conditions set out in the law of the Member State where the court is situated.

3. If the counter-claim is brought in a legal action to which the right holder of the Community design is not already a party, he shall be informed thereof and may be joined as a party to the action in accordance with the conditions set out in the law of the Member State where the court is situated.

4. The validity of a Community design may not be put in issue in an action for a declaration of non-infringement.

*Article 89***Presumption of validity defence as to the merits**

1. In proceedings in respect of an infringement action or an action for threatened infringement the Community design Court shall treat the Community design as valid unless its validity is put in issue by the defendant with a counterclaim for a declaration of invalidity.

2. In proceedings in respect of an infringement action or an action for threatened infringement, the Community design Court shall, if the right holder presents evidence to sustain his claim that the design has an individual character, treat the design as

1. In proceedings in respect of an infringement action or an action for threatened infringement of a registered Community design, the Community design Court shall treat the Community design as valid unless its validity is put in issue by the defendant with a counterclaim for a declaration of invalidity.

2. In proceedings in respect of an infringement action or an action for threatened infringement of an unregistered Community design, the Community design Court shall, if the right holder presents evidence to sustain his claim that the design has an individual character, treat the design as valid, unless its validity is put in issue by the defendant with a counterclaim for a declaration of invalidity.

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3. In proceedings referred to in paragraph 1, a plea relating to the invalidity of a Community design submitted otherwise than by way of counter-claim shall be admissible in so far as the defendant claims that the Community design should be declared invalid on account of national design right within the meaning of Article 27 belonging to him.

## Article 90

**Judgements of validity**

1. Where in a proceeding before a Community design Court the Community design has been put in issue by way of a counter-claim for a declaration of invalidity:

- (a) if any of the grounds mentioned in Article 27 are found to prejudice the maintenance of the Community design, the Court shall declare the Community design invalid;
- (b) if none of the grounds mentioned in Article 27 is found to prejudice the maintenance of the Community design, the Court shall reject the counter-claim.

2. The Community design Court with which a counter-claim for a declaration of invalidity of a registered Community design has been filed shall inform the Office of the date on which the counter-claim was filed. The latter shall record this fact in the register.

3. The Community design Court hearing a counter-claim for a declaration of invalidity of a registered Community design may, on application by the right holder of the registered Community design and after hearing the other parties, stay the proceedings and request the defendant to submit an application for a declaration of invalidity to the Office within a time limit which shall determine. If the application is not made within the time limit, the proceedings shall continue; the counter-claim shall be deemed withdrawn. Article 95(3) shall apply.

4. Where a Community design Court has given a judgement which has become final on a counter-claim for a declaration of invalidity of a registered Community design, a copy of the judgement shall be sent to the Office. Any party may request information about such transmission. The Office shall mention the judgement in the register in accordance with the provisions of the implementing Regulation.

5. No counter-claim for a declaration of invalidity of a registered Community design may be made if an application relating to the same subject-matter and cause of action, and involving the same parties, has already been determined by the Office in a decision which has become final.

3. In proceedings referred to in paragraphs 1 and 2, a plea relating to the invalidity of a Community design submitted otherwise than by way of counter-claim shall be admissible in so far as the defendant claims that the Community design should be declared invalid on account of an earlier national design right within the meaning of Article 27(1)(d) belonging to him.

Unchanged

3. The Community design Court hearing a counter-claim for a declaration of invalidity of a registered Community design may, on application by the right holder of the registered Community design and after hearing the other parties, stay the proceedings and request the defendant to submit an application for a declaration of invalidity to the Office within a time limit which the Court shall determine. If the application is not made within the time limit, the proceedings shall continue; the counter-claim shall be deemed withdrawn. Article 95(3) shall apply.

Unchanged

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*Article 91***Effects of the judgement on validity**

When it has become final, a judgement of a Community design Court declaring a Community design invalid shall have, subject to Article 27(5), in all the Member States the effects specified in Article 28.

*Article 92***Applicable law**

1. The Community design Courts shall apply the provisions of this Regulation.

2. On all matters not covered by this Regulation, a Community design Court shall apply its national law, including its private international law.

3. Unless otherwise provided in this Regulation, a Community design Court shall apply the rules of procedure governing the same type of action relating to a national design right in the Member State where it is situated.

When it has become final, a judgement of a Community design Court declaring a Community design invalid shall have, subject to Article 27(5), in all the Member States the effects specified in Article 28.

Unchanged

*Article 93***Sanctions in actions for infringement**

1. Where in an action for infringement or for threatened infringement a Community design Court finds that the defendant has infringed or threatened to infringe a Community design, it shall, unless there are special reasons for not doing so, issue

1. Where in an action for infringement or for threatened infringement a Community design Court finds that the defendant has infringed or threatened to infringe a Community design, it shall, unless there are special reasons for not doing so, issue the following orders:

(b) issue an order to seize the infringing products;

(a) an order prohibiting the defendant from proceeding with the acts which have infringed or would infringe the Community design;

(b) an order to seize the infringing products;

(c) an order to seize materials and implements predominantly used in order to manufacture the infringing goods, if their owner knew the effect for which such use was intended or if such effect would have been obvious in the circumstances;

(d) any order imposing other sanctions appropriate under the circumstances which are provided by the law of the Member State in which the acts of infringement or threatened infringement are committed, including its private international law.

2. The Community design Court shall take such measures in accordance with its national law as are aimed at ensuring the orders referred to in paragraphs 1 and 2 are complied with.

2. The Community design Court shall take such measures in accordance with its national law as are aimed at ensuring the orders referred to in paragraph 1 are complied with.

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*Article 94***Provisional measures, including protective measures**

1. Application may be made to the courts of a Member State, including Community design Courts, for such provisional measures, including protective measures, in respect of a Community design as may be available under the law of that State on national design rights even if, under this Regulation, a Community design Court of another Member State has jurisdiction as to the substance of the matter.
2. In proceedings relating to provisional measures, including protective measures, a plea otherwise than by way of counter-claim relating to the invalidity of a Community design submitted by the defendant shall be admissible. Article (2) shall, however, apply mutatis mutandis.
3. A Community design Court whose jurisdiction is based on Article 86(1), (2), (3) or (4) shall have jurisdiction to grant provisional measures, including protective measures, which, subject to any necessary procedure for recognition and enforcement pursuant to Title III of the Convention on Jurisdiction and Enforcement, are applicable in the territory of any Member State. No other court shall have such jurisdiction.

2. In proceedings relating to provisional measures, including protective measures, a plea otherwise than by way of counter-claim relating to the invalidity of a Community design submitted by the defendant shall be admissible. Article 89(2) shall, however, apply mutatis mutandis.

Unchanged

*Article 95***Specific rules on related actions**

1. A Community Design Court hearing an action referred to in Article 85, other than an action for a declaration of non-infringement, shall, unless there are special grounds for continuing the hearing, of its own motion after hearing the parties, or at the request of one of the parties and after hearing the other parties, stay the proceedings where the validity of the Community design is already in issue before another Community Design Court on account of a counter-claim or, in the case of a registered Community design, where an application for a declaration of invalidity has already been filed at the Office.
2. The Office, when hearing an application for a declaration of invalidity of a registered Community design, shall, unless there are special grounds for continuing the hearing, of its own motion after hearing the parties, or at the request of one of the parties and after hearing the other parties, stay the proceedings where the validity of the registered Community design is already in issue on account of a counter-claim before a Community Design Court. However, if one of the parties to the proceedings before the Community Design Court so requests, the court may, after hearing the other parties to these proceedings, stay the proceedings. The Office shall in this instance continue the proceedings pending before it.

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3. Where the Community Design Court stays the proceedings it may order provisional measures, including protective measures, for the duration of the stay.

*Article 96***Jurisdiction of Community Design Courts of second instance-further appeal**

1. An appeal to the Community Design Courts of second instance shall lie from judgements of the Community Design Courts of first instance in respect of proceedings arising from the actions and claims referred to in Article 85.

2. The conditions under which an appeal may be lodged with a Community Design Court of second instance shall be determined by the national law of the Member State in which that court is located.

3. The national rules concerning further appeal shall be applicable in respect of judgements of Community Design Courts of second instance.

**Section 3****Other disputes concerning Community designs***Article 97***Supplementary provisions on the jurisdiction of national courts other than Community Design Courts**

1. Within the Member State whose courts have jurisdiction pursuant to the courts having jurisdiction for actions relating to Community designs other than those referred to in Article 85 shall be those which would have jurisdiction *ratione loci* and *ratione materiae* in actions relating to a national design right in that State.

2. Actions relating to Community designs other than those referred to in Article 85, for which no court has jurisdiction pursuant to and paragraph 1 of this Article may be heard before the courts of the Member State in which the Office is situated.

*Article 98***Obligation of the national court**

A national court which is dealing with an action relating to a Community design other than the actions referred to in Article 85 shall treat the design as valid. Articles 89(2) and 94(2) shall, however, apply *mutatis mutandis*.

Unchanged

1. Within the Member State whose courts have jurisdiction pursuant to Articles 83(1) or 83a, the courts having jurisdiction for actions relating to Community designs other than those referred to in Article 85 shall be those which would have jurisdiction *ratione loci* and *ratione materiae* in actions relating to a national design right in that State.

2. Actions relating to Community designs other than those referred to in Article 85, for which no court has jurisdiction pursuant to Articles 83(1), 83a and paragraph 1 of this Article may be heard before the courts of the Member State in which the Office is situated.

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## TITLE XI

## EFFECTS ON THE LAWS OF THE MEMBER STATES

## Article 99

**Parallel actions on the basis of Community designs and national design rights**

1. Where actions for infringement or for threatened infringement involving the same cause of action and between the same parties are brought before the courts of different Member States, one being seized on the basis of a Community design and the other seized on the basis of a design right providing simultaneous protection, the court other than the court first seized shall of its own motion decline jurisdiction in favour of that court. The court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested.
2. The Community Design Court hearing an action for infringement or threatened infringement on the basis of a Community design shall reject the action if a final judgement on the merits has been given on the same cause of action and between the same parties on the basis of a design right providing simultaneous protection.
3. The court hearing an action for infringement or for threatened infringement on the basis of a national design right shall reject the action if a final judgement on the merits has been given on the same cause of action and between the same parties on the basis of a Community design providing simultaneous protection.
4. The preceding paragraphs shall not apply in respect of provisional measures, including protective measures.

## Article 100

**Relationship to other forms of protection under national law**

1. Where actions for infringement or for threatened infringement involving the same cause of action and between the same parties are brought before the courts of different Member States, one being seized on the basis of a Community design and the other seized on the basis of a national design right providing simultaneous protection, the court other than the court first seized shall of its own motion decline jurisdiction in favour of that court. The court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested.

Unchanged

1. The provisions of this Regulation shall be without prejudice to any provisions of Community law or of the law of the Member States concerned relating to unregistered design rights, trade marks or other distinctive signs, patents and utility models, typefaces, civil liability and unfair competition.

2. A design protected by a Community design shall also be eligible for protection under the law of copyright of Member States as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Member State.

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## TITLE XII

## THE OFFICE

## Section 1

**General provisions***Article 101***SUPPLEMENTARY PROVISIONS CONCERNING THE OFFICE**

Unchanged

**General provision**

Unless otherwise provided in this Title, Title XII of the Regulation on the Community trade mark shall apply to the Office with regard to its tasks under this Regulation.

*Article 102*

(deleted)

**Administrative services***Article 103*

(deleted)

**Staff***Article 104*

(deleted)

**Privileges and immunities***Article 105*

(deleted)

**Liability***Article 106*

(deleted)

**Jurisdiction of the Court of Justice**

## Section 2

Unchanged

**Management of the Office***Article 107***of the President****Supplementary powers of the President**

In addition to the powers conferred on the President place before the Commission any proposal to amend this Regulation, the implementing Regulation, the Fees Regulation and any other rule to registered Community designs, after consulting the Administrative

In addition to the functions and powers conferred on the President of the Office by Article 119 of the Regulation on the Community trade mark, the President may place before the Commission any proposal to amend this Regulation, the implementing Regulation, the Fees Regulation and any other rule to the extent that they apply to registered Community designs, after consulting the Administrative Board and, in the case of the Fees Regulation, the Budget Committee.

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*Article 108***Appointment of senior officials****Section 3****Administrative Board***Article 109*

In addition to any powers conferred on by the

- (a) shall set the date for the first filing of applications for registered Community designs pursuant to Article 128(2);
- (b) it shall be consulted before adoption of the guidelines for examination as to formal requirements, and invalidity proceedings in the Office and in the other cases provided for in this Regulation;

*Article 110***Composition***Article 111***Chairmanship***Article 112***Meetings****Section 4****Implementation of procedures***Article 113***Competence**

For taking decisions in connection with the procedures laid down in this

- (b) and Legal Division;
- (c) Invalidity Divisions;
- (d) Boards of Appeal.

(deleted)

Unchanged

**Supplementary powers of the Administrative Board**

In addition to any powers conferred on the Administrative Board by the Regulation on the Community trade mark or by other provisions of this Regulation,

- (a) The Administrative Board shall set the date for the first filing of applications for registered Community designs pursuant to Article 128(2);
- (b) it shall be consulted before adoption of the guidelines for examination as to formal requirements, examination as to grounds for refusal of registration and invalidity proceedings in the Office and in the other cases provided for in this Regulation;

(deleted)

(deleted)

(deleted)

Unchanged

For taking decisions in connection with the procedures laid down in this Regulation the following shall be competent:

- (a) Examiners;
- (b) The Administration of Trade marks and Design and Legal Division;

Unchanged

## INITIAL PROPOSAL

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*Article 114*

shall be responsible for taking decisions in relation to an application for a registered Community design.

*Article 115*

Unchanged

**Examiners**

An examiner shall be responsible for taking decisions on behalf of the Office in relation to an application for a registered Community design.

## 1. The Administration

**The Administration of Trade marks and Design and Legal Division**

1. The Administration of Trademarks and Legal Division instituted by the Regulation on the Community trade mark shall become the Administration of Trade marks and Design and Legal Division.

2. In addition to the powers conferred upon it by the Regulation on the Community trade mark, it shall be responsible for taking those decisions required by this Regulation which do not fall within the competence of an examiner or an Invalidity Division. It shall in particular be responsible for decisions in respect of entries in the Register.

*Article 116*

Unchanged

**Invalidity Divisions**

1. An Invalidity Division shall be responsible for taking decisions in relation to an application for a declaration of invalidity of a registered Community design.

2. An Invalidity Division shall consist of three members. At least two of these members must be legally qualified.

*Article 117***Boards of Appeal**

Board of Appeal shall be responsible for deciding on appeals from decisions of the Invalidity Divisions

In addition to the powers conferred upon it by the Regulation on the Community trade mark, a Board of Appeal instituted by that Regulation shall be responsible for deciding on appeals from decisions of the examiners, the Invalidity Divisions and from the decisions of the Administration of Trade marks and Design and Legal Division

*Article 118*

(deleted)

**Independence of the members of the Boards of Appeal***Article 119*

(deleted)

**Exclusion and objection**

## INITIAL PROPOSAL

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## Article 120

(deleted)

**Appointment of members of Invalidity Divisions and Boards of Appeal during a transitional period**

## Section 5

(deleted)

**Financial Provisions**

## Article 121

(deleted)

**Budget**

## Article 122

(deleted)

**Fees**

## TITLE XIII

Unchanged

**FINAL PROVISIONS**

## Article 123

(deleted)

**Official languages**

## Article 124

Unchanged

**Implementing Regulation**

1. The rules implementing this Regulation shall be adopted in an implementing Regulation.

Unchanged

2. In addition to the fees already provided for in fees shall be charged, in accordance with the detailed rules of application laid down in the Implementing Regulation in the cases listed below:

2. In addition to the fees already provided for in the preceding Articles, fees shall be charged, in accordance with the detailed rules of application laid down in the Implementing Regulation and a Fees Regulation, in the cases listed below:

- (a) late payment of the registration fee;
- (b) late payment of the publication fee;
- (c) late payment of the fee for deferment of publication;
- (d) late payment of additional fees for multiple applications;
- (e) issue of a copy of the certificate of registration;
- (f) registration of the transfer of a registered Community design;
- (g) registration of a licence or another right in respect of a registered Community design;
- (h) cancellation of the registration of a licence or another right;
- (i) issue of an extract from the register;

Unchanged

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- (j) inspection of the files;
- (k) issue of copies of file documents;
- (l) communication of information of a file;
- (m) review of the determination of the procedural costs to be refunded;
- (n) issue of certified of the application.

3. The implementing Regulation and the Fees Regulation shall be adopted and amended in accordance with the procedure laid down in Article 141 of the Regulation on the Community Trademark.

*Article 124a*

Unchanged

**Rules of procedure of the Boards of Appeal**

The rules of procedure of the Boards of Appeal shall apply to appeals heard by those Boards under this Regulation, without prejudice to any necessary adjustment or additional provision, adopted in accordance with the procedure laid down in Article 141 of the Regulation on the Community trade mark.

*Article 125*

(deleted)

**System of exchange of information***Article 126*

(deleted)

**Establishment of a committee and procedure for the adoption of implementing regulations***Article 127*

(deleted)

**Fees Regulation***Article 128*

Unchanged

**Entry into force**

1. This Regulation shall enter into force on the 60th day following its publication in the Official Journal of the European Communities.

2. Applications for registered Community designs may be filed at the Office from the date fixed by the Administrative Board on the recommendation by the

3. Applications for registered Community designs filed within three months before the date referred to in paragraph 2, shall be deemed to have filed on that date.

2. Applications for registered Community designs may be filed at the Office from the date fixed by the Administrative Board on the recommendation by the President of the Office.

Unchanged

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

**Amended proposal for a European Parliament and Council Directive approximating the legal arrangements for the protection of inventions by utility model<sup>(1)</sup>**

(2000/C 248 E/03)

COM(1999) 309 final — 97/0356(COD)

*(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 28 June 1999)*

<sup>(1)</sup> OJ C 36, 3.2.1998, p. 13.

**INITIAL PROPOSAL**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee<sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(2)</sup>,

Whereas the Treaty commits the Community and Member States to creating the conditions for Community industry to be competitive and to promoting a better exploitation of the industrial potential of innovation, research and technological development policies;

Whereas technical inventions play an important role in that they make available improved, better quality products which are particularly effective in terms of, for example, ease of application or use, or which confer a practical or industrial advantage compared with the state of the art;

Whereas, because of differences between Member States' utility model laws, an invention may not be protected throughout the Community, at least not in the same way or for the same length of time, a state of affairs which is incompatible with a transparent, obstacle-free single market; whereas it is therefore necessary, with a view to the establishment and proper functioning of the single market, to approximate Member States' laws in this area;

**AMENDED PROPOSAL**

Unchanged

(1) Whereas the Treaty commits the Community and Member States to creating the conditions for Community industry to be competitive and to promoting a better exploitation of the industrial potential of innovation, research and technological development policies;

(2) Whereas technical inventions play an important role in that they make available improved, better quality products which are particularly effective in terms of, for example, ease of application or use, or which confer a practical or industrial advantage compared with the state of the art;

(3) Whereas, because of differences between Member States' utility model laws, an invention may not be protected throughout the Community, at least not in the same way or for the same length of time, a state of affairs which is incompatible with a transparent, obstacle-free single market; whereas it is therefore necessary, with a view to the establishment and proper functioning of the single market, to approximate Member States' laws in this area;

<sup>(1)</sup> OJ C 235 of 27.7.98, p. 26.

<sup>(2)</sup> European Parliament Opinion of 12 March 1999.

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Whereas it is important in this context to employ every possible means of increasing the competitiveness of Community industry in the field of research and development;

Whereas small and medium-sized firms play a strategic role in relation to innovation and rapid response to market requirements;

Whereas there is a need for placing at the disposal of firms, and in particular small and medium-sized firms and researchers, an instrument which is cheap, rapid and easy to evaluate and apply;

Whereas utility model protection is better suited than patent protection to technical inventions involving a specific level of inventiveness;

Whereas technical inventions should be suitably protected throughout the Community;

Whereas, in accordance with the principle of proportionality, the approximation may be limited to those national provisions which have the most direct impact on the functioning of the single market;

Whereas, if the objectives of the approximation are to be attained, the conditions for obtaining and retaining the rights conferred by a registered utility model should in principle be the same in all Member States; whereas to that end an exhaustive list of the requirements which a technical invention must satisfy if it is to be protected by a utility model must be drawn up;

Whereas these requirements are for the most part the same as those for patent protection; whereas the level of inventiveness required must nevertheless be different to allow for the specific nature of technical inventions protectable by utility model;

Whereas utility model protection must be available both to products and to processes;

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(4) Whereas it is important in this context to employ every possible means of increasing the competitiveness of Community industry in the field of research and development;

(5) Whereas small and medium-sized firms play a strategic role in relation to innovation and rapid response to market requirements;

(6) Whereas there is a need for placing at the disposal of firms, and in particular small and medium-sized firms and researchers, an instrument which is cheap, rapid and easy to evaluate and apply; whereas the fees should therefore be as reasonable as possible for small firms, individual inventors and universities;

(7) Whereas utility model protection is better suited than patent protection to technical inventions involving a specific level of inventiveness;

(8) Whereas technical inventions should be suitably protected throughout the Community;

(9) Whereas, in accordance with the principle of proportionality, the approximation may be limited to those national provisions which have the most direct impact on the functioning of the single market;

(10) Whereas, if the objectives of the approximation are to be attained, the conditions for obtaining and retaining the rights conferred by a registered utility model should in principle be the same in all Member States; whereas to that end an exhaustive list of the requirements which a technical invention must satisfy if it is to be protected by a utility model must be drawn up;

(11) Whereas these requirements are for the most part the same as those for patent protection; whereas the level of inventiveness required must nevertheless be different to allow for the specific nature of technical inventions protectable by utility model;

(12) Whereas utility model protection must be available both to products and to processes;

(13) Whereas it is necessary to exclude from utility model protection not only those inventions which are normally excluded from patentability but also, in order to meet the needs of the industries concerned, inventions relating to chemical or pharmaceutical substances or processes;

## INITIAL PROPOSAL

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Whereas it is essential, in order to safeguard the proper functioning of the single market and ensure that competition is not distorted, that registered utility models should henceforth confer upon their proprietor the same protection in all Member States and that the period of protection should be identical; whereas this period may not exceed 10 years;

Whereas the nature and scope of the rights conferred by a utility model must be spelled out; whereas the principle of Community exhaustion of rights must apply in accordance with the case-law of the Court of Justice of the European Communities, but the principle of international exhaustion must be expressly excluded;

Whereas rules must also be laid down on dual protection by patent and by utility model, and on the lapse and revocation of utility models;

Whereas all Member States of the Community are bound by the Paris Convention for the Protection of Industrial Property; whereas the Community and all Member States are bound by the Agreement on Trade-related Aspects of Intellectual Property Rights concluded under the auspices of the World Trade Organisation; whereas the provisions of this Directive must be in complete harmony with those of the Paris Convention and of the above-mentioned Agreement; whereas Member States' other obligations stemming from the Convention and the Agreement are not affected by this Directive;

(14) Whereas a utility model application must satisfy requirements similar to those for patents; whereas, however, a utility model application gives rise only to a check to ensure that the formal conditions for protectability are satisfied without any preliminary examination to establish novelty or inventive step; whereas it may form the subject-matter of a search report on the state of the art only at the request of the applicant or any other interested party;

(15) Whereas it is essential, in order to safeguard the proper functioning of the single market and ensure that competition is not distorted, that registered utility models should henceforth confer upon their proprietor the same protection in all Member States and that the period of protection should be identical; whereas this period may not exceed 10 years;

(16) Whereas the nature and scope of the rights conferred by a utility model must be spelled out; whereas the principle of Community exhaustion of rights must apply in accordance with the case-law of the Court of Justice of the European Communities, but the principle of international exhaustion must be expressly excluded;

(17) Whereas rules must also be laid down on dual protection by patent and by utility model, and on the lapse and revocation of utility models;

(18) Whereas all Member States of the Community are bound by the Paris Convention for the Protection of Industrial Property; whereas the Community and all Member States are bound by the Agreement on Trade-related Aspects of Intellectual Property Rights concluded under the auspices of the World Trade Organisation; whereas the provisions of this Directive must be in complete harmony with those of the Paris Convention and of the above-mentioned Agreement; whereas Member States' other obligations stemming from the Convention and the Agreement are not affected by this Directive;

(19) Whereas the application of this Directive should be monitored and it should be adapted in order to safeguard, in the context of utility models, the proper functioning of the internal market and innovation by Community enterprises; whereas the Commission should propose the measures necessary for this purpose, which should include specific steps to facilitate and reduce the cost of registering utility models in more than one Member State,

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HAVE ADOPTED THIS DIRECTIVE:

Unchanged

## CHAPTER ONE

## GENERAL PROVISIONS

*Article 1***Definition**

1. In accordance with the provisions of this Directive, utility model protection shall cover new inventions involving products or processes that involve an inventive step and are suitable for industrial application.

2. The following names are used in the Member States:

Belgium:	Brevet de courte durée/Octrooi van korte duur
Denmark:	Brugsmodel
Germany:	Gebrauchsmuster
Greece:	Πιστοποιητικό υποδειγματος χρησιμότητας
Spain:	Modelo de utilidad
France:	Certificat d'utilité
Ireland:	Short-term patent
Italy:	Brevetto per modelli di utilità
Netherlands:	Zesjarig octrooi
Austria:	Gebrauchsmuster
Portugal:	Modelo de utilidade
Finland:	Nyttygårtsmodellagen

*Article 2*

Unchanged

**Subject**

This Directive seeks to approximate Member States' laws, regulations and administrative provisions on the protection of inventions by utility model.

## CHAPTER II

## SCOPE OF THE UTILITY MODEL

*Article 3***Exceptions to protection**

1. The following in particular shall not be regarded as inventions that are eligible for utility model protection:

(a) discoveries, scientific theories and mathematical methods;

Unchanged

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(b) aesthetic creations;

(c) schemes, rules and methods for performing mental acts or doing business;

(d) presentations of information.

Unchanged

2. The items referred to in paragraph 1, shall be excluded from utility model protection only the application for utility model protection relates to those items as such.

*Article 4**Article 4***Non-protectable inventions**

Utility models shall not be granted in respect of:

Unchanged

(a) inventions the exploitation of which would be contrary to public policy or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all Member States;

(b) inventions relating to biological material;

(c) inventions relating to chemical or pharmaceutical substances or processes;

*Article 5***Novelty**

1. An invention shall be considered to be new if it does not form part of the state of the art.

2. The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the utility model application.

3. Additionally, the content of utility model and patent applications as filed, of which the dates of filing are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as comprised in the state of the art.

*Article 6***Inventive step***Article 6***Inventive step**

1. For the purposes of this Directive, an invention shall be considered as involving an inventive step if, compared with the state of the art, it presents an advantage and is not very obvious to an expert in the field.

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2. The advantage referred to in the previous paragraph must be a practical or technical advantage for the use or manufacture of the product or process in question, or another benefit to the user, such as an educational advantage or an entertainment value.

*Article 7***Industrial application**

1. An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

2. Surgical or therapeutic treatment procedures applicable to the human body or to the bodies of animals and diagnostic procedures which are carried out on the human body or the bodies of animals shall not be considered to be inventions susceptible of industrial application within the meaning of paragraph 1.

Unchanged

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CHAPTER III**UTILITY MODEL APPLICATION***Article 8***Requirements of the application**

1. A utility model application shall contain only:

- (a) a request for the grant of a utility model;
- (b) a description of the invention;
- (c) one or more claims;
- (d) any drawings referred to in the description or the claims;
- (e) an abstract.

Unchanged

2. A utility model application shall be subject to the payment of a filing fee and, where appropriate, a search fee.

*Article 9***Date of filing**

The date of filing of a utility model application shall be the date on which documents filed by the applicant contain:

- (a) an indication that a utility model is sought;
- (b) information identifying the applicant;
- (c) a description and one or more claims.

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*Article 10***Designation of the inventor**

The utility model application shall designate the inventor. If the applicant is not the inventor or is not the sole inventor, the designation shall contain a statement indicating the origin of the right to the utility model.

*Article 11***Unity of invention**

The utility model application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

*Article 12***Disclosure of the invention**

The utility model application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

*Article 13***Claims**

The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.

*Article 14*

Unchanged

**The abstract**

The abstract shall merely serve for use as technical information. It may not be taken into account for any other purpose, in particular not for the purpose of interpreting the scope of the protection sought nor for the purpose of applying Article 5(3).

*Article 15***Examination as to formal requirements**

1. The competent authority with which a utility model application has been lodged shall examine whether the application satisfies the formal requirements of Articles 8 and 10 and shall check whether it contains a description and an abstract.

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2. If a date of filing cannot be accorded, the competent authority shall give the applicant an opportunity to correct the deficiencies in accordance with such conditions and within such period as it may fix. If the deficiencies are not remedied in due time, the application shall not be dealt with as a utility model application.

3. The competent authority referred to in paragraph 1 shall not carry out any examination to establish whether the requirements of Articles 5, 6 and 7 have been met.

*Article 16***Search report**

2. The competent authority with which the application has been lodged may entrust the task of drawing up the search report to any authority which it considers competent to do so.

3. Immediately after it has been drawn up, the search report shall be transmitted to the applicant together with copies of any cited documents.

1. If a utility model application has been accorded a date of filing and is not deemed to have been withdrawn, the competent authority with which the application has been lodged shall, at the request of the applicant or any other interested party and at their own cost, draw up on the basis of the claims a search report covering the relevant state of the art, with due regard to the description and any drawings.

Unchanged

3. Immediately after it has been drawn up, the search report shall be transmitted to the applicant together with copies of any cited documents. The search report shall be made available to the public as part of the documentation accompanying the granting of the utility model.

4. In the provisions which they adopt in order to comply with this Directive, Member States shall provide that a search report is compulsory in the event of legal proceedings being brought to enforce the rights conferred by the utility model, unless it has already been the subject of a previous search report.

*Article 17***Priority right**

1. Any person who has duly filed an application for a utility model or a patent in or for one of the Member States, such State being a party to the Paris Convention for the Protection of Industrial Property, or his successors in title, shall enjoy, for the purpose of filing a utility model application in respect of the same invention in one or more other Member States a right of priority during a period of twelve months from the date of filing of the first application.

Unchanged

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2. Any filing that is equivalent to a regular national filing under the domestic law of the Member State where it was made or under bilateral or multilateral agreements shall be recognised as giving rise to a right of priority.
3. By a regular national filing is meant any filing that is sufficient to establish the date on which the application was filed in the Member State concerned, whatever may be the outcome of the application.

*Article 18***Internal priority and transformation**

2. The provisions of Article 17(2) and (3) shall apply *mutatis mutandis*.

Unchanged

1. Any person who has duly filed a patent application shall enjoy a right of priority during a period of twelve months for the purpose of filing a utility model application or changing his patent application into an application for a utility model in respect of the same invention, unless priority has already been claimed for the patent application.

## CHAPTER IV

**EFFECTS OF THE UTILITY MODEL***Article 19***Duration of protection**

1. The duration of the utility model shall be six years from the date of filing of the application.

Unchanged

2. Six months before the period indicated in paragraph 1 elapses, the right-holder may submit to the competent authority an application for renewal of the utility model for a period of two years.

2. Six months before the period indicated in paragraph 1 elapses, the right-holder may submit to the competent authority an application for renewal of the utility model for a period of two years. This renewal shall not be granted unless an application for a search report has been made in respect of the invention concerned.

Unchanged

3. Six months before the period indicated in paragraph 2 elapses, the right-holder may submit a second and last application for renewal for a maximum period of two years.

4. In no circumstances may utility model protection last for more than ten years from the date of filing of the application.

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*Article 20***Rights conferred**

3. The rights conferred by a utility model in accordance with paragraphs 1 and 2 shall not extend to:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes relating to the subject-matter of the protected invention.

5. Member States may provide limited exceptions to the exclusive rights conferred by a utility model, provided that such exceptions do not unreasonably conflict with a normal exploitation of the utility model and do not unreasonably prejudice the legitimate interests of the proprietor of the utility model, taking account of the interests of third parties.

6. Where the law of a Member State allows for use of the subject-matter of a utility model other than that allowed under paragraph 5 without the authorisation of the right-holder, including use by the government or third parties authorised by the government, the provisions applicable to patents for similar use shall be complied with.

1. Where the subject-matter of a utility model is a product, the utility model shall confer on its proprietor the right to prevent third parties not having his consent from making, using, offering for sale, selling, or importing for these purposes that product.

2. Where the subject-matter of a utility model is a process, the utility model shall confer on its proprietor the right to prevent third parties not having his consent from using the process and from using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

Unchanged

4. The proprietor of or applicant for a utility model shall have the right to assign, or transfer, the utility model by any legally recognised means and to conclude licensing agreements.

Unchanged

7. The right conferred by the utility model shall take full effect at the time when the protection is published.

*Article 21***Community exhaustion of rights**

1. The rights conferred by a utility model shall not extend to acts concerning a product covered by that utility model which are done after that product has been put on the market in the Community by the right-holder or with his consent.

Unchanged

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2. The rights conferred by a utility model shall, however, extend to acts concerning a product covered by that utility model which are done after that product has been put on the market outside the Community by the right-holder or with his consent.

*Article 22***Relationship with other forms of protection**

The provisions of this Directive shall be without prejudice to any provisions of Community law or of the law of the Member State concerned relating to design rights, trade marks or other distinctive signs, patents, typefaces, topography of semiconductor products, civil liability or unfair competition.

## CHAPTER V

Unchanged

**DUAL PROTECTION, LAPSE AND REVOCATION***Article 23***Dual protection**

1. The same invention may form the subject-matter, simultaneously or successively, of a patent application and a utility model application.

2. A utility model which has been granted shall be deemed to be ineffective where a patent relating to the same invention has been granted and published.

3. Member States shall take appropriate measures to prevent the proprietor, in the event of his rights being infringed, from instituting successive proceedings under both sets of protection arrangements.

*Article 24*

Unchanged

**Lapse**

A utility model shall lapse:

- (a) at the end of the period laid down in Article 19;
- (b) if its proprietor surrenders it;
- (c) if the fees referred to in Article 8(2) have not been paid in due time.

*Article 25***Revocation**

1. An application for revocation of a utility model may be filed only on the grounds that:

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(a) the subject-matter of the utility model is not protectable pursuant to Articles 1(1) and 3 to 7 of this Directive;

(b) the utility model does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

(c) the subject-matter of the utility model extends beyond the content of the utility model application as filed;

(d) the protection conferred by the utility model has been extended.

2. If the grounds for revocation affect the utility model only partially, revocation shall be pronounced in the form of a corresponding limitation of the utility model.

2. If the grounds for revocation affect the utility model only partially, revocation shall be pronounced in the form of a corresponding limitation of the utility model. If the national law permits, the limitation may be effected in the form of an amendment to the claims, the description or the drawings.

*Article 26***Secondary application**

In the absence of specific provisions applicable to utility models, these shall be governed, mutatis mutandis, by the provisions laid down for patents for invention provided they are not incompatible with the specific characteristics of utility models.

## CHAPTER VI

Unchanged

**FINAL PROVISIONS***Article 27***Transposal**

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

Unchanged

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

2. Member States shall inform the Commission of the main provisions of national law which they adopt in the field governed by this Directive.

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*Article 28***Monitoring of the Directive**

Within three years of the deadline for transposal laid down in Article 27, the Commission shall inform the European Parliament and the Council of the results of its application and whether it should be adapted in order to safeguard, in the context of utility models, the proper functioning of the internal market and innovation by Community undertakings. It shall also propose any measures it deems necessary to improve it.

*Article 29*

Unchanged

**Entry into force**

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

*Article 30***Addressees**

This Directive is addressed to the Member States.

**Amended proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market <sup>(1)</sup>**

(2000/C 248 E/04)

(Text with EEA relevance)

COM(1999) 427 final — 98/0325(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 17 August 1999)

<sup>(1)</sup> OJ C 30, 5.2.1999, p. 4.

INITIAL PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL  
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57(2), 66 and 100a thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee <sup>(1)</sup>,

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

(1) Whereas the European Union is seeking to forge ever closer links between the States and peoples of Europe, to ensure economic and social progress; whereas, in accordance with Article 7a of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods, services and the freedom of establishment are ensured; whereas the development of Information Society services within the area without internal frontiers is vital to eliminating the barriers which divide the European peoples;

(2) Whereas the development of electronic commerce within the Information Society offers significant employment opportunities in the Community, particularly in small and medium-sized enterprises, and will stimulate economic growth and investment in innovation by European companies

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Unchanged

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 and 95 thereof,

Unchanged

Acting in accordance with the procedure referred to in Article 251 of the Treaty,

(1) Whereas the European Union is seeking to forge ever closer links between the States and peoples of Europe, to ensure economic and social progress; whereas, in accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods, services and the freedom of establishment are ensured; whereas the development of Information Society services within the area without internal frontiers is vital to eliminating the barriers which divide the European peoples;

(2) Whereas the development of electronic commerce within the Information Society offers significant employment opportunities in the Community, particularly in small and medium-sized enterprises, and will stimulate economic growth and investment in innovation by European companies, and can also enhance the competitiveness of European industry, provided that everyone has access to the Internet;

<sup>(1)</sup> OJ C 169, 16.6.1999.

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(2a) Whereas Community law and the characteristics of the Community legal order are a vital asset to enable European citizens and operators to take full advantage, without consideration of borders, of the opportunities afforded by electronic commerce; whereas this Directive therefore has the purpose of ensuring a high level of Community legal integration in order to establish a real area without internal borders for Information Society services;

(2b) Whereas the free movement of Information Society services can in many cases be a specific reflection in Community law of a more general principle, namely freedom of expression as enshrined in Article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, which has been ratified by all the Member States; whereas, for this reason, Directives covering the supply of Information Society services must ensure that this activity may be engaged freely in the light of that Article, subject only to the restrictions laid down in paragraph 2 of that Article and in Article 46(1) of the Treaty;

(2c) Whereas the definition of Information Society service already exists in Community law, in the Directive 98/34/EC of the European Parliament and the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations <sup>(1)</sup>, as amended by Directive 98/48/EC of the European Parliament and the Council of 20 July 1998 <sup>(2)</sup>. Whereas Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access <sup>(3)</sup>, has already referred to the definition provided by Directive 98/34; whereas this definition covers any service normally provided for or against remuneration, at a distance, via networks, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service; whereas those services referred to in the indicative list in annex V of Directive 98/34/EC, as amended by Directive 98/48/EC, which do not imply data processing and storage are not covered by this definition;

<sup>(1)</sup> OJ L 204, 21.7.1998, p. 37.

<sup>(2)</sup> OJ L 217, 5.8.1998, p. 18.

<sup>(3)</sup> OJ L 320, 28.11.1998, p. 54.

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(3) Whereas Information Society services span a wide range of economic activities which can, in particular, consist of selling goods on line; whereas they are not solely restricted to services giving rise to on-line contracting but also, in so far as they represent an economic activity, extend to services which are not remunerated by those who receive them, such as those offering on-line information; whereas Information Society services also include on line activities via telephony and telefax

(3) Whereas Information Society services span a wide range of economic activities which can, in particular, consist of selling goods on line; whereas they are not solely restricted to services giving rise to on-line contracting but also, in so far as they represent an economic activity, extend to services which are not remunerated by those who receive them, such as those offering on-line information or commercial communications, or those providing tools allowing for search, access and retrieval of data; whereas Information Society services also include services consisting in transmitting information via a communication network, in providing access to a communication network or in hosting information provided by a recipient of the service; whereas television broadcasting within the meaning of the Directive 89/552/EEC (<sup>1</sup>) of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, and radio broadcasting are not Information Society services because they are not provided at individual request; whereas by contrast services which are transmitted point to point, such as video on demand or the sending of commercial communications by e-mail are Information Society services;

(4) Whereas the development of Information Society services within the Community is restricted by a number of legal obstacles to the proper functioning of the internal market which hamper or make less attractive the exercise of the freedom of establishment and the freedom to provide services; whereas these obstacles arise from divergences in legislation and from the legal uncertainty as to which national rules apply to such services; whereas, in the absence of coordination and adjustment of legislation in the relevant areas, obstacles might be justified in the light of the case-law of the Court of Justice of the European Communities; whereas legal uncertainty exists with regard to the extent to which Member States may control services originating from another Member State;

Unchanged

(4a) Whereas it is important to ensure that electronic commerce can fully benefit from the internal market and therefore that, as with Directive 89/552/EEC, a high level of Community integration should be achieved;

(<sup>1</sup>) OJ L 298, 17.10.1989, p. 23.

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(5) Whereas, in the light of Community objectives, of Articles 52 and 59 of the Treaty and of secondary Community law, these obstacles should be eliminated by coordinating certain national laws and by clarifying certain legal concepts at Community level to the extent necessary for the proper functioning of the internal market; whereas, by dealing only with certain specific matters which give rise to problems for the internal market, this Directive is fully consistent with the need to respect the principle of subsidiarity as set out in Article 3b of the Treaty;

(5) Whereas, in the light of Community objectives, of Articles 43 and 49 of the Treaty and of secondary Community law, these obstacles should be eliminated by coordinating certain national laws and by clarifying certain legal concepts at Community level to the extent necessary for the proper functioning of the internal market; whereas, by dealing only with certain specific matters which give rise to problems for the internal market, this Directive is fully consistent with the need to respect the principle of subsidiarity as set out in Article 5 of the Treaty;

(6) Whereas, in accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market; whereas, where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as far as electronic commerce is concerned, the Directive must ensure a high level of protection of objectives of general interest, in particular, consumer protection and the protection of public health; whereas according to Article 129 of the Treaty, the protection of public health is an essential component of other Community policies; whereas this Directive does not impact on the legal requirements applicable to the delivery of goods as such, nor those applicable to services which are not Information Society services;

(5a) Whereas, in order to ensure legal certainty and consumer confidence, this Directive must lay down a clear and uniform general framework to cover certain legal aspects of electronic commerce in the internal market;

(6) Whereas, in accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market; whereas, where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as far as electronic commerce is concerned, the Directive must ensure a high level of protection of objectives of general interest, in particular the protection of minors and human dignity, consumer protection and the protection of public health; whereas according to Article 152 of the Treaty, the protection of public health is an essential component of other Community policies; whereas this Directive does not impact on the legal requirements applicable to the delivery of goods as such, nor those applicable to services which are not Information Society services;

(6a) Whereas the rules relating to the protection of personal data, in particular 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 the free movement of such data <sup>(1)</sup> and 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 <sup>(2)</sup> are fully applicable to Information Society services; whereas these Directives already establish the Community legal framework in the field of

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(2)</sup> OJ L 24, 30.1.1998, p. 1.

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personal data and therefore it is not necessary to cover this issue in this Directive in order to ensure the smooth functioning of the internal market, in particular the free movement of such data between Member States; whereas the implementation and application of this Directive should be in full compliance with the principles relating to the protection of personal data, in particular as regards unsolicited commercial communication and the liability regime for intermediaries; whereas this Directive cannot prevent the anonymous use of open networks such as the Internet;

(7) Whereas this Directive does not aim to establish specific rules on private international law relating to conflicts of law or jurisdiction and is therefore without prejudice to the relevant international conventions;

(8) Whereas Information Society services should be supervised at the source of the activity, in order to ensure an effective protection of public interest objectives; whereas, to that end, it is necessary to ensure that the competent authority provides such protection not only for the citizens of its own country but for all Community citizens; whereas, moreover, in order to effectively guarantee freedom to provide services and legal certainty for suppliers and recipients of services, such Information Society services should only be subject to the law of the Member State in which the service provider is established; whereas, in order to improve mutual trust between Member States, it is essential to state clearly this responsibility on the part of the Member State where the services originate;

(9) Whereas the place at which a service provider is established should be determined in accordance with the case-law of the Court of Justice; whereas the place of establishment of a company providing services via an internet website is not the place at which the technology supporting its website is located or the place at which its website is accessible; whereas, where the same supplier has a number of establishments, the competent Member State will be the one in which the supplier has the centre of his activities; whereas in cases where it is particularly difficult to assess in which Member States the supplier is established, cooperative procedures should be established between the Member States and the consultative committee should be capable of being convened in urgent cases to examine such difficulties;

(7) Whereas this Directive does not aim to establish specific rules on private international law relating to conflicts of law or jurisdiction and is not a substitute for the relevant international conventions;

Unchanged

(9a) Whereas the definition of 'recipient of a service' covers all types of usage of Information Society services, both by persons who provide information on open networks such as the Internet and by persons who seek information on the Internet for private or professional reasons;

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(10) Whereas commercial communications are essential for the financing of Information Society services and for developing a wide variety of new, charge-free services; whereas in the interests of consumer protection and fair trading, commercial communications, including discounts, promotional offers and promotional competitions, must meet a number of transparency requirements and that these requirements are without prejudice to Directive 97/7/EC of the European Parliament and of the Council on the protection of consumers in respect of distance contracts<sup>(1)</sup>; whereas this Directive should not affect existing Directives on commercial communications, in particular Directive 98/43/EC of the European Parliament and of the Council<sup>(2)</sup> on tobacco advertising;

(11) Whereas Article 10(2) of Directive 97/7/EC and Article 12(2) of European Parliament and Council Directive 97/66/EC of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector<sup>(3)</sup> address the issue of consent by receivers to certain forms of unsolicited commercial communication and are fully applicable to Information Society services;

Unchanged

(11) Whereas the sending of unsolicited commercial communications by e-mail may be undesirable for consumers and Information Society service providers and may disrupt the smooth functioning of interactive networks; whereas the question of consent by recipients of certain forms of unsolicited commercial communications is not addressed by this Directive, but has already been addressed, in particular, in Directive 97/7/EC and in Directive 97/66/EC; whereas, in Member States which authorise unsolicited commercial communications by e-mail, the setting up of appropriate industry filtering initiatives should be encouraged and facilitated; whereas in addition it is necessary that in any event unsolicited commercial communications are clearly identifiable as such in order to improve transparency and to facilitate the functioning of such industry initiatives; whereas unsolicited commercial communications by e-mail should not result in additional communication costs for the recipient;

(12) Whereas, in order to remove barriers to the development of cross-border services within the Community which professional practitioners might offer on the internet, it is necessary that compliance be guaranteed at Community level with professional rules aiming, in particular, to protect consumers or public health; whereas codes of conduct at Community level would be the best means of determining the rules on professional ethics applicable to commercial communication; whereas the drawing-up or, where appropriate, the adaptation of such rules should in the first place be encouraged by, rather than laid down in, this Directive; whereas the regulated professional activities governed by this Directive should be understood in the light of the definition set out in Article 1d of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration<sup>(4)</sup>;

Unchanged

<sup>(1)</sup> OJ L 144, 4.6.1997, p. 19.

<sup>(2)</sup> OJ L 213, 30.7.1998, p. 9.

<sup>(3)</sup> OJ L 24, 30.1.1998, p. 1.

<sup>(4)</sup> OJ L 19, 24.1.1989, p. 16.

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(13) Whereas each Member State should amend its legislation containing requirements, and in particular requirements as to form, which are likely to curb the use of contracts by electronic means, subject to any Community measure in the field of taxation that could be adopted on electronic invoicing; whereas the examination of the legislation requiring such adjustment should be systematic and should cover all the necessary stages and acts of the contractual process, including the filing of the contract; whereas the result of this amendment should be to make contracts concluded electronically genuinely and effectively workable in law and in practice; whereas the legal effect of electronic signatures is dealt with by European Parliament and Council Directive 98/.../EC [on a common framework for electronic signatures] (1); whereas it is necessary to clarify at what point in time a contract entered into electronically is considered to be actually concluded; whereas the service recipient's agreement to enter into a contract may take the form of an online payment; whereas the acknowledgment of receipt by a service provider may take the form of the online provision of the service paid for;

(14) Whereas, amongst others, Council Directive 93/13/EEC (2) regarding unfair contract terms and Directive 97/7/EC, form a vital element for protecting consumers in contractual matters; whereas those Directives also apply in their entirety to Information Society services; whereas that same Community *acquis* also embraces Council Directive 84/450/EEC (3) on misleading advertising, as amended by European Parliament and Council Directive 97/55/EC (4), Council Directive 87/102/EEC (5) on consumer credit; as last amended by European Parliament and Council Directive 98/7/EC (6), Council Directive 90/314/EEC (7) on package travel, package holidays and package tours, and European Parliament and Council Directive 98/6/EC (8) on the indication of prices of products offered to consumers; whereas this Directive should be without prejudice to Directive 98/43/EC, adopted within the framework of the internal market, or to other Directives on the protection of public health,

(13) Whereas each Member State should amend its legislation containing requirements, and in particular requirements as to form, which are likely to curb the use of contracts by electronic means, subject to any Community measure in the field of taxation that could be adopted on electronic invoicing; whereas the examination of the legislation requiring such adjustment should be systematic and should cover all the necessary stages and acts of the contractual process, including the filing of the contract; whereas the result of this amendment should be to make contracts concluded electronically genuinely and effectively workable in law and in practice; whereas the legal effect of electronic signatures is dealt with by European Parliament and Council Directive 98/.../EC [on a Community framework for electronic signatures] (1); whereas it is necessary to clarify at what point in time a contract entered into electronically is considered to be actually concluded; whereas the service recipient's agreement to enter into a contract may take the form of an online payment; whereas the acknowledgment of receipt by a service provider may take the form of the online provision of the service paid for;

(14) Whereas, amongst others, Council Directive 93/13/EEC (2), of 5 April 1993, on unfair terms in consumer contracts and Directive 97/7/EC, form a vital element for protecting consumers in contractual matters; whereas those Directives also apply in their entirety to Information Society services; whereas that same Community *acquis* also embraces Council Directive 84/450/EEC (3) of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising, as amended by Directive 97/55/EC (4) of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, Council Directive 87/102/EEC (5) of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit; as last amended by Directive 98/7/EC (6) of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, Council Directive 90/314/EEC (7) on package travel, package holidays and package tours, and Directive 98/6/EC (8) of the European Parliament and of

(1) COM(1998) 297 final, 13.5.1998.

(2) OJ L 95, 21.4.1993, p. 29.

(3) OJ L 250, 19.9.1984, p. 17.

(4) OJ L 290, 23.10.1997, p. 18.

(5) OJ L 42, 12.2.1987, p. 48.

(6) OJ L 101, 1.4.1998, p. 17.

(7) OJ L 158, 23.6.1990, p. 59.

(8) OJ L 80, 18.3.1998, p. 27.

(1) COM(1998) 297 final, 13.5.1998.

(2) OJ L 95, 21.4.1993, p. 29.

(3) OJ L 250, 19.9.1984, p. 17.

(4) OJ L 290, 23.10.1997, p. 18.

(5) OJ L 42, 12.2.1987, p. 48.

(6) OJ L 101, 1.4.1998, p. 17.

(7) OJ L 158, 23.6.1990, p. 59.

(8) OJ L 80, 18.3.1998, p. 27.

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the Council of 16 February 1998 on consumer protection in connection with the indication of the prices of products offered to consumers; whereas this Directive should be without prejudice to Directive 98/43/EC<sup>(1)</sup> of the European Parliament and of the Council of 6 July 1998 on the approximation of the laws, regulations and administrative provisions of the Member states relating to the advertising and sponsorship of tobacco products, adopted within the framework of the internal market, or to other Directives on the protection of public health, especially Council Directive 92/28/EEC<sup>(2)</sup> of 31 March 1992 on the advertising of medicinal products for human use;

(15) Whereas the confidentiality of electronic messages is guaranteed by Article 5 of Directive 97/66/EC; whereas in accordance with that Directive Member States must prohibit any kind of interception or surveillance of such electronic messages by others than the senders and receivers

(16) Whereas both existing and emerging disparities in Member States' legislation and case-law concerning civil and criminal liability of service providers acting as intermediaries prevent the smooth functioning of the internal market, in particular by impairing the development of cross-border services and producing distortions of competition; whereas service providers have a duty to act, under certain circumstances, with a view to preventing or ceasing illegal activities; whereas the provisions of this Directive should constitute the appropriate basis for the development of rapid and reliable procedures for removing and disabling access to illegal information; whereas such mechanisms could be developed on the basis of voluntary agreements between all parties; whereas it is in the interest of all parties involved in the provision of Information Society services to adopt and implement such procedures; whereas the provisions of this Directive relating to liability should not preclude the development and effective operation, by the different interested parties, of technical systems of protection and identification

(15) Whereas the confidentiality of electronic messages is guaranteed by Article 5 of Directive 97/66/EC; whereas in accordance with that Directive Member States must prohibit any kind of interception or surveillance of such electronic messages by others than the senders and receivers and abstain from prohibiting or restricting the use of cryptographic methods or tools for protecting confidentiality or ensuring authenticity of the information transmitted or stored;

(16) Whereas both existing and emerging disparities in Member States' legislation and case-law concerning civil and criminal liability of service providers acting as intermediaries prevent the smooth functioning of the Internal Market, in particular by impairing the development of cross-border services and producing distortions of competition; whereas service providers have a duty to act, under certain circumstances, with a view to preventing or halting illegal activities; whereas the provisions of this Directive should constitute the appropriate basis for the development of rapid and reliable procedures for removing and disabling access to illegal information; whereas such mechanisms could be developed on the basis of voluntary agreements between all parties concerned and should be encouraged by Member States; whereas it is in the interest of all parties involved in the provision of Information Society services to adopt and implement such procedures; whereas the provisions of this Directive relating to liability should not preclude the development and effective operation, by the different interested parties, of technical systems of protection and identification and of technical surveillance instruments made possible by digital technology within the limits laid down by Directives 95/46/EC and 97/66/EC;

<sup>(1)</sup> OJ L 213, 30.7.1998, p. 9.

<sup>(2)</sup> OJ L 113, 30.4.1992, p. 13.

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(16a) Whereas it is important that the Directive .../.../EC of the European Parliament and the Council on the harmonisation of certain aspects of copyright and related rights in the Information Society (<sup>(1)</sup>) and this Directive come into force within a similar time scale with a view to establishing a clear framework of rules relevant to the issue of liability of intermediaries for copyright and related rights infringements at Community level;

(16b) Whereas this Directive strikes a balance between the different interests at stake and establishes principles upon which industry agreements and standards can be based;

(16c) Whereas the effective exercise of the freedoms of the internal market makes it necessary to guarantee victims effective access to means of settling disputes; whereas damage which may arise in connection with Information Society services is characterised both by its rapidity and by its geographical extent; whereas in view of this specific character and the need to ensure that national authorities do not endanger the mutual confidence which they should have in one another, this Directive requests Member States to ensure that appropriate court actions are available; whereas Member States should examine the need to provide access to judicial procedures by appropriate electronic means;

(17) Whereas each Member State should be required, where necessary, to amend any legislation which is liable to hamper the use of schemes for the out-of-court settlement of disputes through electronic channels; whereas the result of this amendment must be to make the functioning of such schemes genuinely and effectively possible in law and in practice, even across borders; whereas the bodies responsible for such out-of-court settlement of consumer disputes must comply with certain essential principles, as set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for such settlement of consumer disputes (<sup>(1)</sup>);

Unchanged

(17a) Whereas in the context of this Directive, notwithstanding the rule on the control at source of Information Society services, it would appear legitimate under certain circumstances for Member States to take measures to restrict the free movement of Information Society services; whereas, however, such measures must be taken in accordance with Community law and must be necessary to achieve

<sup>(1)</sup> OJ L 115, 17.4.1998, p. 31.

<sup>(1)</sup> COM(1999) 250 final, 21.5.1999.

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one of the following public interest objectives pursued: public policy, in particular the protection of minors, or the fight against any incitement to hatred on grounds of race, sex, religion or nationality; the protection of public health or public security; and consumer protection; whereas such measures must be strictly proportionate to their objective and must not go beyond what is necessary to achieve it;

(18) Whereas it is necessary to exclude certain activities from the scope of this Directive, on the grounds that the freedom to provide services in these fields cannot, at this stage, be guaranteed under the Treaty or existing secondary legislation; whereas excluding these activities does not preclude any instruments which might prove necessary for the proper functioning of the internal market; whereas taxation, particularly value-added tax imposed on a large number of the services covered by this Directive, must be excluded from the scope of this Directive; whereas, in this respect, the Commission also intends to extend the application of the principle of taxation at source to the provision of services within the internal market, thus giving its approach a general coherence;

(19) Whereas as regards the derogation contained in this Directive regarding contractual obligations concerning contracts concluded by consumers, those obligations should be interpreted as including information on the essential elements of the content of the contract, including consumer rights, which have a determining influence on the decision to contract;

(20) Whereas this Directive should not apply to services supplied by service providers established in a third country; whereas, in view of the global dimension of electronic commerce, it is, however, appropriate to ensure that the Community rules are consistent with international rules; whereas this Directive is without prejudice to the results of discussions within international organisations (WTO, OECD, UNCITRAL) on legal issues; whereas this Directive should also be without prejudice to the discussions within the Global Business Dialogue which were launched on the basis of the Commission Communication of 4 February 1998 on 'Globalisation and the Information Society — The need for strengthened international coordination' (1);

Unchanged

(20) Whereas this Directive should not apply to services supplied by service providers established in a third country; whereas, in view of the global dimension of electronic commerce, it is, however, appropriate to ensure that the Community rules are consistent with international rules; whereas this Directive is without prejudice to the results of discussions within international organisations (amongst others WTO, OECD, UNCITRAL) on legal issues; whereas this Directive should also be without prejudice to the discussions within the Global Business Dialogue which were launched on the basis of the Commission Communication of 4 February 1998 on 'Globalisation and the Information Society — The need for strengthened international coordination' (1);

(20a) Whereas, despite the global nature of electronic communications, coordination of national regulatory measures at European Union level is necessary in order to avoid fragmentation of the internal market, and for the establishment of an appropriate European regulatory framework; whereas such coordination should also contribute to the establishment of a common and strong negotiating position in international fora;

(1) COM(1998) 50 final.

(1) COM(1998) 50 final.

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## AMENDED PROPOSAL

(20b) Whereas, in order to allow the unhampered development of electronic commerce, the legal framework must be clear and simple, predictable and consistent with the rules applicable at international level so that it does not adversely affect the competitiveness of European industry or impede innovation in that sector;

(20c) Whereas, if the market is actually to operate by electronic means in the context of globalisation, the European Union and the major non-European areas need to consult each other with a view to making laws and procedures compatible;

(20d) Whereas cooperation with third countries should be strengthened in the area of electronic commerce, in particular with applicant countries and the European Union's main trading partners;

(21) Whereas the Member States need to ensure, that, when Community acts are transposed into national legislation, Community law is duly applied with the same effectiveness and thoroughness as national law;

(22) Whereas the adoption of this Directive will not prevent the Member States from taking into account the various social, societal and cultural implications which are inherent in the advent of the Information Society nor hinder cultural, and notably audiovisual, policy measures, which the Member States might adopt, in conformity with Community law, taking into account their linguistic diversity, national and regional specificities and their cultural heritage; whereas, in any case, the development of the Information Society must ensure that Community citizens can have access to the cultural European heritage provided in the digital environment;

Unchanged

(22a) Whereas electronic communication offers the Member States an excellent means of providing public services in the cultural, educational and linguistic fields;

(23) Whereas the Council, in its Resolution of 3 November 1998 on the consumer aspects of the Information Society, stressed that the protection of consumers deserved special attention in this field; whereas the Commission will examine the degree to which existing consumer protection rules provide insufficient protection in the context of the Information Society and will identify, where necessary, the deficiencies of this legislation and those issues which could require additional measures; whereas, if need be, the Commission should make specific additional proposals to resolve such deficiencies that will thereby have been identified;

(<sup>1</sup>) OJ C 23, 28.1.1999, p. 1.

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(24) Whereas this Directive should be without prejudice to Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerized reservation systems (¹), as amended by Regulation (EEC) No 3089/93 (²).

Unchanged

(25) Whereas Commission Regulation (EC) No 2027/97 (³) and the Warsaw Convention of 12 October 1929 place various obligations upon air carriers regarding the provision of information to their passengers, including information about the liability of the carrier; whereas this Directive is without prejudice to the requirements of those instruments,

(25) Whereas Council Regulation (EC) No 2027/97 (³) on air carrier liability in the event of accidents and the Warsaw Convention of 12 October 1929 place various obligations upon air carriers regarding the provision of information to their passengers, including information about the liability of the carrier; whereas this Directive is without prejudice to the requirements of those instruments,

HAVE ADOPTED THIS DIRECTIVE:

Unchanged

## CHAPTER I

## GENERAL PROVISIONS

## Article 1

**Objective and scope**

1. This Directive seeks to ensure the proper functioning of the internal market, particularly the free movement of Information Society services between the Member States.

2. This Directive approximates, to the extent necessary for the achievement of the objective set out in paragraph 1, national provisions on Information Society services relating to the internal market arrangements, the establishment of service providers, commercial communications, electronic contracts, the liability of intermediaries, codes of conduct, out-of-court dispute settlements, court actions and cooperation between Member States.

3. This Directive complements Community law applicable to Information Society services without prejudice to the existing level of protection for public health and consumer interests, as established by Community acts, including those adopted for the functioning of the internal market.

(¹) OJ L 220, 29.7.1989, p. 1.

(²) OJ L 278, 11.11.1993, p. 1.

(³) OJ L 285, 17.10.1997, p. 1.

(³) OJ L 285, 17.10.1997, p. 1.

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*Article 2***Definitions**

For the purpose of this Directive, the following terms shall bear the following meanings:

(a) 'Information Society services': any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services;

For the purpose of this definition:

- 'at a distance' means that the service is provided without the parties being simultaneously present;
- 'by electronic means' means that a service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- 'at the individual request of a recipient of services' means a service provided through the transmission of data on individual request.

(b) 'service provider': any natural or legal person providing an Information Society service;

Unchanged

(c) 'established service provider': a service provider who effectively pursues an economic activity using a fixed establishment for an indeterminate duration. The presence and use of the technical means and technologies required to provide the service do not constitute an establishment of the provider;

(d) 'recipient of the service': any natural or legal person who, for professional ends or otherwise, uses an Information Society service, in particular for the purposes of seeking information or making it accessible;

(e) 'commercial communications': any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a liberal profession. The following do not as such constitute commercial communications:

(a) 'Information Society services': Information Society services within the meaning of Article 1(2) of Directive 98/34/EC of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations as amended by Directive 98/48/EC of 20 July 1998 (¹);

(¹) OJ L 204, 21.7.1998, p. 37, as amended by Directive 98/48/EC of 20.7.1998, OJ L 217, 5.8.1998, p. 18.

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- information allowing direct access to the activity of the company, organisation or person, in particular a domain name or an electronic-mail address,
- communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, in particular without financial consideration.

(f) 'coordinated field': the requirements applicable to Information Society service providers and Information Society services.

(f) 'consumer': any natural person who is acting for purposes which are outside his or her trade, business or profession.

(g) 'coordinated field': the requirements applicable to Information Society service providers and Information Society services.

*Article 3***Internal market**

1. Each Member State shall ensure that the Information Society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within this Directive's coordinated field.
2. Member States may not, for reasons falling within this Directive's coordinated field, restrict the freedom to provide Information Society services from another Member State.
3. Paragraph 1 shall cover the provisions set out in Articles 9, 10 and 11 only in so far as the law of the Member State applies by virtue of its rules of private international law.

Unchanged

## CHAPTER II

**PRINCIPLES**

## SECTION 1

**ESTABLISHMENT AND INFORMATION REQUIREMENTS***Article 4***Principle excluding prior authorisation**

1. Member States shall lay down in their legislation that access to the activity of Information Society service provider may not be made subject to prior authorisation or any other requirement the effect of which is to make such access dependent on a decision, measure or particular act by an authority.

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2. Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at Information Society services, or which are covered by Directive 97/13/EC of the European Parliament and of the Council (1).

*Article 5***General information to be provided**

1. Member States shall lay down in their legislation that Information Society services shall render easily accessible, in a direct and permanent manner to their recipients and competent authorities, the following information:

- (a) the name of the service provider;
- (b) the address at which the service provider is established;
- (c) the particulars of the service provider, including his electronic-mail address, which allow him to be contacted rapidly and communicated with in a direct and effective manner;
- (d) where the service provider is registered in a trade register, the trade register in which the service provider is entered and his registration number in that register;
- (e) where the activity is subject to an authorisation scheme, the activities covered by the authorisation granted to the service provider and the particulars of the authority providing such authorisation;
- (f) as concerns the regulated professions:
  - any professional body or similar institution with which the service provider is registered;
  - the professional title granted in the Member State of establishment, the applicable professional rules in the Member State of establishment and the Member States in which the Information Society services are regularly provided;
- (g) where the service provider undertakes an activity that is subject to VAT, the VAT number under which he is registered with his fiscal administration.

2. Member States shall lay down in their legislation that prices of Information Society services are to be indicated accurately and unequivocally

1. Without prejudice to the obligations deriving from Directive 97/7/EC, Member States shall lay down in their legislation that Information Society services shall render easily accessible, in a direct and permanent manner to their recipients and competent authorities, the following information:

Unchanged

2. Member States shall lay down in their legislation that where Information Society services refer to prices, and other essential terms and conditions, these are to be indicated accurately and unequivocally and must include all additional costs.

(1) OJ L 117, 7.5.1997, p. 15.

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## SECTION 2

## COMMERCIAL COMMUNICATIONS

## Article 6

**Information to be provided**

Member States shall lay down in their legislation that commercial communication shall comply with the following conditions:

- (a) the commercial communication shall be clearly identifiable as such;
- (b) the natural or legal person on whose behalf the commercial communication is made shall be clearly identifiable;
- (c) promotional offers, such as discounts, premiums and gifts, where authorised, shall be clearly identifiable as such, and the conditions which are to be met to qualify for them shall be easily accessible and be presented accurately and unequivocally;
- (d) promotional competitions or games, where authorised, shall be clearly identifiable as such, and the conditions for participation shall be easily accessible and be presented accurately and unequivocally.

Unchanged

Without prejudice to the obligations deriving from Directive 97/7/EC, Member States shall lay down in their legislation that commercial communication shall comply with the following conditions:

Unchanged

(c) promotional offers, such as discounts, premiums and gifts, where authorised by the Member State in which the service provider is established, shall be clearly identifiable as such, and the conditions which are to be met to qualify for them shall be easily accessible and be presented accurately and unequivocally;

(d) promotional competitions or games, where authorised by the Member State in which the service provider is established, shall be clearly identifiable as such, and the conditions for participation shall be easily accessible and be presented accurately and unequivocally.

## Article 7

**Unsolicited commercial communication**

Member States shall lay down in their legislation that unsolicited commercial communication by electronic mail must be clearly and unequivocally identifiable as such as soon as it is received by the recipient.

1. Member States shall lay down in their legislation that unsolicited commercial communication by electronic mail must be clearly and unequivocally identifiable as such as soon as it is received by the recipient.

2. Without prejudice to Directive 97/7/EC and Directive 97/66/EC, Member States shall take measures to ensure that service providers undertaking unsolicited commercial communications by e-mail consult regularly and respect the opt-out registers in which natural persons not wishing to receive such commercial communications can register themselves.

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*Article 8***Regulated professions**

1. Member States shall lay down in their legislation relating to commercial communication by regulated professions that the provision of Information Society services is authorised provided that the professional rules regarding the independence, dignity and honour of the profession, professional secrecy and fairness towards clients and other members of the profession are met.
2. Member States and the Commission shall encourage professional associations and bodies to establish codes of conduct at Community level in order to determine the types of information that can be given for the purposes of providing the Information Society service in conformity with the rules referred to in paragraph 1.
3. Where necessary in order to ensure the proper functioning of the internal market, and in the light of the codes of conduct applicable at Community level, the Commission may stipulate, in accordance with the procedure laid down in Article 23, the information referred to in paragraph 2.

## SECTION 3

**ELECTRONIC CONTRACTS***Article 9***Treatment of electronic contracts**

1. Member States shall ensure that their legislation allows contracts to be concluded electronically. Member States shall in particular ensure that the legal requirements applicable to the contractual process neither prevent the effective use of electronic contracts nor result in such contracts being deprived of legal effect and validity on account of their having been made electronically.
2. Member States may lay down that paragraph 1 shall not apply to the following contracts:
  - (a) contracts requiring the involvement of a notary;
  - (b) contracts which, in order to be valid, are required to be registered with a public authority;
  - (c) contracts governed by family law;
  - (d) contracts governed by the law of succession.

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3. The list of categories of contract provided for in paragraph 2 may be amended by the Commission in accordance with the procedure laid down in Article 23.

Deleted

4. Member States shall submit to the Commission a complete list of the categories of contracts covered by the derogations provided for in paragraph 2.

3. Member States shall submit to the Commission a complete list of the categories of contracts covered by the derogations provided for in paragraph 2.

*Article 10*

**Information to be provided**

1. Member States shall lay down in their legislation that, except when otherwise agreed by professional persons, the manner of the formation of a contract by electronic means shall be explained by the service provider clearly and unequivocally, and prior to the conclusion of the contract. The information to be provided shall include, in particular:

- (a) the different stages to follow to conclude the contract;
- (b) whether or not the concluded contract will be filed and whether it will be accessible;
- (c) the expedites for correcting handling errors.

2. Member States shall provide in their legislation that the different steps to be followed for concluding a contract electronically shall be set out in such a way as to ensure that parties can give their full and informed consent.

Unchanged

3. Member States shall lay down in their legislation that, except when otherwise agreed by professional parties, the service providers shall indicate any codes of conduct to which they subscribe and information on how those codes can be consulted electronically.

*Article 11*

**Moment at which the contract is concluded**

1. Member States shall lay down in their legislation that, save where otherwise agreed by professional persons, in cases where a recipient, in accepting a service provider's offer, is required to give his consent through technological means, such as clicking on an icon,

1. Member States shall lay down in their legislation that, save where otherwise agreed by professional persons, in cases where a recipient, in accepting a service provider's offer, is required to give his consent through technological means, such as clicking on an icon, the contract is concluded when the recipient of the service has received from the service provider, electronically, an acknowledgement of receipt of the recipient's acceptance

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following principles apply:

(a) the contract is concluded when the recipient of the service:

- has received from the service provider, electronically, an acknowledgement of receipt of the recipient's acceptance, and
- has confirmed receipt of the acknowledgement of receipt;

(b) acknowledgement of receipt is deemed to be received and confirmation is deemed to have been given when the parties to whom they are addressed are able to access them;

(c) acknowledgement of receipt by the service provider and confirmation of the service recipient shall be sent as quickly as possible.

2. Member States shall lay down in their legislation that, save where otherwise agreed by professional persons, the service provider shall make available to the recipient of the service appropriate means allowing him to identify and correct handling errors

The following principles apply:

- (a) acknowledgement of receipt is deemed to be received when the recipient of the service is able to access it;
- (b) the service provider is obliged to immediately send the acknowledgement of receipt.

Deleted

2. Member States shall lay down in their legislation that, save where otherwise agreed by professional persons, the service provider shall make available to the recipient of the service appropriate means that are effective and accessible allowing him to identify and correct handling errors and accidental transactions before the conclusion of the contract. Contract terms and general conditions provided to the consumer must be made available in a way that allows him to store and to reproduce them.

## SECTION 4

## LIABILITY OF INTERMEDIARIES

## Article 12

## Mere conduct

1. Where an Information Society service is provided that consists of the transmission in a communication network of information provided by the recipient of the service, or the provision of access to a communication network, Member States shall provide in their legislation that the provider of such a service shall not be liable, otherwise than under a prohibitory injunction, for the information transmitted, on condition that the provider:

- (a) does not initiate the transmission;

## SECTION 4

## LIABILITY OF INTERMEDIARY SERVICE PROVIDERS

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(b) does not select the receiver of the transmission; and

(c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

*Article 13***Caching**

Where an Information Society service is provided that consists in the transmission in a communication network of information provided by a recipient of the service, Member States shall provide in their legislation that the provider shall not be liable, otherwise than under a prohibitory injunction, for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

(a) the provider does not modify the information;

(b) the provider complies with conditions on access to the information;

(c) the provider complies with rules regarding the updating of the information, specified in a manner consistent with industrial standards;

(d) the provider does not interfere with the technology, consistent with industrial standards, used to obtain data on the use of the information; and

(e) the provider acts expeditiously to remove or to bar access to the information upon obtaining actual knowledge of one of the following:

- the information at the initial source of the transmission has been removed from the network;
- access to it has been barred;
- a competent authority has ordered such removal or barring.

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*Article 14***Hosting**

1. Where an Information Society service is provided that consists in the storage of information provided by a recipient of the service, Member States shall provide in their legislation that the provider shall not be liable, otherwise than under a prohibitory injunction, for the information stored at the request of a recipient of the service, on condition that:

- (a) the provider does not have actual knowledge that the activity is illegal and, as regards claims for damages, is not aware of facts or circumstances from which illegal activity is apparent; or
- (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

*Article 15***No obligation to monitor**

1. Member States shall not impose a general obligation on providers, when providing the services covered by Articles 12 and 14, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

2. Paragraph 1 shall not affect any targeted, temporary surveillance activities required by national judicial authorities in accordance with national legislation to safeguard national security, defence, public security and for the prevention, investigation, detection and prosecution of criminal offences.

1. Member States shall not impose a general obligation on providers, when providing the services covered by Articles 12 to 14, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

Unchanged

## CHAPTER III

**IMPLEMENTATION***Article 16***Codes of conduct**

1. Member States and the Commission shall encourage:

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- (a) the drawing-up of codes of conduct at Community level, by trade and professional associations or organisations designed to contribute to the proper implementation of Articles 5 to 15;
- (b) the transmission of draft codes of conduct at national or Community level to the Commission so that the latter may examine their compatibility with Community law;
- (c) the accessibility of these codes of conduct in the Community languages by electronic means;
- (d) the communication to the Member States and the Commission, by professional associations or organisations, of their assessment of the application of their codes of conduct and their impact upon practices, habits or customs relating to electronic commerce.

2. In so far as they may be concerned, consumer associations shall be involved in the drafting and implementation of codes of conduct drawn up according to point (a) of paragraph 1.

- (a) the drawing-up of codes of conduct at Community level, by trade, professional and consumer associations or organisations designed to contribute to the proper implementation of Articles 5 to 15;

Unchanged

- (d) the communication to the Member States and the Commission, by professional and consumer associations or organisations, of their assessment of the application of their codes of conduct and their impact upon practices, habits or customs relating to electronic commerce.

- (e) the drawing up of codes of conduct regarding the protection of minors and human dignity

Unchanged

## Article 17

### Out-of-court dispute settlement

1. Member States shall ensure that, in the event of disagreement between an Information Society service provider and its recipient, their legislation allows the effective use of out-of-court schemes for dispute settlement, including appropriate electronic means.
2. Member States shall ensure that bodies responsible for the out-of-court settlement of consumer disputes apply, whilst abiding by Community law, the principles of independence and transparency, of adversarial techniques, procedural efficacy, legality of the decision, and freedom of the parties and of representation.
3. Member States shall encourage bodies responsible for out-of-court dispute settlement to inform the Commission of the decisions they take regarding Information Society services and to transmit any other information on the practices, usages or customs relating to electronic commerce.

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*Article 18***Court actions**

1. Member States shall ensure that effective court actions can be brought against Information Society services' activities, by allowing the rapid adoption of interim measures designed to remedy any alleged infringement and to prevent any further impairment of the interests involved.

2. Acts in breach of the national provisions incorporating Articles 5 to 15 of this Directive which affect consumers' interests shall constitute infringements within the meaning of Article 1(2) of Directive 98/27/EC of the European Parliament and Council (1).

*Article 19***Cooperation between authorities**

1. Member States shall ensure that their competent authorities have the appropriate powers of supervision and investigation necessary to implement this Directive effectively and that service providers supply those authorities with the requisite information.

2. Member States shall ensure that their national authorities cooperate with the authorities of other Member States; they shall, to that end, appoint a contact person, whose coordinates they shall communicate to the other Member States and to the Commission.

3. Member States shall, as quickly as possible, provide the assistance and information requested by authorities of other Member States or by the Commission, including by appropriate electronic means.

4. Member States shall establish, within their administration, contact points which shall be accessible electronically and from which recipients and service providers may:

- (a) obtain information on their contractual rights and obligations;
- (b) obtain the particulars of authorities, associations or organisations from which recipients of services may obtain information about their rights or with whom they may file complaints; and
- (c) receive assistance in the event of disputes.

(1) OJ L 166, 11.6.1998, p. 51.

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5. Member States shall ensure that their competent authorities inform the Commission of any administrative or judicial decisions taken in their territory regarding disputes relating to Information Society services and practices, usages and customs relating to electronic commerce.

6. The rules governing cooperation between national authorities as referred to in paragraphs 2 to 5 shall be laid down by the Commission in accordance with the procedure set out in Article 23.

7. Member States may ask the Commission to convene urgently the committee referred to in Article 23 in order to examine difficulties over the application of Article 3(1).

*Article 20***Electronic media**

The Commission may take measures, in accordance with the procedure provided for in Article 23, to ensure the proper functioning of electronic media between Member States, as referred to in Articles 17(1) and 19(3) and (4).

*Article 21***Sanctions**

Member States shall determine the sanctions applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are enforced. The sanctions they provide for shall be effective, proportionate and dissuasive. Member States shall notify these measures to the Commission no later than the date specified in Article 25 and shall inform it of all subsequent amendments to those measures without delay.

**CHAPTER IV****EXCLUSIONS FROM SCOPE AND DEROGATIONS***Article 22***Exclusions and derogations**

1. This Directive shall not apply to:

(a) taxation;

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(b) the field covered by Directives 95/46/EC of the European Parliament and of the Council (¹);

(c) the activities of Information Society services referred to in Annex I. This list of activities may be amended by the Commission in accordance with the procedure laid down by Article 23.

2. Article 3 shall not apply to the fields referred to in Annex II.

3. By way of derogation from Article 3(2), and without prejudice to court action, the competent authorities of Member States may take such measures restricting the freedom to provide an Information Society service as are consistent with Community law and with the following provisions:

(a) the measures shall be:

- (i) necessary for one of the following reasons:
  - public policy, in particular the protection of minors, or the fight against any incitement to hatred on grounds of race, sex, religion or nationality,
  - the protection of public health,
  - public security,
  - consumer protection;
- (ii) taken against an Information Society service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives,
- (iii) proportionate to those objectives;

(b) prior to taking the measures in question, the Member State has:

- asked the Member State referred to in Article 3(1) to take measures and the latter did not take such measures, or the latter were inadequate;
- notified the Commission and the Member State in which the service provider is established of its intention to take such measures

(b) the field covered by Directives 95/46/EC (¹); and 97/66/EC (²) of the European Parliament and of the Council;

Unchanged

(¹) OJ L 281, 23.11.1995, p. 31.

(²) OJ L 24, 30.1.1998, p. 1.

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(c) Member States may lay down in their legislation that, in the case of urgency, the conditions stipulated in point (b) do not apply. Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State in which the service provider is established, indicating the reasons for which the Member State considers that there is urgency.

(d) the Commission may decide on the compatibility of the measures with Community law. Where it adopts a negative decision, the Member States shall refrain from taking any proposed measures or shall be required to urgently put an end to the measures in question.

## CHAPTER V

## ADVISORY COMMITTEE AND FINAL PROVISIONS

*Article 23***Committee**

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

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

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

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

*Article 24***Re-examination**

Not later than three years after the adoption of this Directive, and thereafter every two years, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, accompanied, where necessary, by proposals for adapting it to developments in the field of Information Society services.

1. Not later than three years after the adoption of this Directive, and thereafter every two years, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, containing statistical results and accompanied, where necessary, by proposals for adapting it to developments in the field of digital technologies and Information Society services.

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2. The report shall examine the need for adaptation in the light of technical and economic developments and emerging jurisprudence in the Member States. It should in particular analyse the need for proposals concerning the liability of providers of hyperlinks and location tool services, notification requirements and the attribution of liability following the taking down of content;

*Article 25***Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within one year of its entry into force. They shall forthwith inform the Commission thereof.

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

Unchanged

*Article 26***Entry into force**

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

*Article 27***Addressees**

This Directive is addressed to the Member States.

## ANNEX I

**ACTIVITIES EXCLUDED FROM THE SCOPE OF APPLICATION OF THE DIRECTIVE**

Information Society services' activities, as referred to in Article 22(1), which are not covered by this Directive:

- the activities of notaries;
- the representation of a client and defence of his interests before the courts;
- gambling activities, excluding those carried out for commercial communication purposes.

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## ANNEX II

**DEROGATIONS FROM ARTICLE 3**

As referred to in Article 22(2) in which Article 3 does not apply:

- copyright, neighbouring rights, rights referred to in Directive 87/54/EEC <sup>(1)</sup> and Directive 96/9/EC <sup>(2)</sup> as well as industrial property rights;
- the emission of electronic money by institutions in respect of which Member States have applied one of the derogations provided for in Article 7(1) of Directive .../.../EC <sup>(3)</sup>;
- Article 44 paragraph 2 of Directive 85/611/EEC <sup>(4)</sup>;
- Article 30 and Title IV of Directive 92/49/EEC <sup>(5)</sup>, Title IV of Directive 92/96/EEC <sup>(6)</sup>, Articles 7 and 8 of Directive 88/357/EEC <sup>(7)</sup> and Article 4 of Directive 90/619/EEC <sup>(8)</sup>;
- contractual obligations concerning consumer contracts;
- unsolicited commercial communications by electronic mail, or by an equivalent individual communication.

<sup>(1)</sup> Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products; OJ L 24, 27.1.1987, p. 36.

<sup>(2)</sup> Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases; OJ L 77, 27.3.1996, p. 20.

<sup>(3)</sup> European Parliament and Council Directive .../.../EC of ... (on the taking up and the prudential supervision of the business of electronic money institutions).

<sup>(4)</sup> Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertaking for collective investment in transferable securities (UCITS), OJ L 375, 31.12.1985, p. 3, as last amended by Directive 95/26/EC of the European Parliament and of the Council (OJ L 168, 18.7.1995, p. 7).

<sup>(5)</sup> Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) OJ L 228, 11.8.1992, p. 1, as amended by Directive 95/26/EC.

<sup>(6)</sup> Council Directive 92/56/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life insurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive), OJ L 360, 9.12.1992, p. 1, as amended by Directive 95/26/EC.

<sup>(7)</sup> Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC, OJ L 172, 4.7.1988, p. 1, as last amended by Directive 92/49/EEC.

<sup>(8)</sup> Council Directive of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC, OJ L 330, 29.11.1990, p. 50, as amended by Directive 92/96/EEC.

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**Amended proposal for a European Parliament and Council Regulation on measures to promote the conservation and sustainable management of tropical forests and other forests in developing countries<sup>(1)</sup>**

(2000/C 248 E/05)

(Text with EEA relevance)

COM(2000) 54 final — 1999/0015(COD)

(Submitted by the Commission on 9 February 2000)

<sup>(1)</sup> OJ C 87, 29.3.1999, p. 97.

**INITIAL PROPOSAL**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 130s and 130w 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 189c of the Treaty<sup>(3)</sup>,

(1) Forests have a variety of functions and values for mankind and can contribute to the achievement of Community development and environment objectives such as poverty reduction, sustainable economic and social development and protection of the environment.

(2) In numerous resolutions, the European Parliament has expressed its concern over the destruction of forests and the consequences for forestpeoples.

(3) In reply to the request by the European Parliament in its Resolution on the European Union's forestry strategy<sup>(2)</sup> the Commission has adopted, in ..., Communication setting out a strategy for Community action on the promotion of the conservation and sustainable management of forests in developing countries.

**AMENDED PROPOSAL**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 175 and 179 thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Having regard to the opinion of the Committee of the Regions<sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(3)</sup>,

Whereas:

(1) Forests have a variety of functions and values for mankind and can contribute to the achievement of Community development and environment objectives such as the campaign against poverty, sustainable economic and social development and the protection of the environment.

(2) In numerous resolutions, the European Parliament has expressed its concern over the destruction of forests and the consequences for forest-dependent people, in particular indigenous peoples.

(3) In reply to the request by the European Parliament in its Resolution on the European Union's forestry strategy<sup>(4)</sup> the Commission has adopted, in ..., the Communication 'Forests and Development — the EC approach' setting out a strategy for Community action on the promotion of the conservation and sustainable management of forests in developing countries.

<sup>(1)</sup> COM(1999) 41 final.

<sup>(2)</sup> REX/016 of 7.7.1999.

<sup>(3)</sup> ...

<sup>(4)</sup> OJ C 55, 24.2.1997, p. 22.

<sup>(2)</sup> OJ C 55, 24.2.1997, p. 22.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

(4) The objectives of this strategy are to be pursued in the context of the broader Community aim to promote the conservation and sustainable use of forests, in whatever geographical area or climate zone they may be situated.

(5) The Community and its Member States are signatories to the Rio Declaration and the Agenda 21 action programme and are committed to the UNGASS resolution 'Programme for the further implementation of Agenda 21'.

(6) The Community and its Member States are members of the World Trade Organisation and parties to Multilateral Environment Agreements, notably the Convention on Biological Diversity, the Framework Convention on Climate Change and the Convention to Combat Desertification; they are thus committed to take into account the common but differentiated responsibilities of developed parties and developing parties on these subjects.

(7) In its 1997 Special Session, the United Nations General Assembly has endorsed the proposals for action formulated in the framework of the Intergovernmental Panel on Forests (IPF); the Community and its Member States are fully committed to the implementation of these proposals.

(8) Council Regulation (EC) No 3062/95 of 20 December 1995 on operations to promote tropical forests <sup>(1)</sup> set out the framework for Community assistance in this area; Regulation (EC) No 3062/95 was applicable until 31 December 1999; the experience acquired during the implementation of Regulation (EC) No 3062/95 should be reflected in this regulation.

(9) In its Resolution of 30 November 1998, the Council acknowledges the role that forest peoples play in managing the environment, in particular with regard to the conservation and sustainable use of forests in developing countries.

(10) existing financial instruments available to the Community for supporting the conservation and sustainable development of forests could usefully be supplemented.

Unchanged

(5) The Community and its Member States are signatories to the Rio Declaration and the Agenda 21 action programme and are committed to the United Nations General Assembly Special Session (UNGASS) resolution 'Programme for the further implementation of Agenda 21'.

Unchanged

(8) Council Regulation (EC) No 3062/95 of 20 December 1995 on operations to promote tropical forests <sup>(1)</sup> set out the framework for Community assistance in this area; Regulation (EC) No 3062/95 was applicable until 31 December 1999; the experience acquired during the implementation of Regulation (EC) No 3062/95 should be reflected in this regulation.

(9) In its Resolution of 30 November 1998, the Council acknowledges the role that indigenous peoples play in managing the environment, in particular with regard to the conservation and sustainable use of forests in developing countries.

(10) The financial instruments available to the Community for supporting the conservation and sustainable development of forests should be supplemented.

<sup>(1)</sup> OJ L 327, 30.12.1995.

<sup>(1)</sup> OJ L 327, 30.12.1995.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

(11) Provision should be made for funding the operations referred to in this Regulation.

(12) rules for implementation, in particular the form of action, recipients of aid and decision-making procedures should be laid down,

(11) Provision should be made for funding the activities referred to in this Regulation.

(12) Detailed rules for implementation should be laid down, in particular the form of action, the co-operation partners and the decisionmaking procedure.

(13) In accordance with 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 (1) measures for the implementation of this Regulation should be adopted by use of the advisory procedure provided for in Article 3 of that Decision,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Community shall provide financial assistance and technical expertise to promote the conservation and sustainable management of tropical forests and other forests in developing countries so as to meet the economic, social and environmental demands placed on forests at local, national and global levels.

This financial assistance and technical expertise shall complement and reinforce the assistance provided through other instruments of development co-operation.

*Article 2*

For the purposes of this Regulation:

1. 'Tropical forests and other forests in developing countries' means the natural and semi-natural forest ecosystems, whether primary or secondary, whether closed or open forests, in both dry and humid areas. The areas concerned are those found within the territories of African, Caribbean and Pacific countries, the Mediterranean countries and the countries of Latin America and Asia.
2. 'Conservation' means all operations to preserve and rehabilitate forests, in particular operations designed to protect or restore the biological diversity and ecological functions of the forest ecosystem, while securing as far as possible their current and future value for mankind and in particular for forest-dependent people.

HAVE ADOPTED THIS REGULATION:

*Article 1*

The Community shall provide financial assistance and appropriate expertise to promote the conservation and sustainable management of tropical forests and other forests in developing countries, so as to meet the economic, social and environmental demands placed on forests at local, national and global levels.

The assistance and expertise provided under this Regulation shall complement and reinforce that provided through other instruments of development co-operation.

Unchanged

1. 'Tropical forests and other forests' means natural and semi-natural forest ecosystems, whether primary or secondary, whether closed or open forests, in dry, semi-arid and humid areas.
2. 'Conservation' means all activities to preserve and rehabilitate forests, in particular activities designed to protect or restore the biological diversity and ecological functions of the forest ecosystem, while securing as far as possible their current and future value for mankind and in particular for forest-dependent people.

(1) OJ L 184, 17.7.1999, p. 23.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

3. 'Sustainable forest management' means the management and use of forests and wooded lands in a way, and at a rate, that maintains their biological diversity, productivity, regeneration capacity, vitality and their potential to fulfil, now and in the future, relevant ecological, economic and social functions, at local, national, and global levels, without causing any damage to other ecosystems.

4. 'Sustainable development' means the improvement of the standard of living and welfare of the relevant populations within the limits of the capacity of the ecosystems by maintaining natural assets and their biological diversity for the benefit of present and future generations.

5. 'Forest peoples' means the indigenous peoples who inhabit the forest or claim it as their home and any people who live in or near the forest and have traditionally been directly and to a large extent dependent on the forest.

## Article 3

Activities to be carried out pursuant to this Regulation shall aim at:

- raising the status of forests in national policies and integrating forest policies in development planning;
- promoting the production and use of wood and non-wood forest products from sustainably managed resources;
- contributing to the adequate valuation of forest resources and services.

## Article 4

1. In the provision of financial assistance and technical expertise aimed at attaining the objectives set out in Article 3, the Community shall give special consideration to the promotion of:

(a) Development of appropriate national and international forest policy frameworks based on realistic valuation of forests, including land use planning, equitable trade in sustainably produced forest products, legal and fiscal measures, institution building, support to the private sector and taking into account other sectoral policies which impact on forests and the interests and customary rights of forest peoples;

Unchanged

5. 'Forest-dependent people' means the indigenous peoples who inhabit the forest or claim it as their traditional home and any people who live in or near the forest and have traditionally been directly and to a large extent dependent on the forest.

## Article 3

Activities to be carried out under this Regulation shall aim at:

- raising the status of forests in national policies and integrating forest policies based on sustainable forest management in development planning;

Unchanged

1. The activities to be carried out under this Regulation shall address in particular:

(a) Development of appropriate national and international forest policy frameworks based on realistic valuation of forests, which include land use planning, equitable trade in sustainably produced forest products, legal and fiscal measures, institution building and support to self-development of forest-dependent people to shape their own social, economic and cultural development, and support to the private sector. These shall take into account other sectoral policies which impact on forests and the interests and customary rights of forest-dependent people;

## INITIAL PROPOSAL

## AMENDED PROPOSAL

- (b) Conservation of forests which are recognised as being of high ecological value as well as restoration of degraded forest areas, which are considered to be of importance due to their local and global impacts such as the protection of hydrographic basins, the prevention of soil erosion, climate change and the preservation of biological diversity;
- (c) Sustainable forest management and utilisation to provide economic, social and environmental benefits and including *inter alia* forest certification and environmentally sound harvesting of both wood and non-wood forest products and natural and assisted forest regeneration;
- (d) Economic viability of sustainable forest management through more efficient utilisation of forest products and technical improvements of downstream activities related to the forest sector such as small and medium scale processing and marketing of wood and non-wood forest products, the sustainable use of wood as energy source and the development of alternatives to agricultural practices based on forest clearing;
- (e) Knowledge and information generation and management concerning forest services and products, in order to provide a sound scientific basis for realising the activities listed under (a) to (d).

7. Operations carried out pursuant to this Regulation shall concentrate on pilot projects in the field, innovative programmes, studies and research, the results of which will enable the EC to develop, adjust and implement its forest sector cooperation policies.

3. Particular attention shall be given to:

- encouraging private entrepreneurship in the forest products processing and marketing chain, in the context of agreed policies for private sector development and taking into account existing social systems and community-based economic activities;
- encouraging the direct participation of developing country public and private organisations, ensuring appropriate scale of interventions and adaptation of administrative procedures to locally manageable level;

- (b) Conservation and restoration of forests which are considered to be of importance due to their high ecological value, in particular their value for the preservation of biodiversity, or due to their local and global impacts, such as the protection of hydrographic basins, the prevention of soil erosion or of climate change;
- (c) Sustainable forest management and utilisation to provide economic, social and environmental benefits and including *inter alia* forest certification - taking account of the different management conditions for small and large forest areas - and environmentally sound harvesting of both wood and non-wood forest products and natural and assisted forest regeneration;
- (d) Economic viability of sustainable forest management through more efficient utilisation of forest products and technical improvements of downstream activities related to the forest sector such as small and medium scale processing and marketing of wood and non-wood forest products, the sustainable use of wood as an energy source and the promotion of alternatives to agricultural practices based on forest clearing;
- (e) Knowledge and information generation and management concerning forest services and products, in order to provide a sound scientific basis for the activities listed under (a) to (d).

2. Activities eligible for financing shall include pilot projects in the field, innovative programmes, studies and research, the results of which will, in addition to their specific objectives, contribute to the development, adjustment and better implementation of forestry policies of the Community and of partner countries.

- encouraging environmentally and socially responsible private entrepreneurship in the forest products processing and marketing chain, in the context of agreed policies for private sector development and taking into account existing social systems and community-based economic activities;
- encouraging the direct participation of co-operation partners in the developing countries, and at the same time ensuring an appropriate scale of interventions and adaptation of administrative procedures to locally manageable levels;

## INITIAL PROPOSAL

## AMENDED PROPOSAL

- participation of forest peoples in operations carried out pursuant to this Regulation;
- sustainability of any proposed activity, social, economic as well as environmental;

2. Priorities shall be determined in accordance with:

- the needs of each country as reflected in regional and national development and environment policies relating to forests, considering National Forest Plans, and
- Community co-operation objectives as established in jointly agreed country strategy papers.

4. Operations carried out pursuant to this Regulation shall be preceded by environmental and social impact assessments, as well as analysis of financial and economic feasibility. These operations shall also be preceded by provision of relevant information to forest peoples and be conditional on their support.

Operations carried out will be evaluated using specific quantitative and qualitative indicators set in the reference conditions.

5. Operations carried out pursuant to this Regulation shall be coordinated with, and may provide support for, national and international programmes and operations on the conservation and sustainable management of forests, in particular the proposals for action formulated in the context of the IPF/IFF process.

- participation of forest-dependent people and local communities in activities carried out under this Regulation, taking into account their development priorities and economic, social and cultural rights, *inter alia* through capacity building, in order to ensure their full participation in all decision-making processes;

Unchanged

- proper co-ordination and information flows between the Commission and the Member States in order to ensure coherence of activities in the regions concerned;

- gender-specific roles, knowledge, perspectives and contributions of women/girls and men/boys in the management and use of forests.

4. Priorities shall be determined in accordance with:

- the needs of each country as reflected in regional and national development and environment policies relating to forests, considering national forest plans and local needs, and

- Community co-operation objectives as established by the Commission in jointly agreed country strategy papers.

5. Activities carried out under this Regulation shall be preceded by environmental and socio-cultural impact assessments, including an assessment of the congruence of the envisaged operations with the development priorities of the forest-dependent people and local communities concerned, as well as analysis of financial and economic feasibility. These activities shall also be preceded by a transparent exchange of information with forest-dependent people and local communities and be conditional on their support.

Deleted

6. Activities carried out under this Regulation shall be coordinated with, and may provide support for, national and international programmes and activities on the conservation and sustainable management of forests, in particular the proposals for action formulated by the Intergovernmental Panel for Forests/Intergovernmental Forum for Forests (IPF/IFF) process.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

6. When appropriate, operations shall be carried out within the framework of regional organisations and international programmes of co-operation and shall form part of a global policy on the conservation and sustainable management of forests.

*Article 5*

Aid recipients and co-operation partners shall include not only States and regions but also international organisations, decentralised departments, regional bodies, public agencies, traditional and local communities, private operators and industries, including cooperatives and NGOs and associations representing local people.

*Article 6*

1. Community financing may cover studies, technical assistance, education, training or other services, supplies and works, small grant funds as well as appraisals, audits and evaluation and monitoring missions. It may cover, technical and administrative assistance costs, to the benefit of the Commission and the beneficiary, related to operations other than the permanent tasks of the public administration, linked to the identification, preparation, management, monitoring, auditing and control of programmes or projects.

Community financing may cover both investment, linked to a specific programme or project, with the exception of the purchase of real estate, and, recurring expenditure (including administrative, maintenance and operating expenditure).

However, with the exception of training, education and research programmes, operating costs may normally be covered only during the start-up phase and on a gradually decreasing basis.

2. A contribution shall be sought from the beneficiaries defined in Article 5. Their contribution shall depend on their means and the nature of the operation concerned.

3. Opportunities may be sought for cofinancing with other donors, especially with Member States and the international organisations concerned. In this respect, a co-ordination with the measures taken by other donors shall be sought.

7. When appropriate, activities shall be carried out within the framework of regional organisations and international programmes of co-operation and shall be supportive to the development of a global policy on the conservation and sustainable management of forests.

*Article 5*

Co-operation partners which may receive assistance under this Regulation shall include international organisations, states, regions and regional bodies, decentralised departments, public agencies, private operators and industries, co-operatives, local communities, non-governmental organisations and associations representing local people, in particular forest-dependent people.

*Article 6*

1. Community financing may cover studies, technical assistance, education, training or other services, supplies and works, small grant funds as well as appraisals, audits and evaluation and monitoring missions. It may cover, within the limit established annually by the budgetary authority, technical and administrative assistance costs, to the benefit of the Commission and the beneficiary, related to operations other than the permanent tasks of the public administration, linked to the identification, preparation, management, monitoring, auditing and control of programmes or projects.

Community financing may cover both investment, linked to a specific activity, with the exception of the purchase of real estate, and, recurrent expenditure (including administrative, maintenance and operating expenditure).

With the exception of training, education and research programmes, recurrent expenditure may normally be covered only during the start-up phase and on a gradually decreasing basis.

2. A contribution from the co-operation partners defined in Article 5 shall be sought for each co-operation activity. Their contribution shall be requested according to their means and the nature of the activity concerned.

3. Opportunities may be sought for cofinancing with other donors, especially with Member States and the international organisations concerned. In this respect, co-ordination with the measures taken by other donors shall be sought.

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INITIAL PROPOSAL

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AMENDED PROPOSAL

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4. The necessary measures shall be taken to emphasise the Community character of the aid provided pursuant to this Regulation.

5. In order to attain the objectives of consistency and complementarity laid down in the Treaty and with the aim of guaranteeing optimum efficiency for the totality of these operations, the Commission may take all co-ordination measures necessary, including in particular:

(a) the establishment of a system for the systematic exchange and analysis of information on operations financed or being considered for financing by the Community and the Member States;

(b) on-the-spot co-ordination of these operations by means of regular meetings and exchanges of information between the representatives of the Commission and Member States in the beneficiary countries.

6. In order to obtain the greatest possible impact at global, national and local levels, the Commission, in liaison with the Member States, may take any initiative necessary for ensuring proper co-ordination and close collaboration, especially regarding the exchange of information, with the beneficiary countries, donors and international organisations, funds and programmes involved, in particular those forming part of the United Nations system.

*Article 7*

Financial support pursuant to this Regulation shall take the form of grants.

*Article 8*

1. The Commission shall be responsible for appraising, deciding on and administering operations covered by this Regulation according to the budgetary and other procedures in force, and in particular those laid down in the Financial Regulation applicable to the general budget of the European Communities.

4. The necessary measures shall be taken to emphasise the Community character of the assistance provided under this Regulation.

5. In order to attain the objectives of consistency and complementarity laid down in the Treaty and with the aim of guaranteeing optimum efficiency for all these activities, the Commission will, in liaison with Member States, take all co-ordination measures necessary, including in particular:

(a) the systematic exchange and analysis of information on operations financed or being considered for financing by the Community and the Member States;

(b) on-the-spot co-ordination of these activities by means of regular meetings and exchange of information between representatives of the Commission and of the Member States in the beneficiary countries.

6. In order to obtain the greatest possible impact of the activities at global, national and local levels, the Commission, in liaison with the Member States, will take any initiative necessary for ensuring proper co-ordination and close collaboration, especially regarding the exchange of information, with the co-operation partners, donors and other international organisations involved, in particular those forming part of the United Nations system.

*Article 7*

Financial assistance under this Regulation shall take the form of grants.

*Article 8*

1. The Commission shall be responsible for appraising, taking decisions to finance and administering activities covered by this Regulation according to the budgetary and other procedures in force, and in particular those laid down in the Financial Regulation applicable to the general budget of the European Communities.

2. Each year the Commission shall present a document establishing strategic guidelines and priorities for implementing the activities to be carried out in the following year. This document shall be discussed in a joint meeting of the Committees referred to in Article 9, paragraph 1.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

2. Decisions relating to grants of more than EUR 2 million for individual operations financed pursuant to this Regulation shall be adopted under the procedure laid down in Article 9.

3. The Commission shall be authorised to approve, without seeking the approval of the Committee referred to in Article 9, any extra commitments needed for covering any expected or real cost overruns in connection with the operations, provided that the overrun or additional requirement is less than or equal to 20 % of the initial commitment fixed by the financing decision.

4. All financing agreements or contracts concluded pursuant to this Regulation shall provide for the Commission and the Court of Auditors to conduct on-the-spot checks in accordance with the usual procedures laid down by the Commission under the rules in force, in particular those of the Financial Regulation applicable to the general budget of the European Communities.

5. Where operations are the subject of financing agreements between the Community and the recipient country, such agreements shall stipulate that the payment of taxes, duties or any other charges is not to be covered by the Community.

6. Participation in invitations to tender and the award of contracts shall be open on equal terms to all natural and legal persons of the Member States and of the recipient country. It may be extended to other developing countries and, in exceptional cases which are fully justified, to other third countries.

7. Supplies shall originate in the Member States, the recipient country or other developing countries. In exceptional cases, where circumstances warrant, supplies may originate in other countries.

8. Particular attention will be given to:

- the pursuit of cost-effectiveness and sustainable impact in project design,
- the clear definition and monitoring of objectives and indicators of achievement for all projects.

3. Decisions relating to grants of more than EUR 2 million for individual activities financed under this Regulation shall be adopted by the Commission in accordance with the procedure laid down in Article 9.

4. The Commission shall inform the Committee referred to in Article 9(1) succinctly of any financing decisions it intends to take with regard to activities of less than EUR 2 million in value. The information shall be made available not later than one week before the decision is taken.

5. The Commission shall be authorised to approve any extra commitments needed for covering any expected or real cost overruns or additional requirements in connection with the activities, provided that the overrun or additional requirement is less than or equal to 20 % of the initial commitment fixed by the financing decision.

6. All financing agreements or contracts concluded under this Regulation shall provide for the Commission and the Court of Auditors to conduct on-the-spot checks in accordance with the usual procedures laid down by the Commission under the rules in force, in particular those of the Financial Regulation applicable to the general budget of the European Communities.

7. Where operations are the subject of financing agreements between the Community and the recipient country, such agreements shall stipulate that the payment of taxes, duties or any other charges is not to be covered by the Community.

8. Participation in invitations to tender and the award of contracts shall be open on equal terms to all natural and legal persons of the Member States and of the recipient country. It may be extended to other developing countries and, in exceptional cases which are fully justified, to other third countries.

9. Supplies shall originate in the Member States, the recipient country or other developing countries. In exceptional cases, where circumstances warrant, supplies may originate in other countries.

10. Particular attention will be given to:

- the pursuit of cost-effectiveness and sustainable impact of activities,
- the clear definition and monitoring of objectives and indicators of achievement for all activities.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

*Article 9*

1. The Commission shall be assisted by the geographically determined Committee competent for development.

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

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

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

*Article 10*

An exchange of views shall take place once a year on the basis of a presentation by the representative of the Commission of the general guidelines for the operations to be carried out in the year ahead, in the framework of a joint meeting of the Committees referred to in Article 9.

*Article 11*

1. After each budget year, the Commission shall submit an annual report to the European Parliament and the Council, summarising the operations financed in the course of that year and evaluating the implementation of this Regulation over that period.

The summary shall in particular provide information about the nature and quantity of the projects financed and about those with whom contracts have been concluded. The report shall also indicate the number of external assessments carried out, if any, regarding specific activities.

*Article 9*

1. The Commission shall be assisted by the Committee set up by Article 15 of Council Regulation (EEC) No. 443/92 of 25 February 1992<sup>(1)</sup> (PVD-ALA), by the Committee set up by Article 11 of Council Regulation (EC) No 1488/96 of 23 July 1996 (MEDA)<sup>(2)</sup> or by the Committee set up by Article 21 of the Internal Agreement on the Financing and Administration of Community Aid under the Second Financial Protocol to the Fourth ACP-EC Convention of Lomé<sup>(3)</sup>.

2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

## Deleted

*Article 10*

1. By 1 September after each budget year, the Commission shall submit an annual report to the European Parliament and the Council, summarising the activities financed in the course of that year and evaluating the implementation of this Regulation over that period.

The summary shall in particular provide information about the number and nature of the activities financed, the co-operation partners and the countries concerned. The report shall also indicate the number of external evaluations carried out regarding specific activities.

<sup>(1)</sup> OJ L 52, 27.2.1992, p. 1.

<sup>(2)</sup> OJ L 189, 30.7.1996, p. 1-9.

<sup>(3)</sup> Signed on 20.12.1995.

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INITIAL PROPOSAL

2. The Commission shall regularly assess operations financed by the Community with a view to establishing whether the objectives aimed at by those operations have been achieved and to providing guidelines for improving the effectiveness of future operations. The Commission shall submit to the Committee referred to in Article 9 a summary of the assessments made which may, if appropriate, be examined by the Committee. The assessment reports shall be available to any Member States requesting them.

3. The Commission shall inform the Member States, at the latest one month after its decision, of the operations and projects that have been approved, stating their cost and nature, the recipient country and partners.

4. The financing guide specifying the guidelines and criteria applicable to the selection of projects shall be published and communicated to the interested parties by the Commission services, including Commission delegations in beneficiary countries.

*Article 12*

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

2. Four years after the entry into force of this Regulation the Commission shall submit to the European Parliament and to the Council an overall assessment of the operations financed by the Community under this Regulation, together with suggestions concerning the future of this Regulation.

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

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AMENDED PROPOSAL

2. The Commission shall regularly evaluate activities financed by the Community with a view to establishing whether the objectives aimed at by those activities have been achieved and to providing guidelines for improving the effectiveness of future activities. The evaluations will take into account the views of the beneficiaries, including forest-dependent people and local communities. The Commission shall submit to the Committee referred to in Article 9 paragraph 1 a summary of the evaluations made. The evaluation reports shall be available to any Member State and to the European Parliament.

3. The Commission shall inform the Member States, at the latest one month after its decision, of the activities that have been approved, stating their cost and nature, the country concerned and the co-operation partners.

4. A financing guide specifying the guidelines and criteria applicable to the selection of activities shall be published and communicated to the interested parties by the Commission services, including Commission delegations in countries concerned.

*Article 11*

Unchanged

2. Four years after the entry into force of this Regulation the Commission shall submit to the European Parliament and to the Council an overall evaluation of the activities financed by the Community under this Regulation, in the context of overall Community development co-operation, together with proposals concerning the future of this Regulation, including its possible modification or termination.

Unchanged

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**Amended proposal for a European Parliament and Council Regulation on the distribution of permits for heavy goods vehicles travelling in Switzerland<sup>(1)</sup>**

(2000/C 248 E/06)

(Text with EEA relevance)

COM(2000) 117 final — 1999/0022(COD)

*(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 1 March 2000)*

<sup>(1)</sup> OJ C 114, 27.4.1999, p. 4.

The proposal made by the Commission in COM(1999) 35 final — COD 1999/0022 is hereby amended as follows

**INITIAL PROPOSAL**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and, in particular, Article 75 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 189c of the Treaty,

Whereas:

- (1) By Council Decision No ... the European Community has concluded an Agreement with the Confederation of Switzerland on the transport of goods and passengers by rail and road.
- (2) That Agreement provides for a system of permits to allow heavy goods vehicles to circulate on Swiss territory with weights in excess of that normally permitted in that country.
- (3) That Agreement also provides for a system of permits for empty and light goods vehicles to circulate on Swiss territory at reduced charges.
- (4) It is necessary to establish rules governing the distribution and management of the permits which are made available to the Community.
- (5) For practical and management reasons, those permits should be made available to the Member States by the Commission.
- (6) To that end, an allocation method should be established. Thereafter, the Member States should share out the amounts allocated to them among undertakings in accordance with objective criteria.
- (7) In order to ensure the optimal use of permits, all unallocated permits should be returned to the Commission for redistribution.

**AMENDED PROPOSAL**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and, in particular, Article 71 thereof,

Unchanged

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

Acting in accordance with the procedure referred to in Article 251 of the Treaty,

Unchanged

## INITIAL PROPOSAL

- (8) The allocation of permits should be based on criteria that take full account of existing transport flows across the Alpine region.
- (9) That allocation may have to be revised in the light of new statistical evidence. In carrying out such revisions, the Commission shall be assisted by a Committee.

## AMENDED PROPOSAL

- (8) The allocation of permits should be based on criteria that take full account of existing freight transport flows and genuine transport needs across the Alpine region.
- (10) Implementing measures have to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1),

HAVE ADOPTED THIS REGULATION:

Unchanged

*Article 1*

This Regulation lays down the rules for the distribution between the Member States of permits available to the Community by virtue of Articles 8 and 40(3)(b) of the Agreement between the European Community and the Confederation of Switzerland on the transport of goods and passengers by rail and road (hereinafter referred to as 'The Agreement').

*Article 2*

For the purposes of this Regulation:

- 1. 'full-weight permit' shall mean a permit issued under Article 8 of the Agreement allowing goods vehicles to circulate on Swiss territory at weights up to a maximum of 40 tonnes;
- 2. 'empty permit' shall mean a permit issued under Article 40 of the Agreement allowing goods vehicles that are empty or are transporting light loads, as defined in Annex 11 to the Agreement, to circulate on Swiss territory at a special tariff, as laid down in Article 40 of the Agreement.

*Article 3*

- 1. The Commission shall allocate permits in accordance with paragraphs 2 to 5.
- 2. The full-weight permits shall be allocated in accordance with Annex I.
- 3. The empty permits shall be allocated in accordance with Annex II.
- 4. The permits for each year shall be allocated before 15 November of the preceding year.

- 4. The permits for each year shall be allocated before 15 August of the preceding year.

(1) OJ C 114, 27.4.1999, p. 4.

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INITIAL PROPOSAL

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AMENDED PROPOSAL

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5. The number of permits allocated for the first year of implementation of the Agreement shall be adjusted *pro rata* if the Agreement has entered into force after 1 January of that year.

Unchanged

*Article 4*

Member States shall distribute permits amongst the undertakings established in their territory according to objective and non-discriminatory criteria.

*Article 5*

Before 15 November each year, Member States shall transfer to the Commission those permits for that year which have not been allocated to undertakings.

Before 15 September each year, Member States shall transfer to the Commission those permits for that year which have not been allocated to undertakings.

The Commission shall allocate those permits in accordance with the procedure laid down in Article 7 to one or more Member States in order to ensure an optimal use of those permits.

Unchanged

*Article 6*

The Commission shall carry out a detailed survey before 1 January 2000 in order to provide accurate statistics on bilateral and transit traffic flows of heavy goods vehicles in the Alpine region, notably as regards the origin and destination of the vehicles and their Member State of registration.

On the basis of the survey, the Commission shall recalculate the allocations in accordance with the methodology laid down in Annex III.

Should the recalculation result in an allocation for any Member State which differs from that set out in Annexes I and II by more than 5 %, but by at least 500 permits, any amendments necessary to adapt Annexes I and II shall be adopted in accordance with the procedure laid down in Article 7.

*Article 7*

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

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

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

Deleted

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INITIAL PROPOSALAMENDED PROPOSAL

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

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

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

2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

4. The European Parliament shall be informed by the Commission of Committee proceedings on a regular basis, pursuant to Article 7(3) of the Decision. The principles and conditions on public access to documents applicable to the Commission shall apply to the Committee

*Article 8*

Unchanged

This Regulation shall enter into force on the same day as the Agreement.

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

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## ANNEX I

**Scale for allocating full-weight permits**

The quantity of full-weight permits as laid down in Article 8 of the Agreement shall be allocated by the Commission to the Member States as follows:

**Full weight permits available in years**

Member State	2000	2001 and 2002	2003 and 2004
Belgium	16 609	19 930	26 571
Denmark	2 919	3 231	3 854
Germany	88 378	107 472	145 660
Greece	1 882	1 966	2 134
Spain	3 772	4 272	5 271
France	38 490	46 620	62 879
Ireland	1 963	2 065	2 269
Italy	50 349	61 085	82 557
Luxembourg	3 342	3 747	4 556
Netherlands	19 477	23 428	31 329
Austria	9 588	11 365	14 920
Portugal	1 710	1 756	1 848
Finland	3 035	3 372	4 047
Sweden	3 193	3 565	4 309
United Kingdom	5 293	6 127	7 795
Total	250 000	300 000	400 000

## ANNEX II

**Scale for allocating empty permits**

The quantity of empty permits as laid down in Article 40 of and Annex 11 to the Agreement shall be allocated by the Commission to the Member States as follows:

**Empty permits available annually**

Member States	2000-2004
Belgium	14 718
Denmark	2 750
Germany	62 788
Greece	6 160
Spain	1 584
France	10 714
Ireland	198
Italy	85 448
Luxembourg	2 200
Netherlands	22 968
Austria	1 760
Portugal	264
Finland	836
Sweden	550
United Kingdom	7 062
Total	220 000

## ANNEX III

**Methodology for determining the allocation of permits**

The allocation of the permits shall take place on the basis of the following methodology:

**Full-weight permits**

A basic allocation of 1 500 permits will be made to each Member State.

The remaining permits will be allocated in equal parts on the basis of criteria relating to transit traffic and on the basis of criteria relating to bilateral traffic.

*Bilateral traffic*

The allocation will take place on the basis of the shares of heavy vehicles registered in the Member States in bilateral road transport to and from Switzerland.

*Transit traffic*

The allocation will take place on the basis of the shares of heavy vehicles registered in the Member States in the total number of diverted kilometres in north-south trans-Alpine road traffic as a result of the current weight restrictions in Switzerland.

Diverted mileage will be calculated as the difference between the actual distance of trans-Alpine journeys and the shortest distance through Switzerland. The mileages through Switzerland will be adjusted to take into account border delays and road traffic conditions by means of an addition of 60 kilometres.

For those Member States where the above method leads to less than 200 permits, the allocation will be established at a level of 200 permits.

**Empty permits**

The empty permits will be allocated on the basis of the shares of vehicles registered in the Member States in the transit traffic through Switzerland of vehicles with a laden weight between 7,5 and 28 tonnes.

The figures in Annexes I and II are based on the above methodology, available statistics and a number of assumptions where no statistics were available. The available statistics and the assumptions will be replaced by the results of the survey when the Commission recalculates Annexes I and II.

**Survey**

The survey will generate the following data:

The origin and destination and the Member State of registration of the vehicle of a representative sample of trans-Alpine transit traffic by vehicles with a laden weight above 28 tonnes, via the Brenner and the Mt Blanc tunnel.

The origin and destination and the Member State of registration of the vehicle of a representative sample of bilateral traffic by vehicles with a laden weight between 7,5 and 28 tonnes with origin or destination in Switzerland.

The Member State of registration of the vehicle of a representative sample of transit traffic journeys by road through Switzerland of vehicles with a laden weight between 7,5 and 28 tonnes.

**Proposal for a European Parliament and Council Regulation concerning action against anti-personnel landmines**

(2000/C 248 E/07)

COM(2000) 111 final — 2000/0062(COD)

(Submitted by the Commission on 15 March 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 179 thereof,

Having regard to the proposal from the Commission,

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

Whereas:

- (1) The Community is concerned by the presence of anti-personnel land-mines and other unexploded devices in the areas of civil communities which are trying to recover from armed conflict.
- (2) Anti-personnel landmines cause suffering and casualties, particularly in the poorest parts of the world, and constitute a serious obstacle to economic development, inhibit the return of refugees and displaced persons, and obstruct humanitarian aid operations, reconstruction and rehabilitation and the restoration of normal social conditions.
- (3) The Community is committed to the goal of total elimination of anti-personnel landmines world-wide in the coming years.
- (4) The Community and its Member States have provided the largest contribution to the wider international effort to overcome the tragedy of anti-personnel landmines.
- (5) This Regulation is a direct response to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Land Mines and Their Destruction (Ottawa Convention).
- (6) Therefore, financial aid should, as a priority, benefit those third countries which are committed to the fight against anti-personnel landmines and are parties to the Ottawa Convention.
- (7) Such an approach should not prevent Community response to humanitarian emergencies wherever they occur.
- (8) Community mine action is often an integral part of humanitarian aid, rehabilitation, reconstruction or development projects, whilst being a discrete and specialised activity responding to distinct priorities, operational requirements and political imperatives.

- (9) As part of such projects, as well as in the case of framework programmes for the research and development of mine action technology, new and existing actions will continue to be funded from specific budget lines, supported, complemented and coordinated under this Regulation where appropriate.
- (10) This Regulation is designed to provide the basis for a coherent and efficient approach for the Community mine action, through advancing an integrating strategy, in close coordination between the Commission, the Member States and the international community at all stages of mine actions.
- (11) It is necessary to ensure that these actions are coherent with the European Union's foreign policy as a whole, including the Common Foreign and Security Policy.
- (12) Since the measures necessary 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 (<sup>(1)</sup>), they should be adopted by use of the management procedure provided for in Article 4 of that Decision.
- (13) The anti-personnel landmine problem, by its life-threatening nature and its global extent, requires efficient, flexible and, where necessary, rapid decision-making procedures for the financing of Community actions.
- (14) A financial reference amount, within the meaning of point 2 of the Declaration by the European Parliament, the Council and the Commission of 6 March 1995, is included in this Regulation without thereby affecting the powers of the budgetary authority as they are defined by the Treaty.
- (15) The Community should ensure maximum transparency in the implementation of the financial assistance and stringent controls in the use of appropriations.
- (16) The protection of the Communities' financial interests as well as the fight against fraud and irregularities constitute an inherent part of this Regulation.

(<sup>1</sup>) OJ L 184, 17.7.1999, p. 23.

HAS ADOPTED THIS REGULATION:

*Article 1*

1. The purpose of this Regulation is to lay down the procedures for the implementation of Community operations while advancing a consistent and coherent humanitarian de-mining strategy at Community and international levels, responding to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction (hereinafter referred to as the 'Ottawa Convention').

2. The operations referred to in this Regulation shall be implemented in the territory of third countries or shall be directly related to situations arising in third countries, particularly in those most vulnerable amongst them, and as a priority in developing countries.

*Article 2*

1. The principal objectives of the Community mine action shall be:

- (a) to support the elaboration, monitoring and implementation of a civilian de-mining strategy;
- (b) to assist afflicted countries in the implementation of their obligations under the Ottawa Convention;
- (c) to create and sustain national structures and local capabilities within the afflicted countries to carry out mine actions with maximum effectiveness;
- (d) to respond to humanitarian emergency, prevent casualties and assist the rehabilitation of mine victims;
- (e) to support the in-country trial and introduction into operational use of appropriate mine action equipment and techniques.

2. The operations financed under this Regulation may comprise all activities related to mine action, including

- (a) mine awareness education;
- (b) training of specialist personnel;
- (c) survey and marking of suspected areas;
- (d) detection and identification of landmines;
- (e) de-mining (mine clearance to humanitarian standards) and landmine destruction;
- (f) victim assistance and rehabilitation;

(g) information management, including geographical information systems;

(h) other activities, which contribute to the reduction of the human, economic, and environmental impact of anti-personnel landmines, and other hazardous debris of war.

3. In the context of paragraph 2, priority shall be given to actions addressing immediate and unforeseeable requirements generated by outbreaks of fighting, migration of large groups of people towards mine-afflicted areas, or comparable situations such as urgent assistance in the implementation of peace agreements. Priority will also be given to actions in the most seriously mine-afflicted countries, where anti-personnel landmines and other unexploded ordnance cause many civilian casualties or where the presence or suspected presence of these devices is a major obstacle to the restoration of economic and social activity or to development and thus require a specific long-term commitment that emergency humanitarian or reconstruction aid are unable to provide.

4. In order to ensure coherence, complementarity and synergy within regional cooperation programmes and in the context of humanitarian aid, rehabilitation, reconstruction and development projects, mine actions which can be financed within the framework of any of those programs or projects will continue to be financed from the budget line on which the principal action is financed. Where necessary, these activities may be complemented or supported by mine actions financed under this Regulation.

*Article 3*

The operations financed under this Regulation shall mainly benefit countries which are parties to the Ottawa Convention. Exceptions may be made for humanitarian emergency, for assistance to mine victims, and for actions in direct support of vulnerable civil communities, such as refugees and displaced persons, or where the national administration is not functioning.

*Article 4*

1. Partners eligible for financial support under this Regulation may include regional and international organisations and agencies, non-governmental organisations, national, provincial and local governments departments and agencies, institutes, and public and private operators with appropriate specialised expertise and experience.

2. Participation in invitations to tender and the award of contracts shall be open on equal terms to natural and legal persons of the Member States and of the recipient country. In exceptional cases which are fully justified, participation may be extended to third countries.

### Article 5

1. Community aid under this Regulation may be used to finance technical assistance, training, personnel or other services related to mine action; trials of equipment and techniques; logistical support, procurement, provision and storage of any equipment, supplies and works needed for the implementation of mine actions; studies and conferences and measures to strengthen international coordination of mine action; evaluation and monitoring missions; activities to raise public awareness; as well as the costs of highlighting the Community nature of the aid.

2. Community financing under this Regulation shall take the form of grants.

3. The operations covered by this Regulation shall be exempt from taxes, charges, duties and customs duties.

### Article 6

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

2. Where reference is made to this paragraph, the management procedure laid down in Article 4 of the Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

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

### Article 7

1. The Commission shall, on the basis of a reciprocal and regular exchange of information, including the exchange of information on the spot, ensure the effective coordination of the assistance efforts undertaken by the Community and individual Member States, in order to increase the coherence and complementarity of their programmes.

2. The Commission may seek opportunities for co-financing with other providers of funds, especially with Member States.

3. The Commission shall promote coordination and cooperation with other international contributors, in particular those which form part of the United Nations system.

4. The necessary measures shall be taken to give visibility to the contribution by the Community.

### Article 8

1. The Commission shall appraise, decide, and administer operations covered by this Regulation in accordance with the budgetary and other procedures in force, and in particular

those laid down in Articles 116 and 118 of the Financial Regulation applicable to the general budget of the European Communities.

2. Financing decisions exceeding EUR 3 million shall be taken under the procedure laid down in Article 6(2), with the exception of emergency action set out in Article 9.

3. The Commission shall inform the Committees referred to in Article 6 succinctly of any financing decisions of less than EUR 3 million in value. This information shall be made available not later than two months following the adoption of the financing decision.

4. The Commission may take decisions amending financing decisions adopted in accordance with the procedure laid down in Article 6(2), where they do not entail any substantial amendments or additional commitments in excess of 20 % of the initial commitment.

### Article 9

1. The Commission shall decide on emergency action for any amount not in excess of EUR 5 million.

2. Operations to meet immediate and unforeseeable requirements generated by sudden natural or man-made disasters, such as floods, famine, migration of large groups of people towards mine-afflicted areas, sudden peace settlements, or comparable situations, as well as urgent assistance in the implementation of peace agreements, shall be deemed to necessitate emergency action.

3. Where operations fulfil these conditions and are in excess of EUR 3 million, the Commission, having adopted its decision, shall

(a) inform the Member States in writing within two working days,

(b) account for its decision at the next meeting of the Committee concerned, in particular giving the reasons for its use of the emergency procedure.

### Article 10

1. Projects shall be prioritised and appraised in terms of their relevance and cost effectiveness and, where appropriate, integrated into the wider development or reconstruction framework of the country or region in question.

2. Wherever possible, the project should be clearly integrated within a national anti-personnel landmines programme coordinated by the beneficiary government or by an international institution mandated for that purpose. The aim should be for the project to be taken over, in due course, by the beneficiary government itself in order to enhance local capacity and the sustainability of the project.

### Article 11

All financing agreements or contracts concluded under this Regulation shall provide for the Commission and the Court of Auditors to conduct on-the-spot checks according to the usual procedures laid down by the Commission under the rules in force, and in particular those of the Financial Regulation applicable to the general budget of the European Communities<sup>(1)</sup>.

In addition, the Commission may carry out on-the-spot checks and inspections in conformity with Regulation No 2185/96<sup>(2)</sup>. The measures taken by the Commission shall provide for adequate protection of the financial interests of the Community in conformity with Regulation No 2988/95<sup>(3)</sup>.

### Article 12

To facilitate multi-annual mine action coordination and programming, an APL Strategy Paper comprising horizontal guidelines and priorities for Community mine actions and the benchmarks for their achievement, shall regularly be presented to the Committees concerned, for discussion. It shall cover issues such as a multi-annual indicative programme and shall refer to existing mine action programmes at country and regional levels, to the contributions of other donors including Member States and to Community mine actions funded from other budget lines.

### Article 13

1. The Commission shall regularly assess mine actions financed by the Community in order to establish whether the objectives of the operations have been achieved and to provide guidelines for improving the effectiveness of future operations.

2. The Commission shall regularly inform the European Parliament and the Council of the progress of its mine actions. It shall submit a report summarising Community mine action in the previous year to the European Parliament and to the Council by 30 April each year at the latest, and evaluate the implementation of this Regulation.

### Article 14

Three years after entry into force of this Regulation, the Commission shall submit an overall assessment of the operations financed by the Community under this Regulation to the European Parliament and the Council, together with suggestions for the future of the regulation and, as necessary, proposals for amendments to it.

### Article 15

This Regulation shall enter into force on the third 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.

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<sup>(1)</sup> OJ L 356, 31.12.1977, p. 1.

<sup>(2)</sup> OJ L 292, 15.11.1996, p. 2.

<sup>(3)</sup> OJ L 312, 23.12.1995, p. 1.

**Proposal for a Council Decision modifying Decision 1999/311/EC of 29 April 1999 adopting the third phase of the trans-European cooperation scheme for higher education (Tempus III) (2000-2006)**

(2000/C 248 E/08)

**(Text with EEA relevance)**

COM(2000) 184 final — 2000/0074(CNS)

*(Submitted by the Commission on 31 March 2000)*

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 of the Commission,

Having regard to the opinion of the European Parliament,

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

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

Whereas:

- (1) By Decision 1999/311/CE of 29 April 1999, the Council adopted the third phase of the trans-European cooperation scheme for higher education (Tempus III) (2000-2006)
- (2) This programme is intended for the non-associated countries of central and eastern Europe eligible for economic aid by virtue of Regulation (EEC) No 3906/89 (PHARE programme) or the programme intended to replace it and the New Independent States of the former Soviet Union and Mongolia as laid down in Council Regulation (EC, Euratom) No 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia <sup>(1)</sup> (which replaces the old Tacis programme)

(3) The footnote inserted in Article 2 states that 'at present' the programme relates to Albania, Bosnia-Herzegovina and the former Yugoslav Republic of Macedonia

(4) It is important to be able to extend the Tempus III programme to other countries in the region in future, in particular Croatia.

HAS DECIDED AS FOLLOWS:

***Sole Article***

Decision 1999/311/CE is hereby amended as follows:

The first paragraph of Article 2 'Eligible countries' is replaced by the following text:

'Tempus III concerns the non-associated countries of central and eastern Europe designated as eligible for economic aid by virtue of Regulation (EEC) No 3906/89 (PHARE programme) or the programme intended to replace it, and the new independent states of the former Soviet Union and Mongolia mentioned in Regulation (EC, Euratom) No 99/2000 (which replaces the old Tacis programme). These countries are hereinafter referred to as "eligible countries"'

<sup>(1)</sup> OJ L 12, 18.1.2000, p. 1.

**Proposal for a Council Regulation establishing additional technical measures for the recovery of the stock of cod in the Irish Sea (ICES Division VIIa)**

(2000/C 248 E/09)

**(Text with EEA relevance)**

COM(2000) 190 final — 2000/0071(CNS)

*(Submitted by the Commission on 5 April 2000)*

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) The stock of mature cod in the Irish Sea is currently depleted and urgent and temporary technical measures for fishing in the Irish Sea have been laid down in Commission Regulation (EC) No 304/2000 of 9 February 2000 establishing measures for the recovery of the stock of cod in the Irish Sea (ICES Division VIIa) (1).
- (2) Greater protection of juvenile cod in the Irish Sea is required so that more juveniles survive to become adults.
- (3) Additional technical measures intended to ensure the survival of juvenile cod are required within the Irish Sea.
- (4) Also, conditions defined in footnote 6 of Annex I of Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (2) as last amended by Regulation (EC) No 2723/1999 (3) currently allow, during 2000, relaxed percentage by-catch conditions to prevail for various fishing gears both within and in waters adjacent to the Irish Sea (ICES Division VIIa). The application of these conditions during 2000 is not desirable. The aforementioned footnote therefore requires to be made inapplicable in the Irish Sea,

HAS ADOPTED THIS REGULATION:

**Article 1**

This Regulation lays down technical measures additional to those defined in Regulation (EC) No 850/98 which shall apply exclusively to the Irish Sea (ICES Division VIIa) as defined in Council Regulation (EEC) No 3880/91 of 17 December 1991 on the submission of national catch statistics by Member States fishing in the Northeast Atlantic (4).

**Article 2**

When fishing in the Irish Sea, it shall be prohibited to use or carry on board:

1. any cod-end or extension piece made entirely or partly of multiple-twine netting materials;
2. any cod-end or extension piece of which the thickness of the twine exceeds 6 mm;
3. any cod-end of mesh size range 70 to 89 mm having more than 120 meshes in any circumference of said cod-end excluding the joinings and selvedges;
4. any towed net which includes any individual quadrilateral mesh of which the bars of the mesh are not of approximately equal length;
5. any demersal towed net of mesh size range 70 to 99 mm unless the upper half of such a net includes a panel of netting material attached directly to the headline of the net, extending towards the posterior of the net for at least 15 meshes and constructed of diamond-meshed netting material of which no individual mesh is of mesh size less than 140 mm. This provision shall not apply to beam trawls;
6. any demersal towed net of mesh size range 80 to 99 mm unless a square-meshed panel of mesh size of least 80 mm is included in such a net. This provision shall not apply to beam trawls;
7. any demersal towed net to which a cod-end of mesh size less than 100 mm is attached by any means other than being sewn into the anterior part of the net.

**Article 3**

Footnote 6 of Annex I of Regulation (EC) No 850/98 shall not apply to ICES Division VIIa.

**Article 4**

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

The conditions of Article 2 shall apply from 1 January 2001.

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

(1) OJ L 35, 10.2.2000, p. 10.

(2) OJ L 125, 27.4.1998, p. 1.

(3) OJ L 328, 22.12.1999, p. 9.

(4) OJ L 365, 31.12.1991, p. 1.

**Proposal for a Council Regulation amending Regulation (EEC) No 2759/75 on the common organisation of the market in pigmeat**

(2000/C 248 E/10)

COM(2000) 193 final — 2000/0076(CNS)

(Submitted by the Commission on 13 April 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 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) For a long time the European Union market in pigmeat has been subject to cyclical movements, with periods in which the supply of pigmeat has been in balance and prices have been satisfactory followed by periods when supplies have been plentiful and market prices have consequently been low. For some years now, this cycle has been more pronounced and the periods of recession have been lengthening, endangering the cash flow situation of pigfarmers. Steps should be taken, therefore, to amend Council Regulation (EEC) No 2759/75 (<sup>1</sup>), as last amended by Regulation (EC) No 3290/94 (<sup>2</sup>), and to authorise the Member States to establish a regulatory fund making it possible for pigfarmers, who participate on a voluntary basis, to cope with fluctuations in market prices. To ensure the satisfactory operation of the funds and in particular their financing, provision should be made for a minimum period of participation and for the lodging of a security by the pigfarmers concerned.

(2) In order that the funds may be established rapidly and effectively at national level, use should be made of existing bodies, if any. The participation of pigfarmers in their management and administration must be ensured. The funds will adopt the arrangements necessary for their operation and inform the Commission and the other Member States thereof.

(3) Financing for the funds will be provided by a levy paid by participating pigfarmers in respect of each fattening pig produced. In order to cover the administrative costs of setting up the funds, Member States may grant degressive launching aid. To supplement their financing, the funds may seek loans from banks and other institutions on market terms.

(4) The principal component of the fund arrangements will be the regulatory mechanism because it establishes a levy

threshold requiring an amount to be paid to the fund, during periods when market prices are satisfactory, in respect of each fattening pig, and a payment threshold triggering the grant of an amount by the fund, during periods of recession, to farmers in respect of each fattening pig. The two thresholds will be set by the funds in the light of market factors and their financial situation. In view of its role as the principal component in the operation of the funds, the regulatory mechanism must be authorised by the Commission in accordance with the procedure laid down in Article 24 of Regulation (EEC) No 2759/75. By adjusting the levy amounts and payments it should be possible for the funds to take account of the structure of the sector and improve it.

(5) In a future recession it may happen that, in the period immediately following their establishment, the funds will have to start making payments without having the opportunity to collect the necessary financial resources. In that case, the Member State concerned must be authorised to grant an interest-free loan that will allow the fund to carry out its task. This loan must be reimbursed. Where the funds have sufficient financial resources to allow them to act in the event of a future recession, they may suspend the collection of the levy temporarily.

(6) The establishment of the funds in the Member States concerned must be mirrored by certain arrangements for the control of pigmeat production in the European Union. Pigfarmers who participate in the funds will benefit from certain assurances regarding their income from fattening pigs. It is therefore reasonable to require them to comply with production rules for improving the balance of the market and ensuring the satisfactory operation of the funds. However, provision should be made for a derogation from this provision where market prospects permit,

HAS ADOPTED THIS REGULATION:

**Article 1**

The following Title Ia is inserted in Regulation (EEC) No 2759/75 after Article 7:

**“TITLE Ia**

**REGULATORY FUND**

**Article 7a**

1. The Member States are authorised to establish a regulatory fund for pigfarmers whose pigs are fattened in their territory. The purpose of the fund shall be to assist pigfarmers in coping with fluctuations in market prices.

(<sup>1</sup>) OJ L 282, 1.11.1975, p. 1.

(<sup>2</sup>) OJ L 349, 31.12.1994, p. 105.

2. Pigfarmers shall participate in the funds on a voluntary basis either directly or indirectly through producer groups or any other collective body of which they are members. Pigfarmers and groups participating in the funds shall give an undertaking to comply with the rules laid down by the funds. Compliance with the rules shall be ensured by the lodging of a security.

3. Pigfarmers shall participate in the funds for a minimum of five years in respect of all their production units in the territory of the Member State concerned.

#### Article 7b

1. The regulatory funds shall be organised and administered by existing national bodies or bodies set up for the purpose. Pigfarmers shall be represented in the management of the funds and their supervisory bodies.

2. The regulatory funds shall adopt the necessary arrangements and in particular the conditions of membership, the regulatory mechanism and the procedure governing levies and payments.

#### Article 7c

1. The regulatory funds shall be financed by the pigfarmers themselves, through the collection of a levy in respect of each fattening pig, paid by the pigfarmers or by the producer group through which they market their pigs.

2. To facilitate the establishment of a regulatory fund, Member States may grant aid to meet the administrative costs incurred during the launch of the fund. To that end, eligible expenditure shall include the rental of premises, the purchase of office equipment, including computer hardware and software, administrative costs, including personnel costs, fixed costs and miscellaneous charges. The aid amount may not exceed 100 % of the costs incurred during the first year, reduced by 20 percentage points for each subsequent year, so that in the fifth and last year it amounts to 20 % of the real costs.

3. In order to obtain the resources needed to operate their regulatory fund, the funds may borrow from banks and public or private institutions. In that case, the interest rate on loans shall be the market rate and may not include interest subsidies constituting State aid.

#### Article 7d

1. The regulatory mechanism applied by the funds shall comprise:

— a "levy threshold" triggering the payment to the funds of a levy in respect of each fattening pig by pigfarmers during periods when price levels are satisfactory,

— a "payment threshold" opening entitlement to the payment, by the funds, of an amount in respect of each fattening pig to pigfarmers during periods of recession.

2. The funds shall forward to the Commission, through the competent authorities, the regulatory mechanism and in particular the thresholds referred to in paragraph 1, the level of which shall be set taking into account the market price for standard quality slaughtered pigs in the Member State concerned, the production costs in that country, the financial situation of the fund and the situation of the Community market in pigmeat. The Commission shall authorise the mechanism in accordance with the procedure laid down in Article 24.

3. The regulatory funds may adjust the amounts granted in respect of each fattening pig and the number of eligible pigs per farmer in the light in particular of the size and structure of the pig farms in the Member State concerned. The levy may also be adjusted.

#### Article 7e

1. In order to prevent funds from failing to operate for lack of financial resources during a three-year period from the time they are established, Member States may, where strictly necessary, grant the regulatory fund an interest-free loan. Such loans shall be reimbursed by the fund in full within a period of five years. Member States shall inform the Commission of the amount of the loan and its method of calculation. The Commission shall inform the other Member States thereof.

2. Where the regulatory funds have adequate financial resources, they may suspend collection of the levy temporarily. Interest income, if any, available to the funds must be used for their statutory objectives.

#### Article 7f

Upon becoming a member of a regulatory fund, pigfarmers must declare the number of their fattening places within the territory of the Member State concerned. They must give an undertaking not to increase that number during the whole of their period of membership. However, where market prospects permit, a Member State may, at its request, be authorised by the Commission, in accordance with the procedure laid down in Article 24, to derogate from this requirement.

*Article 7g*

1. Member States shall adopt the measures necessary to apply this Title and shall determine in particular the procedures for establishing and managing the regulatory funds.

2. They shall notify the Commission of the provisions adopted under this Title and of any amendments thereto. The Commission shall notify the other Member States thereof.

*Article 2*

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

It shall apply from 1 July 2000.

*Article 7h*

Detailed rules for the application of this Title shall be adopted in accordance with the procedure laid down in Article 24.'

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

**Proposal for a Council Decision in accordance with article 122(2) of the Treaty for the adoption  
by Greece of the single currency on 1 January 2001**

(2000/C 248 E/11)

COM(2000) 274 final — 2000/0110(CNS)

(Submitted by the Commission on 3 May 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 122, paragraph 2 thereof,

Having regard to the proposal from the Commission,

Having regard to the report from the Commission,

Having regard to the report from the European Central Bank,

Having regard to the opinion of the European Parliament,

Having regard to the discussion of the Council, meeting in the composition of Heads of State or Government,

(1) Whereas the third stage of economic and monetary union (EMU) started on 1 January 1999; whereas the Council, meeting in Brussels on 3 May 1998 in the composition of Heads of State or Government, decided that Belgium, Germany, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland fulfilled the necessary conditions for adopting the single currency in 1 January 1999 (¹).

(2) Whereas, in accordance with paragraph 1 of Protocol 25 of the Treaty, the United Kingdom notified the Council that it did not intend to move to the third stage of EMU on 1 January 1999; whereas this notification has not been changed; whereas, in accordance with paragraph 1 of Protocol No 26 of the Treaty and the Decision taken by the Heads of State or Government in Edinburgh in December 1992, Denmark has notified the Council that it will not participate in the third stage of EMU; whereas Denmark has not requested that the procedure referred to in Article 122(2) is initiated.

(3) Whereas Greece and Sweden have a derogation as defined in Article 122 of the Treaty.

(4) Whereas the European Central Bank (ECB) was established on 1 July 1998; whereas the European Monetary System has been replaced by an exchange rate mechanism the setting up of which was agreed by a Resolution of the European Council on 16 June 1997 (²); whereas the procedures for an exchange rate mechanism in stage

three of economic and monetary union (ERM II) were laid down in the agreement of 1 September 1998 between the ECB and the national central banks of the Member States outside the euro area (³).

(5) Whereas paragraph 2 of Article 122 lays down the procedures for abrogation of the derogation of the Member States concerned; whereas according to that Article at least once every two years, or at the request of a Member State with a derogation, the Commission and the ECB shall report to the Council in accordance with the procedure laid down in Article 121(1); whereas such reports have to be prepared in 2000; whereas on 9 March 2000 Greece made a request.

(6) Whereas national legislation in the Member States including the statutes of national central banks shall as necessary be adapted with a view to ensuring compatibility with Articles 108 and 109 of the Treaty and the Statute of the ESCB; whereas the reports of the Commission and the ECB provide a detailed assessment of the compatibility of the legislation of Greece and Sweden with Articles 108 and 109 of the Treaty and the statute of the ESCB.

(7) Whereas according to Article 1 of Protocol No 21 the criterion on price stability referred to in the first indent of Article 121(1) shall mean that a Member State has a price performance that is sustainable and an average rate of inflation, observed over a period of one year before the examination, that does not exceed by more than 1 ½ percentage points that of, at most, the three best performing Member States in terms of price stability; whereas for the purpose of the criterion on price stability inflation will be measured by the harmonised indices of consumer prices (HICPs) defined in Council Regulation (EC) No 2494/95; whereas in order to assess the price stability criterion a Member State's inflation has been measured by the percentage change in the arithmetic average of twelve monthly indices relative to the arithmetic average of twelve monthly indices of the previous period; whereas in the one year period ending in March 2000 the three best performing Member States in terms of price stability were France, Austria and Sweden, with inflation rates of, respectively 0,9 %, 0,9 % and 0,8 %; whereas a reference value calculated as the simple arithmetic average of the inflation rates of the three best performing Member States in terms of price stability plus 1,5 percentage points was considered in the reports of the Commission and the ECB; whereas, on this basis, the reference value in the one year period ending in March 2000 was 2,4 %.

(¹) Council Decision 1998/317/EC, OJ L 139 of 11.5.1998.

(²) OJ C 236 of 2.8.1997.

(³) OJ C 345 of 13.11.1998.

(8) Whereas according to Article 2 of Protocol No 21 the criterion on the government budgetary position referred to in the second indent of Article 121(1) shall mean that at the time of the examination the Member State is not the subject of a Council decision under Article 104(6) of the Treaty that an excessive deficit exists.

(9) Whereas according to Article 3 of Protocol No 21 the criterion on participation in the exchange-rate mechanism of the European Monetary System referred to in the third indent of Article 121(1) shall mean that a Member State has respected the normal fluctuation margins provided for by the exchange-rate mechanism (ERM) of the European Monetary System without severe tensions for at least the last two years before the examination. In particular, the Member State shall not have devalued its currency's bilateral central rate against any other Member State's currency on its own initiative for the same period; whereas since 1 January 1999 the ERM II provides the framework for assessing the fulfilment of the exchange rate criterion; whereas in assessing the fulfilment of this criterion in their reports, the Commission and the ECB have examined the two year period ending in March 2000.

(10) Whereas according to Article 4 of Protocol No 21 the criterion on the convergence of interest rates referred in the fourth indent of Article 121(1) shall mean that, observed over a period of one year before the examination, a Member State has had an average nominal long-term interest rate that does not exceed by more than two percentage points that of, at most, the three best performing Member States in terms of price stability; whereas for the purpose of the criteria on the convergence of interest rates comparable interest rates on 10-year benchmark government bonds were used; whereas in order to assess the fulfilment of the interest rate criterion a reference value calculated as the simple arithmetic average of the nominal long-term interest rates of the three best performing Member States in terms of price stability plus two percentage points was considered in the reports of the Commission and the ECB; whereas, on this basis, the reference value in the one year period ending in March 2000 was 7,2 %.

(11) Whereas, in accordance with Article 5 of Protocol No 21 the data used in the current assessment of the fulfilment of the convergence criteria will be provided by the Commission; whereas for the preparation of this proposal the Commission provided data; whereas budgetary data were provided by the Commission after reporting by the Member States by 1 March 2000 in accordance with Council Regulation (EC) No 3605/93, amended by Council Regulation (EC) No 475/2000.

(12) Whereas in Greece national legislation, including the statute of the national central bank, is compatible with Articles 108 and 109 of the Treaty and the Statute of the ESCB;

Regarding the fulfilment by Greece of the convergence criteria mentioned in the four indents of Article 122(1) of the Treaty:

- the average inflation rate in Greece in the year ending March 2000 stood at 2,0 % which is below the reference value;
- on 17 December 1999 (<sup>1</sup>) the Council abrogated its previous Decision on the existence of an excessive deficit in Greece and therefore Greece is not the subject of a Council Decision on the existence of an excessive government deficit;
- Greece has been a member of the ERM and subsequently of ERM II during the last two years; in that period the Greek drachma (GRD) has not been subject to severe tensions and Greece has not devalued, on its own initiative, the GRD bilateral central rate against any other Member State's currency up to 1 January 1999 nor against the euro since then;
- in the year ending March 2000 the long-term interest rate in Greece was, on average, 6,4 % which is below the reference value;

Greece has achieved a high degree of sustainable convergence by reference to all four criteria.

Consequently, Greece fulfils the necessary conditions for the adoption of a single currency.

(13) Whereas the Council, acting by qualified majority on a proposal by the Commission, shall decide which Member States with a derogation fulfil the necessary conditions for the adoption of the single currency and abrogate the derogations of the Member States concerned,

HAS ADOPTED THIS DECISION:

*Article 1*

Greece fulfils the necessary conditions for the adoption of the single currency. The derogation of Greece is abrogated with effect from 1 January 2001.

*Article 2*

This Decision is addressed to the Member States.

*Article 3*

This Decision shall be published in the *Official Journal of the European Communities*.

(<sup>1</sup>) OJ L 12 of 18.1.2000.