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⁽¹⁾ Text with EEA relevance

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II

(Preparatory Acts)

COMMISSION

Proposal for a Directive of the European Parliament and of the Council on measuring instruments

(2001/C 62 E/01)

(Text with EEA relevance)

COM(2000) 566 final — 2000/0233(COD)

(Submitted by the Commission on 15 September 2000)

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,

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

Whereas:

- (1) A number of measuring instruments are covered by specific Directives, adopted on the basis of Directive 71/316/EEC on common provisions for both measuring instruments and methods of metrological control⁽¹⁾. Specific directives that are technically outdated should be repealed and replaced by an independent directive, which is in the spirit of Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards⁽²⁾. Specific Directives that are not outdated should remain governed by Directive 71/316/EEC.
- (2) Measuring instruments can be used for a variety of measurement tasks. Those responding to reasons of public interest, affecting the daily life of citizens in many ways directly and indirectly, require the use of legally controlled measuring instruments.
- (3) Legal metrological control should not lead to barriers to the free movement of measuring instruments, the provision concerned should be the same in all Member States and proof of conformity accepted throughout the Community.
- (4) Legal metrological control requires conformity with specified performance requirements. The performance requirements that the measuring instruments must meet should provide a high level of protection. The assessment of conformity should provide a high level of confidence.
- (5) The performance of measuring instruments is particularly sensitive to the electromagnetic environment. Immunity of measuring instruments to electromagnetic interference forms an integral part of this Directive and the immunity requirements of Council Directive 89/336/EEC of 3 May 1989 on electromagnetic compatibility⁽³⁾, as last

amended by Directive 93/68/EEC⁽⁴⁾, would therefore not apply.

- (6) Community legislation should specify essential requirements that do not impede technical progress. The legal requirements should therefore preferably be performance requirements. Regulations to remove technical barriers to trade should follow the new approach provided for in the Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards.
- (7) European technical standards should therefore be drawn up whose technical and performance specifications comply with the essential requirements laid down by this Directive. Conformity with the specifications of those standards would give rise to a presumption of conformity with the essential requirements laid down by this Directive. Standards harmonised at European level are drawn up by private bodies and must retain their non-mandatory status. For this purpose, the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (Cenelec) are recognised as being the bodies that are competent to adopt harmonised standards that follow the general guidelines for cooperation between the Commission and those two bodies signed on 13 November 1984.
- (8) The drawing up of harmonised standards by CEN and Cenelec is to be carried out at the request of the Commission pursuant to Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services⁽⁵⁾, as amended by Directive 98/48/EC⁽⁶⁾. In relation to standardisation, it is advisable for the Commission to be assisted by the Committee set up under Directive 98/34/EC. The Committee will, if necessary, consult technical experts.
- (9) In certain specialised fields the technical and performance specifications of internationally agreed normative documents can also comply, in part or in full, with the product specifications laid down in legislation. In those cases the use of these internationally agreed normative documents can be an alternative to the use of European technical standards.

⁽¹⁾ OJ L 202, 6.9.1971, p. 1.

⁽²⁾ OJ C 136, 4.6.1985, p. 1.

⁽³⁾ OJ L 139, 23.5.1989, p. 19.

⁽⁴⁾ OJ L 220, 30.8.1993, p. 1.

⁽⁵⁾ OJ L 204, 21.7.1998, p. 37.

⁽⁶⁾ OJ L 217, 5.8.1998, p. 18.

- (10) Conformity with the essential requirements laid down by this Directive can also be provided by specifications that are not supplied by a European technical standard or internationally agreed normative document. The use of European technical standards or internationally agreed normative documents should therefore be optional.
- (11) The state of the art in measurement technology is subject to constant evolution which may lead to changes in the needs for conformity assessments. Therefore, for each category of measurement there must be an appropriate procedure or a choice between different procedures of equivalent stringency. The procedures adopted are as required by Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation Directives ⁽¹⁾.
- (12) In accordance with Article 2 of the Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾, measures necessary for the implementation of this Directive should be adopted by use of the advisory procedure provided for in Article 3 of that Decision.
- (13) The Member States should actively survey their markets and take all appropriate measures to non-complying instruments from being placed on their markets or being used. Adequate cooperation among the market surveillance authorities of the Member States is therefore necessary to ensure a Community-wide effect of the market surveillance activities.
- (14) Member States should take all appropriate measures to ensure that measuring instruments that carry the CE conformity marking and supplementary marking are correctly placed on the market. Manufacturers should be informed of the grounds on which negative decisions in respect of their products were taken, and the legal remedies available to them.
- (15) This Directive should repeal the Community legislation in respect of the measuring instruments covered by the following Council Directives:
- 71/318/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to gas meters ⁽³⁾, as last amended by Commission Directive 82/623/EEC ⁽⁴⁾;
 - 71/319/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to meters for liquids other than water ⁽⁵⁾;
 - 71/348/EEC of 12 October 1971 on the approximation of the laws of the Member States relating to ancillary equipment for meters for liquids other than water ⁽⁶⁾, as last amended by the Act of Accession of Austria, Finland and Sweden;
 - 73/362/EEC of 19 November 1973 on the approximation of the laws of the Member States relating to material measures of length ⁽⁷⁾, as last amended by Commission Directive 85/146/EEC ⁽⁸⁾;
 - 75/33/EEC of 17 December 1974 on the approximation of the laws of the Member States relating to cold water meters ⁽⁹⁾;
 - 75/410/EEC of 24 June 1975 on the approximation of the laws of the Member States relating to continuous totalising weighing machines ⁽¹⁰⁾;
 - 76/891/EEC of 4 November 1976 on the approximation of the laws of the Member States relating to electrical energy meters ⁽¹¹⁾;
 - 77/95/EEC of 21 December 1976 on the approximation of the laws of the Member States relating to taximeters ⁽¹²⁾;
 - 77/313/EEC of 5 April 1977 on the approximation of the laws of the Member States relating to measuring systems for liquids other than water ⁽¹³⁾ as amended by Commission Directive 82/625/EEC ⁽¹⁴⁾;
 - 78/1031/EEC of 5 December 1978 on the approximation of the laws of the Member States relating to automatic checkweighing and weight grading machines ⁽¹⁵⁾;
 - 79/830/EEC of 11 September 1979 on the approximation of the laws of the Member States relating to hot-water meters ⁽¹⁶⁾.

⁽¹⁾ OJ L 220, 30.8.1993, p. 23.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

⁽³⁾ OJ L 202, 6.9.1971, p. 21.

⁽⁴⁾ OJ L 252, 27.8.1982, p. 5.

⁽⁵⁾ OJ L 202, 6.9.1971, p. 32.

⁽⁶⁾ OJ L 239, 25.10.1971, p. 9.

⁽⁷⁾ OJ L 335, 5.12.1973, p. 56.

⁽⁸⁾ OJ L 54, 23.2.1985, p. 29.

⁽⁹⁾ OJ L 14, 20.1.1975, p. 1.

⁽¹⁰⁾ OJ L 183, 14.7.1975, p. 25.

⁽¹¹⁾ OJ L 336, 4.12.1976, p. 30.

⁽¹²⁾ OJ L 26, 31.1.1977, p. 59.

⁽¹³⁾ OJ L 105, 28.4.1977, p. 18.

⁽¹⁴⁾ OJ L 252, 27.8.1982, p. 10.

⁽¹⁵⁾ OJ L 364, 27.12.1978, p. 1.

⁽¹⁶⁾ OJ L 259, 15.10.1979, p. 1.

(16) Manufacturers should be offered the possibility to exercise the rights obtained before the entry into force of this Directive, during a reasonable period. Transitional arrangements are therefore necessary,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND OBJECT

Article 1

Scope

This Directive applies to the devices and systems with a measuring function defined in the instrument specific annexes MI-001 to MI-011.

Article 2

Object

This Directive establishes the essential requirements that the devices and systems referred to in Article 1 have to satisfy if they are subject to legal metrological control in a Member State, and the conformity assessment that they have to undergo in those circumstances, with a view to their placing on the market and putting into use.

It is a specific Directive in respect of requirements for electromagnetic immunity in the sense of Article 2(2) of Directive 89/336/EEC.

CHAPTER II

LEGAL METROLOGICAL CONTROL

Article 3

Definitions

For the purposes of this Directive:

- (a) 'measuring instrument' means any device or system with a measurement function that is covered by the scope and object of this Directive, as laid down in Articles 1 and 2;
- (b) 'sub-assembly' means a hardware device that functions independently and together with other sub-assemblies with which it is compatible, makes up a measuring instrument;
- (c) 'legal metrological control' means the control of the measurement tasks of a measuring instrument, prescribed by the Member States for reasons of public health, public safety, public order, protection of the environment, levying of taxes and duties, protection of the consumers and fair trading;
- (d) 'manufacturer' means the physical or legal person who

- carries out the technical design of a measuring instrument, or has it carried out on his behalf, and
 - manufactures the measuring instrument, or has it manufactured on his behalf, and
 - places it lawfully on the market under his own name,
- or,
- the physical or legal person who
- takes responsibility for the conformity of the measuring instrument to the appropriate requirements of this Directive, and
 - has taken all necessary measures to bear those responsibilities, and
 - places the measuring instrument lawfully on the market under his own name;

- (e) 'placing on the market' means the first passing of the product from the stage of manufacture to the stage of distribution and/or use on the Community market;
- (f) 'putting into use' means the first use of a product for the purposes for which it was intended;
- (g) 'authorised representative' means the physical or legal person who is authorised by a manufacturer, in writing, to act on his behalf for specified tasks. An authorised representative must be established within the Community if he is to act under this Directive;
- (h) 'harmonised standard' means a technical specification adopted by the European Committee for Standardisation (CEN) or the European Committee for Electrotechnical Standardisation (Cenelec) or jointly by both, at the request of the Commission pursuant to Directive 98/34/EC, and prepared in accordance with the General Guidelines agreed between the Commission and the European standards organisations;
- (i) 'normative document' means a document containing normative elements drawn up by the Organisation Internationale de Métrologie Légale.

Article 4

Essential requirements and assessment of conformity

1. A measuring instrument shall meet the essential requirements laid down in Annex I and the relevant instrument specific Annex.
2. The conformity of a measuring instrument with the essential requirements shall be assessed in accordance with the provisions of Article 7.
3. Where a measuring instrument consists of a number of sub-assemblies and where specific annexes exist laying down the essential requirements for all of these sub-assemblies that together make up the measuring instrument, the provisions of this Directive shall apply *mutatis mutandis* to each of these sub-assemblies.

Article 5

Conformity marking

1. The conformity of a measuring instrument with all the obligations contained in this Directive shall be indicated by the presence on it of the CE conformity marking and the supplementary metrology marking as specified in Article 13.
2. The CE conformity marking and supplementary metrology marking shall be affixed by, or under the responsibility of the manufacturer.
3. The affixing of markings on a measuring instrument that are likely to deceive third parties as to the meaning and form of the CE marking or the supplementary metrology marking shall be prohibited. Any other marking may be affixed to a measuring instrument, provided that the visibility and legibility of the CE marking and the supplementary metrology marking is not thereby reduced.

Article 6

Placing on the market and putting into use

1. Without prejudice to the provisions of Articles 13 and 14, Member States shall not impede for reasons covered by this Directive the placing on the market and putting into use of any measuring instrument that carries the CE conformity marking and supplementary metrology marking in accordance with Article 5.
2. Member States shall ensure that the use of any measuring instrument that carries the CE conformity marking and supplementary metrology marking in accordance with Article 5 shall not be impeded by rules or conditions in respect of aspects covered by this Directive which are imposed by contracting entities in pursuit of the relevant activities, as referred to in Article 2 of Council Directive 93/38/EEC ⁽¹⁾.

CHAPTER III

ASSESSMENT OF CONFORMITY

Article 7

Assessment of conformity

Assessment of conformity of a measuring instrument with its essential requirements shall be carried out by the application, at the choice of the manufacturer, of one of the conformity assessment procedures listed in the specific annex concerning that instrument.

The conformity assessment modules making up the procedures are described in Annexes A to H1.

Article 8

Notification

1. Member States shall notify to the other Member States and the Commission the bodies which they have designated to carry out the tasks pertaining to the conformity assessment modules referred to in Article 7, together with the identification numbers given by the Commission according to paragraph 4, the kind(s) of measuring instrument for which each body has been designated and in addition, where relevant, the instrument classes, the measuring range, the measurement technology, and any other instrument characteristic limiting the scope of the notification.
2. Member States shall apply the criteria set out in Annex III for the designation of such bodies.
3. A Member State that has notified a body shall withdraw such notification if it finds that the body no longer meets the criteria referred to in paragraph 2. It shall forthwith inform the other Member States and the Commission of any such withdrawal of a notification.
4. Each of the bodies to be notified shall be given an identification number by the Commission. The Commission shall publish the list of bodies notified, together with the information in respect of the scope of the notification referred to in paragraph 1, in the C series of the *Official Journal of the European Communities* and shall ensure that the list is kept up to date.

CHAPTER IV

PRESUMPTION OF CONFORMITY

Article 9

Harmonised standards and normative documents

1. Member States shall presume conformity with the essential requirements referred to in Article 4 in respect of a measuring instrument that complies with the elements of the national standards implementing the European harmonised standard for that measuring instrument that correspond to those elements of this European harmonised standard whose references have been published in the C series of the *Official Journal of the European Communities*.

Where a measuring instrument complies only in part with the elements of the national standards referred to in the first subparagraph, Member States shall presume conformity with the essential requirements corresponding to the elements of the standards with which the instrument complies.

Member States shall publish the references of the national standards referred to in the first subparagraph.

2. Member States shall presume conformity with the essential requirements referred to in Article 4 in respect of a measuring instrument that complies with the normative document referred to in Article 11(2)(c), whose references have been published in the C series of the *Official Journal of the European Communities*.

⁽¹⁾ OJ L 199, 9.8.1993, p. 84.

Where a measuring instrument complies only in part with the normative document referred to in the first subparagraph, Member States shall presume conformity with the essential requirements corresponding to the normative elements with which the instrument complies.

Member States shall publish the references of the normative document referred to in the first subparagraph.

CHAPTER V

COMMITTEES

Article 10

Committee on standards and technical regulations

Where a Member State or the Commission considers that a European harmonised standard as referred to in Article 9(1) does not fully meet the essential requirements referred to in Article 4, the Member State or the Commission shall bring the matter before the Standing Committee set up under Directive 98/34/EC, giving its reasons for doing so. The Committee shall deliver an opinion without delay.

In the light of the Committee's opinion, the Commission shall inform the Member States whether or not it is necessary to withdraw the references of the national standards from the publication referred to in the third subparagraph of Article 9(1).

Article 11

Measuring Instruments Committee

1. The Commission shall be assisted by a Standing Committee, the Measuring Instruments 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 advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

Article 12

Functions of the Measuring Instruments Committee

1. On request by a Member State or on its own initiative, the Commission, acting in accordance with the procedure referred to in Article 11(2), may take any appropriate measure to:

- (a) amend instrument specific annexes in respect of:
- the maximum permissible errors and accuracy classes,
 - the rated operating conditions,
 - the critical change values,
 - the list of conformity assessment procedures referred to in Article 7;

(b) amend the test programmes laid down in Annex II;

(c) request the Organisation Internationale de Métrologie Légale to draw up a normative document containing normative elements conformity with which provides presumption of conformity with the corresponding essential requirements of this Directive;

(d) publish the references of the normative document referred to in point (c) in the C series of the *Official Journal of the European Communities*.

2. Where a Member State or the Commission considers that a normative document whose references have been published in the C series of the *Official Journal of the European Communities* in accordance with paragraph 2(d), does not fully meet the essential requirements referred to in Article 4, that Member State or the Commission shall bring the matter before the Measuring Instruments Committee, giving its reasons for doing so.

The Commission, acting in accordance with the procedure referred to in Article 11(2), shall inform the Member States whether or not it is necessary to withdraw the references of the normative document concerned from the publication referred to in the third subparagraph of Article 9(2).

CHAPTER VI

MARKINGS

Article 13

Markings

1. The CE conformity marking referred to in Article 5 consists of the letters CE according to the design laid down in paragraph I.B(d) of the Annex to Decision 93/465/EEC. The CE marking shall be at least 5 mm high.

2. The supplementary metrology marking referred to in Article 5 consists of the capital letter M and the year of its affixing, surrounded by a rectangle. The height of the rectangle shall be equal to the height of the CE conformity marking. The supplementary metrology marking shall immediately follow the CE conformity marking.

3. The identification number of the notified body concerned referred to in Article 8, if prescribed by the conformity assessment procedure, shall follow the CE conformity marking and supplementary metrology marking. The measuring instrument shall carry no identification number of a notified body where that is not prescribed by the conformity assessment procedure.

4. When a measuring instrument consists of a set of devices operating together, the markings shall be present on the instrument's main device.

When a measuring instrument is too small or too sensitive to carry the markings referred to in paragraph 1, the markings shall be carried by the packing in which the instrument is offered for sale or, if applicable, the container in which the instrument is supplied.

5. The CE conformity marking and supplementary metrology marking shall be indelible. The identification number of the notified body concerned shall be indelible or self destructive upon removal. All markings shall be clearly visible or easily accessible.

Article 14

Market surveillance

1. Member States shall take all appropriate measures to ensure that measuring instruments that carry the CE conformity marking and supplementary metrology marking according to Article 5 shall be placed on the market and put into use only if, when correctly installed and used in accordance with the manufacturer's instructions, they satisfy the essential requirements referred to in Article 4, and they have undergone conformity assessment in accordance with Article 7.

2. The competent authorities of the Member States shall assist each other in the fulfilment of their obligations to carry out market surveillance.

In particular, the competent authorities shall exchange information concerning the extent to which instruments they examine comply with the obligations of this Directive, and the results of such examinations.

Each Member State shall inform the other Member States and the Commission which competent authorities it has designated for such exchange of information.

Information exchanged shall be kept confidential.

3. If a Member State establishes that all or part of the measuring instruments of a particular model that bear the CE conformity marking and the supplementary metrology marking do not satisfy the conditions set out in paragraph 1, it shall take all appropriate measures to withdraw those instruments from the market, prohibit or restrict their further being placed on the market, or prohibit or restrict their further being used.

When deciding on the measures, the Member State shall take account of the systematic or incidental nature of the non-compliance. Where the Member State has established that the non-compliance is of a systematic nature, it shall immediately inform the Commission of the measures taken, indicating the reasons for its decision.

4. The Commission shall enter into consultation with the parties concerned as soon as possible.

Should the Commission find that the measures taken by the Member State concerned are justified, it shall immediately inform the Member State that took the action thereof, as well as the other Member States.

The competent Member State shall take appropriate action against whomsoever has affixed the markings and shall inform the Commission and the other Member States thereof.

Should the Commission find that the measures taken by the Member State concerned are not justified, it shall immediately inform the Member State that took the action thereof, as well as the manufacturer concerned or his authorised representative.

If the non-compliance is attributed to shortcomings in the standards, the Commission shall, after having consulted the parties concerned, bring the matter as soon as possible before the Committee referred to in Article 10.

The Commission shall ensure that the Member States are kept informed of the progress and outcome of the procedure.

CHAPTER VII

GENERAL AND FINAL PROVISIONS

Article 15

Decisions entailing refusal or restriction

Any decision taken by a Member State pursuant to this Directive which requires the withdrawal from the market of a measuring instrument, or prohibits or restricts the placing on the market or putting into use of an instrument, shall state the exact grounds on which it is based. Such a decision shall be notified forthwith to the party concerned, who shall at the same time be informed of the legal remedies available to him under the laws in force in the Member State concerned and of the time limits to which such remedies are subject.

Article 16

Repeals

The following Directives are repealed as from (1 July 2002) without prejudice to Article 17:

- Directive 71/318/EEC;
- Directive 71/319/EEC;
- Directive 71/348/EEC;
- Directive 73/362/EEC;
- Directive 75/33/EEC;
- Directive 75/410/EEC;
- Directive 76/891/EEC;
- Directive 77/95/EEC;
- Directive 77/313/EEC;
- Directive 78/1031/EEC;
- Directive 79/830/EEC.

*Article 17***Transitional provisions**

By way of derogation from Article 18(2), Member States shall permit, for measurement tasks for which they have prescribed the use of a legally controlled measuring instrument, the placing on the market and putting into use of measuring instruments that satisfy the rules applicable before (1 July 2002) until the expiration of the validity of the type approval of those measuring instruments or, in case of a type approval of indefinite validity, for a period of ten years from (1 July 2002).

*Article 18***Transposition**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by (1 July 2002) at the latest. They shall forthwith inform the Commission thereof.

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

*Article 19***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 20***Addressees**

This Directive is addressed to the Member States.

ANNEX I

ESSENTIAL REQUIREMENTS

A measuring instrument shall provide a high level of metrological protection in order that any party affected can have confidence in the result of measurement, and shall be designed and manufactured to a high level of quality in respect of the measurement technology and security of the measurement data.

The requirements that shall be met by measuring instruments to provide these objectives are set out below and are completed, where appropriate, by specific instrument requirements in Annexes MI-001 to MI-011 that provide more detail on certain aspects of the general requirements.

The solutions adopted in the pursuit of the requirements shall take account of the intended use of the instrument and reasonably foreseeable misuse.

Instruments are deemed to satisfy the relevant aspects of requirements if manufacturers can demonstrate that the corresponding test programme(s) of Annex II has/have been performed and gave appropriate results.

DEFINITIONS

Measurand

The measurand is the particular quantity subject to measurement.

Influence quantity

An influence quantity is a quantity that is not the measurand but that affects the result of measurement.

Rated operating conditions

The rated operating conditions are the values for the measurand and influence quantities making up the normal working conditions of an instrument.

Disturbance

A disturbance is an influence quantity not normally making up the working conditions of the instrument for which values and performance requirements are prescribed.

Critical change value

The critical change value is the value at which the change in the measurement result is considered undesirable. The value is expressed in the unit of measurement in which the measurement result itself is expressed.

Material measure

A material measure is a device, intended to reproduce or supply in a permanent manner during its use one or more known values of a given quantity.

Direct sales

A trading transaction is direct sales if:

- the measurement result serves as the basis for the price to pay and;
- the parties in the transaction must accept the measurement result on the spot and;
- the change of ownership and the payment take place on the spot, or their obligation is established on the spot, as a result of the acceptance by the parties of the measurement result.

REQUIREMENTS

1. **Allowable errors**

- 1.1. Under rated operating conditions and in the absence of a disturbance, the error of measurement shall not exceed the maximum permissible error value as laid down in the appropriate specific instrument requirements.

Unless stated otherwise, maximum permissible error is expressed as a bilateral value of the deviation from the true measurement value.

- 1.2. Under rated operating conditions and in the presence of a disturbance, the performance requirement shall be as laid down in the appropriate specific instrument requirements.
- 1.3. The manufacturer shall specify the climatic, mechanical and electromagnetic environments in which the instrument is intended to be used, taking account of the requirements for operating conditions laid down in the appropriate specific instrument requirements.
- 1.3.1. Climatic and mechanical environments are differentiated into classes A to I as described below.

C Climatic environments

C1 This class applies to continuously temperature-controlled enclosed locations. Humidity is not controlled. Heating, cooling or humidification is used to maintain the required conditions, where necessary. Measuring instruments may be exposed to solar radiation, heat radiation, and to movements of ambient air due to drafts from the air-conditioning system or open windows; they are not subject to condensed water, precipitation, or ice formations.

The conditions of this class may be found in continuously manned offices, certain workshops, and other rooms for special applications.

C2 This class applies to enclosed locations whose temperature and humidity are not controlled. Heating may be used to raise low temperatures, especially in case where there is a large difference between the conditions of this class and the open air conditions. Measuring instruments may be exposed to solar and heat radiation and drafts and may be subject to condensed water, water from sources other than rain and to ice formations.

The conditions of this class may be found in some entrances and staircases of buildings, in garages, cellars, certain workshops, factory buildings and industrial process plants, ordinary storage rooms for frost-resistant products, farm buildings, etc.

- C3 This class applies to open locations with average climatic conditions, thus excluding polar and desert environments.
- M Mechanical environments
- M1 This class applies to locations with vibration and shocks of low significance, e.g. for instruments fastened to light supporting structures subject to negligible vibrations and shocks transmitted from local blasting or pile-driving activities, slamming doors, etc.
- M2 This class applies to locations with significant or high levels of vibration and shock, e.g. transmitted from machines and passing vehicles in the vicinity or adjacent to heavy machines, conveyor belts, etc.
- M3 This class applies to locations where the level of vibration and shock is high and very high, e.g. for instruments mounted directly on machines, conveyor belts, etc.

Table 1

Combined climatic and mechanical environments

Environments	C1	C2	C3
M1	A	B	C
M2	D	E	F
M3	G	H	I

- 1.3.2. Electromagnetic environments are classified as E1 or E2;

E1 Residential, commercial and light industrial,

E2 Industrial

2. **Reproducibility**

The application of the same measurand in a different location or by a different user, all other conditions being the same, shall result in the close agreement of successive measurements.

3. **Repeatability**

- 3.1. The application of the same measurand under the same conditions of measurement shall result in close agreement of successive measurements. The difference between the measurement results shall be small when compared with the maximum permissible error.
- 3.2. For an instrument subject to significant random errors the difference between the mean values of subsequent series of results shall be small when compared with the maximum permissible error.

4. **Discrimination and sensitivity**

A measuring instrument shall be sufficiently sensitive and the discrimination threshold shall be sufficiently low for the intended measurement task.

5. **Durability**

A measuring instrument shall be designed to maintain an adequate stability of its metrological characteristics over a reasonable period of time provided that it is properly installed, maintained and used according to the manufacturer's instruction when in the environmental conditions for which it is intended.

6. **Reliability**

A measuring instrument shall be designed to reduce as far as possible the effect of a defect that would lead to an inaccurate measurement result, unless the presence of such a defect is obvious or can be easily and simply checked using devices apart from the instrument itself.

7. Suitability

- 7.1. A measuring instrument shall have no feature likely to facilitate fraudulent use, whereas possibilities for unintentional misuse shall be minimal.
- 7.2. A measuring instrument shall be suitable for its intended use taking account of the practical working conditions, and bearing in mind the intended user, shall not require unreasonable demands of the user in order to obtain a correct measurement result.
- 7.3. Where the measurand is the attribute of a product that is conditioned by the measuring instrument, the conditioning shall be carried out adequately, taking account of the maximum permissible error for the measurement.
- 7.4. Where a measuring instrument is designed for the measurement of values of the measurand that are constant over time, the measuring instrument shall be insensitive to small fluctuations of the value of the measurand, or shall take appropriate action.
- 7.5. A measuring instrument shall be robust and its materials of construction shall be suitable for the conditions in which it is intended to be used.

8. Protection against corruption

- 8.1. The metrological characteristics of a measuring instrument shall not be inadmissibly influenced by the connection to it of another device, by any feature of the connected device itself or by any remote device that communicates with the measuring instrument.
- 8.2. A hardware component that is critical for metrological characteristics shall be designed so that it can be secured. Security measures foreseen shall provide for evidence of an intervention.
- 8.3. Software that is critical for metrological characteristics shall be identified as such and shall be secured. Its identification shall be easily available. Evidence of an intervention shall be available for a reasonable period of time.
- 8.4. Measurement data and metrologically important parameters stored or transmitted shall be adequately protected against accidental or intentional corruption.
- 8.5. The displays of utility measuring instruments shall not be able to be reset during use.

9. Information to be borne by and to accompany the instrument

- 9.1. A measuring instrument shall bear the following inscriptions:
 - manufacturer's mark or name,
 - information in respect of its accuracy,plus, when applicable:
 - pertinent data in respect of the conditions of use,
 - identity marking,
 - number of the type examination certificate.
- 9.2. An instrument of dimensions too small or of too sensitive a composition to allow it to bear the relevant information shall have its accompanying container and/or associated documentation suitably marked.
- 9.3. A measuring instrument shall be accompanied by information on its operation. Information should include where relevant:
 - rated operating conditions;
 - climatic, mechanical and electromagnetic environment classes;
 - instruction for installation, maintenance, repairs, permissible adjustments;
 - instruction for correct operation and any special conditions of use.
- 9.4. Instruments used for utility measurements or groups of instruments do not necessarily require individual instruction manuals.

- 9.5. Unless specified otherwise in a specific instrument annex the scale interval for a measured value shall be in the form $1 \times 10n$, $2 \times 10n$, or $5 \times 10n$, where n is any integer or zero. The unit of measurement or its symbol shall be shown close to the numerical value.
- 9.6. A material measure shall be marked with a nominal value or a scale, accompanied by the unit of measurement.
- 9.7. The units of measurement used and their symbols shall be in accordance with the legal provisions at Community level on units of measurement and their symbols.
- 9.8. All marks and inscriptions required under any requirement shall be clear, indelible, unambiguous and non-transferable.

10. Indication of result

- 10.1. Indication of the result shall be by means of a display or hard copy.
- 10.2. The indication of any result shall be clear and unambiguous and accompanied by such marks and inscriptions necessary to inform the user of the significance of the result. Easy reading of the presented result shall be permitted under normal conditions of use. Additional indications may be shown provided they cannot be confused.
- 10.3. In the case of hard copy the print or record shall also be easily legible and indelible.
- 10.4. A measuring instrument for direct sales trading transactions shall be designed to present the measurement result to both parties in the transaction when installed as intended.
- 10.5. A measuring instrument intended for domestic utility measurement purposes from which the measurement data can be read either by a mobile data capture unit or remotely via a transmission link shall be fitted with a display accessible to the consumer. The reading of this display is the measurement result that serves as the basis for the price to pay.

11. Further processing of data to conclude the trading transaction

- 11.1. A measuring instrument other than a utility measuring instrument shall record by a durable means the measurement result accompanied by information to identify the particular transaction, when:
 - the measuring instrument is for direct sales trading transactions and;
 - the measurement is non-repeatable and;
 - the measuring instrument is normally for use in the absence of one of the trading parties.
- 11.2. Additionally, a durable proof of the measurement result and the information to identify the transaction shall be available on request at the time the measurement is concluded.

12. Conformity evaluation

A measuring instrument shall be designed so as to allow ready evaluation of its conformity with the requirements of this directive.

ANNEX II

TEST PROGRAMMES

INTRODUCTION

Appropriate results obtained having carried out the test programmes are deemed to satisfy the particular aspect of the product requirement under evaluation. In the case of a particular instrument, values attributed in the test programmes to severity levels or combinations of severity levels for the climatic and mechanical classes A-I may be changed by direct reference in the specific annex.

Test set-ups and test procedures shall be according to internationally agreed documents.

1. TEST PROGRAMMES

Test programmes are separated according to operating conditions as follows:

Programme 1: Electromagnetic environment

Programme 2: Climatic environment

Programme 3: Mechanical environment

Programme 4: Power supply

A further test programme, programme 5 concerns durability.

1.1. Applicability of test programmes

An instrument or sub-assembly is subjected to test according to its rated operating conditions which shall be in accordance with the requirements of the specific instrument annex.

1.2.1. Climatic and mechanical classes

The climatic and mechanical classes, A-I, are as outlined in Table 1 of Annex I.

The appropriate severity levels for testing are as set out below.

Table 1

Severity levels

Description of test	Classes								
	A	B	C	D	E	F	G	H	I
Heat	1	2	3	1	2	3	1	2	3
Dry cold	1	2	3	1	2	3	1	2	3
Damp heat, steady state	—	1	2	—	1	2	—	1	2
Damp heat, cyclic	—	1	2	—	1	2	—	1	2
Vibration	—	—	—	1	1	1	2	2	2
Mechanical shock	—	—	—	1	1	1	2	2	2

1.2.2. Electromagnetic Environmental Classes

Class E1— Residential, commercial and light industry environment

Class E2 — Industrial environment

1.3. Basic rules concerning the determination of errors

Errors shall be determined under normal test conditions. When the effect of one influence quantity is being evaluated, all other factors are to be kept relatively constant, at a value close to normal.

1.4. Basic rules for testing

Each influence quantity is applied and its effect evaluated separately. Metrological test shall be carried out during or after the application of the influence quantity whichever condition corresponds to the normal operational status of the instrument when that influence quantity is likely to occur.

2. PROGRAMME 1: ELECTROMAGNETIC ENVIRONMENT

The test programme as outlined in Tables 2, 3 and 4 apply to the instrument or sub-assembly according to the electromagnetic environment, E1 or E2, in which the instrument is intended to be used.

Where the instrument or sub-assembly is intended to be used in a permanent continuous electromagnetic field the permitted performance during the radiated electromagnetic field — amplitude modulated test shall be within maximum permissible error, in all other cases the critical change value and the permissible effect is that laid down in the specific instrument Annex.

Table 2

Disturbance	Port	E1	E2
Voltage interruptions on AC supply	Input ports	> 95 % reduction over 5 000 ms	
Voltage dips on AC supply	Input ports	30 % reduction over 10 ms 60 % reduction over 100 ms	
Electrostatic discharge	Enclosure port	4 kV Contact 8 kV Air	
Fast transients ⁽¹⁾	— Ports for signal lines and data buses not involved in process control; — Ports directly involved in process, and in process measurement, signalling and control; — I/O DC power ports; — I/O AC power ports; — Functional earth ports.	± 500 V ⁽²⁾ ± 500 V ⁽²⁾ ± 500 V ⁽³⁾ ± 1 000 V ± 500 V ⁽²⁾	1 000 V ± 2 000 V ± 2 000 V ± 2 000 V ± 1 000 V
Radio frequency electromagnetic field Amplitude modulated	Enclosure port	80-1 000 MHz 3 V/m 80 % MA (1 kHz)	80-1 000 MHz ⁽⁴⁾ 10 V/m 80 % MA (1 kHz)
Radio frequency electromagnetic field Keyed carrier	Enclosure port	900 ± 5 MHz 3 V/m 50 Duty cycle % 200 Rep. frequency Hz	900 ± 5 MHz 10 V/m 50 Duty cycle % 200 Rep. frequency Hz

⁽¹⁾ 5 Tr/50 Th ns, 5 rep. Frequency kHz in all cases.

⁽²⁾ Applicable only to ports interfacing with cables whose total length according to the manufacturer's functional specification may exceed 3 m.

⁽³⁾ Not applicable to input ports intended for connection to a battery or a rechargeable battery which must be removed or disconnected from the apparatus for recharging. Apparatus with a DC power input port intended for use with an AC-DC power adapter shall be tested on the AC power input of the AC-DC power adapter specified by the manufacturer or where none is so specified using a typical AC-DC power adapter. The test is applicable to DC power input ports intended to be connected permanently to cables longer than 10 m.

⁽⁴⁾ Except for ITU broadcast frequency bands 87 MHz-108 MHz, 174 MHz-230 MHz, and 470 MHz-790 MHz where the level shall be 3 V.

Table 3

Radio frequency — common code

Port	E1	E2
— Ports for signal lines and data buses not involved in process control, — Ports directly involved in process, and in process measurement signalling and control	0,15-80 MHz ⁽¹⁾ 3 V 80 % MA (1 kHz)	0,15-80 MHz ⁽¹⁾ ⁽²⁾ 10 V 80 % MA (1 kHz)
— I/O DC power ports	0,15-80 MHz ⁽¹⁾ 3 V 80 % MA (1 kHz)	0,15-80 MHz ⁽²⁾ 10 V 80 % MA (1 kHz)
— I/O AC power ports, — Functional earth ports	0,15-80 MHz 3 V 80 % MA (1 kHz)	0,15-80 MHz ⁽²⁾ 3 V 80 % MA (1 kHz)

The test level can be defined as the equivalent current into a 150 ohm load.

⁽¹⁾ Applicable only to ports interfacing with cables whose total length according to the manufacturer's functional specification may exceed 3 m.

⁽²⁾ Except for ITU broadcast frequency bands 47 MHz-68 MHz where the level shall be 3 V.

Table 4

Surges

Port	E1	E2
Ports for signal lines and data buses not involved in process control	—	1,2 Tr/50 Th ms (8/20) ⁽²⁾ line to ground ± 2 kV line to line ± 1 kV
Ports directly involved in process, and in process measurement, signalling and control	—	1,2 Tr/50 Th ms (8/20) line to ground ± 2 kV line to line ± 1 kV
DC input ports	1,2 Tr/50 Th µs (8/20) ⁽¹⁾ ⁽³⁾ line to ground ± 0,5 kV line to line ± 0,5 kV	1,2 Tr/50 Th ms (8/20) line to ground ± 0,5 kV line to line ± 0,5 kV
AC input ports	1,2 Tr/50 Th µs (8/20) line to ground ± 2 kV line to line ± 1 kV	1,2 Tr/50 Th ms (8/20) line to ground ± 4 kV line to line ± 2 kV

⁽¹⁾ Apparatus with a DC power input port intended for use with an AC-DC power adapter shall be tested on the AC power input of the AC-DC power adapter specified by the manufacturer or where none is so specified using a typical AC-DC power adapter. The test is applicable to DC power input ports intended to be connected permanently to cables longer than 10 m.

⁽²⁾ Applicable only to ports interfacing with cables whose total length according to the manufacturer's functional specification may exceed 10 m.

⁽³⁾ Not applicable to input ports intended for connection to a battery or to a rechargeable battery which must be removed or disconnected from the apparatus for recharging.

3. PROGRAMME 2: CLIMATIC ENVIRONMENT

To verify operation within maximum permissible error under the relevant climatic environment conditions

3.1. Static temperature

Where practicable both dry heat and cold tests may be combined in a cycle.

3.1.1. *Dry heat*

To verify operation within maximum permissible error under conditions of high temperature.

Severity level	1	2	3
Temperature (°C)	30	40	55
Duration (h)	2	2	2

3.1.2. *Cold*

To verify performance within maximum permissible error under conditions of low temperature

Severity level	1	2	3
Temperature (°C)	+ 5	- 10	- 25
Duration (h)	2	2	2

3.2. **Ambient humidity**

According to the climatic operating environment in which the instrument is intended to be used either the damp heat steady state (non-condensing) or damp heat cyclic (condensing) test may be appropriate.

The damp heat cyclic test is appropriate where condensation is important or when penetration of vapour will be accelerated by the effect of breathing. In conditions where non-condensing humidity is a factor the damp heat steady state is appropriate.

3.2.1. *Damp heat, steady-state (non-condensing)*

To verify operation within maximum permissible error under conditions of high humidity and constant temperature.

Severity level	1	2
Temperature (°C)	30	40
Relative humidity (%)	85	93
Duration (days)	2	4

3.2.2. *Damp heat, cyclic (condensing)*

To verify operation within maximum permissible error under conditions of high humidity when combined with cyclic temperature changes.

Severity level	1	2
Temperature range (°C)	25-40	25-55
Duration (cycles)	2	2
Relative humidity	95 % at lower temperature phases and 93 % at upper temperature phases	95 % at lower temperature phases and 93 % at upper temperature phases

4. PROGRAMME 3: MECHANICAL ENVIRONMENT

To verify operation within maximum permissible error under the relevant mechanical environment conditions

4.1. Vibration

The random vibration test is appropriate for evaluation of conditions where the magnitude of the influence quantity is not stable. The test for sinusoidal vibration is appropriate for evaluation of conditions where the frequency(ies) and the level(s) of effective acceleration are known and stable, or when a relevant resonance frequency is known.

4.1.1. Random vibration

To verify operation within maximum permissible error under conditions of random vibration.

Severity level	1	2
Total frequency range (Hz)	10-15	10-150
Total RMS level ($m.s^{-2}$)	1,6	7
ASD level 10-20 Hz ($m^2.s^{-3}$)	0,048	1
ASD level 20-150 Hz (dB/octave)	- 3	- 3
Number of axes	3	3
Duration per axis	Two minutes in each functional mode or a longer period if necessary for carrying out the measurement	

4.1.2. Sinusoidal vibration

To verify operation within maximum permissible error under conditions of vibration of a consistent character.

Severity level	1	2
Frequency range (Hz)	10-150	10-150
Max. acceleration level ($m.s^{-2}$)	2	10
Number of sweep cycles per axis	20	20

4.2. Mechanical shock

To verify operation within maximum permissible error under conditions of mechanical shock

Severity level	1	2
Height of fall (mm)	25	50
Number of falls (on each bottom edge)	1	1

5. **PROGRAMME 4: POWER SUPPLY**

To verify operation within maximum permissible error under normal power supply conditions.

Characteristic	Test specification
Mains voltage variation	85-110 % nominal
DC voltage variation	to the limits as specified by the manufacturer
Mains frequency variation	98-102 % nominal

6. **PROGRAMME 5: DURABILITY**

To assess the possible occurrence of defects over the expected lifetime of the instrument or sub-assembly.

6.1. **Gas meters**

6.1.1. *Diaphragm meters*

6.1.1.1. Test specification: 5 000 hours at Q_{max}

6.1.1.2. Allowable errors

During and after test at flow rates of Q_{min} , $2 Q_{min}$, $0,1 Q_{max}$, $0,4 Q_{max}$, $0,7 Q_{max}$ and Q_{max} :

- the error of indication at each flow rate in the range Q_t to Q_{max} shall not differ from the corresponding initial value by more the 2 % for that flow rate,
- the error of indication shall be within twice the maximum permissible error.

6.1.2. *Rotary positive displacement and turbine meters*

6.1.2.1. Test specification: 1 000 hours, total duration shall not last more than two months.

6.1.2.2. Allowable errors

After test at flow rates of Q_{min} , $0,05 Q_{max}$, $0,15 Q_{max}$, $0,25 Q_{max}$, $0,4 Q_{max}$, $0,7 Q_{max}$ and Q_{max} :

- the error of indication at each test flow rate shall not differ from the corresponding initial value by more than one third of the maximum permissible error for that flow rate,
- the error of indication shall be within the maximum permissible error.

6.2. **Water meters**

6.2.1. *Water meters shall be submitted to two consecutive series of tests*

- Q_3 less than or equal to $16 \text{ m}^3/\text{h}$
 - First series (Cyclic test): 100 000 discontinuous cycles during which the flow-rate may vary between zero and Q_3 . Each cycle shall include at least one period during which the flow-rate must be zero and at least one period during which the flow-rate must be Q_3 .
 - Second series (Continuous test): continuous flow at Q_4 during 100 hours.
- Q_3 greater than $16 \text{ m}^3/\text{h}$
 - First series: Continuous flow at Q_3 during 750 hours
 - Second series: Continuous flow at Q_4 during 200 hours.

6.2.2. *Allowable errors*

6.2.2.1. Variation on measurement error after each series of tests when compared to initial measurement error shall not exceed:

- 3 % of the metered volume between Q_1 included and Q_2 excluded,
- 1,5 % of the metered volume between Q_2 included and Q_4 included.

6.2.2.2. Measurement error on volume metered after each series of tests shall not exceed:

- ± 6 % of the metered volume between Q_1 included and Q_2 excluded,
- $\pm 2,5$ % of the metered volume between Q_2 included and Q_4 included for water meters intended to meter water with a temperature between $0,1$ °C and 30 °C,
- $\pm 3,5$ % of the metered volume between Q_2 included and Q_4 included for water meters intended to meter water with a temperature between 30 °C and 90 °C.

6.2.3. *Volume of water*

The volume of water passed through each tested meter and due to the two series of tests as defined in 2.1 must be at least:

$$600 \times Q_3 \text{ (in m}^3\text{) for } Q_3 < 16 \text{ m}^3\text{/h}$$

$$1\,000 \times Q_3 \text{ (in m}^3\text{) for } Q_3 > 16 \text{ m}^3\text{/h.}$$

6.2.4. *Tested flow rates*

Measurement errors on volume of water must be determined at reference conditions before and after each series of tests, for each tested meter and at least for the following flow rates:

$$Q_1 - (Q_1 + Q_2)/2 - Q_2 - 0,1Q_3 - 0,3Q_3 - 0,5Q_3 - Q_3 - Q_4.$$

6.2.5. *Test conditions*

Tests shall be carried out with water of an appropriate temperature to test the meter for the temperature range for which it is intended. Water used in testing shall be clean water having no solid particles in suspension, a low aggressivity and a low proportion of calcium carbonate.

ANNEX III

CRITERIA TO BE SATISFIED BY BODIES DESIGNATED BY THE MEMBER STATES FOR THE CARRYING OUT OF TASKS PERTAINING TO THE CONFORMITY ASSESSMENT MODULES

Set out below are the criteria that Member States shall apply for the designation of bodies according to Article 8, paragraph 1.

1. The body, its director and the staff involved in conformity assessment work shall not be the designer, manufacturer, supplier, installer or user of the measuring instruments that they inspect, nor the authorised representative of any of these persons. Also they may not be directly involved in the design, manufacture, marketing or maintenance of the instruments, nor represent the parties engaged in these activities. The preceding criteria do not, however, preclude in any way the possibility of exchanges of technical information for purposes of conformity assessment, between the manufacturer and the body.
2. The body and its staff involved in conformity assessment work shall be free from all pressures and inducements, in particular financial inducements, that might influence their judgement or the results of their conformity assessment work, especially from persons or groups of persons with an interest in the results of the assessments.
3. The conformity assessment tasks shall be carried out with the highest degree of professional integrity and requisite competence in the field of metrology.

Should the body subcontract specific tasks connected with the establishment or verification of product performance or specifications, it shall first ensure that the subcontractor meets the provisions of this Directive, and in particular of this Annex. The body shall keep the relevant documents assessing the subcontractor's qualifications and the work carried out by him under this Directive at the disposal of the national authorities.

4. The body shall be able to carry out all the tasks assigned to such bodies by the Annex for which it has been notified, whether these tasks are carried out by the body itself or on its behalf and under its responsibility. It shall dispose in particular of the necessary staff and possess the necessary facilities for carrying out the technical and administrative tasks entailed in assessment and verification in a proper manner. It shall also have access to the equipment necessary for the required verification.
5. The body shall have
 - sound vocational training, covering all assessment and verification operations for which the body was designated;
 - satisfactory knowledge of the rules in respect of the inspections which it carries out, and adequate experience of such inspections;
 - the ability required to draw up the certificates, records and reports to demonstrate that the inspections were carried out.
6. The impartiality of the body must be guaranteed. Its remuneration must not depend on the number of inspections carried out, nor on the results of the inspections.
7. The body must have taken out civil liability insurance, unless liability is assumed by the Member State under national legislation or the Member State carries out the inspections itself directly.
8. The body's staff are bound to observe professional secrecy with regard to all information obtained in the course of exercising their duties pursuant to this Directive or any provision of national law putting this Directive into effect, except vis-à-vis the competent administrative authorities of the Member State in which their activities are carried out.

ANNEX IV

TECHNICAL DOCUMENTATION

The technical documentation shall render the design, manufacture and operation of the measuring instrument intelligible and shall enable assessment of its conformity with the appropriate requirements of this Directive.

The documentation shall include in so far as relevant for assessment:

- a general description of the instrument;
 - conceptual design and manufacturing drawings and plans of components, sub-assemblies, circuits, etc.;
 - descriptions and explanations necessary for the understanding of the above, including the operation of the instrument;
 - a list of the standards referred to in Article 9, applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements where the standards referred to in Article 9 have not been applied;
 - results of design calculations, examinations, etc.;
 - test reports;
 - the EC type examination certificates or EC design examination certificates in respect of instruments containing parts identical to those in the design.
-

ANNEX A

DECLARATION OF CONFORMITY BASED ON INTERNAL PRODUCTION CONTROL

1. The declaration of conformity based on internal production control is the conformity assessment procedure whereby the manufacturer or his authorised representative fulfils the obligations laid down hereafter, and ensures and declares that the measuring instruments concerned satisfy the appropriate requirements of this Directive.

Technical documentation

2. The manufacturer shall establish the technical documentation as described in Annex IV. The documentation shall enable assessment of the conformity of the instrument with the appropriate requirements of this Directive. It shall, as far as relevant for such assessment, cover the design, manufacture and operation of the instrument.
3. The manufacturer shall keep the technical documentation at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured.

Manufacturing

4. The manufacturer shall take all measures necessary to ensure conformity of the manufactured instruments with the appropriate requirements of this Directive.

Written declaration of conformity

- 5.1. The manufacturer shall affix the CE conformity marking and the supplementary metrology marking to each measuring instrument that satisfies the appropriate requirements of this Directive.
- 5.2. A declaration of conformity is drawn up for each instrument model and shall be kept at the disposal of the national authorities for a period ending ten years after the last instrument of that model has been manufactured. It shall identify the model of the instrument for which it was drawn up.

A copy of the declaration shall also be sent to one of the bodies notified for type examination according to Article 8 whose responsibility it shall be to periodically make the list of declarations of conformity received available to all Member States.

A copy of the declaration shall be supplied with each measuring instrument that is placed on the market.

Authorised representative

6. The manufacturer's obligations contained in paragraphs 3 and 5.2 may be fulfilled, on his behalf and under his responsibility, by his authorised representative established within the Community.

Where neither the manufacturer nor his authorised representative is established within the Community, the obligations mentioned above shall be the responsibility of the importer or any other person who places the instrument on the Community market.

ANNEX A1

DECLARATION OF CONFORMITY BASED ON INTERNAL PRODUCTION CONTROL PLUS PRODUCT TESTING BY A NOTIFIED BODY

1. The declaration of conformity based on internal production control plus product testing by a notified body is the conformity assessment procedure whereby the manufacturer or his authorised representative fulfils the obligations laid down hereafter, and ensures and declares that the measuring instruments concerned satisfy the appropriate requirements of this Directive.

Technical documentation

2. The manufacturer shall establish the technical documentation as described in Annex IV. The documentation shall enable assessment of the conformity of the instrument with the appropriate requirements of this Directive. It shall, as far as relevant for such assessment, cover the design, manufacture and operation of the instrument.
3. The manufacturer shall keep the technical documentation at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured.

Manufacturing

4. The manufacturer shall take all measures necessary to ensure conformity of the manufactured instruments with the appropriate requirements of this Directive.

Product checks

5. A notified body chosen by the manufacturer shall carry out product checks at random intervals, or have them carried out. An adequate sample of the final products, taken by the notified body before the placing on the market, shall be examined and appropriate tests as identified by the relevant document(s) referred to in Article 9, or equivalent tests, shall be carried out to check the conformity of the instruments with the appropriate requirements of this Directive. In the absence of a relevant document, the notified body concerned shall decide on the appropriate tests to be carried out.

In those cases where a relevant number of instruments in the sample do not conform the notified body shall take appropriate measures.

Written declaration of conformity

- 6.1. The manufacturer shall affix the CE conformity marking, the supplementary metrology marking and, under the responsibility of the notified body referred to in paragraph 5, the latter's identification number to each measuring instrument that satisfies the appropriate requirements of this Directive.
- 6.2. A declaration of conformity is drawn up for each instrument model and shall be kept at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured. It shall identify the model of the instrument for which it was drawn up.

A copy of the declaration shall also be sent to one of the bodies notified for type examination according to Article 8 whose responsibility it shall be to periodically make the list of declarations of conformity received available to all Member States.

A copy of the declaration shall be supplied with each measuring instrument that is placed on the market.

Authorised representative

7. The manufacturer's obligations contained in paragraphs 3 and 6.2 may be fulfilled, on his behalf and under his responsibility, by his authorised representative established within the Community.

Where neither the manufacturer nor his authorised representative is established within the Community, the obligations mentioned above shall be the responsibility of the importer or any other person who places the instrument on the Community market.

ANNEX B

Type examination

1. Type examination is the part of a conformity assessment procedure whereby a notified body examines the technical design of a measuring instrument and ascertains and attests that the technical design meets the provisions of this Directive that apply to the measuring instrument.
2. Type examination may be carried out in either of the following manners. The notified body decides on the appropriate manner and the specimens required.
 - (a) examination of a specimen, representative of the production envisaged, of the complete measuring instrument;
 - (b) examination of specimens, representative of the production envisaged, of one or more critical parts of the measuring instrument, plus assessment of the adequacy of the technical design of the other parts of the measuring instrument through examination of the technical documentation and supporting evidence referred to in paragraph 3;
 - (c) assessment of the adequacy of the technical design of the measuring instrument through examination of the technical documentation and supporting evidence referred to in paragraph 3, without examination of a specimen.
3. The application for type examination shall be lodged by the manufacturer or his authorised representative established within the Community with a notified body of his choice.

The application shall include:

- the name and address of the manufacturer and, if the application is lodged by the authorised representative, his name and address in addition;
 - a written declaration that the same application has not been lodged with any other notified body;
 - the technical documentation as described in Annex IV. The documentation shall enable assessment of the conformity of the instrument with the appropriate requirements of this Directive. It shall, as far as relevant for such assessment, cover the design, manufacture and operation of the instrument;
 - the specimens, representative of the production envisaged, as required by the notified body;
 - the supporting evidence for the adequacy of the technical design of those parts of the measuring instrument for which no specimens are required. This supporting evidence shall mention any relevant documents that have been applied, in particular where the relevant documents referred to in Article 9 have not been applied in full, and shall include, where necessary, the results of tests carried out by the appropriate laboratory of the manufacturer, or by another testing laboratory on his behalf and under his responsibility.
4. The notified body shall:

For the specimens:

- 4.1. examine the technical documentation, verify that the specimens have been manufactured in conformity with it and identify the elements which have been designed in accordance with the relevant provisions of the relevant documents referred to in Article 9, as well as the elements which have been designed without applying the relevant provisions of those documents;
- 4.2. carry out the appropriate examinations and tests, or have them carried out, to check whether, where the manufacturer has chosen to apply the solutions in the relevant documents, these have been applied correctly;
- 4.3. carry out the appropriate examinations and tests, or have them carried out, to check whether, where the manufacturer has chosen not to apply the solutions in the relevant documents, the solutions adopted by the manufacturer meet the corresponding essential requirements of this Directive;
- 4.4. agree with the applicant on the location where the examinations and tests shall be carried out.

For the other parts of the measuring instrument:

- 4.5. examine the technical documentation and supporting evidence to assess the adequacy of the technical design of the other parts of the measuring instrument.

For the manufacturing process:

- 4.6. examine the technical documentation to assure that the manufacturer has adequate means to ensure consistent production.
5. Where the technical design meets the provisions of this Directive that apply to the measuring instrument, the notified body shall issue an EC type examination certificate to the applicant. The certificate shall contain the name and address of the manufacturer, conclusions of the examination, conditions (if any) for its validity and the necessary data for identification of the instrument.

All relevant parts of the technical documentation shall be annexed to the certificate and a copy kept by the notified body.

The certificate shall have a validity period of ten years from the date of its issue, and may be renewed for subsequent periods of ten years each.

6. The applicant shall inform the notified body that holds the technical documentation concerning the EC type examination certificate of all modifications to the instrument that may affect the conformity of the instrument with the essential requirements or the conditions for validity of the certificate. Such modifications require additional approval in the form of an addition to the original EC type examination certificate.
7. Each notified body shall periodically make available to all Member States the list of:
 - EC type examination certificates issued;
 - EC type examination certificates refused;
 - additions and amendments relating to certificates already issued.

Each notified body shall inform all Member States immediately of the withdrawal of an EC type examination certificate. Each Member State shall make this information available to the bodies that it has notified.

8. The other notified bodies may receive a copy of the EC type examination certificates and/or their additions. The annexes to the certificates shall be kept at the disposal of the other notified bodies.
9. The manufacturer or his authorised representative established within the Community shall keep a copy of the EC type examination certificate and its additions with the technical documentation for a period ending 10 years after the last measuring instrument has been manufactured.

Where neither the manufacturer nor his authorised representative is established within the Community, the obligation to keep the technical documentation available shall be the responsibility of the importer or any other person who places the measuring instrument on the Community market.

ANNEX C

DECLARATION OF CONFORMITY TO TYPE BASED ON INTERNAL PRODUCTION CONTROL

1. The declaration of conformity to type based on internal production control is the part of a conformity assessment procedure whereby the manufacturer or his authorised representative fulfils the obligations laid down hereafter and ensures and declares that the measuring instruments concerned are in conformity with the type as described in the EC type examination certificate and satisfy the appropriate requirements of this Directive.

Manufacturing

2. The manufacturer shall take all measures necessary to ensure conformity of the manufactured instruments with the type as described in the EC type examination certificate and with the appropriate requirements of this Directive.

Written declaration of conformity

- 3.1. The manufacturer shall affix the CE conformity marking and the supplementary metrology marking to each measuring instrument that is in conformity with the type as described in the EC type examination certificate and satisfies the appropriate requirements of this Directive.
- 3.2. A declaration of conformity is drawn up for each instrument model and shall be kept at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured. It shall identify the model of the instrument for which it was drawn up.

A copy of the declaration shall be supplied with each measuring instrument that is placed on the market.

Authorised representative

4. The manufacturer's obligations contained in paragraph 3.2 may be fulfilled, on his behalf and under his responsibility, by his authorised representative established within the Community.

Where neither the manufacturer nor his authorised representative is established within the Community, the obligations mentioned above shall be the responsibility of the importer or any other person who places the instrument on the Community market.

ANNEX C1

DECLARATION OF CONFORMITY TO TYPE BASED ON INTERNAL PRODUCTION CONTROL PLUS PRODUCT TESTING BY A NOTIFIED BODY

1. The declaration of conformity to type based on internal production control plus product testing by a notified body is the part of a conformity assessment procedure whereby the manufacturer or his authorised representative fulfils the obligations laid down hereafter and ensures and declares that the measuring instruments concerned are in conformity with the type as described in the EC type examination certificate and satisfy the appropriate requirements of this Directive.

Manufacturing

2. The manufacturer shall take all measures necessary to ensure conformity of the manufactured instruments with the type as described in the EC type examination certificate and with the appropriate requirements of this Directive.

Product checks

3. A notified body chosen by the manufacturer shall carry out product checks at random intervals, or have them carried out. An adequate sample of the final products, taken by the notified body before the placing on the market, shall be examined and appropriate tests as identified by the relevant document(s) referred to in Article 9, or equivalent tests, shall be carried out to check the conformity of the product with the type as described in the EC type examination certificate and the appropriate requirements of the Directive. In the absence of a relevant document, the notified body concerned shall decide on the appropriate tests to be carried out.

In those cases where a relevant number of instruments in the sample do not conform the notified body shall take appropriate measures.

Written declaration of conformity

- 4.1. The manufacturer shall affix the CE conformity marking, the supplementary metrology marking and, under the responsibility of the notified body referred to in paragraph 3 the latter's identification number, to each measuring instrument that is in conformity with the type as described in the EC type examination certificate and satisfies the appropriate requirements of this Directive.
- 4.2. A declaration of conformity is drawn up for each instrument model and shall be kept at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured. It shall identify the model of the instrument for which it was drawn up.

A copy of the declaration shall be supplied with each measuring instrument that is placed on the market.

Authorised representative

5. The manufacturer's obligations contained in paragraph 4.2 may be fulfilled, on his behalf and under his responsibility, by his authorised representative established within the Community.

Where neither the manufacturer nor his authorised representative is established within the Community, the obligations mentioned above shall be the responsibility of the importer or any other person who places the instrument on the Community market.

ANNEX D

DECLARATION OF CONFORMITY TO TYPE BASED ON QUALITY ASSURANCE OF THE PRODUCTION PROCESS

1. The declaration of conformity to type based on quality assurance of the production process is the part of a conformity assessment procedure whereby the manufacturer fulfills the obligations laid down hereafter and ensures and declares that the measuring instruments concerned are in conformity with the type as described in the EC type examination certificate and satisfy the appropriate requirements of this Directive.

Manufacturing

2. The manufacturer shall operate an approved quality system for production, final product inspection and testing of the measuring instrument concerned as specified in paragraph 3 and shall be subject to surveillance as specified in paragraph 4.

Quality system

- 3.1. The manufacturer shall lodge an application for assessment of the quality system with a notified body of his choice.

The application shall include:

- all relevant information for the instrument category envisaged;
- the documentation concerning the quality system;
- the technical documentation of the approved type and a copy of the EC type examination certificate.

- 3.2. The quality system shall ensure compliance of the instruments with the type as described in the EC type examination certificate and the appropriate requirements of this Directive.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. This quality system documentation must permit a consistent interpretation of the quality programmes, plans, manuals and records.

It shall contain in particular an adequate description of:

- the quality objectives and the organizational structure, responsibilities and powers of the management with regard to product quality;
- the manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used;
- the examinations and tests that will be carried out before, during, and after manufacture, and the frequency with which they will be carried out;
- the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc;
- the means to monitor the achievement of the required product quality and the effective operation of the quality system.

- 3.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in paragraph 3.2. It shall presume conformity with these requirements in respect of a quality system that complies with the corresponding specifications of the national standard that implements the relevant harmonised standard.

The auditing team shall include persons with experience in the instrument technology concerned and experience as a legal metrology assessor. The evaluation procedure shall include an inspection visit to the manufacturer's premises.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

- 3.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to maintain it so that it remains adequate and efficient.

- 3.5. The manufacturer shall keep the notified body that has approved the quality system informed of any intended updating of the quality system.

The notified body shall evaluate the modifications proposed and decide whether the amended quality system will still satisfy the requirements referred to in paragraph 3.2 or whether a re-assessment is required.

It shall notify its decision to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

Surveillance under the responsibility of the notified body

- 4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.
- 4.2. The manufacturer shall allow the notified body entrance for inspection purposes to the locations of manufacture, inspection, testing and storage, and shall provide it with all necessary information, in particular:
- the quality system documentation;
 - the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.
- 4.3. The notified body shall carry out periodic audits to make sure that the manufacturer maintains and applies the quality system and shall provide an audit report to the manufacturer.
- 4.4. Additionally, the notified body may pay unexpected visits to the manufacturer. During such visits the notified body may, if necessary, carry out product tests, or have them carried out, to verify that the quality system is functioning correctly. It shall provide the manufacturer with a visit report and, if tests have been carried out, with a test report.

Written declaration of conformity

- 5.1. The manufacturer shall affix the CE conformity marking, the supplementary metrology marking and, under the responsibility of the notified body referred to in paragraph 3.1, the latter's identification number to each measuring instrument that is in conformity with the type as described in the EC type examination certificate and satisfies the appropriate requirements of this Directive.
- 5.2. A declaration of conformity is drawn up for each instrument model and shall be kept at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured. It shall identify the model of the instrument for which it was drawn up.
- A copy of the declaration shall be supplied with each measuring instrument that is placed on the market.
6. The manufacturer shall, for a period ending ten years after the last instrument has been manufactured, keep at the disposal of the national authorities:
- the documentation referred to in paragraph 3.1, second indent;
 - the updating referred to in paragraph 3.5, as approved;
 - the decisions and reports from the notified body referred to in paragraphs 3.5, 4.3 and 4.4.
7. Each notified body shall periodically make available to all Member States the list of quality system approvals issued or refused, and shall immediately inform all Member States of the withdrawal of a quality system approval.

Each Member State shall make this information available to the bodies which it has notified.

Authorised representative

8. The manufacturer's obligations contained in paragraphs 3.1, 3.5, 5.2 and 6 may be fulfilled, on his behalf and under his responsibility, by his authorised representative established within the Community.

ANNEX D1

DECLARATION OF CONFORMITY BASED ON QUALITY ASSURANCE OF THE PRODUCTION PROCESS

1. The declaration of conformity based on quality assurance of the production process is the conformity assessment procedure whereby the manufacturer fulfills the obligations laid down hereafter and ensures and declares that the measuring instruments concerned satisfy the appropriate requirements of this Directive.

Technical documentation

2. The manufacturer shall establish the technical documentation as described in Annex IV. The documentation shall enable assessment of the conformity of the instrument with the appropriate requirements of this Directive. It shall, as far as relevant for such assessment, cover the design and operation of the instrument.
3. The manufacturer shall keep the technical documentation at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured.

Manufacturing

4. The manufacturer shall operate an approved quality system for production, final product inspection and testing of the measuring instrument concerned as specified in paragraph 5 and shall be subject to surveillance as specified in paragraph 6.

Quality system

- 5.1. The manufacturer shall lodge an application for assessment of the quality system with a notified body of his choice.

The application shall include:

- all relevant information for the instrument category envisaged;
- the documentation concerning the quality system;
- the technical documentation referred to in paragraph 2.

- 5.2. The quality system shall ensure compliance of the instruments with the appropriate requirements of this Directive.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. This quality system documentation must permit a consistent interpretation of the quality programmes, plans, manuals and records.

It shall contain in particular an adequate description of:

- the quality objectives and the organizational structure, responsibilities and powers of the management with regard to product quality;
- the manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used;
- the examinations and tests that will be carried out before, during, and after manufacture, and the frequency with which they will be carried out;
- the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc;
- the means to monitor the achievement of the required product quality and the effective operation of the quality system.

- 5.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in paragraph 5.2. It shall presume conformity with these requirements in respect of a quality system that complies with the corresponding specifications of the national standard that implements the relevant harmonised standard.

The auditing team shall include persons with experience in the instrument technology concerned and experience as a legal metrology assessor. The evaluation procedure shall include an inspection visit to the manufacturer's premises.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

- 5.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to maintain it so that it remains adequate and efficient.
- 5.5. The manufacturer shall keep the notified body that has approved the quality system informed of any intended updating of the quality system.

The notified body shall evaluate the modifications proposed and decide whether the amended quality system will still satisfy the requirements referred to in paragraph 5.2 or whether a re-assessment is required.

It shall notify its decision to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

Surveillance under the responsibility of the notified body

- 6.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.
- 6.2. The manufacturer shall allow the notified body entrance for inspection purposes to the locations of manufacture, inspection, testing and storage, and shall provide it with all necessary information, in particular:
 - the quality system documentation;
 - the technical documentation referred to in paragraph 2;
 - the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.
- 6.3. The notified body shall carry out periodic audits to make sure that the manufacturer maintains and applies the quality system and shall provide an audit report to the manufacturer.
- 6.4. Additionally, the notified body may pay unexpected visits to the manufacturer. During such visits the notified body may, if necessary, carry out product tests, or have them carried out, to verify that the quality system is functioning correctly. It shall provide the manufacturer with a visit report and, if tests have been carried out, with a test report.

Written declaration of conformity

- 7.1. The manufacturer shall affix the CE conformity marking, the supplementary metrology marking and, under the responsibility of the notified body referred to in paragraph 5.1, the latter's identification number to each measuring instrument that satisfies the appropriate requirements of this Directive.
- 7.2. A declaration of conformity is drawn up for each instrument model and shall be kept at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured. It shall identify the model of the instrument for which it was drawn up.

A copy of the declaration shall be supplied with each measuring instrument that is placed on the market.

8. The manufacturer shall, for a period ending ten years after the last instrument has been manufactured, keep at the disposal of the national authorities:
 - the documentation referred to in paragraph 5.1, second indent;
 - the updating referred to in paragraph 5.5, as approved;
 - the decisions and reports from the notified body referred to in paragraphs 5.5, 6.3 and 6.4.
9. Each notified body shall periodically make available to all Member States the list of quality system approvals issued or refused, and shall immediately inform all Member States of the withdrawal of a quality system approval.

Each Member State shall make this information available to the bodies which it has notified.

Authorised representative

10. The manufacturer's obligations contained in paragraphs 5.1, 5.5, 7.2 and 8 may be fulfilled, on his behalf and under his responsibility, by his authorised representative established within the Community.

ANNEX E

DECLARATION OF CONFORMITY TO TYPE BASED ON QUALITY ASSURANCE OF FINAL PRODUCT INSPECTION AND TESTING

1. The declaration of conformity to type based on quality assurance of final product inspection and testing is the part of a conformity assessment procedure whereby the manufacturer fulfils the obligations laid down hereafter and ensures and declares that the measuring instruments concerned are in conformity with the type as described in the EC type examination certificate and satisfy the appropriate requirements of this Directive.

Manufacturing

2. The manufacturer shall operate an approved quality system for final product inspection and testing of the measuring instrument concerned as specified in paragraph 3 and shall be subject to surveillance as specified in paragraph 4.

Quality system

- 3.1. The manufacturer shall lodge an application for assessment of the quality system with a notified body of his choice.

The application shall include:

- all relevant information for the instrument category envisaged;
- the documentation concerning the quality system;
- the technical documentation of the approved type and a copy of the EC type examination certificate.

- 3.2. The quality system shall ensure compliance of the instruments with the type as described in the EC type examination certificate and the appropriate requirements of this Directive.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. This quality system documentation must permit a consistent interpretation of the quality programmes, plans, manuals and records.

It shall contain in particular an adequate description of:

- the quality objectives and the organizational structure, responsibilities and powers of the management with regard to product quality;
- the examinations and tests that will be carried out after manufacture;
- the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc;
- the means to monitor the effective operation of the quality system.

- 3.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in paragraph 3.2. It shall presume conformity with these requirements in respect of a quality system that complies with the corresponding specifications of the national standard that implements the relevant harmonised standard.

The auditing team shall include persons with experience in the instrument technology concerned and experience as a legal metrology assessor. The evaluation procedure shall include an inspection visit to the manufacturer's premises.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

- 3.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to maintain it so that it remains adequate and efficient.

- 3.5. The manufacturer shall keep the notified body that has approved the quality system informed of any intended updating of the quality system.

The notified body shall evaluate the modifications proposed and decide whether the amended quality system will still satisfy the requirements referred to in paragraph 3.2 or whether a re-assessment is required.

It shall notify its decision to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

Surveillance under the responsibility of the notified body

- 4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.
- 4.2. The manufacturer shall allow the notified body entrance for inspection purposes to the locations of inspection, testing and storage, and shall provide it with all necessary information, in particular:
- the quality system documentation;
 - the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.
- 4.3. The notified body shall carry out periodic audits to make sure that the manufacturer maintains and applies the quality system and shall provide an audit report to the manufacturer.
- 4.4. Additionally, the notified body may pay unexpected visits to the manufacturer. During such visits the notified body may, if necessary, carry out product tests, or have them carried out, to verify that the quality system is functioning correctly. It shall provide the manufacturer with a visit report and, if tests have been carried out, with a test report.

Written declaration of conformity

- 5.1. The manufacturer shall affix the CE conformity marking, the supplementary metrology marking and, under the responsibility of the notified body referred to in paragraph 3.1, the latter's identification number to each measuring instrument that is in conformity with the type as described in the EC type examination certificate and satisfies the appropriate requirements of this Directive.
- 5.2. A declaration of conformity is drawn up for each instrument model and shall be kept at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured. It shall identify the model of the instrument for which it was drawn up.

A copy of the declaration shall be supplied with each measuring instrument that is placed on the market.

6. The manufacturer shall, for a period ending ten years after the last instrument has been manufactured, keep at the disposal of the national authorities:
- the documentation referred to in the second indent of paragraph 3.1;
 - the updating referred to in the second paragraph of paragraph 3.5, as approved;
 - the decisions and reports from the notified body which are referred to in the final paragraph of paragraph 3.5, paragraph 4.3 and paragraph 4.4.
7. Each notified body shall periodically make available to all Member States the list of quality system approvals issued or refused, and shall immediately inform all Member States of the withdrawal of a quality system approval.

Each Member State shall make this information available to the bodies which it has notified.

Authorised representative

8. The manufacturer's obligations contained in paragraphs 3.1, 3.5, 5.2 and 6 may be fulfilled, on his behalf and under his responsibility, by his authorised representative established within the Community.

ANNEX E1

DECLARATION OF CONFORMITY BASED ON QUALITY ASSURANCE OF FINAL PRODUCT INSPECTION AND TESTING

1. The declaration of conformity based on quality assurance of final product inspection and testing is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down hereafter and ensures and declares that the measuring instruments concerned are in conformity with the appropriate requirements of this Directive.

Technical documentation

2. The manufacturer shall establish the technical documentation as described in Annex IV. The documentation shall enable assessment of the conformity of the instrument with the appropriate requirements of this Directive. It shall, as far as relevant for such assessment, cover the design, manufacture and operation of the instrument.
3. The manufacturer shall keep the technical documentation at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured.

Manufacturing

4. The manufacturer shall operate an approved quality system for final product inspection and testing of the measuring instrument concerned as specified in paragraph 5 and shall be subject to surveillance as specified in paragraph 6.

Quality system

- 5.1. The manufacturer shall lodge an application for assessment of the quality system with a notified body of his choice.

The application shall include:

- all relevant information for the instrument category envisaged;
- the documentation concerning the quality system;
- the technical documentation referred to in paragraph 2.

- 5.2. The quality system shall ensure compliance of the instruments with the appropriate requirements of this Directive.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. This quality system documentation must permit a consistent interpretation of the quality programmes, plans, manuals and records.

It shall contain in particular an adequate description of:

- the quality objectives and the organizational structure, responsibilities and powers of the management with regard to product quality;
- the examinations and tests that will be carried out after manufacture;
- the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc;
- the means to monitor the effective operation of the quality system.

- 5.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in paragraph 5.2. It shall presume conformity with these requirements in respect of a quality system that complies with the corresponding specifications of the national standard that implements the relevant harmonised standard.

The auditing team shall include persons with experience in the instrument technology concerned and experience as a legal metrology assessor. The evaluation procedure shall include an inspection visit to the manufacturer's premises.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

- 5.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to maintain it so that it remains adequate and efficient.

- 5.5. The manufacturer shall keep the notified body that has approved the quality system informed of any intended updating of the quality system.

The notified body shall evaluate the modifications proposed and decide whether the amended quality system will still satisfy the requirements referred to in paragraph 5.2 or whether a re-assessment is required.

It shall notify its decision to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

Surveillance under the responsibility of the notified body

- 6.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.
- 6.2. The manufacturer shall allow the notified body entrance for inspection purposes to the locations of inspection, testing and storage, and shall provide it with all necessary information, in particular:
- the quality system documentation;
 - the technical documentation referred to in paragraph 2;
 - the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.
- 6.3. The notified body shall carry out periodic audits to make sure that the manufacturer maintains and applies the quality system and shall provide an audit report to the manufacturer.
- 6.4. Additionally, the notified body may pay unexpected visits to the manufacturer. During such visits the notified body may, if necessary, carry out product tests, or have them carried out, to verify that the quality system is functioning correctly. It shall provide the manufacturer with a visit report and, if tests have been carried out, with a test report.

Written declaration of conformity

- 7.1. The manufacturer shall affix the CE conformity marking, the supplementary metrology marking and, under the responsibility of the notified body referred to in paragraph 5.1, the latter's identification number to each measuring instrument that satisfies the appropriate requirements of this Directive.
- 7.2. A declaration of conformity is drawn up for each instrument model and shall be kept at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured. It shall identify the model of the instrument for which it was drawn up.
- A copy of the declaration shall be supplied with each measuring instrument that is placed on the market.
8. The manufacturer shall, for a period ending ten years after the last instrument has been manufactured, keep at the disposal of the national authorities:
- the documentation referred to in paragraph 5.1, second indent;
 - the updating referred to in paragraph 5.5, as approved;
 - the decisions and reports from the notified body referred to in paragraphs 5.5, 6.3 and 6.4.
9. Each notified body shall periodically make available to all Member States the list of quality system approvals issued or refused, and shall immediately inform all Member States of the withdrawal of a quality system approval.

Each Member State shall make this information available to the bodies which it has notified.

Authorised representative

10. The manufacturer's obligations contained in paragraphs 5.1, 5.5, 7.2 and 8 may be fulfilled, on his behalf and under his responsibility, by his authorised representative established within the Community.

ANNEX F

DECLARATION OF CONFORMITY TO TYPE BASED ON PRODUCT VERIFICATION

1. The declaration of conformity to type based on product verification is the part of a conformity assessment procedure whereby the manufacturer or his authorised representative fulfils the obligations laid down hereafter and ensures and declares that the measuring instruments that have been subjected to the provisions of point 3 are in conformity with the type as described in the EC type examination certificate and satisfy the appropriate requirements of this Directive.

Manufacturing

2. The manufacturer shall take all measures necessary to ensure conformity of the manufactured instruments with the approved type as described in the EC type examination certificate and the appropriate requirements of this Directive.

Verification

3. A notified body chosen by the manufacturer shall carry out the appropriate examinations and tests, or have them carried out, to check the conformity of the instruments with the type as described in the EC type examination certificate and the appropriate requirements of this Directive.

The examinations and tests to check the conformity with the metrological requirements will be carried out, at the choice of the manufacturer, either by examination and testing of every instrument as specified in paragraph 4, or by examination and testing of the instruments on a statistical basis as specified in paragraph 5.

4. Verification of conformity with the metrological requirements by examination and testing of every instrument
 - 4.1. All instruments shall be individually examined and appropriate tests as set out in the relevant documents referred to in Article 9, or equivalent tests, shall be carried out to verify their conformity with the metrological requirements that apply to them. In the absence of a relevant document, the notified body concerned shall decide on the appropriate tests to be carried out.
 - 4.2. The notified body shall issue a certificate of conformity in respect of the examinations and tests carried out, and shall affix its identification number to each approved instrument or have it affixed under its responsibility.

The manufacturer shall keep the certificates of conformity available for inspection by the national authorities.

5. Statistical verification of conformity with the metrological requirements
 - 5.1. The manufacturer shall have taken all measures necessary in order that the manufacturing process ensures the homogeneity of each lot produced, and shall present his instruments for verification in the form of homogeneous lots.
 - 5.2. A random sample shall be drawn from each lot according to the requirements of paragraph 5.3. All instruments in the sample shall be individually examined and appropriate tests as set out in the relevant documents referred to in Article 9, or equivalent tests, to establish their conformity with the metrological requirements that apply to them shall be carried out to determine whether the lot is accepted or rejected. In the absence of a relevant document, the notified body concerned shall decide on the appropriate tests to be carried out.
 - 5.3. The statistical procedure shall meet the following requirements:

The statistical control will be based on attributes. The sampling system shall ensure:

- a level of quality corresponding to a probability of acceptance of 95 %, with a non-conformity percentage of less than 1 %;
- a limit quality corresponding to a probability of acceptance of 5 %, with a non-conformity percentage of less than 7 %.

- 5.4. If a lot is accepted all instruments of the lot are approved, except for those instruments from the sample that were found not to satisfy the tests.

The notified body shall issue a certificate of conformity in respect of the examinations and tests carried out, and shall affix its identification number to each approved instrument or have it affixed under its responsibility.

The manufacturer shall keep the certificates of conformity available for inspection by the national authorities.

- 5.5. If a lot is rejected, the notified body shall take appropriate measures to prevent the placing on the market of that lot. In the event of frequent rejection of lots the notified body may suspend the statistical verification.

Written declaration of conformity

- 6.1. The manufacturer shall affix the CE conformity marking and the supplementary metrology marking to each measuring instrument that is in conformity with the approved type and satisfies the appropriate requirements of this Directive.
- 6.2. A declaration of conformity is drawn up for each instrument model and shall be kept at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured. It shall identify the model of the instrument for which it was drawn up.

A copy of the declaration shall be supplied with each measuring instrument that is placed on the market.

If agreed upon by the notified body referred to in paragraph 3, the manufacturer shall also affix the notified body's identification number to the measuring instruments under the notified body's responsibility.

7. The manufacturer may, if agreed upon by the notified body and under its responsibility, affix the notified body's identification number to the measuring instruments during the manufacturing process.

Authorised representative

8. The manufacturer's obligations may be fulfilled, on his behalf and under his responsibility, by his authorised representative established within the Community, except for the obligations contained in paragraphs 2 and 5.1.

ANNEX F1

DECLARATION OF CONFORMITY BASED ON PRODUCT VERIFICATION

1. The declaration of conformity based on product verification is the conformity assessment procedure whereby the manufacturer or his authorised representative fulfils the obligations laid down hereafter and ensures and declares that the measuring instruments that have been subjected to the provisions of point 5 are in conformity with the appropriate requirements of this Directive.

Technical documentation

2. The manufacturer shall establish the technical documentation as described in Annex IV. The documentation shall enable assessment of the conformity of the instrument with the appropriate requirements of this Directive. It shall, as far as relevant for such assessment, cover the design, manufacture and operation of the instrument.
3. The manufacturer shall keep the technical documentation at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured.

Manufacturing

4. The manufacturer shall take all measures necessary to ensure conformity of the manufactured instruments with the appropriate requirements of this Directive.

Verification

5. A notified body chosen by the manufacturer shall carry out the appropriate examinations and tests, or have them carried out, to check the conformity of the instruments with the appropriate requirements of this Directive.

The examinations and tests to check the conformity with the metrological requirements will be carried out, at the choice of the manufacturer, either by examination and testing of every instrument as specified in paragraph 6, or by examination and testing of the instruments on a statistical basis as specified in paragraph 7.

6. Verification of conformity with the metrological requirements by examination and testing of every instrument
- 6.1. All instruments shall be individually examined and appropriate tests as set out in the relevant documents referred to in Article 9, or equivalent tests, shall be carried out to verify their conformity with the metrological requirements that apply to them. In the absence of a relevant document, the notified body concerned shall decide on the appropriate tests to be carried out.
- 6.2. The notified body shall issue a certificate of conformity in respect of the examinations and tests carried out, and shall affix its identification number to each approved instrument or have it affixed under its responsibility.
The manufacturer shall keep the certificates of conformity available for inspection by the national authorities.
7. Statistical verification of conformity with the metrological requirements
- 7.1. The manufacturer shall have taken all measures necessary in order that the manufacturing process ensures the homogeneity of each lot produced, and shall present his instruments for verification in the form of homogeneous lots.
- 7.2. A random sample shall be drawn from each lot according to the requirements of paragraph 7.3. All instruments in the sample shall be individually examined and appropriate tests as set out in the relevant documents referred to in Article 9, or equivalent tests, to establish their conformity with the metrological requirements that apply to them, shall be carried out to determine whether the lot is accepted or rejected. In the absence of a relevant document, the notified body concerned shall decide on the appropriate tests to be carried out.
- 7.3. The statistical procedure shall meet the following requirements:
The statistical control will be based on attributes. The sampling system shall ensure:
 - a level of quality corresponding to a probability of acceptance of 95 %, with a non-conformity percentage of less than 1 %;
 - a limit quality corresponding to a probability of acceptance of 5 %, with a non-conformity percentage of less than 7 %.
- 7.4. If a lot is accepted all instruments of the lot are approved, except for those instruments from the sample that were found not to satisfy the tests.
The notified body shall issue a certificate of conformity in respect of the examinations and tests carried out, and shall affix its identification number to each approved instrument or have it affixed under its responsibility.
The manufacturer shall keep the certificates of conformity available for inspection by the national authorities.
- 7.5. If a lot is rejected, the notified body shall take appropriate measures to prevent the placing on the market of that lot. In the event of frequent rejection of lots the notified body may suspend the statistical verification.

Written declaration of conformity

- 8.1. The manufacturer shall affix the CE conformity marking and the supplementary metrology marking to each measuring instrument that satisfies the appropriate requirements of this Directive.
- 8.2. A declaration of conformity is drawn up for each instrument model and shall be kept at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured. It shall identify the model of the instrument for which it was drawn up.
A copy of the declaration shall be supplied with each measuring instrument that is placed on the market.
If agreed upon by the notified body referred to in paragraph 5, the manufacturer shall also affix the notified body's identification number to the measuring instruments under the notified body's responsibility.
9. The manufacturer may, if agreed upon by the notified body and under its responsibility, affix the notified body's identification number to the measuring instruments during the manufacturing process.

Authorised representative

10. The manufacturer's obligations may be fulfilled, on his behalf and under his responsibility, by his authorised representative established within the Community, except for the obligations contained in paragraphs 4 and 7.1.
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ANNEX G

DECLARATION OF CONFORMITY BASED ON UNIT VERIFICATION

1. The declaration of conformity based on unit verification is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down hereafter and ensures and declares that a measuring instrument that has been subjected to the provisions of paragraph 4, is in conformity with the appropriate requirements of this Directive.

Technical documentation

2. The manufacturer shall establish the technical documentation as described in Annex IV and make it available to the notified body referred to in paragraph 4. The technical documentation shall enable assessment of the conformity of the instrument with the appropriate requirements of this Directive and shall, as far as relevant for such assessment, cover the design, manufacture and operation of the instrument.

Manufacturing

3. The manufacturer shall take all measures necessary to ensure conformity of the manufactured instrument with the appropriate requirements of this Directive.

Verification

4. A notified body chosen by the manufacturer shall carry out the appropriate examinations and tests as set out in the relevant documents referred to in Article 9, or equivalent tests, to check the conformity of the instrument with the appropriate requirements of this Directive, or have them carried out. In the absence of a relevant document, the notified body concerned shall decide on the appropriate tests to be carried out.

The notified body shall affix its identification number to the approved instrument, or have it affixed under its responsibility.

Written declaration of conformity

- 5.1. The manufacturer shall affix the CE conformity marking and the supplementary metrology marking to the measuring instrument that satisfies the appropriate requirements of this Directive.
- 5.2. A declaration of conformity shall be drawn up and kept at the disposal of the national authorities for a period ending ten years after the instrument has been manufactured. It shall identify the instrument for which it was drawn up.

A copy of the declaration shall be supplied with the measuring instrument.

Authorised representative

6. The manufacturer's obligations contained in paragraph 5.2 may be fulfilled, on his behalf and under his responsibility, by his authorised representative established within the Community.

ANNEX H

DECLARATION OF CONFORMITY BASED ON FULL QUALITY ASSURANCE

1. The declaration of conformity based on full quality assurance is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down hereafter and ensures and declares that the measuring instruments concerned satisfy the appropriate requirements of this Directive.

Manufacturing

2. The manufacturer shall operate an approved quality system for design, manufacture and final product inspection and testing of the measuring instrument concerned as specified in paragraph 3, and shall be subject to surveillance as specified in paragraph 4.

Quality system

- 3.1. The manufacturer shall lodge an application for assessment of the quality system with a notified body of his choice.

The application shall include:

- all relevant information for the instrument category envisaged;
- the documentation concerning the quality system.

- 3.2. The quality system shall ensure compliance of the instruments with the appropriate requirements of this Directive.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. This quality system documentation must permit a consistent interpretation of the quality programmes, plans, manuals and records. It shall contain in particular an adequate description of:

- the quality objectives and the organisational structure, responsibilities and powers of the management with regard to design and product quality;
- the technical design specifications, including standards, that will be applied and, where the standards referred to in Article 9 will not be applied in full, the means that will be used to ensure that the essential requirements of this Directive that apply to the instruments will be met;
- the design control and design verification techniques, processes and systematic actions that will be used when designing the instruments pertaining to the instrument category covered;
- the corresponding manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used;
- the examinations and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out;
- the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.;
- the means to monitor the achievement of the required design and product quality and the effective operation of the quality system.

- 3.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in paragraph 3.2. It shall presume conformity with these requirements in respect of a quality system that complies with the corresponding specifications of the national standard that implements the relevant harmonised standard.

The auditing team shall include persons with experience in the instrument technology concerned and experience as a legal metrology assessor. The evaluation procedure shall include an inspection visit to the manufacturer's premises.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

- 3.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to maintain it so that it remains adequate and efficient.

- 3.5. The manufacturer shall keep the notified body that has approved the quality system informed of any intended updating of the quality system.

The notified body shall evaluate the modifications proposed and decide whether the amended quality system will still satisfy the requirements referred to in paragraph 3.2 or whether a re-assessment is required.

It shall notify its decision to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

Surveillance under the responsibility of the notified body

- 4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.
- 4.2. The manufacturer shall allow the notified body entrance for inspection purposes to the locations of manufacture, inspection, testing and storage, and shall provide it with all necessary information, in particular:
- the quality system documentation;
 - the quality records as foreseen by the design part of the quality system, such as results of analyses, calculations, tests, etc.;
 - the quality records as foreseen by the manufacturing part of the quality system, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.
- 4.3. The notified body shall carry out periodic audits to make sure that the manufacturer maintains and applies the quality system and shall provide an audit report to the manufacturer.
- 4.4. Additionally, the notified body may pay unexpected visits to the manufacturer. During such visits the notified body may, if necessary, carry out product tests, or have them carried out under its responsibility, to verify that the quality system is functioning correctly. It shall provide the manufacturer with a visit report and, if tests have been carried out, with a test report.

Written declaration of conformity

- 5.1. The manufacturer shall affix the CE conformity marking, the supplementary metrology marking and, under the responsibility of the notified body referred to in paragraph 3.1, the latter's identification number to each measuring instrument that satisfies the appropriate requirements of this Directive.
- 5.2. A declaration of conformity is drawn up for each instrument model and shall be kept at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured. It shall identify the model of the instrument for which it was drawn up.
- A copy of the declaration shall also be sent to one of the bodies notified for type examination according to Article 8 whose responsibility it shall be to periodically make the list of declarations of conformity received available to all Member States.
- A copy of the declaration shall be supplied with each measuring instrument that is placed on the market.
6. The manufacturer shall, for a period ending ten years after the last instrument has been manufactured, keep at the disposal of the national authorities:
- the documentation concerning the quality system referred to in paragraph 3.1, second indent;
 - the updating referred to in paragraph 3.5, as approved;
 - the decisions and reports from the notified body referred to in paragraphs 3.5, 4.3 and 4.4.
7. Each notified body shall periodically make available to all Member States the list of quality system approvals issued or refused, and shall immediately inform all Member States of the withdrawal of a quality system approval.

Each Member State shall make this information available to the bodies which it has notified.

Authorised representative

8. The manufacturer's obligations contained in paragraphs 3.1, 3.5, 5.2 and 6 may be fulfilled, on his behalf and under his responsibility, by his authorised representative established within the Community.

ANNEX H1

DECLARATION OF CONFORMITY BASED ON FULL QUALITY ASSURANCE PLUS DESIGN EXAMINATION

1. The declaration of conformity based on full quality assurance plus design examination is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down hereafter and ensures and declares that the measuring instruments concerned satisfy the appropriate requirements of this Directive.

Manufacturing

2. The manufacturer shall operate an approved quality system for design, manufacture and final product inspection and testing of the measuring instrument concerned as specified in paragraph 3, and shall be subject to surveillance as specified in paragraph 5. The adequacy of the technical design of the measuring instrument shall have been examined according to the provisions of paragraph 4.

Quality system

- 3.1. The manufacturer shall lodge an application for assessment of the quality system with a notified body of his choice.

The application shall include:

- all relevant information for the instrument category envisaged;
- the documentation concerning the quality system.

- 3.2. The quality system shall ensure compliance of the instruments with the appropriate requirements of this Directive.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. This quality system documentation must permit a consistent interpretation of the quality programmes, plans, manuals and records. It shall contain in particular an adequate description of:

- the quality objectives and the organisational structure, responsibilities and powers of the management with regard to design and product quality;
- the technical design specifications, including standards, that will be applied and, where the standards referred to in Article 9 will not be applied in full, the means that will be used to ensure that the essential requirements of this Directive that apply to the instruments will be met;
- the design control and design verification techniques, processes and systematic actions that will be used when designing the instruments pertaining to the instrument category covered;
- the corresponding manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used;
- the examinations and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out;
- the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.;
- the means to monitor the achievement of the required design and product quality and the effective operation of the quality system.

- 3.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in paragraph 3.2. It shall presume conformity with these requirements in respect of a quality system that complies with the corresponding specifications of the national standard that implements the relevant harmonised standard.

The auditing team shall include persons with experience in the instrument technology concerned and experience as a legal metrology assessor. The evaluation procedure shall include an inspection visit to the manufacturer's premises.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

- 3.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to maintain it so that it remains adequate and efficient.

- 3.5. The manufacturer shall keep the notified body that has approved the quality system informed of any intended updating of the quality system.

The notified body shall evaluate the modifications proposed and decide whether the amended quality system will still satisfy the requirements referred to in paragraph 3.2 or whether a re-assessment is required.

It shall notify its decision to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

Design examination

- 4.1. The manufacturer shall lodge an application for examination of the design with the notified body referred to in item 3.1.
- 4.2. The application shall enable understanding of the design, manufacture and operation of the instrument, and shall enable assessment of conformity with the appropriate requirements of this Directive. It shall include:
- the name and address of the manufacturer;
 - a written declaration that the same application has not been lodged with any other notified body;
 - the technical documentation as described in Annex IV. The documentation shall enable assessment of the conformity of the instrument with the appropriate requirements of this Directive. It shall, as far as relevant for such assessment, cover the design and operation of the instrument;
 - the supporting evidence for the adequacy of the technical design. This supporting evidence shall mention any standards that have been applied, in particular where the standards referred to in Article 9 have not been applied in full, and shall include, where necessary, the results of tests carried out by the appropriate laboratory of the manufacturer, or by another testing laboratory on his behalf and under his responsibility.

- 4.3. The notified body shall examine the application, and where the design meets the provisions of the Directive that apply to the measuring instrument it shall issue an EC design examination certificate to the applicant. The certificate shall contain the name and address of the manufacturer, conclusions of the examination, conditions (if any) for its validity and the necessary data for identification of the approved instrument.

All relevant parts of the technical documentation shall be annexed to the certificate and a copy kept by the notified body.

The certificate shall have a validity period of ten years from the date of its issue,

If the manufacturer is denied a design examination certificate, the notified body shall provide detailed reasons for such a denial.

- 4.4. The manufacturer shall keep the notified body that has issued the EC design examination certificate informed of any modification to the approved design. Modifications to the approved design must receive additional approval from the notified body that issued the EC design examination certificate where such changes may affect the conformity with the essential requirements of this Directive, the conditions for validity of the certificate or the prescribed conditions for use of the instrument. This additional approval is given in the form of an addition to the original EC design examination certificate.
- 4.5. Each notified body shall periodically make available to all Member States the list of:
- EC design examination certificates issued;
 - EC design examination certificates refused;
 - additions and amendments relating to certificates already issued.

Each notified body shall inform all Member States immediately of the withdrawal of an EC design examination certificate.

Each Member State shall make this information available to the bodies which it has notified.

- 4.6. The other notified bodies may receive a copy of the EC design examination certificates and/or their additions. The annexes to the certificates shall be kept at the disposal of the other notified bodies.

- 4.7. The manufacturer or his authorised representative established within the Community shall keep a copy of the EC design examination certificate and its additions with the technical documentation for a period ending 10 years after the last measuring instrument has been manufactured.

Where neither the manufacturer nor his authorised representative is established within the Community, the obligation to keep the technical documentation available shall be the responsibility of the importer or any other person who places the measuring instrument on the Community market.

Surveillance under the responsibility of the notified body

- 5.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.
- 5.2. The manufacturer shall allow the notified body entrance for inspection purposes to the locations of design, manufacture, inspection, testing and storage, and shall provide it with all necessary information, in particular:
- the quality system documentation;
 - the quality records as foreseen by the design part of the quality system, such as results of analyses, calculations, tests, etc.;
 - the quality records as foreseen by the manufacturing part of the quality system, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.
- 5.3. The notified body shall carry out periodic audits to make sure that the manufacturer maintains and applies the quality system and shall provide an audit report to the manufacturer.
- 5.4. Additionally, the notified body may pay unexpected visits to the manufacturer. During such visits the notified body may, if necessary, carry out product tests, or have them carried out under its responsibility, to verify that the quality system is functioning correctly. It shall provide the manufacturer with a visit report and, if tests have been carried out, with a test report.

Written declaration of conformity

- 6.1. The manufacturer shall affix the CE conformity marking, the supplementary metrology marking and, under the responsibility of the notified body referred to in paragraph 3.1, the latter's identification number to each measuring instrument that satisfies the appropriate requirements of this Directive.
- 6.2. A declaration of conformity is drawn up for each instrument model and shall be kept at the disposal of the national authorities for a period ending ten years after the last instrument has been manufactured. It shall identify the model of the instrument for which it was drawn up and shall mention the number of the design examination certificate.

A copy of the declaration shall be supplied with each measuring instrument that is placed on the market.

7. The manufacturer shall, for a period ending ten years after the last instrument has been manufactured, keep at the disposal of the national authorities:
- the documentation referred to in 3.1, second indent;
 - the updating referred to in paragraph 3.5, as approved;
 - the decisions and reports from the notified body referred to in paragraphs 3.5, 5.3 and 5.4.
8. Each notified body shall periodically make available to all Member States the list of quality system approvals issued or refused, and shall immediately inform all Member States of the withdrawal of a quality system approval.

Each Member State shall make this information available to the bodies which it has notified.

Authorised representative

9. The manufacturer's obligations contained in paragraphs 3.1, 3.5, 6.2 and 7 may be fulfilled, on his behalf and under his responsibility, by his authorised representative established within the Community.
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ANNEX MI-001

WATER METERS

The relevant requirements of Annex I, the specific requirements of this Annex and the conformity assessment procedures listed in this Annex apply to water meters intended for the measurement of volumes of clean, cold or heated water used in non-negotiated transactions.

DEFINITIONS

Water meter

An instrument intended to measure, memorise and display the volume at metering conditions of water passing through the measurement transducer.

Minimum flowrate (Q_1)

The lowest flowrate at which the water meter provides indications that satisfy the requirements concerning the maximum permissible errors.

Transitional flowrate (Q_2)

The transitional flowrate is the flowrate value occurring between the permanent and minimum flowrates, at which the flowrate range is divided into two zones, the 'upper zone' and the 'lower zone'. Each zone has a characteristic maximum permissible error.

Permanent flowrate (Q_3)

The highest flowrate at which the water meter operates in a satisfactory manner under normal conditions of use, i.e. under steady or intermittent flow conditions.

Overload flowrate (Q_4)

The overload flowrate is the highest flowrate at which the meter operates in a satisfactory manner for a short period of time without deteriorating.

SPECIFIC REQUIREMENTS

Rated operating conditions

The manufacturer shall specify the rated operating conditions for the instrument, in particular;

1. The flowrate range of the water.

The values for the flowrate range shall fulfil the following conditions:

$$Q_3/Q_1 \geq 10$$

$$Q_2/Q_1 = 1,6$$

$$Q_4/Q_3 = 1,25$$

For a period of 5 years from the adoption of this directive the ratio Q_2/Q_1 may be: 1,5, 2,5, 4, or 6,3.

2. The temperature range of the water.

The values for the temperature range shall fulfil the following conditions:

0,1 °C to at least 30 °C, or

30 °C to a high temperature, that temperature being at least 90 °C.

The meter may be designed to operate over both ranges.

3. The relative pressure range of the water, the range being 0,3 bar to at least 10 bar.

4. The climatic and mechanical environment class B, C, E or F in which the instrument is intended to be used in accordance with Table 1 of Annex I.
5. For the power supply: the nominal value of the AC voltage supply and/or the limits of DC supply.

Maximum permissible error

6. The maximum permissible error, positive or negative, on volumes delivered at flowrates between the transitional flowrate (Q_2) (included) and the overload flowrate (Q_4) is:

2 % for water having a temperature ≤ 30 °C,

3 % for water having a temperature > 30 °C.
7. The maximum permissible error, positive or negative, on volumes delivered at flowrates between the minimum flowrate (Q_1) and the transitional flowrate (Q_2) (excluded) is 5 % for water having any temperature.

Permissible effect of disturbances

- 8.1. Electromagnetic immunity
 - 8.1.1. The manufacturer shall specify the electromagnetic environment E1 or E2 in which the instrument is intended to be used in accordance with requirement 1.3.2 of Annex I.
 - 8.1.2. The effect of an electromagnetic disturbance on a water meter shall be such that:
 - the change in the measurement result is no greater than the critical change value as defined in 8.1.4, or
 - the indication of the measurement result is such that it cannot be interpreted as a valid result, such as a momentary variation that cannot be interpreted, memorised or transmitted as a measuring result.
 - 8.1.3. After undergoing an electromagnetic disturbance the water meter shall:
 - recover to operate within maximum permissible error, and
 - have all measurement functions safeguarded, and
 - allow recovery of all measurement data present just before the disturbance.
 - 8.1.4. The critical change value is the value of the maximum permissible error applied to the quantity corresponding to one minute at flowrate Q_3 .

Suitability

- 9.1. The meter shall be able to be installed to operate in any position unless clearly marked otherwise.
- 9.2. The manufacturer shall specify whether the meter is designed to measure reverse flow. In such a case, the reverse flow volume shall either be subtracted from the cumulated volume or shall be separately recorded. The same maximum permissible error shall apply to both forward and reverse flow.

Water meters not designed to measure reverse flow shall be capable of withstanding an accidental reverse flow without any deterioration or change in metrological properties, and at the same time record such a reversal.

Units of measurement

10. Metered volume shall be displayed in cubic metres, symbol m^3 .

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are: B+F, B+D, H1.

ANNEX MI-002

GAS METERS

The relevant requirements of Annex I, the specific requirements of this Annex and the conformity assessment procedures listed in this Annex apply to gas meters defined below intended for use in non-negotiated transactions.

DEFINITIONS

Gas meter

An instrument intended to measure, memorise and display the quantity of gas passing through the measurement transducer.

Conversion device

A device fitted to a gas meter that automatically converts the quantity measured at metering conditions into a quantity at base conditions.

Minimum flowrate (Q_{\min})

The lowest flowrate at which the gas meter provides indications that satisfy the requirements regarding maximum permissible error.

Maximum flowrate (Q_{\max})

The highest flowrate at which the gas meter provides indications that satisfy the requirements regarding maximum permissible error.

Transitional flowrate (Q_t)

The transitional flowrate is the flowrate occurring between the maximum and minimum flowrates at which the flowrate range is divided into two zones, the 'upper zone' and the 'lower zone'. Each zone has a characteristic maximum permissible error.

Overload flowrate (Q_r)

The overload flowrate is the highest flowrate at which the meter operates for a short period of time without deteriorating.

Base conditions

The specified conditions to which the measured quantity of fluid is converted.

SPECIFIC REQUIREMENTS

Rated operating conditions

The manufacturer shall specify the rated operating conditions of the instrument, in particular;

1. The flowrate range of the gas.

The values for the flowrate range shall fulfil the following conditions:

$$Q_{\max}/Q_{\min} > 20$$

$$Q_{\max}/Q_t \geq 5$$

$$Q_r/Q_{\max} = 1,2$$

2. The temperature range of the gas, with a minimum range of 40 °C.

3. The fuel gas related conditions.

The instrument shall be designed for the range of gases and supply pressures of the country of destination. In particular the manufacturer shall indicate:

- the gas family or group;
- the maximum operating pressure.

4. The climatic and mechanical environment in which the instrument or its sub-assemblies are intended to be used in accordance with Table 1 of Annex I, with a minimum temperature range of 60 °C.

5. For the power supply: the nominal value of the AC voltage supply and/or the limits of DC supply.

Base conditions for converted values

6. The manufacturer shall specify the base conditions for converted values.

Maximum permissible error

7.1. Gas meter

Table 1

Accuracy class	1,5	1
$Q_{\min} \leq Q < Q_t$	3 %	2 %
$Q_t \leq Q \leq Q_{\max}$	1,5 %	1 %

When the errors between Q_t and Q_{\max} all have the same sign, they shall all not exceed 1 % for class 1,5 and 0,5 % for Class 1.

7.2. Change in maximum permissible error due to a conversion device.

7.2.1. For an integrated temperature conversion device that only converts volume as a function of the temperature and only indicates the converted volume, the maximum permissible error of the meter is increased by 0,5 % in a range of 10 °C extending symmetrically around the temperature specified by the manufacturer that lies between 15 °C and 25 °C. Outside this range an additional increase of 0,5 % is permitted.

7.2.2. For conversion devices other than those covered by 7.2.1 the maximum permissible error is increased by 1 %.

Permissible effect of disturbances

8.1. Electromagnetic immunity

8.1.1. The manufacturer shall specify the electromagnetic environment E1 or E2 in which the instrument is intended to be used in accordance with requirement 1.3.2 of Annex I.

8.1.2. The effect of an electromagnetic disturbance on a gas meter shall be such that:

- (i) the change in measurement is no greater than the critical change value as defined in 4.1.4, or
- (ii) the indication of the measurement result is such that it cannot be interpreted as a valid result, such as a momentary variation that cannot be interpreted, memorised or transmitted as a measuring result.

8.1.3. After undergoing a disturbance the gas meter shall:

- recover to operate within maximum permissible error, and
- have all measurement functions safeguarded, and
- allow recovery of all measurement data present just before the disturbance.

8.1.4. The critical change value is the value of the maximum permissible error applied to the quantity corresponding to one minute at flowrate Q_{\max} .

Suitability

- 9.1. An instrument powered from the mains (AC or DC) shall be provided with an emergency power supply device or other means to assure during a failure of the principal power source that all measuring functions are safeguarded.
- 9.2. A dedicated power source shall have a lifetime of at least five years. After 90 % of its lifetime an appropriate warning shall be shown.
- 9.3. An indicating device shall have a sufficient number of digits to ensure that the quantity passed during at least two years at normal operation does not return the digits to their initial values.
- 9.4. The meter shall be able to be installed to operate in any position unless clearly marked otherwise.
- 9.5. An electronic conversion device shall be capable of detecting when it is operating outside the operating range(s) stated by the manufacturer for parameters that are relevant for measurement accuracy. In such a case the conversion device must stop integrating the converted quantity, and may totalise separately the converted quantity for the time it is outside the operating range(s).

Units

10. Metered volume shall be displayed in cubic metre, symbol m³.

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are: B+F, B+D, H1.

ANNEX MI-003
Active electrical energy meters and measurement transformers

The relevant requirements of Annex I, the specific requirements of this Annex and the conformity assessment procedures listed in this Annex apply to active electrical energy meters of accuracy classes 1 and 2, and to measurement transformers for use in combination with any such active electrical energy meter.

DEFINITIONS

An active electrical energy meter is a device which measures the active electrical energy consumed in a circuit since the moment at which the display indicated zero. It may be used in combination with a measurement transformer, depending upon the measurement technique applied.

A measurement transformer is a device for use in combination with an active electrical energy meter, which offers to the meter a reduced value of the voltage at which the electricity is being supplied to the circuit, and/or a reduced value of the current flowing in the circuit, the reduction factors being constant.

- I = the electrical current flowing through the meter;
- I_n = the nominal value of I for which the meter has been designed;
- I_{st} = the lowest value of I at which the meter measures active electrical energy;
- I_{min} = the value of I from which onwards the error is intended to lie within prescribed limits;
- I_{tr} = the value of I from which onwards the error is intended to lie within the error limits corresponding to the accuracy class declared for the meter;
- I_{max} = the maximum value of I for which the meter has been designed;
- U = the potential of the electricity supplied to the meter;
- U_n = the nominal value of U for which the meter has been designed;
- f = the frequency of the electrical current flowing through the meter;
- f_n = the nominal value of f for which the meter has been designed;
- PF = power factor = $\cos\Phi$ = the phase difference between I and U;
- T = ambient temperature.

SPECIFIC REQUIREMENTS**PART 1 — METERS**

1. The manufacturer shall specify the values of f_n , U_n , I_n , I_{min} , I_{tr} and I_{max} that apply to the meter. The values chosen shall fulfil the following conditions:

$$I_{min}/I_{st} \geq 10;$$

$$I_{tr}/I_{st} \geq 20;$$

$$I_{max}/I_{st} \geq 200.$$

Design prescriptions

2. In the case of electrical energy meters designed for use in combination with a measurement transformer, I_{\max} shall be equal to $1,2 \cdot I_n$.

Quality of the electricity

3. A meter shall satisfy the accuracy requirements laid down in this Annex in the case of electricity with a quality as specified hereafter.

No legal requirements in respect of metrological performance apply when the electricity has a quality, even momentarily, which is worse than the quality specified hereafter.

The voltage and frequency values lie within the following limits:

$$0,9 \cdot U_n \leq U \leq 1,1 \cdot U_n;$$

$$0,98 \cdot f_n \leq f \leq 1,02 \cdot f_n.$$

The power factor lies within the following limits:

From $\cos\Phi = 0,5$ inductive to $\cos\Phi = 0,8$ capacitive.

Rated operating conditions

4. The manufacturer shall specify the climatic and mechanical environment class B or class C for which the meter has been designed in accordance with Table 1 of Annex I.

Accuracy classes

5. The following accuracy classes are defined: Class 1, Class 2.

Maximum permissible errors

6. Table 1 shows the maximum errors, expressed in percent of the true value, that must be respected by the electrical energy meter under rated operating conditions for electricity with a quality within the limits specified in requirement 3 of this Annex.

Table 1

Maximum permissible errors (percent of true value)

Electrical current flowing through the meter	PF	Accuracy class	
		1	2

Single phase meter; Polyphase meter, if operating with balanced loads

$I_{tr} \leq I \leq I_{\max}$	1	$1 + \Delta$	$2 + \Delta$
$2I_{tr} \leq I \leq I_{\max}$	$\neq 1$	$1 + \Delta$	$2 + \Delta$
$I_{\min} \leq I < I_{tr}$	1	$1,5 + \Delta$	$2,5 + \Delta$
$2I_{\min} \leq I < 2I_{tr}$	$\neq 1$	$1,5 + \Delta$	$2,5 + \Delta$

Polyphase meter, if operating with single phase load

$I_{tr} \leq I \leq I_{\max}$	1	$2 + \Delta$	$3 + \Delta$
$2I_{tr} \leq I \leq I_{\max}$	$\neq 1$	$2 + \Delta$	$3 + \Delta$

$\Delta = k_1 + k_2 + k_3(T - T_n)$, where the values of k_1 , k_2 and k_3 are given in Table 2.

Table 2
k values for use in Table 1

Condition		PF	Accuracy class	
			1	2
K ₁	U within the quality limits, and $U \neq U_n$	1	0,7	1
	Idem	$\neq 1$	1	1,5
	$U = U_n$		0	0
K ₂	f within the quality limits, and $f \neq f_n$	1	0,5	0,8
	Idem	$\neq 1$	0,7	1
	$f = f_n$		0	0
K ₃	T within rated conditions	1	0,05	0,1
	Idem	$\neq 1$	0,07	0,15

Permissible effect of disturbances

7.1. Electromagnetic immunity

7.1.1. The manufacturer shall specify the electromagnetic environment E1 or E2 for which the electrical energy meter has been designed in accordance with requirement 1.3.2 of Annex I.

7.1.2. The change in accuracy of an electrical energy meter due to the presence of an electromagnetic disturbance shall be less than the critical value given in Table 3, or the indication of the measurement result shall be such that it cannot be interpreted as a valid measurement result, such as a momentary variation that cannot be interpreted, memorised or transmitted as a measuring result.

Table 3

Critical values of the change in accuracy under disturbances (percentage values are percent of true value)

Disturbance	Accuracy class	
	1	2
Electromagnetic disturbances		
Electromagnetic field	3 %	4 %
Magnetic induction	2 %	3 %
Electrostatic discharge	$10^{-6} \cdot m \cdot U_n \cdot I_{\max}$ kWh where m = the no. of measuring elements	

7.1.3. After having undergone an electromagnetic disturbance, the electrical energy meter shall

- recover to operate within maximum permissible error, and
- have all measurement functions safeguarded, and
- allow recovery of all measurement data present immediately before the occurrence of the disturbance.

Other requirements

8. A meter shall have a display, visible by the consumer when installed in the normal installation position as specified by the manufacturer.
9. The display shall have a sufficient number of digits to ensure that the indication doesn't return to its initial value when the active electrical energy consumed in the circuit corresponds to operation of the meter for 1 500 h at $I = I_{\max}$, $U = U_n$ and $PF = 1$.
10. When the electrical energy measured is indicated in different displays corresponding to different tariffs, the meter shall indicate the active tariff.
11. During use, it shall be impossible to reset the indication of the quantity of electrical energy measured.

12. A meter with a prepayment device shall show the value of the credit remaining.
The error of the value of electrical energy consumed per unit decrease of the credit remaining shall be ≤ 1 scale interval.
13. In the event of loss of electricity in the circuit, the amounts of electrical energy measured shall remain available for reading during a period of at least 4 months.

Units

14. The electrical energy measured shall be displayed in kilowatt-hours, symbol kWh.

PART 2 — MEASUREMENT TRANSFORMERS

Quality of the electricity

15. A measurement transformer shall satisfy the accuracy requirements laid down in this Annex in the case of electricity with a quality as specified in requirement 3 of this Annex.

No legal requirements in respect of metrological performance apply when the electricity has a quality, even momentarily, which is worse than the quality specified in requirement 3 of this Annex.

Rated operating conditions

16. The manufacturer shall specify the climatic and mechanical environment class B or class C for which the measurement transformer has been designed in accordance with Table 1 of Annex I.

Accuracy classes

17. The following accuracy classes are defined for measurement transformers intended for use in combination with an active electrical energy meter 0,1 - 0,2 - 0,5.

Maximum permissible errors

18. Table 4 shows the maximum errors, expressed in percent of the true value of the active electrical energy measured, that must be respected by the measurement transformer under rated operating conditions for electricity with a quality as specified in requirement 3 of this Annex.

Table 4

Maximum permissible errors (percent of true value)

	Accuracy class		
	0,1	0,2	0,5
<i>Current transformers for use in combination with induction type meters</i>			
$I = 0.05 I_n$	0,4	0,75	1,5
$I = 0.20 I_n$	0,2	0,35	0,75
$I = I_n$	0,1	0,2	0,5
$I = 1.2 I_n$	0,1	0,2	0,5
<i>Current transformers for use in combination with static meters</i>			
$I = 0.01 I_n$		0,75	1,5
$I = 0.05 I_n$		0,35	0,75
$I = 0.20 I_n$		0,2	0,5
$I = I_n$		0,2	0,5
$I = 1.2 I_n$		0,2	0,5
<i>Voltage transformer</i>			
$I = \text{any value}$	0,1	0,2	0,5

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are: B+F, B+D, H1.

ANNEX MI-004

HEAT METERS

The relevant requirements of Annex I, the specific requirements of this Annex and the conformity assessment procedures listed in this Annex apply to heat meters defined below.

DEFINITIONS

A heat meter is an instrument intended for measuring the heat which, in a heat exchange circuit, is absorbed or given up by a liquid called the heat conveying liquid.

A heat meter is either a complete instrument or an instrument made up of the sub-assemblies flow sensor, temperature sensor pair, and calculator, as defined in Article 3.2, or a combination of these.

- ϑ = the temperature of the heat conveying liquid;
- ϑ_{in} = the value of ϑ at the inlet of the heat exchange circuit;
- ϑ_{out} = the value of ϑ at the outlet of the heat exchange circuit;
- $\Delta\vartheta$ = $\vartheta_{in} - \vartheta_{out}$;
- ϑ_{max} = the upper limit of ϑ for the heat meter to function correctly;
- ϑ_{min} = the lower limit of ϑ for the heat meter to function correctly;
- $\Delta\vartheta_{max}$ = the upper limit of $\Delta\vartheta$ for the heat meter to function correctly;
- $\Delta\vartheta_{min}$ = the lower limit of $\Delta\vartheta$ for the heat meter to function correctly;
- q = the flow rate of the heat conveying liquid;
- q_s = the highest value of q that is permitted for short periods of time for the heat meter to function correctly;
- q_p = the highest value of q that is permitted permanently for the heat meter to function correctly;
- q_i = the lowest value of q that is permitted for the heat meter to function correctly;
- P = the thermal power of the heat exchange;
- P_s = the upper limit of P that is permitted for the heat meter to function correctly.

SPECIFIC REQUIREMENTS

PART 1 — METERS

Rated operating conditions

1. The rated values of the operating conditions shall be specified by the manufacturer as follows:
 - 1.1. For the temperature of the liquid:

ϑ_{max} , ϑ_{min} , $\Delta\vartheta_{max}$, $\Delta\vartheta_{min}$, subject to the following restrictions:

$\Delta\vartheta_{max}/\Delta\vartheta_{min} \geq 10$;

$\Delta\vartheta_{min} = 2K$.
 - 1.2. For the pressure of the liquid:

The maximum positive internal pressure that the heat meter can withstand permanently at the upper limit of the temperature range.
 - 1.3. For the flow rate of the liquid:

q_s , q_p , q_i , where the values of q_p and q_i are subject to the following restriction:

$q_p/q_i \geq 10$.
 - 1.4. For the thermal power:

P_s .
 - 1.5. For the climatic and mechanical influence quantities:

The environment class B, C, E or F for which the meter has been designed, in accordance with Table 1 of Annex I.

Accuracy classes

2. The following accuracy classes are defined for heat meters: class 2, class 3.

Maximum permissible errors

3. The maximum permissible errors for the accuracy classes, expressed in percent of the true value, are:

$$\text{For class 2: } mpe = (3 + 4 \cdot \Delta\vartheta_{\min} / \Delta\vartheta + 0,02 \cdot q_p / q)$$

$$\text{For class 3: } mpe = (4 + 4 \cdot \Delta\vartheta_{\min} / \Delta\vartheta + 0,05 \cdot q_p / q)$$

Permissible effect of disturbances

- 4.1. Electromagnetic immunity
- 4.1.1. The manufacturer shall specify the electromagnetic environment E1 or E2 in which the instrument is intended to be used in accordance with requirement 1.3.2 of Annex I.
- 4.1.2. The effect of an electromagnetic disturbance shall be such that:
the change in the measurement result is no greater than the critical change value as laid down in requirement 4.1.3, or
the indication of the measurement result is such that it cannot be interpreted as a valid result.
- 4.1.3. The critical change value is 0,5 of the mpe.

PART 2 — SUB-ASSEMBLIES

5. Where a heat meter is made up of sub-assemblies according to Article 4.3, the essential requirements for the heat meter apply to the sub-assemblies as relevant. In addition, the following requirements apply:

- 5.1. For the flow sensor:

$$\text{Class 2: } E_f = (2 \% + 0,02 \cdot q_p / q), \text{ but not more than } \pm 5 \%$$

$$\text{Class 3: } E_f = (3 \% + 0,05 \cdot q_p / q), \text{ but not more than } \pm 5 \%$$

where the error E_f relates the indicated value to the true value of the relationship between flow sensor output signal and mass or volume.

- 5.2. For the temperature sensor pair:

$$E_t = (0,5 \% + 3 \Delta\vartheta_{\min} / \Delta\vartheta)$$

where the error E_t relates the indicated value to the true value of the relationship between temperature sensor pair output and temperature difference.

- 5.3. For the calculator:

$$E_c = (0,5 \% + \Delta\vartheta_{\min} / \Delta\vartheta)$$

where the error E_c relates the value of the heat indicated to the true value of the heat.

- 5.4. For the combination of partial errors:

When the errors of a heat meter are determined from errors of subassemblies, the error of the heat meter is the arithmetic sum of the errors of the subassemblies.

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are: B+F, B+D, H1.

ANNEX MI-005

MEASURING SYSTEMS FOR THE CONTINUOUS AND DYNAMIC MEASUREMENT OF QUANTITIES OF LIQUIDS OTHER THAN WATER

The relevant essential requirements of Annex I, the specific requirements of this Annex and the conformity assessment procedures listed in this Annex apply to measuring systems intended for the continuous and dynamic measurement of quantities of liquids other than water.

DEFINITIONS**Meter**

An instrument designed to measure continuously, memorise and display the quantity at metering conditions of liquid flowing through the measurement transducer in a closed, fully surcharged conduit.

Measuring system

A system that comprises the meter itself and all devices required to ensure correct measurement or intended to facilitate the measuring operations.

Minimum measured quantity

The minimum measured quantity is the smallest quantity of liquid for which the measurement is metrologically acceptable for the measuring system.

Base conditions

The specified conditions to which the measured quantity of liquid is converted.

Transfer point

A point at which the liquid is defined as being delivered or received.

SPECIFIC REQUIREMENTS

1. FLOWRATE RANGE

The flowrate range is specified by the manufacturer subject to the following conditions;

- (i) the flowrate range of a measuring system shall be within the flowrate range of each of its elements;
- (ii) Meter

Table 1

Characteristic of liquid	Minimum ratio of $Q_{\max}: Q_{\min}$
Liquefied gases (incl. Cryogenics) or viscosity ≥ 20 mPa.s	5:1
All other liquids	10:1

- (iii) Measuring system

Table 2

Specific measuring system	Characteristic of liquid	Minimum ratio of $Q_{\max}: Q_{\min}$
Fuel system for motor vehicles	Not LPG	10:1
	LPG	5:1
Measuring system	Cryogenic liquids	5:1
Measuring systems on pipelines or for loading/unloading ships	—	Free choice
All other measuring systems	—	2:1

2. PROPERTIES OF THE LIQUID

The manufacturer shall specify the properties of the liquid by specifying the name or type of liquid or its relevant characteristics as follows:

- Temperature range;
- Pressure range;
- Density range;
- Viscosity range.

3. RATED OPERATING CONDITIONS

The manufacturer shall specify the rated operating conditions for the instrument, in particular:

- (i) the climatic and mechanical environment class B, C or I in which the instrument is intended to be used in accordance with Table 1 of Annex I, and observing the following conditions for temperature range:
 - minimum range of 50 °C for classes C and I
 - minimum range of 30 °C for class B
- (ii) power supply: nominal AC voltage supply and/or limits of DC supply.
- (iii) the base conditions for converted values.

4. ACCURACY CLASSIFICATION AND MAXIMUM PERMISSIBLE ERRORS

- 4.1. For quantities equal to or greater than two litres or the mass equivalent, the maximum permissible errors on indications are:

Table 3

	Accuracy class				
	0,3	0,5	1,0	1,5	2,5
Measuring systems (A)	0,3 %	0,5 %	1,0 %	1,5 %	2,5 %
Meters (B)	0,2 %	0,3 %	0,6 %	1,0 %	1,5 %

- 4.2. For quantities less than two litres or the mass equivalent, the maximum permissible errors on indications are:

Table 4

Measured quantity - V	Maximum permissible error
$V < 0,1 \text{ L}$	$4 \times$ value in Table 3, applied to 0,1 L
$0,1 \text{ L} \leq V < 0,2 \text{ L}$	$4 \times$ value in Table 3
$0,2 \text{ L} \leq V < 0,4 \text{ L}$	$2 \times$ value in Table 3, applied to 0,4 L
$0,4 \text{ L} \leq V < 1 \text{ L}$	$2 \times$ value in Table 3
$1 \text{ L} \leq V < 2 \text{ L}$	value in Table 3, applied to 2 L

Note: values given in litres are converted to the mass equivalent value for mass measuring instruments

- 4.3. However, no matter what the measured quantity may be, the magnitude of the maximum permissible error is given by the greater of the following two values:

- the absolute value of the maximum permissible error given in Table 3 or Table 4.
- the absolute value of the maximum permissible error for the minimum measured quantity (E_{\min}).

4.4.1. $V_{\min} \geq 2$ litres or mass equivalent

For minimum measured quantities greater than or equal to two litres or the mass equivalent,

Alternative 1

E_{\min} shall fulfil the condition: $E_{\min} > 2R$, where R is the resolution of the indicating device.

Alternative 2

E_{\min} is given by the formula: $E_{\min} = (2 V_{\min}) \times (A/100)$, where:

- V_{\min} is the minimum measured quantity,
- A is the numerical value specified in line A of Table 3.

4.4.2. $V_{\min} < 2$ litres or mass equivalent

For minimum measured quantities less than two litres or the mass equivalent, E_{\min} is twice the value specified in Table 4, and related to line A of Table 3.

4.5. Conversion to base conditions

In case of converted indication to volume at base conditions or to mass the maximum permissible errors are as in line A of Table 3.

4.6. Conversion devices

Maximum permissible errors on converted indications due to a conversion device are equal to $\pm (A - B)$, A and B being the values specified in Table 1. However the magnitude of the maximum permissible error shall not be less than the greater of the two following values:

- one-half scale interval of the indicating device for converted indications,
- half of the value corresponding to E_{\min} .

Parts of conversion devices that can be tested separately.

(a) Calculator

Maximum permissible error on quantities of liquid indications applicable to calculation, positive or negative, are equal to one-tenth of the maximum permissible error defined in line A of Table 3. However the magnitude of the maximum permissible error shall not be less than one half scale interval of the measuring system in which the calculator is intended to be used.

(b) Sensors

Sensors shall have an accuracy at least as good as the values in Table 5:

Table 5

MPE on Measurements	Accuracy classes of the measuring system				
	0,3	0,5	1,0	1,5	2,5
Temperature	$\pm 0,3$ °C	$\pm 0,5$ °C			$\pm 1,0$ °C
Pressure	Less than 1 Mpa: ± 50 k Pa From 1 to 4 Mpa: ± 5 % Over 4 Mpa: ± 200 kPa				
Density	± 1 kg/m ³	± 2 kg/m ³		± 5 kg/m ³	

(c) Accuracy for calculating function

The maximum permissible error for the calculation of each characteristic quantity of the liquid, positive or negative, is equal to two fifths of the value fixed in (b) above. However the magnitude of the maximum permissible error shall not be less than one-half scale interval of the indicating device for converted indications.

5. MAXIMUM PERMISSIBLE EFFECT OF DISTURBANCES

- 5.1. The manufacturer shall specify the electromagnetic environment E1 or E2 in which the instrument is intended to be used in accordance with requirement 1.3.2 of Annex I.
- 5.2. The effect of an electromagnetic disturbance on a measuring system shall be one of the following:
- the change in the measurement result is no greater than the critical change value as defined in 5.3, or
 - the indication of the measurement result shows a momentary variation that cannot be interpreted, memorised or transmitted as a measuring result. Furthermore, in the case of an interruptible system this can also mean the impossibility to perform any measurement, or
 - the change in the measurement result is greater than the critical change value in which case the measuring system shall permit the retrieval of the measuring result just before the critical change value occurred and cut off the flow in the case of an interruptible system.
- 5.3. The critical change value is the greater of $MPE/5$ for a particular measured quantity or E_{min} .

6. DURABILITY

- 6.1. An instrument shall be designed so that it can respect twice the maximum permissible error without adjustment during a period of one year of normal service after its first putting into use.

7. SUITABILITY

- 7.1. For any measured quantity relating to the same measurement, the indications provided by various devices shall not deviate one from another by more than one scale interval where devices have the same scale interval. In the case where the devices have different scale intervals the deviation shall not be more than that of the greatest scale interval.

However, in the case of self-service systems the scale intervals of all devices indicating the result of measurement shall be the same and results shall not deviate one from another.

- 7.2. A measuring system shall normally incorporate only one transfer point. When more than one transfer point is present under no circumstances shall it be possible to divert measured liquid.
- 7.3. Any percentage of air or gas not easily detectable in the liquid shall not lead to a variation of error greater than:
- 0,5 % for liquids other than potable liquids and for liquids of a viscosity not exceeding 1 mPa.s, or
 - 1 % for potable liquids and for liquids of a viscosity exceeding 1 mPa.s.
 - However, the allowed variation shall never be smaller than 1 % of V_{min} . This value applies in the case of air or gas pockets.

7.4. Instruments for direct sales

- 7.4.1. A measuring system for direct sales shall be provided with means for resetting the display to zero.
- 7.4.2. The display of volume at metering conditions shall be permanent.

7.5. Fuel dispensers for motor vehicles

- 7.5.1. Displays on fuel dispensers for motor vehicles shall not be capable of being reset to zero during a measurement.
- 7.5.2. The start of a new measurement shall be inhibited until the display has been reset to zero.
- 7.5.3. Where a measuring system is fitted with a price display, the difference between the indicated price and the price calculated from the unit price and the indicated quantity shall not exceed the price corresponding to E_{min} . However this difference need not be less than the smallest monetary value.

8. POWER SUPPLY FAILURE

- 8.1. A non-interruptible measuring system shall be provided with an emergency power supply device that will safeguard all measuring functions during the failure of the main power supply device.

- 8.2. An interruptible measuring system shall either comply with the above requirement for non-interruptible systems or be equipped with means to save and display the data present in order to permit the conclusion of the transaction in progress and with means to stop the flow at the moment of the failure of the main power supply device.

The absolute value of the maximum permissible error for the indicated quantity is increased by 5 % of the minimum measured quantity.

9. ACCURACY CLASSES AND USES

Minimum accuracy class	Types of measuring system
0,3	— Measuring systems on pipeline
0,5	— All measuring systems if not differently stated elsewhere in this Table, in particular: <ul style="list-style-type: none"> — fuel dispensers for motor vehicles (other than LPG), — measuring systems on road tankers for liquids of low viscosity — measuring systems for unloading ship's tanks and rail and road tankers — measuring systems for milk — measuring systems for loading ships — measuring systems for refuelling aircraft
1,0	— Measuring systems (other than LPG dispensers) for liquefied gases under pressure measured at a temperature equal to or above - 10 °C — LPG dispensers for motor vehicles — Measuring systems normally in class 0,3 or 0,5 but used for liquids <ul style="list-style-type: none"> — whose temperature is less than - 10 °C or greater than 50 °C — whose dynamic viscosity is higher than 1 000 mPa.s — whose maximum volumetric flowrate is not higher than 20 L/h
1,5	Measuring systems for liquefied carbon dioxide Measuring systems (other than LPG dispensers) for liquefied gases under pressure measured at a temperature below - 10 °C (other than cryogenic liquids).
2,5	Measuring systems for cryogenic liquids (temperature below - 153 °C)

10. UNITS OF MEASUREMENT

Metered quantity shall be displayed in millilitres (ml) or cubic centimetres (cm³), litres (l or L), cubic metres (m³), grams (g), kilograms (kg) or tonnes (t).

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are:

For mechanical or electromechanical systems: B+F, B+E, B+D, H1, G.

For electronic systems or systems containing software: B+F, B+D, H1, G.

ANNEX MI-006

AUTOMATIC WEIGHING INSTRUMENTS

The relevant essential requirements of Annex I, the specific requirements of this Annex and the conformity assessment procedures listed in the different chapters of this Annex apply to automatic weighing instruments defined below intended to determine the mass of a body by using the action of gravity on that body.

DEFINITIONS**Automatic weighing instrument**

An instrument that determines the mass of a product without the intervention of an operator and follows a pre-determined programme of automatic processes characteristic of the instrument.

Automatic catchweigher

An automatic weighing instrument that determines the mass of pre-assembled discrete loads or single loads of loose material.

Automatic checkweigher

An automatic catchweigher that subdivides articles of different mass into two or more subgroups according to the value of the difference of their mass and a nominal set-point.

Weightgrader

An automatic catchweigher that subdivides articles of different mass into several subgroups each characterised by a given mass range.

Weigh labeller/price labeller

An automatic catchweigher that labels/prices and labels individual articles.

Automatic gravimetric filling instrument

An automatic weighing instrument that fills containers with a predetermined and virtually constant mass of product from bulk and which comprises essentially an automatic feeding device or devices associated with one or more weighing units and the appropriate control and discharge devices.

Discontinuous totalizer (totalizing hopper weigher)

An automatic weighing instrument that determines the mass of a bulk product by dividing it into discrete loads. The mass of each discrete load is determined in sequence and summed. Each discrete load is then delivered to bulk.

Continuous totalizer

An automatic weighing instrument that continuously determines the mass of a bulk product on a conveyor belt, without systematic subdivision of the product and without interrupting the movement of the conveyor belt.

Rail-weighbridge

An automatic weighing instrument having a load receptor inclusive of rails for conveying railway vehicles.

SPECIFIC REQUIREMENTS

CHAPTER I — REQUIREMENTS COMMON TO ONE OR MORE AUTOMATIC WEIGHING INSTRUMENTS

1.1. **Rated operating conditions**

The manufacturer shall specify the rated operating conditions for the instrument, in particular, values shall be specified for the following operating conditions:

- (i) measurement range of the instrument in terms of its maximum and minimum capacity,
- (ii) power supply; nominal AC supply voltage and/or limits of DC supply,

(iii) the climatic and mechanical environment class B, C or I in which the instrument or its sub-assemblies are intended to be used in accordance with Table 1 of Annex I, and observing the following conditions for temperature range:

- minimum range of 50 °C for classes C and I
- minimum range of 30 °C for class B

1.2. **Manufacturer's specification**

The manufacturer shall also specify:

- (i) rate of operation,
- (ii) where appropriate for the intended use of the instrument, the characteristics of the product to be weighed, such as:
 - temperature,
 - particle size,
 - bulk density,
 - viscosity
 - or any other defining characteristic.

2. **Electromagnetic environment**

In accordance with requirement 1.3.2 of Annex I the manufacturer shall specify in which electromagnetic environment Class E1 or Class E2 the instrument is intended to be used.

The permitted performance and the critical change value are given in the relevant Chapter for each type of instrument.

3. **Suitability**

- 3.1. Means shall be provided to limit the effects of tilt, loading and rate of operation such that maximum permissible errors are not exceeded in normal operation.
- 3.2. Adequate material handling facilities shall be provided to enable the instrument to respect the maximum permissible errors during normal operation.
- 3.3. If present, the operator control interface shall be clear and effective.
- 3.4. The integrity of the display shall be verifiable by the operator.
- 3.5. Adequate zero setting capability shall be provided to enable the instrument to respect the maximum permissible errors during normal operation.
- 3.6. Printout

A processed printing of results outside the measurement range shall be identified as such.

CHAPTER II — AUTOMATIC CATCHWEIGHERS

1. **Accuracy classes**

Instruments are divided into accuracy classes designated by:

X(x) or Y(y)

1.1. Class X(x)

Class X(x) applies to instruments used to check prepackages made up in accordance with the requirements of directives 75/106/EEC and 76/211/EEC as amended.

X is a regime relating accuracy to load weight and the class designation factor (x) is a multiplier for the limits of error specified for class X(1).

The manufacturer shall specify the class designation factor (x). (x) shall be 1×10^k , 2×10^k or 5×10^k , where k is an integer or zero.

1.2. Class Y(y)

Class Y(y) applies to all other automatic catchweighers. Class Y has two sub-classes Y(a) or Y(b).

2. Maximum permissible error

2.1. Class X(x) instruments

2.1.1. Mean error

Load (m) in verification scale intervals (e) (x) ≤ 1 (x) > 1		Maximum permissible mean error
0 < m ≤ 500	0 < m ≤ 50	± 0,5 e
500 < m ≤ 2 000	50 < m ≤ 200	± 1,0 e
2 000 < m ≤ 10 000	200 < m ≤ 1 000	± 1,5 e

2.1.2. Standard deviation

Load (m)	Maximum permissible standard deviation for class X(1)
m ≤ 50 g	0,48 %
50 < m ≤ 100	0,24 g
100 g < m ≤ 200 g	0,24 %
200 g < m ≤ 300 g	0,48 g
300 g < m ≤ 500 g	0,16 %
500 g < m ≤ 1 000 g	0,8 g
1 000 g < m ≤ 10 000 g	0,08 %
10 000 g < m ≤ 15 000 g	8 g
15 000 g < m	0,053 %

2.2. Class Y(y) instruments

Net load (m) in verification scale intervals (e) Class Y(a) Class Y(b)		Maximum permissible error
0 < m ≤ 500	0 < m ≤ 50	± 1,5 e
500 < m ≤ 2 000	50 < m ≤ 200	± 2,0 e
2 000 < m ≤ 10 00	200 < m ≤ 1 000	± 2,5 e

3. Measurement range

In specifying the measurement range for class Y(y) instruments the manufacturer shall take account that the minimum capacity shall not be less than:

- 20 e for class Y(a)
- 10 e for class Y(b)
- 5 e for postal scales of class Y(a) or Y(b)

4. Dynamic setting

When fitted, a dynamic setting facility that compensates for the dynamic effects of the load in motion:

- shall be inhibited to operate outside the specified load range, and
- shall be capable of being secured.

The dynamic setting facility shall operate over a load range specified by the manufacturer.

5. Performance under electromagnetic disturbances

The critical change value due to a disturbance is one scale interval.

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are:

For mechanical or electromechanical instruments: F1, E1, D1, B+F, B+E, B+D, H, G.

For electronic instruments or instruments containing software: B+F, B+D, H1, G.

CHAPTER III — AUTOMATIC GRAVIMETRIC FILLING INSTRUMENTS

1. Accuracy classes

- 1.1. An instrument type is designated a reference accuracy class, Ref(x), corresponding to the best possible accuracy for instruments of the type. After installation individual instruments are designated for one or more operational accuracy classes, X(x), having taken account of the specific products to be weighed. The class designation factor (x) shall be in the form 1×10^k , 2×10^k or 5×10^k , the index k being any integer or zero.

The manufacturer shall specify both the reference accuracy class Ref(x) and the operational accuracy class(es), X(x).

1.2. Reference accuracy class

The reference accuracy class, Ref(x), is applicable for static weighing for which the maximum permissible error shall be as given in 2.2 multiplied by the class designation factor (x).

1.3. Operational accuracy class

For the operational accuracy class X(x), X is a regime relating accuracy to load weight and (x) is a multiplier for the limits of error specified for class X(1) in 2.2.

2. Maximum permissible error

2.1. Maximum permissible static weighing error

For static loads under rated operating conditions, the maximum permissible error for reference accuracy class Ref(x), shall be 0,36 of the maximum permissible deviation of each fill from the average as specified in 2.2.

2.2. Deviation from average fill

Value of the mass of the fills — M(g)	Maximum permissible deviation of each fill from the average for class X(1)
$M \leq 50$	6,3 %
$50 < M \leq 100$	3,15 g
$100 < M \leq 200$	3,15 %
$200 < M \leq 300$	6,3 g
$300 < M \leq 500$	2,1 %
$500 < M \leq 1\ 000$	10,5 g
$1\ 000 < M \leq 10\ 000$	1,05 %
$10\ 000 < M \leq 15\ 000$	105 g
$15\ 000 < M$	0,7 %

Note: Maximum deviation of each fill from the average may be adjusted in the case of a positive error to account for the effect of material particle size.

2.3. Maximum permissible error relative to pre-set value (setting error)

For instruments where it is possible to pre-set a fill weight the maximum difference between the pre-set value and the average mass of the fills shall not exceed 0,36 of the maximum permissible deviation of each fill from the average, as specified in 2.2.

3. Performance under electromagnetic disturbance

The critical change value is equal to a change of static weight indication equal to the maximum permissible error as specified in 2.1 calculated for the rated minimum fill, or a change that would give equivalent effect on the fill in the case of instruments where the fill consists of multiple loads.

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are:

For mechanical or electromechanical instruments: B+F, B+E, B+D, H1, G.

For electronic instruments or instruments containing software: B+F, B+D, H1, G.

CHAPTER IV — DISCONTINUOUS TOTALIZERS

1. Maximum permissible error

Accuracy class	Maximum permissible error of totalized load
0,2	± 0,10 %
0,5	± 0,25 %
1	± 0,50 %
2	± 1,00 %

2.1. Totalization scale interval (d_t) shall be in the range:

$0,01 \% \text{ max} < d_t < 0,2 \% \text{ max}$.

2.2. Minimum totalized load (Σ_{min}) shall be greater than the load at which the maximum permissible error is equal to the totalization scale interval (d_t) and greater than the minimum load.

2.3. Zero setting

Instruments that do not tare weigh after each discharge shall have a zero setting device and automatic operation shall be inhibited if zero indication $> 0,5 d_t$.

2.4. Operator interface

Operator adjustments and reset function shall be inhibited during automatic operation.

2.5. Printout

On instruments equipped with a printing device, the reset total shall be inhibited until the total is printed. The printout of total shall occur if automatic operation is interrupted.

3. Performance under electromagnetic disturbances

The critical change value due to a disturbance is:

- (a) one scale interval of weight indication; or
- (b) one totalization scale interval for any stored total.

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are:

For mechanical or electromechanical instruments: B+F, B+E, B+D, H1, G.

For electronic instruments or instruments containing software: B+F, B+D, H1, G.

CHAPTER V — CONTINUOUS TOTALIZERS

1. Measurement range

In specifying the measurement range the manufacturer shall take account that:

- (i) The minimum instantaneous net load on the weighing unit shall not be less than 20 % of the maximum capacity.

- (ii) The minimum totalized load Σ_{\min} shall not be less than the largest of the following values:
- 2 % of the load totalized in one hour at maximum flowrate;
 - the load obtained at maximum flowrate in one revolution of the belt;
 - the load corresponding to the following appropriate number of totalization scale intervals,
 - 800 e for class 0.5
 - 400 e for class 1
 - 200 e for class 2.

2. **Maximum permissible error**

Accuracy class	Percentage of the mass of the totalized load
0,5	0,25
1	0,5
2	1,0

3. **Speed of the belt**

The speed of the belt shall be specified by the manufacturer. The speed shall not vary by more than 5 % of the nominal value. The product shall not have a different speed than the speed of the belt.

4. **It shall not be possible for the general totalization device to be reset to zero.**

5. **Performance under electromagnetic disturbances**

The critical change value due to a disturbance is 0,7 mpe.

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are:

For mechanical or electromechanical instruments: B+F, B+E, B+D, H1, G.

For electronic instruments or instruments containing software: B+F, B+D, H1, G.

CHAPTER VI — AUTOMATIC RAIL WEIGHBRIDGES

1. **Maximum permissible error**

Accuracy class	Percentage of mass of single wagon or total train, as appropriate
0,2	0,1
0,5	0,25
1	0,5
2	1,0

When weighing coupled wagons the errors of not more than 10 % of the weighing results taken from one or more passes of the train may exceed the appropriate maximum permissible error given in the above Table but shall not exceed twice that value.

2. **The scale interval shall not be greater than one tenth of the initial MPE applied to the minimum capacity.**

3. **Performance under electromagnetic disturbance**

The critical change value is one verification scale interval.

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are:

For mechanical or electromechanical instruments: B+F, B+E, B+D, H1, G.

For electronic instruments or instruments containing software: B+F, B+D, H1, G.

ANNEX MI-007

TAXIMETERS

The relevant requirements of Annex I, the specific requirements of this Annex and the conformity assessment procedures listed in this Annex apply to taximeters installed in a taxi.

DEFINITIONS

A taximeter is a measuring instrument designed for installation in a motor vehicle that calculates and displays the fare to be paid for a trip, based on the distance travelled and the duration of the trip.

SPECIFIC REQUIREMENTS**Design requirements**

1. A taximeter shall be designed to measure the following parameters:
 - (a) the distance travelled;
 - (b) the duration;
 - (c) the period of time during which the speed of the car was below a certain threshold value. This threshold value of the speed shall be adjustable and it shall be possible to secure the adjustment.
2. In addition to the devices necessary to carry out the measurements referred to in requirement 1, a taximeter shall comprise the following auxiliary devices:
 - a printer interface or built-in printer;
 - a real time clock;
 - a device for data exchange to a central device.

It shall be possible to disable the functioning of any of these auxiliary devices and to secure the disablement.

3. A taximeter shall be able to calculate the fare in both of the following manners:
 1. on the basis of parameters (a) and (b) of requirement 1;
 2. on the basis of parameters (a) and (c) of requirement 1.

It shall be possible to disable the functioning of any of these two modes of calculation and to secure the disablement.

4. It shall be possible to adjust a taximeter for the vehicle constant of the taxi in which it is to be installed and to secure the adjustment.

Rated operating conditions

5. The manufacturer shall specify the rated operating conditions for the instrument, in particular:
 - the climatic and mechanical environment class D, E or F in which the instrument is intended to be used in accordance with Table 1 of Annex I;
 - the limits of the DC power supply for which the instrument has been designed.

Maximum permissible errors

6. The maximum permissible errors are:
 - For the time elapsed: $\pm 0,1$ %;
 - For the distance travelled: $\pm 0,2$ %;
 - For the calculation of the fare: $\pm 0,1$ %.

Permissible effect of disturbances

- 7.1. Electromagnetic immunity.
 - 7.1.1. The electromagnetic class that applies is E2 in accordance with point 1.3.2. of Annex I.
 - 7.1.2. The maximum permissible errors laid down in requirement 6 shall also be respected in the presence of an electromagnetic disturbance.

Power supply failure

8. In case of a reduction of the DC voltage supply to a value below the lower operating limit as specified by the manufacturer, the taximeter shall either
 - save and display the value of the fare at the moment the power supply failure took place, and return to the position 'for hire', or
 - preserve its measuring functions and continue to meet the maximum permissible errors until it saves and displays the value of the fare and returns to the position 'for hire'.

Other requirements

- 9.1. A taximeter shall permanently display the fare in real-time.
- 9.2. If the fare includes a fixed sum, this shall be excluded from the fare displayed. However, in that case a taximeter may display temporarily the value of the fare inclusive of the fixed sum.
10. If the fare is calculated according to method 1 of requirement 3, a taximeter may have an additional display mode in which only distance travelled and duration of the trip are displayed in real time.
11. All values displayed for the passenger shall be clearly readable under daylight and night conditions.
12. If the fare to be paid can be effected by the choice of functionality from a pre-programmed set or by free data setting, it shall be possible to secure the instrument settings and data entered.
13. A taximeter shall be fitted with totalizers for all of the following values:
 - the values of the parameters listed in requirement 1;
 - the values of the fare.

The totalized values shall include the values saved according to requirement 8 under conditions of loss of power supply.

If disconnected from power, a taximeter shall retain the totalized values during at least six months.

14. It shall be impossible to change the tariff, tariff structure or mode of calculation of the fare with the taximeter in operation, other than automatic changes by the meter itself on the basis of
 - the parameters listed in requirement 1; or
 - the time of the day and day of the week if the taximeter is fitted with a real time clock.
15. It shall be possible to secure the connection of the taximeter to the taxi in which it is installed.
16. It shall be possible to verify the compliance of a taximeter installed in a taxi with the requirements on maximum permissible error.
17. A taximeter and its installation instructions specified by the manufacturer shall be such that, if installed according to the manufacturer's instructions, fraudulent alterations of the measurement signal representing the distance travelled are impossible.
18. A taximeter shall be designed so that it can respect the maximum permissible errors without adjustment during a period of 1 year of normal use.

19. For the auxiliary devices listed in requirement 2 whose functioning has not been disabled and secured as part of the conformity assessment, the following additional requirements apply:

for the printer interface or built-in printer:

- the functioning of the taximeter shall be inhibited when no printer is connected or when printing is impossible for other reasons;

for the real time clock:

- the possibility to adjust the time of the day shall be limited to 2 minutes per week. Adjustment to summer and winter time shall be automatic;

for the data exchange device:

- transfer to a central system of data that are subject to legal control by this Directive shall only be possible if the taximeter protects the data against accidental or deliberate interference during the transfer;
- transfer from a central system of data that are subject to legal control by this Directive is subject to the following requirements:
 - it shall be easily possible to check the correct reception of the data by the taximeter;
 - the taximeter shall transmit evidence of correct data reception to the central system.

20. The values of distance travelled and time elapsed, when displayed or printed in accordance with this Directive, shall use the following units:

distance travelled:

- in the United Kingdom and Ireland: until the date which will be fixed by these Member States according to Article (1)(b) of Directive 80/181/EEC, as last amended by Directive 89/617/EEC: kilometres or miles;
- in all other Member States: kilometres.

Time elapsed:

minutes.

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are: B+F, B+D, H1.

ANNEX MI-008

MATERIAL MEASURES

CHAPTER I — MATERIAL MEASURES OF LENGTH

The relevant essential requirements of Annex I, the specific requirements of this chapter and the conformity assessment procedures listed in this chapter apply to material measure of length defined below.

DEFINITIONS**Material measure of length**

An instrument whose scale marks determine the length of a measured object by direct comparison.

SPECIFIC REQUIREMENTS**Reference conditions**

- 1.1. For tapes of length equal to or greater than five metres, the maximum permissible errors are to be respected with a tractive force of twenty Newtons, unless otherwise specified by the manufacturer and marked accordingly.
- 1.2. The reference temperature is 20 °C unless otherwise specified by the manufacturer and marked accordingly.

Maximum permissible errors

2. The maximum permissible error, positive or negative, between two non-consecutive scale marks is $L = a + bL$, where:
 - L is the value of the length rounded up to the next whole metre; and
 - a and b are given in Table 1 below.

When a terminal interval is bounded by a surface, the maximum permissible error for any distance beginning at this point is increased by the value c given in Table 1 below.

Table 1

Accuracy class	a (mm)	b	c (mm)
I	0,1	$1,10^{-4}$	0,1
II	0,3	$2,10^{-4}$	0,2
III	0,6	$4,10^{-4}$	0,4

The maximum permissible error for the length of two consecutive scale marks, and the maximum permissible difference between two consecutive intervals are given in Table 2 below.

Table 2

Length i of the interval	Maximum permissible error or difference in millimetres according to accuracy class		
	I	II	III
$i \leq 1$ mm	0,1	0,2	0,3
1 mm $< i \leq 1$ cm	0,2	0,4	0,6
1 cm $< i \leq 1$ dm	0,3	0,5	0,9

Materials

- 3.1. Materials used for material measures of length shall have such a temperature stability that the maximum permissible error can be respected in a range of ± 8 K.
- 3.2. The materials used for material measures of length shall have such humidity stability that the maximum permissible error can be respected up to 85 % relative humidity.

Markings

4. The scale marks shall bear the value of length.

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are: A1, F1, E1, D1, B+E, B+D, H, G.

CHAPTER II - CAPACITY SERVING MEASURES

The relevant essential requirements of Annex I, the specific requirements of this chapter and the conformity assessment procedures listed in this chapter apply to capacity serving measures defined below.

DEFINITIONS**Capacity serving measure**

A capacity measure intended to determine a specified volume of a liquid which is sold for immediate consumption.

Line measure

A capacity serving measure having a mark to indicate nominal capacity.

Brim measure

A capacity serving measure for which the internal volume is equal to the nominal capacity.

Transfer measure

A capacity serving measure from which it is intended that the liquid is decanted prior to consumption.

Capacity

The capacity is the internal volume for brim measures or internal volume to a filling mark for line measures.

SPECIFIC REQUIREMENTS**Reference conditions**

- 1.1. Temperature: the reference temperature for measurement of capacity is 20 °C.
- 1.2. Position for correct indication: free standing on a level surface.
2. Maximum permissible errors

Table 1

Transfer measures	± 3 %
Line measures < 200 ml	± 5 %
Line measures ≥ 200 ml	± 3 %
Brim measures < 200 ml	0 to 10 %
Brim measures ≥ 200 ml	0 to 6 %

Materials

3. Capacity serving measures shall be made of material which is sufficiently rigid and dimensionally stable to maintain capacity within the maximum permissible error.

Shape

- 4.1. Transfer measures shall be designed so that a change of contents equal to the maximum permissible error causes a change in level of 2 mm at the brim or filling mark.
- 4.2. Transfer measures shall be designed so that the complete discharge of the liquid being measured will not be impeded.

Marking

- 5.1. The nominal capacity declared shall be clearly and indelibly marked on the measure.
- 5.2. Capacity serving measures may also be marked with up to three clearly distinguishable capacities, none of which shall lead to confusion one to the other. A further half-capacity filling mark associated with one of the marked capacities is allowed provided it does not cause confusion.
- 5.3. All filling marks shall be sufficiently clear and durable to ensure that maximum permissible errors are not exceeded in use.

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are: A1, F1, E1, D1, B+E, B+D, H.

ANNEX MI-009

DIMENSIONAL MEASURING INSTRUMENTS

The applicable essential requirements of Annex I, the specific requirements of this Annex and the conformity assessment procedures listed in this Annex apply to dimensional measuring instruments of the types defined.

DEFINITIONS**Length measuring instrument**

A length measuring instrument serves for the automatic determination of the length of materials in the form of bands and cables during feed motion of the product to be measured.

Area measuring instruments

An area measuring instrument serves for the automatic determination of the area of irregular shaped objects, e.g. for leather.

Multi-dimensional measuring instruments

A multi-dimensional measuring instrument serves for the automatic determination of the edge length (length, height, width) of the smallest enclosing rectangular parallelepiped of a product.

CHAPTER I — REQUIREMENTS COMMON TO ALL DIMENSIONAL MEASURING INSTRUMENTS

Mechanical and climatic environment

1. The manufacturer shall specify in which climatic and mechanical environment class the instrument is intended to be used in accordance with Table 1 of Annex I.

Electromagnetic immunity

- 2.1. The manufacturer shall specify the electromagnetic environment E1 or E2 in which the instrument is intended to be used in accordance with requirement 1.3.2 of Annex I.
- 2.2. The effect of an electromagnetic disturbance on a dimensional measuring instrument shall be such that:
 - the change in measurement result is no greater than the critical change value as defined in 2.3; or
 - it is impossible to perform any measurement; or
 - there are momentary variations in the measurement result that cannot be interpreted, memorised or transmitted as a measuring result; or
 - there are variations in the measurement result severe enough to be noticed by all those interested in the measurement result.
- 2.3. The critical change value is equal to one scale interval.

Durability

3. An instrument must be designed so that it can respect twice the maximum permissible error without adjustment, during a period of one year in normal use.

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are:

For mechanical or electromechanical instruments: F1, E1, D1, B+E, B+D, H, G.

For electronic instruments or instruments containing software: B+F, B+D, H1, G.

CHAPTER II — LENGTH MEASURING INSTRUMENTS

Characteristics of the product to be measured

1. Textiles are characterised by the characteristic factor K. This factor takes the stretchability and force per unit area of the product measured into account and is defined by the following formula:

$$K = \varepsilon(G_A + 2.2 \text{ N/m}^2), \text{ where}$$

ε is the relative elongation of a cloth specimen 1 m wide at a tensile force of 10 N,

G_A is the weight force per unit area of a cloth specimen in N/m^2 .

Operating conditions

- 2.1. Range

Dimensions and K-factor, where applicable, within the range specified by the manufacturer for the instrument. The ranges of K-factor are as given in Table 1:

Table 1

Group	Range of K	Product
I	$0 < K < 2,10^{-2} \text{ N/m}^2$	low stretchability
II	$2,10^{-2} \text{ N/m}^2 < K < 8,10^{-2} \text{ N/m}^2$	medium stretchability
III	$8,10^{-2} \text{ N/m}^2 < K < 24,10^{-2} \text{ N/m}^2$	high stretchability
IV	$24,10^{-2} \text{ N/m}^2 < K$	very high stretchability

- 2.2. Where the measured object is not transported by the measuring instrument, its speed must be within the range specified by the manufacturer for the instrument.
- 2.3. If the measurement result depends on the thickness, the surface condition and the kind of delivery (e.g. from a big roll or from a pile), corresponding limitations are specified by the manufacturer.

Maximum permissible errors

- 3.1. Instrument

Table 2

Accuracy class	Maximum permissible error
I	0,125 %
II	0,25 %
III	0,5 %

However, the maximum permissible absolute error cannot be less than the values given below:

Class I: 0,005 Lm

Class II: 0,01 Lm

Class III: 0,02 Lm

Where Lm is the minimum measurable length, that is to say the smallest length specified by the manufacturer for which the instrument is intended to be used.

Other requirements

- 4.1. The instruments must ensure that the product is measured unstretched according to the intended stretchability for which the instrument is designed.

CHAPTER III — AREA MEASURING INSTRUMENTS

Operating conditions

1.1. Range

Dimensions within the range specified by the manufacturer for the instrument.

1.2. Condition of the product

The manufacturer shall specify the limitations of the instruments due to the speed, and thickness of the surface conditions if relevant, of the product.

Maximum permissible errors

2.1. Instrument

The initial MPE is $\pm 1,0\%$, but not less than 1 dm^2 .

Other requirements

3. Presentation of the product

In the case of pulling back or stopping the product it should not be possible to have an error of measurement or the display must be blanked.

4. Scale interval

The instruments must have a scale interval of $1,0 \text{ dm}^2$. In addition, it must be possible to have a scale interval of $0,1 \text{ dm}^2$ for testing purposes.

CHAPTER IV — MULTIDIMENSIONAL MEASURING INSTRUMENTS

Operating conditions

1.1. The range shall be one of the following:

- 0,5 cm to 5,0 cm;
- 1,0 cm to 80 cm;
- 5 cm to 2 m;
- 50 cm to 20 m.

1.2. Speed of the product

The speed must be within the range specified by the manufacturer for the instrument.

Maximum permissible error

2.1. Instrument:

Table 1

Range	Maximum permissible error
0,5 cm-5,0 cm	0,1 cm
1,0 cm-80 cm	0,2 cm
5 cm-200 cm	1,0 cm
50 cm-2 000 cm	10 cm

ANNEX MI-010

EVIDENTIAL BREATH ANALYSERS

The relevant requirements of Annex I, the specific requirements of this Annex and the conformity assessment procedures listed in this Annex apply to evidential breath analysers defined below.

DEFINITIONS

An evidential breath analyser is a measuring instrument that serves to determine the concentration of ethanol in exhaled alveolar air and that is intended for use for evidential purposes.

SPECIFIC REQUIREMENTS**Rated operating conditions**

1. The rated values of the operating conditions shall be specified by the manufacturer as follows:
 - 1.1. For the measurand:
 - The measuring range, subject to the following constraint:
 - The measuring range shall extend from 0 mg/l to at least 1,5 mg/l.
 - 1.2. For the condition of the exhaled air:
 - Volume range: 1.5-4.5 l;
 - Duration of exhalation: 5-15 s.
 - 1.3. For the climatic and mechanical influence quantities:
 - For a non-portable instrument, the environment class that applies is class E;
 - For a portable instrument, the environment class that applies is class I.
 - 1.4. For the electrical supply influence quantities:
 - In case of AC voltage supply: The voltage range, subject to the following constraints:
 - The minimum value of the voltage range shall be \leq nominal value - 8 %;
 - The maximum value of the voltage range shall be \geq nominal value + 24 %.
 - In case of DC voltage supply:
 - The limits of the DC voltage supply.
 - 1.5. For the ambient pressure:
 - The minimum and maximum values of the ambient pressure, subject to the following restrictions:
 - Min \leq 800 hPa
 - Max \geq 1 040 hPa

Maximum permissible error

2. The maximum error values permitted under rated operating conditions according to requirement 3.1 of Annex I are as shown in Table 1. Percentage values are percent of the true value.

Table 1

True value (mg/l)	Maximum permitted error
< 0,4	0,02 mg/l
≥ 0,4 ≤ 2	± 5 %
> 2	± 20 %

3. The verification scale interval = 0,001 mg/l.

PERMISSIBLE EFFECT OF DISTURBANCES

Electromagnetic immunity

4. The manufacturer shall specify the electromagnetic environment E1 or E2 in which the measuring instrument is intended to be used in accordance with requirement 1.3.2 of Annex I.
5. The effect of an electromagnetic disturbance shall be such that:
- the change in measurement result is no greater than the maximum permissible error of the measurement result, or
 - the measurement result presented cannot be interpreted as a valid result in that:
 - the carrying out of any measurement is impossible, or
 - there are momentary variations in the measurement result that cannot be interpreted, memorised or transmitted as a measurement result, or
 - there are variations in the measurement result severe enough to be noticed by all those interested in the measurement result.

Durability

6. An evidential breath analyser shall be designed so that it can respect 1.6 times the maximum permissible error without adjustment during a period of 2 years after its first putting into use.

Other requirements

7. An evidential breath analyser shall indicate the measurement result in mg/l.
8. For any concentration up to 0,4 mg/l, the standard deviation of the results of 10 measurements shall be less than 0,007 mg/l.
For any concentration equal to or greater than 0,4 mg/l and less than or equal to 2 mg/l, the standard deviation of the results of 10 measurements shall be less than 1,75 %.
For any concentration greater than 2 mg/l, the standard deviation of the results of 10 measurements shall be less than 6 %.
9. An evidential breath analyser shall only carry out a measurement if the sample taken is recognised as being representative of the alveolar air. It shall in particular inhibit a measurement if the exhalation was discontinuous, or if the exhaled air contained breath from the upper respiratory tracts.
10. Before each measurement operation, the evidential breath analyser shall verify automatically that it is capable of carrying out a correct measurement, and shall in particular carry out an automatic adjustment. In case this automatic verification shows that not all conditions for correct operation are fulfilled, any measurement shall be automatically inhibited.
11. It shall be possible for the user to pre-set a numerical value in the evidential breath analyser. After each measurement with a result greater than this pre-set value, the analyser shall automatically, and before presenting the measurement result, repeat the verification referred to in requirement 10. In case this second verification shows that not all conditions for correct operation are fulfilled, no measurement result shall be presented.

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are: B+F, H1, G.

ANNEX MI-011

EXHAUST GAS ANALYSERS

The relevant requirements of Annex I, the specific requirements of this Annex and the conformity assessment procedures listed in this Annex apply to exhaust gas analysers defined below intended for inspection and professional maintenance of motor vehicles in use.

DEFINITIONS

An exhaust gas analyser is a measuring instrument that serves to determine all of the volume fractions of the following components of the exhaust gas of a motor vehicle engine with spark ignition: carbon monoxide, carbon dioxide, hydrocarbons and oxygen.

An exhaust gas analyser may determine in addition the value of the parameter λ .

SPECIFIC REQUIREMENTS**Instrument classes**

1. Two instrument classes I and II are being defined for exhaust gas analysers, the measurement ranges for these classes being as shown in Table 1.

Table 1

Classes and measurement ranges

Parameter	Class I		Class II	
	Min	Max	Min	Max
CO fraction (% v/v)	0	≥ 5 < 7	0	≥ 7
CO ₂ fraction (% v/v)	0	≥ 16	0	≥ 16
Hydrocarbon fraction (% v/v)	0	$\geq 0,2$	0	$\geq 0,2$
O ₂ fraction (% v/v)	0	≥ 21	0	≥ 21
λ	$\leq 0,8$	$\geq 1,2$	$\leq 0,8$	$\geq 1,2$

Rated operating conditions

2. The rated values of the operating conditions shall be specified by the manufacturer as follows:
 - 2.1. For the climatic and mechanical influence quantities:
 - The environment class that applies is class B, in accordance with Table 1 of Annex I.
 - 2.2. For the electrical power influence quantities:
 - The voltage and frequency range for the AC voltage supply;
 - The limits of the DC voltage supply.
 - 2.3. For the ambient pressure:
 - The minimum and maximum values of the ambient pressure, subject to the following restrictions:

	P _{min}	P _{max}
Class I	860 hPa	1 060 hPa
Class II	800 hPa	1 040 hPa

- 2.4. For the concentration of residue hydrocarbon present before a measurement:

The maximum value of the concentration, subject to the following constraint: For a class I instrument, this value shall be no greater than 20 ppm v/v .

Maximum permissible errors

3. For each of the fractions measured, the maximum error value permitted under rated operating conditions according to requirement 1.1 of Annex I is the smaller of the two values shown in Table 2. Absolute values are expressed in %_v or ppm _v, percentage values are percent of the true value.

Table 2

Maximum permissible errors

Parameter	Class I	Class II
CO fraction	$\pm 0,06 \%_{\text{v}}$ $\pm 5 \%$	$\pm 0,2 \%_{\text{v}}$ $\pm 10 \%$
CO ₂ fraction	$\pm 0,5 \%_{\text{v}}$ $\pm 5 \%$	$\pm 1 \%_{\text{v}}$ $\pm 10 \%$
Hydrocarbon fraction	$\pm 12 \text{ ppm }_{\text{v}}$ $\pm 5 \%$	$\pm 30 \text{ ppm }_{\text{v}}$ $\pm 10 \%$
O ₂ fraction	$\pm 0,1 \%_{\text{v}}$ $\pm 5 \%$	$\pm 0,2 \%_{\text{v}}$ $\pm 10 \%$
λ	$\pm 0,3 \%$	$\pm 0,3 \%$

Permissible effect of disturbances

4. Electromagnetic immunity

The manufacturer shall specify the electromagnetic environment E1 or E2 in which the instrument is intended to be used in accordance with requirement 1.3.2 of Annex I.

The effect of an electromagnetic disturbance shall be such that:

- either the change in the measurement result is no greater than the critical change value laid down in point 4.1.3,
- or the presentation of the measurement result is such that it cannot be taken for a valid result.

For each of the volume fractions measured by the instrument, the critical change value is equal to the maximum permissible error for the parameter concerned.

Other requirements

5. The maximum permitted scale intervals for each of the two instrument classes are as shown in Table 3:

Table 3

Maximum permitted scale intervals

Parameter	Class I	Class II
CO fraction	0,01 % _v	0,05 % _v
CO ₂ fraction	0,1 % _v	0,1 % _v
Hydrocarbon fraction	1 ppm _v	5 ppm _v
O ₂ fraction	0,02 % _v if O ₂ ≤ 4 % _v 0,10 % _v if O ₂ > 4 % _v	0,1 % _v
λ	0,01	0,01

6. The standard deviation of 20 measurements shall not exceed mpe/3.
7. The indications of the measurement results shall have reached 95 % of the final values in no more than 15 s.

8. The components in the exhaust gas other than the component whose value is subject to measurement shall not affect the measurement result by more than 0.5 mpe, when those components are present in the following volume fractions:

$$\text{CO} \leq 6 \text{ \%}^{\text{v}}/\text{v}$$

$$\text{CO}_2 \leq 16 \text{ \%}^{\text{v}}/\text{v}$$

$$\text{O}_2 \leq 10 \text{ \%}^{\text{v}}/\text{v}$$

$$\text{H}_2 \leq 5 \text{ \%}^{\text{v}}/\text{v}$$

$$\text{NO} \leq 0,3 \text{ \%}^{\text{v}}/\text{v}$$

$$\text{HC} \leq 2\,000 \text{ ppm }^{\text{v}}/\text{v}$$

Water vapour: any value.

9. An exhaust gas analyser that is equipped with an automatic or semi-automatic adjustment facility shall be unable to make a measurement as long as the adjustments have not been made.
10. An exhaust gas analyser with a hydrocarbon channel shall detect hydrocarbon residues in the gas handling system. It shall be impossible to carry out a measurement if the concentration of the residue hydrocarbon present before a measurement exceeds the rated value as specified by the manufacturer according to requirement 2.6 of this Annex.

CONFORMITY ASSESSMENT

The conformity assessment procedures referred to in Article 7 are: B+F, B+D, H1.

Proposal for a Council Regulation laying down control measures applicable to fishing for certain stocks of highly migratory fish

(2001/C 62 E/02)

(Text with EEA relevance)

COM(2000) 619 final — 2000/0253(CNS)

(Submitted by the Commission on 6 October 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 Community has since 14 November 1997 been a contracting party to the International Convention for the Conservation of Atlantic Tunas⁽¹⁾, termed 'ICCAT Convention' below.
- (2) The ICCAT Convention provides a framework for regional cooperation on the conservation and management of resources of tuna and tuna-like fish in the Atlantic Ocean and adjacent seas through an International Commission for the Conservation of Atlantic Tunas, termed 'ICCAT' below, and the adoption of recommendations on conservation and management in the Convention area that become obligatory for contracting parties.
- (3) ICCAT has adopted a number of recommendations creating control and surveillance obligations, notably on the establishment and transmission of statistics, inspection in port, vessel surveillance by satellite, vessel observations and transshipments, and checks on non-contracting parties' and on stateless vessels. These recommendations have become obligatory for the Community and should therefore be implemented.
- (4) Certain obligations have been transposed into Council Regulation (EC) No 1351/1999 of 21 June 1999 laying down certain control measures to ensure compliance with the measures adopted by ICCAT⁽²⁾ and into Article 22(1) of Council Regulation (EC) No 2742/1999 of 17 December 1999 fixing for 2000 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and, for

Community vessels, in waters where limitations in catch are required and amending Regulation (EC) No 66/98⁽³⁾. For clarity these measures should be incorporated in a single Regulation.

- (5) For scientific research purposes masters of Community fishing vessels should be required to comply with the instructions of the Operational manual for statistics and sampling of tuna and tuna-like fish in the Atlantic Ocean published by ICCAT.
- (6) The Community has approved the Agreement for the establishment of the Indian Ocean Tuna Commission⁽⁴⁾, termed 'IOTC' below. The Agreement provides a useful framework for strengthening international cooperation for the purpose of conserving and rationally utilising Indian Ocean tuna and related species, through creation of the IOTC and the adoption of recommendations on conservation and management in its area of competence that become binding on contracting parties.
- (7) The IOTC has adopted a recommendation on the recording and exchange of information on tropical tuna. This is binding on the Community, which should therefore implement it.
- (8) The Community has fishing interests in the Eastern Pacific and has initiated the procedure for accession to the Inter-American Tropical Tuna Commission, termed 'IATTC' below. Pending accession and in line with its cooperation requirement arising under the United Nations Convention on the Law of the Sea it has decided to apply the measures adopted by the IATTC, and should therefore apply those adopted on control and surveillance.
- (9) The Community has signed the Agreement on the International Dolphin Conservation Programme⁽⁵⁾, has decided by Decision 1999/386/EC⁽⁶⁾ to apply it provisionally pending its approval, and should therefore apply its provisions.

⁽¹⁾ OJ L 162, 18.6.1986, p. 34.

⁽²⁾ OJ L 162, 26.6.1999, p. 6.

⁽³⁾ OJ L 341, 31.12.1999, p. 1.

⁽⁴⁾ OJ L 236, 5.10.1995, p. 24.

⁽⁵⁾ OJ L 132, 27.5.1999, p. 1.

⁽⁶⁾ OJ L 147, 12.6.1999, p. 23.

(10) Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽¹⁾ applies to all fishing activities and all associated activities carried out on the territory and in the maritime waters subject to the sovereignty or jurisdiction of Member States, including those of Community fishing vessels operating in the waters of third countries or on the high seas, without prejudice to fishery agreements concluded between the Community and third countries or international conventions to which the Community is a party.

(11) Since the measures necessary for implementation of this Regulation are management measures within the meaning of Article 2 of Decision 1999/468/EC of 28 June 1999 laying down the procedures for exercise of implementing powers conferred on the Commission ⁽²⁾, they should be adopted using the management procedure specified in Article 4 of that Decision,

HAS ADOPTED THIS REGULATION:

Article 1

Purpose

This Regulation lays down control and inspection measures relating to fishing for stocks of the highly migratory fish species listed in Annex I to this Regulation and shall apply to vessels flying the flag of Member States and registered in the Community, termed 'Community fishing vessels' below, operating in one of the zones specified in Article 2.

Article 2

Zones

For the purposes of this Regulation the following marine zones are specified:

(a) Zone 1:

All waters of the Atlantic Ocean and adjacent seas included in the ICCAT Convention area specified in Article I of the Convention.

(b) Zone 2:

All Indian Ocean waters included in the area of competence specified in Article II of the Agreement for the establishment of the IOTC.

(c) Zone 3:

All Eastern Pacific Ocean waters included in the area specified in Article III of the Agreement on the International Dolphin Conservation Programme.

Article 3

Definitions

For the purposes of this Regulation the following definitions shall apply:

(a) boarding: the boarding of a fishing vessel within an organisation's area of competence by one or more authorised inspectors in order to make an inspection;

(b) transshipment: any transfer from one vessel to another of any quantity of highly migratory fish or products from such fish;

(c) landing: any use of the unloading equipment of a port or any other place to land any quantity of highly migratory fish or products from such fish held on board;

(d) infringement: any act committed or omitted by a fishing vessel that is recorded in an inspection or observation report and gives serious reason for suspecting a breach of the provisions of this Regulation or any other Regulation transposing a recommendation adopted by a regional organisation for one of the zones indicated in Article 2;

(e) vessel of a non-contracting party: vessel identified and declared as engaged in fishing activities in one of the zones specified in Article 2 that is flying the flag of a country that is not a contracting party to the relevant regional organisation;

(f) stateless vessel: vessel for which all indications are that it has no nationality.

CHAPTER I

CONTROL AND INSPECTION MEASURES APPLICABLE IN ZONE 1

Section 1

Control measures

Article 4

Catch sampling

1. Sampling of catches shall be carried out by the masters of Community fishing vessels, at sea and on land, or by default by persons authorised by ICCAT.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 24(2).

⁽¹⁾ OJ L 261, 20.10.1993, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

*Article 5***Catch notification**

1. Member States shall transmit to the ICCAT Executive Secretariat, with electronic access for the Commission, the biological data compiled and catch and fishing effort data, collecting data on composition and live weight for those species landed that are indicated in Annexes II and III on the date of their transshipment or landing and for the place where they were caught. Data transmission shall be according to the requirements of the Operational manual for statistics and sampling of tuna and tuna-like fish in the Atlantic Ocean (3rd edition, ICCAT, 1990) i.e.:

- 15 September: rough estimates of catches of main species in first six months
- 1 November: same estimates for second six months
- 1 March of following year: same estimates for entire year
- 30 April of following year: more precise figures that can be corrected later.

2. Member States shall transmit annually before 15 August to the ICCAT Executive Secretariat, with electronic access for the Commission

- (a) catch and fishing effort data for the previous year, giving a detailed spatio-temporal breakdown
- (b) any data they have on sport fishing catches of tuna and tuna-like fish.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 24(2).

*Article 6***Information on shark catches**

Masters of Community vessels shall notify any catches of and trade in sharks to their national authority, which shall transmit it to the ICCAT Executive Secretariat with electronic access for the Commission.

*Article 7***Undeclared catches**

For imports of frozen tuna and tuna-like fish, at the Commission's request Member States shall collect and examine as much import data as possible and all related

information such as vessel names, their registration and owner, species fished and weight, fishing zone and place of export.

*Article 8***Observation of vessels**

1. For the purposes of this Article 'observation' means any observation, by a Member State's vessel, aircraft or competent authority responsible for inspection at sea, of:

- a stateless vessel likely to be fishing for species listed in Annex I
- or flying the flag of another contracting party and likely to be fishing in breach of ICCAT conservation measures
- or flying the flag of a non-contracting party, entity or fishing entity and likely to be fishing in breach of ICCAT conservation measures.

2. The observation shall be transcribed onto a standard observation form and shall if possible give all the information for which that form provides. It may be accompanied by photographs of the vessel.

3. Observation forms shall be sent without delay to the competent authority of the observer's Member State, which shall immediately transmit them to the Commission, which shall inform the flag country of the vessel observed. The Commission shall immediately transmit observation forms to the ICCAT Executive Secretariat.

4. A Member State receiving observations on the activity of a vessel flying its flag from the competent authority of a contracting party shall immediately notify these and all relevant information to the Commission, which shall notify this information in due time to the Executive Secretariat for examination by the Compliance Committee.

5. Masters of Community vessels shall transmit to their authority any information on vessels assumed to be fishing for bigeye tuna in the Convention area that are not on the list drawn up by the ICCAT Executive Secretariat. Member States shall notify these observations as soon as possible to the Commission, which shall inform the ICCAT Executive Secretariat.

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 24(2).

Article 9

Annual report

1. Before 15 October each year Member States shall send the Commission a national report, using the layout adopted by ICCAT and including (a) information on implementation of the satellite surveillance system and (b) an 'ICCAT declaration table' for each fishery accompanied by comments *inter alia* on breaches of the tolerance margins set by ICCAT for the minimum sizes of certain species and the action taken or to be taken. Member States shall also say how sport fishing for tuna and tuna-like fish is regulated and give details of any transshipment operations involving their vessels during the previous year.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 24(2).

Section 2

Port Inspection Procedures

Article 10

General

1. Member States shall assign to inspection duties at their ports inspectors responsible for the surveillance and inspection of transshipment and landing of the species listed in Annex I.

2. Member States shall ensure that inspection is non-discriminatory and in line with ICCAT port inspection arrangements.

3. Vessels entering ports solely for reasons of *force majeure* shall be exempt from inspection.

Article 11

Inspectors

1. Member States shall issue a special identity card to each ICCAT inspector which he must carry and present before making an inspection. The particulars of the card shall be determined in accordance with the procedure referred to in Article 24(2). Member States shall notify a list of their inspectors to the Commission for transmission to the ICCAT Executive Secretariat.

2. Member States shall ensure that ICCAT inspectors discharge their tasks in conformity with the rules laid down in the ICCAT port inspection arrangements. Inspectors shall remain under the operational control of their competent authority and be responsible to it for their acts.

Article 12

Inspection procedures

1. Member States shall ensure that their ICCAT inspectors:

- in making their inspections cause minimum disturbance to the vessel's activities and cause no deterioration in fish quality;
- draw up an inspection report in line with rules laid down in accordance with the procedure referred to in Article 24(2) and transmit it to their authority.

2. Inspectors shall be authorised to examine all zones, decks and chambers of the vessel, catches (processed or not), gear, equipment and any documentation thought to be needed to check compliance with the conservation measures adopted by ICCAT, including the log book and the loading papers in the case of mother ships and carriers.

3. Inspectors shall sign their report in the presence of the master, who shall have the right to add or cause to be added any information that he considers relevant and sign it. The inspector shall indicate in the log book that an inspection has been made.

Article 13

Master's obligations during inspection

Masters of Community vessels shall

- (a) raise no objection to inspections in national or foreign ports by authorised inspectors, shall not try to intimidate them or incommode them in the course of their work and shall ensure their safety;
- (b) cooperate in inspection of the vessel performed in accordance with the procedures laid down in this Regulation and lend their assistance thereto;
- (c) afford inspectors the means of examining the zones, decks and chambers of the vessel, catches (processed or not), gear, equipment and all documents, including fishing logs and loading papers.

Article 14

Procedure in event of infringement

1. If an ICCAT inspector has serious reason to believe that a fishing vessel has engaged in an activity breaching the conservation measures adopted by ICCAT he shall:

- (a) note the infringement in the inspection report;
- (b) take all necessary action to ensure safekeeping of the evidence for it;

(c) immediately send the inspection report to his authority.

2. The inspecting Member State shall immediately send the original inspection report to the Commission, which shall immediately transmit it, with a copy to the ICCAT Executive Secretariat, to the competent authority of the flag country of the inspected vessel.

Article 15

Follow-up of infringements

1. If a Member State is notified by an ICCAT contracting party or another Member State of an infringement by a vessel flying its flag, it shall take speedy action in line with its national legislation to obtain and examine the evidence, carry out any necessary investigation and if possible inspect the vessel.

2. Each Member State shall name the authority mandated to receive evidence of infringements and notify its name, address and other contact particulars to the Commission.

3. The flag Member State shall notify the Commission, which shall in turn notify the ICCAT Executive Secretariat, of the penalties imposed and measures taken with regard to the vessel concerned.

Article 16

Treatment of inspection reports

1. Each Member State shall attach the same value to reports made by ICCAT inspectors of other Member States and other contracting parties as to those made by its own inspectors.

2. Each Member State shall cooperate with the contracting parties concerned by facilitating, in line with its national legislation, legal or other proceedings arising from a report submitted by an ICCAT inspector under the ICCAT port inspection arrangements.

Section 3

Stateless and non-contracting parties' vessels

Article 17

Transshipment

1. Community fishing vessels may not receive transshipments at sea of fish of the species listed in Annex I from stateless vessels or those flying the flag of a non-contracting party that does not have the status of a cooperating party, entity or fishing entity.

2. The list of cooperating parties, entities and fishing entities adopted by ICCAT is given in Annex IV. The Commission shall amend that Annex in line with ICCAT decisions.

3. Before 15 September each year Member States shall send the Commission particulars of transshipments made during the previous year between vessels flying their flag and stateless vessels or vessels flying the flag of a non-contracting party. The Commission shall forward this information to the ICCAT Executive Secretariat.

Article 18

Control measures for fishing activities

1. The competent authority of a Member State that has boarded and/or inspected a stateless vessel shall immediately inform the Commission of the inspection findings and of any action it has taken under international law. The Commission shall send this information as soon as possible to the ICCAT Executive Secretariat.

2. Member States shall ensure that every stateless or non-contracting party vessel that enters a designated port within the meaning of Article 28e(2) of Regulation (EEC) No 2847/93 is inspected by their competent authority. Until inspection is completed the vessel's catches may not be landed or transhipped.

3. If inspection reveals that the vessel has on board resources covered by an ICCAT recommendation transposed into Community law, the Member State shall prohibit their landing or transshipment.

4. The prohibition referred to in paragraph 3 shall not be issued if the master of the inspected vessel or his representative demonstrates to the competent authority's satisfaction that:

- (a) the catches on board were taken outside the zone, or
- (b) the catches on board were taken without infringing the Community's conservation measures.

Article 19

Member States' nationals

Each Member State shall try, as its national legislation permits, to deter its nationals from participating in activities of non-contracting parties that conflict with implementation of the ICCAT conservation and management measures.

CHAPTER II

**CONTROL AND SURVEILLANCE MEASURES APPLICABLE IN
ZONE 2***Article 20***General**

Each Member State shall take the action necessary in order that vessels flying its flag respect the measures applicable in the zone.

*Article 21***Observations**

1. Masters of Community vessels authorised to fish in the zone shall transmit to their national authority their observations of non-contracting parties' vessels presumed or known to be fishing for bigeye, yellowfin or skipjack tuna in the zone.
2. Member States shall send this information as soon as possible to the Commission, which shall forward it to the IOCT.

CHAPTER III

**CONTROL AND SURVEILLANCE MEASURES APPLICABLE IN
ZONE 3***Article 22***General**

Each Member State shall take the action necessary in order that vessels flying its flag respect the IATTC and International Dolphin Conservation Programme Agreement measures applicable.

*Article 23***Catch registration, sampling and notification**

1. Member States shall set up registration and sampling systems affording monthly estimates of the total quantities of bigeye tuna fished by purse seine, and yellowfin tuna, that were

landed or transhipped by vessels flying their flag and registered in the Community, and also of the total quantities landed at their ports by vessels flying the flag of another Member State and registered in the Community.

2. Without prejudice to Article 18 of Regulation (EEC) No 2847/93, Member States shall, for bigeye tuna, notify to the Commission before the 15th of each month the total quantities that were landed or transhipped in the previous month by vessels flying their flag and registered in the Community and the total quantities landed at their ports by vessels flying the flag of another Member State and registered in the Community.

CHAPTER IV

FINAL PROVISIONS*Article 24*

1. The Commission shall be assisted by the Management Committee for Fisheries and Aquaculture.
2. In cases where this paragraph is referred to, the management procedure specified in Article 4 of Decision 1999/468/EC shall apply, as shall Article 7 thereof.
3. The period mentioned in Article 4(3) of Decision 1999/468/EC shall be one month.

Article 25

1. Regulation (EC) No 1351/1999 is repealed.
2. Article 22(1) of Regulation (EC) No 2742/1999 is deleted.
3. References to the said repealed Regulation and deleted paragraph shall be understood as made to this Regulation, the correspondence table in Annex V applying.

Article 26

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

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

ANNEX I

HIGHLY MIGRATORY SPECIES

- Albacore: *Thunnus alalunga*
- Bluefin tuna: *Thunnus thynnus*
- Bigeye tuna: *Thunnus obesus*
- Skipjack tuna: *Katsuwonus pelamis*
- Atlantic bonito: *Sarda sarda*
- Yellowfin tuna: *Thunnus albacares*
- Blackfin tuna: *Thunnus atlanticus*
- *Euthynnus* spp.
- Southern bluefin tuna: *Thunnus maccoyii*
- *Auxis* spp.
- Ray's bream: *Brama rayi*
- Marlins: *Tetrapturus* spp.; *Makaira* spp.
- Sailfish: *Istiophorus* spp.
- Swordfish: *Xiphias gladius*
- Sauries: *Scomberesox* spp.; *Cololabis* spp.
- Sharks: *Hexanchus griseus*; *Cetorhinus maximus*; *Alopiidae*; *Carcharhinidae*; *Sphymidae*; *Isuridae*; *Lamnidae*
- Cephalopods (all species)
- Cetaceans (whales and porpoises): *Physeteridae*; *Belaenopteridae*; *Balenidae*; *Eschrichtiidae*; *Monodontidae*; *Ziphiidae*; *Delphinidae*.

ANNEX II

HIGHLY MIGRATORY SPECIES SUBJECT TO TOTAL ALLOWABLE CATCHES

Latin name	Ordinary name	Zone
<i>Thunnus thynnus</i>	Bluefin tuna	I
<i>Thunnus obesus</i>	Bigeye tuna	III
<i>Thunnus albacares</i>	Yellowfin tuna	III
<i>Xiphias gladius</i>	Swordfish	I (Atlantic Ocean)

ANNEX III

HIGHLY MIGRATORY SPECIES SUBJECT TO QUARTERLY NOTIFICATION

Latin name	Ordinary name
<i>Thunnus alalunga</i>	Albacore
<i>Thunnus albacares</i>	Yellowfin tuna
<i>Katsuwonus pelamis</i>	Skipjack tuna
<i>Sarda sarda</i>	Atlantic bonito

and any other species taken by Member States' vessels that is on the ICCAT species list.

ANNEX IV

LIST OF COOPERATING PARTIES, ENTITIES AND FISHING ENTITIES

Mexico (United Mexican States)

Taiwan

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ANNEX V

CORRESPONDENCE TABLE

Regulation (EC) No 1351/1999	This Regulation
Articles 1, 2, 3	Article 8
Article 4	Article 18
Article 5	Article 17
Regulation (EC) No 2742/1999	This Regulation
Article 22(1)	Article 23

Proposal for a Council Regulation on the conclusion of the Protocol setting out, for the period 1 July 2000 to 30 June 2003, the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire

(2001/C 62 E/03)

COM(2000) 629 final — 2000/0257(CNS)

(Submitted by the Commission on 9 October 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37, in conjunction with Article 300(2) and (3), thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Pursuant to the Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire, the two parties conducted negotiations to determine the amendments or additions to be made to the Agreement at the end of the period of application of the Protocol annexed thereto⁽¹⁾.

(2) As a result of those negotiations, a new Protocol setting out, for the period 1 July 2000 to 30 June 2003, the fishing opportunities and financial contribution provided for in the above Agreement was initialled on 26 May 2000.

(3) It is in the Community's interests to approve that Protocol.

(4) The method of allocating the fishing opportunities among the Member States should be defined on the basis of the traditional allocation of fishing opportunities under the Fisheries Agreement,

HAS ADOPTED THIS REGULATION:

Article 1

The Protocol setting out, for the period 1 July 2000 to 30 June 2003, the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation.

Article 2

The fishing opportunities set out in the Protocol shall be allocated among the Member States as follows:

(a) demersal species:

Spain: 600 GRT

(b) tuna fishing:

France: 25 vessels

Spain: 41 vessels

Portugal: 5 vessels

If licence applications from these Member States do not exhaust the fishing opportunities set out in the Protocol, the Commission may consider licence applications from any other Member State.

Article 3

The President of the Council is hereby authorised to designate the persons empowered to sign the Protocol in order to bind the Community.

Article 4

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

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

⁽¹⁾ OJ L 379, 31.12.1990.

PROTOCOL

setting out, for the period 1 July 2000 to 30 June 2003, the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire

Article 1

From 1 July 2000 and for a period of three years, fishing opportunities pursuant to Article 2 of the Agreement shall be as follows:

- (a) freezer trawlers designed to fish demersal species, taking deepwater crustaceans, cephalopods and demersal fish: an annual average of 600 gross registered tonnes (GRT) per month;
- (b) pole-and-line tuna vessels: 12 vessels;
- (c) surface longliners: 20 vessels;
- (d) tuna seiners: 39 vessels.

Article 2

The fishing opportunities referred to in Article 1 may be increased by mutual agreement at the request of the Community if they do not thereby compromise the rational exploitation of the resources of Côte d'Ivoire.

In this case the financial compensation referred to in Article 3(1) shall be increased proportionately and pro rata temporis.

Article 3

1. The financial contribution for the fishing opportunities laid down in Article 1 shall be EUR 957 500 per year (EUR 275 000 as financial compensation and EUR 682 500 for the measures provided for in Article 4 of this Protocol).
2. The financial contribution for tuna fishing shall cover a catch of 8 500 tonnes a year in Côte d'Ivoire waters. If the tuna caught by Community vessels in the Côte d'Ivoire fishing zone exceeds this weight, the amount referred to above shall be proportionately increased.
3. The annual financial compensation shall be payable by 31 December each year of the Protocol at the latest. Côte d'Ivoire shall have full discretion regarding the use to which this financial compensation is put.
4. The financial compensation shall be paid into the Public Treasury account No . . . with the Caisse autonome d'amortissement (CAA).

Article 4

The measures set out below shall be financed from the financial contribution provided for in Article 3(1), to the amount of EUR 682 500 per year, broken down as follows:

1. scientific programmes to promote better understanding of fishery and biological resources in the Côte d'Ivoire fishing zone: EUR 90 000
2. technical programmes: EUR 250 000
3. support for fisheries surveillance bodies: EUR 100 000
4. aid for the fisheries ministry for drawing up fisheries and aquaculture development policies and strategies: EUR 50 000
5. institutional support to the administrative department responsible for fisheries: EUR 110 000
6. awards for study, practical training and seminars in the various scientific, technical and economic disciplines relating to fisheries and costs of participation in international meetings on fisheries: EUR 50 000
7. contribution to international organisations: EUR 32 500.

The measures and the annual amounts allocated thereto shall be decided on by the fisheries ministry, which shall inform the Commission thereof.

The annual amounts shall be made available to the bodies concerned not later than 31 December each year and paid into the bank accounts of the competent Côte d'Ivoire authorities specified by the fisheries ministry according to the schedule for their use.

The Ministry responsible for fisheries shall transmit a detailed report on the implementation of these measures and the results achieved to the Delegation of the European Commission, not later than four months after the anniversary date of the Protocol. The Commission may ask the fisheries ministry for any additional information on the results and, after consultation with the Côte d'Ivoire authorities, to reconsider the payments concerned should the measures not be implemented.

Article 5

Should the Community fail to make the payments provided for under Articles 3 and 4 of this Protocol, the obligations of Côte d'Ivoire resulting from the Fisheries Agreement may be suspended.

Article 6

1. Where force majeure prevents fishing activities in the Côte d'Ivoire fishing zone, the Community may suspend payment of the financial contribution following prior consultations, where possible, between the two parties.

2. Payment of the financial contribution shall recommence once the situation returns to normal and following consultation between the two parties confirming that the situation is likely to allow a return to normal fishing activities.

Article 7

The Annex to the Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire shall be replaced by the Annex to this Protocol.

Article 8

This Protocol shall enter into force on the date of its signing.

It shall apply from 1 July 2000.

ANNEX

Conditions for the exercise of fishing activities by Community vessels in the Côte d'Ivoire fishing zone

A. LICENCE APPLICATION AND ISSUING FORMALITIES

The relevant Community authorities shall present to the Côte d'Ivoire fisheries ministry, via the Delegation of the Commission of the European Communities in Côte d'Ivoire, an application for each vessel wishing to fish under the Agreement.

Applications shall be made on the forms provided for that purpose by Côte d'Ivoire, specimens of which are attached (Appendix 1).

Each licence application shall be accompanied by proof of payment of the fee for the licence's term of validity.

The fees shall include all national and local charges except for service charges and port taxes.

The Côte d'Ivoire authorities shall communicate, before the entry into force of the Agreement, all information concerning the bank accounts to be used for the payment of the fee.

Licences shall be issued for specific vessels and shall not be transferable.

However, in the case of force majeure and at the request of the Commission of the European Communities, a vessel's licence may be replaced by a new licence for another vessel with characteristics similar to those of the first vessel. The owner of the first vessel shall return the cancelled licence to the Côte d'Ivoire fisheries ministry via the Delegation of the Commission of the European Communities in Côte d'Ivoire.

The new licence shall indicate:

- the date of issue,
- the fact that it invalidates and replaces the licence of the previous vessel.

No fee as laid down in Article 4(2) of the Agreement shall be due for any unexpired period of validity.

1. Licences shall be transmitted by the Côte d'Ivoire authorities to the Delegation of the Commission of the European Communities in Côte d'Ivoire within 30 days of receipt of the application.
2. The original licence must be held on board at all times and be presented at any time on request of the competent Côte d'Ivoire authorities.

However, for pole-and-line tuna vessels, tuna seiners and surface longliners, the Côte d'Ivoire authorities shall, upon receipt of notification from the Commission of the European Communities that advance payment has been made, enter the vessel concerned in the list of vessels with authorisation to fish, which is sent to the Côte d'Ivoire control authorities. Pending receipt of the original of the licence, a copy of the licence that has been drawn up may be issued by fax to be held on board the vessel.

3. Trawlers authorised under Article 2 of the Agreement must notify the competent Côte d'Ivoire authorities of any changes to the characteristics of a vessel as entered on the licence when issued and as listed in Appendix 1.
 4. Any increase in gross registered tonnage of a trawler shall require a new licence application.
- B. PROVISIONS APPLICABLE TO LICENCES FOR POLE-AND-LINE TUNA VESSELS, TUNA SEINERS AND SURFACE LONGLINERS
1. Licences shall be valid for one year. They shall be renewable.
 2. The fee shall be EUR 25 per tonne of fish caught within the Côte d'Ivoire fishing zone.
 3. Licences shall be issued following payment of a lump sum of EUR 375 per year for each pole-and-line tuna vessel, EUR 2 750 per year for each tuna seiner and EUR 1 000 per year for each surface longliner.
 4. The final statement of the fees due for the fishing period shall be drawn up by the Commission of the European Communities at the end of each calendar year on the basis of the catch declarations made by each shipowner and confirmed by the scientific institutes responsible for verifying catch data such as the Institut de Recherche pour le Développement (IRD), the Instituto Español de Oceanografía (IEO) and the Instituto Português de Investigação Marítima (IPIMAR) on the one hand and the Centre de recherche océanographique de Côte d'Ivoire (Côte d'Ivoire oceanographic research centre) on the other. The statement shall be forwarded simultaneously to the Côte d'Ivoire fishing authorities and to the shipowners. Any additional payment due shall be made by the shipowners to the Côte d'Ivoire fishing authorities no later than 30 days after notification of the final statement.
- However, if the amount of the final statement is lower than the abovementioned advance, the resulting balance shall not be reimbursable to the shipowner.
5. The Côte d'Ivoire authorities shall communicate, before the entry into force of the Agreement, all information concerning the bank account to be used for the payment of the fees.

C. PROVISIONS APPLICABLE TO FREEZER TRAWLERS

1. In the case of freezer trawlers, licences shall be valid for three, six or twelve months. They shall be renewable.
2. The annual fee shall be EUR 168 per GRT per vessel.

Fees for licences for periods of less than one year shall be paid on a pro rata basis. Six-month and three-month licences shall be subject to a surcharge of 3 % and 5 % respectively.

D. CATCH DECLARATIONS

1. Vessels authorised to fish in the Côte d'Ivoire fishing zone under this Agreement shall send their catch declarations to the fishing authorities with a copy to the Delegations of the Commission of the European Communities in Côte d'Ivoire, as follows:
 - (a) trawlers shall notify their catches using the form given in Appendix 2. These declarations shall be monthly and must be communicated at least once every three months;
 - (b) for pole-and-line tuna vessels, tuna seiners and surface longliners a fishing log shall be kept, in accordance with the model in Appendix 3 in the case of surface longliners and Appendix 4 in the case of seiners and pole-and-line vessels for each fishing period spent in the Côte d'Ivoire fishing zone. It shall be filled in even when no catches are made.

The form shall either be collected in port by the relevant departments of the Centre de Recherches Océanographiques de Côte d'Ivoire or sent to the same department within 45 days of the end of the fishing trip spent in the Côte d'Ivoire fishing zone.

Copies shall be sent to the scientific institutes referred to in paragraph 4 of section B above.

Forms must be completed legibly and be signed by the master of the vessel. Moreover, the words 'Outside Côte d'Ivoire fishing zone' shall be entered in the abovementioned fishing log in respect of periods during which the said vessels are not in Côte d'Ivoire waters.

2. Should these provisions not be adhered to, the Côte d'Ivoire authorities reserve the right to suspend the licence of the offending vessel until the required formality has been complied with. In this case, the Delegation of the Commission of the European Communities in Côte d'Ivoire shall be informed without delay.

E. LANDING OF CATCHES

Tuna vessels and surface longliners landing their catches in a Côte d'Ivoire port shall, wherever possible, make their by-catches available to Côte d'Ivoire dealers at local market prices in accordance with the principles of free competition.

In addition, Community tuna vessels shall contribute towards supplying Côte d'Ivoire's tuna-canning factories at a price fixed by mutual agreement between Community shipowners and Côte d'Ivoire dealers on the basis of current prices on the international market. Payment shall be made in convertible currency. The landing schedule must be drawn up by mutual agreement between the Community shipowners and the Côte d'Ivoire dealers.

F. FISHING ZONES

1. To protect spawning grounds and local small-scale fishing activities, Community vessels with licences may not carry out fishing activities as provided for in Article 2 of the Agreement in the following zones:

- up to twelve nautical miles from the coast in the case of pole-and-line tuna vessels and surface longliners,
- up to six nautical miles from the coast in the case of freezer trawlers,
- up to the 200-metre isobath in the case of freezer tuna seiners.

2. However, pole-and-line tuna vessels using live bait shall be authorised to fish for bait in the prohibited zone defined above to obtain bait strictly within the limits of their own requirements.

G. ENTERING AND LEAVING THE ZONE

All vessels shall notify their position and the catch held on board direct to the Côte d'Ivoire authorities, preferably by fax (225 21 35 04 09) or, for vessels not equipped with a fax, by radio (...) or telex (...), within three hours of entering or leaving the Côte d'Ivoire fishing zone and every three days while fishing in Côte d'Ivoire waters.

Vessels shall be informed of the relevant fax number and radio frequency when the fishing licence is issued.

The Côte d'Ivoire authorities and shipowners shall keep a copy of fax communications or a recording of radio communications until both parties have agreed to the final statement of fees due referred to in section B.

A vessel found to be fishing without having informed the Côte d'Ivoire authorities shall be regarded as a vessel without a licence.

H. MESH SIZES

The minimum mesh size authorised (mesh fully extended) shall be:

- (a) 40 mm for freezer trawlers taking deepwater crustaceans;
- (b) 70 mm for freezer trawlers taking cephalopods;
- (c) 60 mm for freezer trawlers taking fish;
- (d) in the case of tuna, the international standards recommended by ICCAT shall apply.

I. SIGNING-ON OF SEAMEN

Owners of vessels which have been granted licences as provided by the Agreement shall contribute to the practical vocational training of Côte d'Ivoire nationals, on the following terms and subject to the following limits:

1. Each trawler owner shall undertake to employ:

- one seaman for vessels under 250 GRT,
- two seamen for vessels between 250 and 300 GRT,
- three seamen for vessels over 300 GRT.

The owners of tuna vessels and surface longliners shall be responsible for employing Côte d'Ivoire nationals, on the following terms and subject to the following limits:

- for the fleet of pole-and-line tuna vessels, four Côte d'Ivoire seamen shall be signed on during the tuna fishing period in the Côte d'Ivoire fishing zone, each being assigned to a different vessel,
- for the fleet of tuna seiners, 30 Côte d'Ivoire seamen shall be signed on,
- for the fleet of surface longliners, four Côte d'Ivoire seamen shall be signed on during the tuna fishing period in the Côte d'Ivoire fishing zone, each being assigned to a different vessel.

The above limits shall not preclude the signing on of additional Côte d'Ivoire seamen at the request of the shipowners.

The Côte d'Ivoire seamen shall be chosen by the shipowners from among professional seamen recognised by the competent authorities.

2. The wages of these seamen shall be fixed, before licences are issued, by mutual agreement between the shipowners or their representatives and the relevant Côte d'Ivoire authorities; the wages shall be borne by the shipowners and must include the social contributions to which the seaman is subject (including life assurance and accident and sickness insurance).

3. Should the seamen not be signed on, owners of pole-and-line tuna vessels, tuna seiners and surface longliners shall be obliged to pay for the fishing period a lump sum equivalent to the wages of the seamen not signed on.

This sum will be used for the training of seamen in Côte d'Ivoire and is to be paid into the account specified by the Côte d'Ivoire fishing authorities.

4. Any vessel may receive on board a trainee student on a proposal from the competent Côte d'Ivoire authorities, subject to the agreement of the vessel's master. The trainee student shall be accorded the same conditions on board as those enjoyed by crewmen at the same level, as far as possible. Côte d'Ivoire shall cover subsistence expenses for this trainee.

J. TAKING ON BOARD OF SCIENTIFIC OBSERVERS

Vessels fishing in the Côte d'Ivoire fishing zone shall take a scientific observer on board at the request of the Côte d'Ivoire authorities; these observers shall be treated as officers. This applies equally, as far as is possible, to the quarters assigned to the observer. The time spent on board by the observer shall be fixed by the Côte d'Ivoire authorities but, as a general rule, it should not exceed the time required to carry out his duties. Once on board, the observer shall:

- observe the fishing activities of the vessels,
- verify the position of vessels engaged in fishing operations,
- perform biological sampling in the context of scientific programmes,
- note the fishing gear used,
- verify the catch data for the Côte d'Ivoire zone recorded in the logbook.

While on board, observers shall:

- take all appropriate steps to ensure that the conditions under which they are taken on board and their presence on board do not interrupt or hamper fishing activities,
- respect the material and equipment on board and the confidentiality of all documents belonging to the said vessel.
- draw up an activity report to be transmitted to the competent Côte d'Ivoire authorities and send a copy to the Delegation of the European Commission.

The conditions governing his embarkation shall be agreed between the shipowner or his agent and the Côte d'Ivoire authorities. Owners of trawlers shall pay the Côte d'Ivoire authorities, together with the licence fee, the sum of EUR 4 per GRT per year pro rata temporis for each vessel fishing in Côte d'Ivoire waters. This sum shall be paid into the account specified by the Côte d'Ivoire fishing authorities. Owners of tuna seiners, pole-and-line tuna vessels and surface longliners shall pay the Côte d'Ivoire Government EUR 10 per month for each observer taken on board. Shipowners who are unable to take observers aboard and put them off at a Côte d'Ivoire port agreed by mutual agreement with the Côte d'Ivoire authorities shall bear the cost of taking the observers aboard and putting them ashore.

If the observer is not present at the time and place agreed and during the twelve hours following the time agreed, shipowners shall be automatically absolved of their obligation to take the observer on board.

The salary and the social contributions of the observer shall be borne by the relevant Côte d'Ivoire authorities.

K. INSPECTION AND MONITORING

At the request of the Côte d'Ivoire authorities, Community vessels operating within the Agreement shall permit and facilitate the boarding and fulfilment of the tasks of Côte d'Ivoire officials responsible for the inspection and monitoring of fishing activities.

These officials should not remain on board any longer than the time required to carry out their duties.

L. BOARDING OF VESSELS

1. The Delegation of the European Commission in Côte d'Ivoire shall be notified within three working days of any boarding within the Côte d'Ivoire fishing zone of a fishing vessel flying the flag of a Member State of the Community and operating under this Agreement. The Delegation shall at the same time receive a brief report of the circumstances and reasons leading to the boarding.
 2. Before any measures regarding the master or the crew of the vessel or any action regarding the cargo and equipment of the vessel are considered, other than those to safeguard evidence relating to the presumed infringement, a consultation meeting shall be held, within one working day from the receipt of the abovementioned information, between the Delegation of the Commission of the European Communities in Côte d'Ivoire, the fisheries authorities and the inspection authorities, possibly attended by a representative of the Member State concerned. At the meeting, the parties shall exchange any relevant documentation or information helping to clarify the circumstances of the established facts. The shipowner or his representative shall be informed of the outcome of the meeting and of any measures resulting from the boarding.
 3. Before any judicial procedure, an attempt shall be made to resolve the presumed infringement through a compromise procedure. This procedure shall end no later than three working days after the boarding.
 4. Should the case not be settled by means of compromise, and the master therefore be brought before a competent Côte d'Ivoire judicial body, a reasonable bank security shall be fixed by the competent authority within two working days, following the conclusion of the compromise procedure, pending the judicial decision. The bank security shall be released by the competent authority once the master of the vessel concerned has been acquitted by the judicial decision.
 5. The vessel and its crew shall be released either:
 - at the end of the consultation meeting, if the established facts permit, or
 - on receipt of payment of a fine (compromise procedure), or
 - once a bank security is deposited (judicial proceedings).
 6. Should one of the Parties consider that there is a problem in the application of the above procedure, it may request urgent consultations.
-

Appendix 1

MINISTÈRE DE LA PRODUCTION ANIMALE
BP V 84, Abidjan
(République de Côte d'Ivoire)

REPUBLIQUE DE CÔTE-D'IVOIRE
UNION-DISCIPLINE-TRAVAIL

APPLICATION FOR A FISHING LICENCE

SECTION A

- 1. Name of shipowner:
- 2. Nationality of shipowner:
- 3. Business address of shipowner:
.....
.....

SECTION B

(to be completed for each vessel)

- 1. Period of validity:
- 2. Name of vessel:
- 3. Year of construction:
- 4. Original flag:
- 5. Current flag:
- 6. Date on which current flag acquired:
- 7. Year acquired:
- 8. Home port and registration No:
- 9. Fishing zones:
- 10. Type of fishing:
- 11. Gross tonnage (GRT):
- 12. Net tonnage (NRT):
- 13. Radio call sign:
- 14. Length overall (metres):
- 15. Bow (metres):
- 16. Depth (metres):
- 17. Hull construction material:
- 18. Engine power:
- 19. Speed (knots):
- 20. Cabins:
- 21. Capacity of tanks (m³):
- 22. Capacity of fish-holds (m³):
- 23. Freezing capacity in tonnes/24 hours and system used:

- 24. Colour of hull:
- 25. Colour of superstructures:
- 26. Crew numbers:
- 27. On-board communication equipment:

Type	Make	Model	Power (Watt)	Year of construction	Frequencies	
					Reception	Transmission

- 28. Navigating and sounding equipment:

Type	Make	Model

- 29. Auxiliary boats used (for each vessel):
- 29.1. Gross tonnage (GRT):
- 29.2. Length overall (metres):
- 29.3. Bow (metres):
- 29.4. Depth (metres):
- 29.5. Hull construction material:
- 29.6. Engine power:
- 29.7. Speed (knots):
- 30. Auxiliary aerial equipment used to detect fish (even if not installed on board):
- 31. Home port:
- 32. Name of captain:
- 33. Address:
- 34. Nationality of captain:

Attach:

- three colour photocopies showing the vessel (side view), auxiliary fishing boats and auxiliary aerial equipment used to detect fish
- an illustration and detailed description of the fishing gear used,
- a document proving that the representative of the shipowner is empowered to sign this application.

.....
(Date of application)

.....
(Signature of representative of shipowner)

Appendix 2

FREEZER TRAWLERS
(DEMERSAL SPECIES)

Name of vessel:	
Nationality (flag):	

Engine rating:	
Gross registered tonnage:	

Month:	Year:
Fishing method:	
Port of landing:	

Date	Fishing area		Number of catches	Number of fishing hours	Species of fish						Totals
	Longitude	Latitude									
1)											
2)											
3)											
4)											
5)											
6)											
7)											
8)											
9)											
10)											
11)											
12)											
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18)											
19)											
20)											
21)											
22)											
23)											
24)											
25)											
26)											
27)											
28)											
29)											
30)											
31)											
	TOTAL										

ICCAT LOGBOOK FOR TUNA FISHERY

<input type="checkbox"/>	Longline
<input type="checkbox"/>	Live bait
<input type="checkbox"/>	Purse Seine
<input type="checkbox"/>	Trawling
<input type="checkbox"/>	Outros (Others)

Vessel name:	Gross tonnage (GRT):	Boat LEFT:	Month	Day	Year	Port
Flag country:	Capacity — (M.T):		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Registration number:	Captain:	Boat RETURNED:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shipowner:	No of Crew:		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Address:	Reporting date:	No of days at sea:		No of fishing days:		Trip Number:
	(Reported by):	Number of sets made:				

Date		Sector		Surf water temp. (°C)	Fishing effort No of hooks used	Capturas (Catches)																Isco usado na pesca (Bait used)						
Month	Day	Latitude N/S	Longitude E/W			Bluefin Tuna	Yellowfin Tuna	(Bigeye Tuna)	(Albacore)	(Swordfish)	(Strip Marlin)	Black Marlin	(Sailfish)	Skipjack	(Miscellaneous fish)	Daily total (weight in kg only)	Saury	Squid	Live bait	Others								
						<i>Thunnus thynnus</i> or <i>maccoyii</i>	<i>Thunnus albacares</i>	<i>Thunnus obesus</i>	<i>Thunnus alalunga</i>	<i>Xiphias gladius</i>	<i>Tetrapturus audax</i> or <i>albidus</i>	<i>Makaira indica</i>	<i>Istiophorus albicans</i> or <i>platypterus</i>	<i>Katsuwonus pelamis</i>	No						kg	No	kg					
						No	Weight kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg					
LANDING WEIGHT (IN KG)																												

Remarks

1 — Use one sheet per month, and one line per day.
2 — At the end of each trip forward a copy of the log to your correspondent or to ICCAT, Calle Corazón de María, 8, 28002 Madrid., Spain.
3 — 'Day' refers to the day you set the line.
4 — Fishing area refers to the position of the boat. Round off minutes and record degree of latitude and longitude. Be sure to record N/S and E/W.
5 — The bottom line -landing weight- should be completed only at the end of the trip. Actual weight at the time of unloading should be recorded.
6 — All information reported herein will be kept strictly confidential.

Appendix 4

TUNA SEINERS — POLE-AND-LINE TUNA VESSELS

NAME OF VESSEL

PORT OF DEPARTURE

DATE TIME

LOG

SKIPPER

PORT OF ARRIVAL

DATE TIME

LOG

Sheet No

Dates	Position at time of haul otherwise at midday	No of haul	Estimated catches								Tank No	Comments Route or search — discards birds Type of shoals, mixture of species — Miscellaneous problems — time spent on a haul	Wreckage	Physical conditions				Heli- copter			
			Yellowfin tuna		Skipjack tuna		Bigeye tuna		Other species					Surface	Current di- rection speed	Visibility (in miles) sky	Situation sea Wind				
			Size kg	Tonnage t	Size kg	Tonnage t	Size kg	Tonnage t	Size kg	Tonnage t											
TOTALS																					

Amended proposal for a Council Directive on the right to family reunification ⁽¹⁾

(2001/C 62 E/04)

COM(2000) 624 final — 1999/0258(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 10 October 2000)⁽¹⁾ OJ C 116 E, 26.4.2000, p. 66.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

Having regard to the Treaty establishing the European Community, and in particular Article 63 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) Article 63(3) of the Treaty provides that the Council is to adopt measures on immigration policy. Article 63(3)(a) provides, in particular, that the Council is to adopt measures relating to the conditions of entry and residence, and specifically refers to entry and residence for the purpose of family reunion.

(2) Measures concerning family reunification must be adopted in conformity with the obligation to protect the family and respect family life which is laid down in a variety of international legal instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. The Union respects the fundamental rights secured by that Convention by virtue of Article 6(2) of the Treaty on European Union.

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third-country nationals.

(2) Article 63(3) of the Treaty provides that the Council is to adopt measures on immigration policy. Article 63(3)(a) provides, in particular, that the Council is to adopt measures relating to the conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunification.

(3) Measures concerning family reunification must be adopted in conformity with the obligation to protect the family and respect family life which is laid down in a variety of international legal instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. The Union respects the fundamental rights secured by that Convention by virtue of Article 6(2) of the Treaty on European Union.

INITIAL PROPOSAL

AMENDED PROPOSAL

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national legislation on the conditions for admission and residence of third-country nationals, to be based on a common evaluation both of economic and demographic trends within the Union and of the situation in countries of origin. The European Council accordingly asked the Council rapidly to adopt decisions on the basis of Commission proposals. Those decisions were to take account not only of the absorption capacity of each Member State but also their historical and cultural links with countries of origin.

(4) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national legislation on the conditions for admission and residence of third-country nationals, to be based on a common evaluation both of economic and demographic trends within the Union and of the situation in countries of origin. The European Council accordingly asked the Council rapidly to adopt decisions on the basis of Commission proposals. Those decisions were to take account not only of the absorption capacity of each Member State but also their historical and cultural links with countries of origin.

(5) In order to evaluate migration flows and to prepare for the adoption of measures by the Council, the Commission needs to have access to statistical data and information on the legal immigration of third-country nationals in each Member State, and in particular on the number of permits issued, and on their type and validity; to this end, Member States must regularly and rapidly make the necessary data and information available to the Commission.

(6) The European Council, at its special meeting in Tampere, stated that the European Union should ensure fair treatment of third-country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the European Union.

Unchanged

(7) In accordance with the Council and Commission Plan of Action of 3 December 1998 ⁽¹⁾, an instrument on the legal status of legal immigrants should be adopted within two years of the entry into force of the Amsterdam Treaty, and rules on the conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purposes of family reunification, should be prepared within five years.

(8) Family reunification is a necessary way of making family life possible. It helps to create a socio-cultural environment facilitating the integration of third-country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in Article 2 and Article 3(1)(k) of the EC Treaty.

(8) Family reunification is a necessary way of making family life possible. It helps to create socio-cultural stability facilitating the integration of third-country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in Article 2 and Article 3(1)(k) of the EC Treaty.

⁽¹⁾ Plan of action on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice (OJ C 19, 23.1.1999, p. 1).

INITIAL PROPOSAL

AMENDED PROPOSAL

- | | |
|---|---|
| (9) To ensure protection of the family and the preservation or formation of family life, a right to family reunification should be established and recognised by the Member States. The practical conditions for the exercise of that right should be determined on the basis of common criteria. | Unchanged |
| (10) Special attention should be paid to the situation of refugees and persons enjoying subsidiary protection on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification. | (10) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification. |
| (12) To avoid discriminating between citizens of the Union who exercise their right to free movement and those who do not, provision should be made for the family reunification of citizens of the Union residing in countries of which they are nationals to be governed by the rules of Community law relating to free movement. | (11) The scope of this Directive does not extend to family reunification for persons enjoying a subsidiary form of protection; a directive on the rules for admission of persons in this category, which should also cover their right to family reunification, should be adopted as soon as possible. |
| (13) Family reunification applies to members of the nuclear family, that is to say the spouse and the minor children. However, if the situation of unmarried couples is treated as corresponding to that of married couples in a Member State, the principle of equal treatment should be respected and provision should be made for unmarried partners to be eligible for reunification. | Unchanged |
| (14) Family reunification should also apply to children of full age and to relatives in the ascending line where, in view of, there are for not separating them from the third-country national residing lawfully in a Member State. | (14) Family reunification should also apply to children of full age and to relatives in the ascending line where, for important objective reasons, their personal situation prevents their living, in acceptable conditions and self-sufficiently, separately from their relative, a third-country national residing lawfully in a Member State. |
| (15) A set of rules governing the procedure for examination of applications for family reunification and for entry and residence of family members should be laid down. Those procedures should be effective and fair and offer appropriate protection to those concerned. | (15) A set of rules governing the procedures for examination of applications for family reunification and for entry and residence of family members should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned. |

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|---|--|
| (16) The integration of family members should be promoted. To that end, they should be granted a status independent of that of the applicant after a period of residence in the Member State. They should have access to education, employment and vocational training. | Unchanged |
| (17) Effective, proportionate and dissuasive measures should be taken to avoid and penalise breaches of the rules and procedures relating to family reunification. | (17) Effective, proportionate and dissuasive measures should be taken to prevent and penalise breaches of the rules and procedures relating to family reunification. |
| (18) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely the establishment of a right to family reunification for third-country nationals to be exercised in accordance with common rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved by the Community. This Directive confines itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose, | Unchanged |

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions*Article 1*

The purpose of this Directive is to establish a right to family reunification for the benefit of third-country nationals residing lawfully in the territory of the Member States and citizens of the Union who do not exercise their right to free movement. This right shall be exercised in the manner prescribed by this Directive.

Article 2

For the purposes of this Directive:

- (a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community;

- (b) 'refugee' means any third-country national or stateless person enjoying refugee status within the meaning of the Convention on the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;

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(c) 'person enjoying subsidiary protection' means any third country national or stateless person authorised to reside in a Member State pursuant to a subsidiary form of protection in accordance with international law, national legislation or the practice of the Member States;

Deleted

(c) 'applicant for reunification' or 'applicant' means a third-country national residing lawfully in a Member State or a citizen of the Union and applying to be joined by members of his family;

(c) 'applicant for reunification' or 'applicant' means either a third-country national residing lawfully in a Member State or a citizen of the Union applying to be joined by members of his family;

(d) 'family reunification' means the entry into and residence in a Member State by family members of a citizen of the Union or of a third-country national residing lawfully in that Member State in order to form or preserve the family unit, whether the family relationship arose before or after the resident's entry;

Unchanged

(e) 'residence permit' means a permit or authorisation issued by the authorities of a Member State in accordance with its legislation allowing a third-country national to reside in its territory, with the exception of provisional authorisations pending examination of an application for asylum.

Article 3

1. This Directive applies where the applicant for reunification is:

(a) a third-country national residing lawfully in a Member State and holding a residence permit issued by that Member State for a period of at least one year;

(b) a refugee, irrespective of the duration of his residence permit;

(c) a citizen of the Union not exercising his right to free movement,

if the applicant's family members are third-country nationals, irrespective of their legal status.

2. This Directive shall not apply where the applicant for reunification is:

(a) a third-country national applying for recognition of refugee status whose application has not yet given rise to a final decision;

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(b) a third-country national authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status.

(c) a third-country national authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

3. This Directive shall not apply to family members of citizens of the Union exercising their right to free movement of persons.

Unchanged

4. This Directive is without prejudice to more favourable provisions of:

(a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other, which entered into force before the date of entry into force of this Directive;

(b) the European Social Charter of 18 October 1961 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.

Article 4

By way of derogation from this Directive, the family reunification of third-country nationals who are family members of a citizen of the Union residing in the Member State of which he is a national and who has not exercised his right to free movement of persons, is governed *mutatis mutandis* by Articles 10, 11 and 12 of Council Regulation (EEC) No 1612/68 ⁽¹⁾, and by the other provisions of Community law listed in the Annex.

CHAPTER II

Family members

Article 5

1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

⁽¹⁾ OJ L 257, 19.10.1968, p. 2.

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- (a) the applicant's spouse, or an unmarried partner living in a durable relationship with the applicant, if the legislation of the Member State concerned treats the situation of unmarried couples as corresponding to that of married couples;
- (b) the minor children of the applicant and of his spouse or unmarried partner, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision recognised by that authority;
- (c) the minor children including adopted children of the applicant or his spouse or unmarried partner, where one of them has custody and the children are dependent on him or her; where custody is shared, the agreement of the other parent shall be required;
- (d) the relatives in the ascending line of the applicant or his spouse or unmarried partner who are dependent on them and have no other means of family support in the country of origin;
- (e) children of the applicant or his spouse or unmarried partner, being of full age, who are objectively unable to satisfy their needs by reason of their state of health.

2. In the event of a polygamous marriage, where the applicant already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the entry and residence of a further spouse, nor the children of such spouse; the entry and residence of children of another spouse shall be authorised if the best interests of the child so require.

3. The minor children referred to in points (b) and (c) of paragraph 1 must be below the age of majority set by the law of the Member State concerned and must not be married.

4. Where the applicant is a refugee or a person enjoying subsidiary protection, the Member States shall facilitate the reunification of other family members not referred to in paragraph 1, if they are dependent on the applicant.

5. Third-country nationals residing in a Member State for the purpose of study may not be joined by the relatives in the ascending line as defined in point (d) of paragraph 1.

4. Where the applicant is a refugee, the Member States shall facilitate the reunification of other family members not referred to in paragraph 1, if they are dependent on the applicant.

Unchanged

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Article 6

If the refugee is an unaccompanied minor, the Member States may:

- (a) authorise the entry and residence for the purposes of family reunification of his relatives in the ascending line without applying the conditions laid down in Article 5(1)(d);
- (b) authorise the entry and residence for the purposes of family reunification of other family members not referred to in Article 5, where the minor has no relatives in the ascending line or such relatives cannot be traced.

CHAPTER III

Submission and examination of the application*Article 7*

1. In order to exercise his right to family reunification, the applicant shall submit an application for entry and residence of a member of his family to the competent authorities of the Member State where he resides. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 5, 8 and, where applicable, 9 and 10. The application shall be submitted when the family member is outside the territory of the Member State.

2. By way of derogation from paragraph 1, the Member State concerned shall examine an application submitted when the family member is already residing in its territory, in exceptional circumstances or on humanitarian grounds.

3. After examining the application, the competent authorities of the Member State shall give the applicant written notification of the decision within a period which may not exceed six months. Reasons shall be given for the decision rejecting the application.

4. If the applicant is a refugee or a person enjoying subsidiary protection and cannot provide documentary evidence of the family relationship, the Member States shall have regard to other evidence of the existence of the family relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

5. When examining an application, the Member States shall have due regard to the best interests of minor children.

1. In order to exercise his right to family reunification, the applicant shall submit an application for entry and residence of one or more members of his family to the competent authorities of the Member State where he resides. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 5, 8 and, where applicable, 9 and 10. The application shall be submitted when the family members are outside the territory of the Member State.

2. By way of derogation from paragraph 1, the Member State concerned shall examine an application submitted when the family members are already residing in its territory, in exceptional circumstances or on humanitarian grounds.

Unchanged

4. If the applicant is a refugee and cannot provide documentary evidence of the family relationship, the Member States shall have regard to other evidence of the existence of the family relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

Unchanged

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CHAPTER IV

Practical conditions for the exercise of the right to family reunification*Article 8*

1. The Member States may refuse to allow the entry and residence of a family member on grounds of public policy, domestic security or public health.

2. The grounds of public policy or domestic security must be based exclusively on the personal conduct of the family member concerned.

3. Renewal of the residence permit may not be withheld and removal from the territory may not be ordered by the competent authority of the Member State concerned on the sole ground of illness or disability suffered after the issue of the residence permit.

Article 9

1. When the application for family reunification is submitted, the Member State concerned may ask the applicant to provide evidence that he has:

- (a) adequate accommodation, that is to say accommodation that would be regarded as normal for a comparable family living in the same region of the Member State concerned;
- (b) sickness insurance in respect of all risks in the Member State concerned for himself and the members of his family;
- (c) stable and sufficient resources, that is to say resources which are higher than or equal to the level of resources below which the Member State concerned may grant social assistance;

Where the first subparagraph cannot be applied, resources shall be deemed sufficient if they are equal to or higher than the level of the minimum social security pension paid by the Member State.

2. The conditions relating to accommodation, sickness insurance and resources provided for by paragraph 1 may be set by the Member States only in order to ensure that the applicant for family reunification will be able to satisfy the needs of his reunified family members without further recourse to public funds. They may not have the effect of discriminating between nationals of the Member State and third-country nationals.

1. The Member States may refuse to allow the entry and residence of family members on grounds of public policy, domestic security or public health.

Unchanged

- (a) accommodation which is at least equivalent in size to that provided as social housing and which meets general health and safety standards in force in the Member State concerned;

Unchanged

- (c) stable resources which are higher than or equal to the level of resources below which the Member State concerned may grant social assistance;

Where the first subparagraph cannot be applied, resources must be higher than or at least equal to the level of the minimum social security pension paid by the Member State.

Unchanged

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3. Paragraph 1 shall not apply if the applicant is a refugee or a person enjoying subsidiary protection.

3. Paragraph 1 shall not apply if the applicant is a refugee.

Article 10

1. The Member States may require the applicant to have resided lawfully in their territory for a period not exceeding one year, before having his family members join him.

Unchanged

2. Paragraph 1 shall not apply if the applicant is a refugee or a person enjoying subsidiary protection.

2. Paragraph 1 shall not apply if the applicant is a refugee.

CHAPTER V

Unchanged

Entry and residence of family members*Article 11*

1. As soon as the application for family reunification has been accepted, the Member State concerned shall authorise the entry of the family member. The Member States shall grant such person every facility for obtaining the requisite visas, including transit visas where required. Such visas shall be issued without charge.

1. As soon as the application for family reunification has been accepted, the Member State concerned shall authorise the entry of the family member or members. The Member States shall grant such persons every facility for obtaining the requisite visas, including transit visas where required. Such visas shall be issued without charge.

2. The Member State concerned shall grant the family member a renewable residence permit of the same duration as that held by the applicant. If the applicant's residence permit is permanent or for an unlimited duration, the Member States may limit the duration of the family member's first residence permit to one year.

2. The Member State concerned shall grant the family members a renewable residence permit of the same duration as that held by the applicant. If the applicant's residence permit is permanent or for an unlimited duration, the Member States may limit the duration of the family members' first residence permits to one year.

Article 12

Unchanged

1. The applicant's family members shall be entitled, in the same way as citizens of the Union, to:

(a) access to education;

(b) access to employment and self-employed activity;

(c) access to vocational guidance, initial and further training and retraining.

2. Points (b) and (c) of paragraph 1 shall not apply to relatives in the ascending line or to children of full age to whom Article 5(1)(d) and (e) applies.

2. Member States may restrict access to employment or self-employed activity by relatives in the ascending line or children of full age to whom Article 5(1)(d) and (e) applies.

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Article 13

Unchanged

1. At the latest after four years of residence, and provided the family relationship still exists, the spouse or unmarried partner and a child who has reached majority shall be entitled to an autonomous residence permit, independent of that of the applicant.

2. The Member States may issue an autonomous residence permit to children of full age and to relatives in the ascending line to whom Article 5(1)(d) and (e) applies.

3. In the event of widowhood, divorce, separation or death of relatives in the ascending or descending line, persons who have entered by virtue of family reunification and have been resident for at least one year, may apply for an autonomous residence permit. Where necessary by reason of particularly difficult situations, Member States shall accept such applications.

CHAPTER VI

Penalties and redress*Article 14*

1. Member States may reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew a residence permit, where it is shown that:

- (a) entry and/or residence was obtained by means of falsified documents or fraud;
- (b) the marriage or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

2. Member States shall undertake specific checks where there are grounds for suspicion.

Article 15

Member States shall have proper regard for the nature and solidity of the person's family relationships and the duration of his residence in the Member State and to the existence of family, cultural and social ties with his country of origin where they withdraw or refuse to renew a residence permit or decide to order the removal of the applicant or members of his family.

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Article 16

Where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered, the applicant and the members of his family have the right to apply to the courts of the Member State concerned.

Article 17

The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The Member States shall notify those provisions to the Commission by the date specified in Article 19 at the latest and shall notify it without delay of any subsequent amendment affecting them.

CHAPTER VII

Final provisions*Article 18*

No later than two years after the deadline set by Article 19 the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may appear necessary.

Article 19

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.

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

Article 20

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

Article 21

This Directive is addressed to the Member States.

ANNEX

Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health ⁽¹⁾.

Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families ⁽²⁾.

Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State ⁽³⁾.

Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services ⁽⁴⁾.

Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity ⁽⁵⁾.

Council Directive 90/364/EEC of 28 June 1990 on the right of residence ⁽⁶⁾.

Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity ⁽⁷⁾.

Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students ⁽⁸⁾.

⁽¹⁾ OJ 56, 4.4.1964, p. 850/64.

⁽²⁾ OJ L 257, 19.10.1968, p. 13.

⁽³⁾ OJ L 142, 30.6.1970, p. 24.

⁽⁴⁾ OJ L 172, 28.6.1973, p. 14.

⁽⁵⁾ OJ L 14, 20.1.1975, p. 10.

⁽⁶⁾ OJ L 180, 13.7.1990, p. 26.

⁽⁷⁾ OJ L 180, 13.7.1990, p. 28.

⁽⁸⁾ OJ L 317, 18.12.1993, p. 59.

Proposal for a Council Decision on the grant of funds to Greece in order to relieve the interest burden on EIB loans for the reconstruction of the region which was devastated by the earthquake of September 1999

(2001/C 62 E/05)

COM(2000) 632 final — 2000/0255(CNS)

(Submitted by the Commission on 11 October 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 from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) Those living in certain areas of Greece have been seriously affected by the earthquakes of September 1999, with an ensuing need to help offset the effects of this disaster on their economic and social well-being.
- (2) The areas stricken by these earthquakes extend over the entire Attica region and in particular the poorest suburbs to the west and north-west of Athens.
- (3) Steps should be taken to deal quickly and efficiently with this quite exceptional situation.
- (4) The European Investment Bank is able to grant loans out of its own resources to help achieve this objective.
- (5) A grant to relieve the interest burden on these loans should be allowed to the Greek State.
- (6) This grant should be chargeable to the general budget of the European Communities.

(7) The Treaty has not provided, for the adoption of the measures in question, powers other than those provided for in Article 308,

HAS DECIDED AS FOLLOWS:

Article 1

Objective

The Community shall make available to the Greek State funds of EUR 2 million in order to relieve the interest burden on loans received from the European Investment Bank (hereinafter referred to as 'the EIB') for the reconstruction of the Attica region after the earthquake of September 1999.

Article 2

Conditions

1. The Commission is hereby empowered to pay these funds in one instalment due in 2000, on terms which it shall lay down. The Commission is entitled to use further increases of the corresponding budget line for a continuation of these measures designated to relieve the interest burden on EIB loans granted for the purpose defined in paragraph 2.

2. All funds received by the Greek State under this Decision shall be exclusively used for relieving the interest burden on EIB loans for the replacement, rehabilitation or reconstruction of buildings, infrastructural and industrial installations (including small and medium enterprises) in the Attica region affected by the earthquake of September 1999.

Amended proposal for a Directive of the European Parliament and of the Council amending for the second time Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (2nd individual Directive within the meaning of Article 16 of Directive 89/391/EEC)

(2001/C 62 E/06)

(Text with EEA relevance)

COM(2000) 648 final — 1998/0327(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 11 October 2000)

INITIAL PROPOSAL

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 118a thereof,

Having regard to the proposal from the Commission, submitted after consulting the Advisory Committee on Safety, Hygiene and Health Protection at Work,

Having regard to the opinion of the Economic and Social Committee ⁽¹⁾,

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

(1) Whereas Article 118a of the Treaty provides that the Council adopt, by means of directives, minimum requirements for encouraging improvements, especially in the working environment, to ensure a better level of protection of the safety and health of workers.

(2) Whereas Pursuant to the said Article, such directives must avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

(3) Whereas Compliance with the minimum requirements designed to ensure a better standard of safety and health in the use of work equipment provided for temporary work at a height is essential to ensure the safety and health of workers.

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 137 (2) thereof,

Unchanged

After consulting the Committee of the Regions ⁽²⁾,

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

Whereas:

(1) Article 137(2) of the Treaty provides that the Council may adopt, by means of directives, minimum requirements for encouraging improvements, especially in the working environment, to ensure a better level of protection of the safety and health of workers.

(2) Pursuant to the said Article, such directives must avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

(3) Compliance with the minimum requirements designed to ensure a better standard of safety and health in the use of work equipment provided for temporary work at a height is essential to ensure the safety and health of workers.

⁽¹⁾ JO C 138, 18.5.1999, p. 30.

⁽²⁾ The Committee of the Regions indicated, by letter of 23 November 1999, that it would not deliver an opinion on this proposal for a Directive.

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- (4) Whereas The provisions adopted pursuant to Article 118a of the Treaty do not prevent any Member State from maintaining or introducing more stringent measures for the protection of working conditions compatible with the Treaty.
- (5) Whereas Work at a height may expose workers to particularly severe risks to their safety and health, and in particular to the risks of falls from a height and of serious occupational accidents.
- (6) Whereas Any employer who intends to have temporary work carried out at a height should select equipment affording adequate protection against the risks of falls from a height.
- (8) Whereas Ladders and scaffolding are the equipment most frequently used in performing temporary work at a height, and the safety and health of workers engaged in this type of work therefore depend to a significant extent on their correct use; whereas the manner in which such equipment can most safely be used by workers should therefore be specified.
- (9) Whereas This Directive is the most appropriate means of achieving the desired objectives and does not go beyond what is necessary to achieve that purpose.
- (10) Whereas This Directive is a practical contribution towards creating the social dimension of the internal market,

HAVE ADOPTED THIS DIRECTIVE:

SECTION I

Article 1

The text annexed to this Directive shall be added to Annex II to Directive 89/655/EEC.

AMENDED PROPOSAL

- (4) The provisions adopted pursuant to Article 137(2) of the Treaty do not prevent any Member State from maintaining or introducing more stringent measures for the protection of working conditions compatible with the Treaty.
- (5) Work at a height may expose workers to particularly severe risks to their safety and health, and in particular to the risks of falls from a height and of serious occupational accidents which are responsible for high rates of injury, in particular fatal injuries.
- (6) Any employer who intends to have temporary work carried out at a height must select equipment affording adequate protection against the risks of falls from a height.
- (7) Self-employed persons and employers, where they themselves pursue an occupational activity and personally use work equipment intended for carrying out temporary work at a height, may affect employees' health and safety. A solution must therefore be found to cover all persons employed in preparing, performing and completing temporary work at a height.
- (8) Ladders and scaffolding are the equipment most frequently used in performing temporary work at a height, and the safety and health of workers engaged in this type of work therefore depend to a significant extent on their correct use. The manner in which such equipment can most safely be used by workers has to be specified. Adequate specific training of workers is therefore required.
- (9) This Directive is the most appropriate means of achieving the desired objectives and does not go beyond what is necessary to achieve that purpose.
- (10) This Directive is a practical contribution towards creating the social dimension of the internal market,

Unchanged

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*Article 2***Final provisions**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (3 years after its adoption). They shall immediately inform the Commission thereof.

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

3. Member States shall communicate to the Commission the texts of the provisions of national law which they have already adopted or adopt in the field covered by this Directive.

Article 3

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

Article 4

Unchanged

This Directive is addressed to the Member States.

ANNEX

3.2.8. Work involving a risk of falls from non-guided load lifting equipment is permitted only under particular justified circumstances. In such cases, workers shall be protected by personal fall prevention equipment.

4. Requirements for the use of work equipment provided for temporary work at a height.

4.1. *General*

4.1.1. In accordance with Article 6 of Directive 89/391/EEC and Article 3 of this Directive, if temporary work at a height cannot be carried out in complete safety and under acceptable ergonomic conditions from a suitable surface, the work equipment most suitable to ensuring an adequate standard of safety and of safety throughout the operations shall be selected. The dimensions of the equipment shall be appropriate to the nature of the work to be performed and the foreseeable stresses and influences and shall allow passage without danger.

4.1.1. In accordance with Article 6 of Directive 89/391/EEC and Article 3 of this Directive, if temporary work at a height cannot be carried out in complete safety and under acceptable ergonomic conditions from a suitable surface, the work equipment most suitable to ensuring and maintaining the highest standard of safety throughout the operations shall be selected. The dimensions of the equipment shall be appropriate to the nature of the work to be performed and the foreseeable stresses and influences and shall allow passage without danger.

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The most appropriate means of access to temporary workplaces at a height shall be selected according to the frequency of passage, height to be negotiated and duration of use. The choice made shall permit evacuation in the event of imminent danger. Passage in either direction between a means of access and platforms, decks or gangways shall not give rise to any additional risks of falling.

Unchanged

4.1.2. Ladders may be used as working places for work at a height only under circumstances in which, the use of other, safer work equipment is not justified in view of the risk and either the short duration of use and low level of risk or existing characteristics of the sites which the employer cannot change.

4.1.2. Ladders may be used as working places for work at a height only under circumstances in which, taking account of point 4.1.1 the use of other, safer work equipment is not justified in view of the low level of risk and either the short duration of use or existing characteristics of the sites which the employer cannot change.

4.1.3. Rope access and positioning techniques may be used only in special circumstances and subject to the following conditions:

Unchanged

- the system shall comprise at least two suspension ropes, each having a separate anchorage point;
- each of the two suspension ropes shall be equipped with fail-safe means of descent;
- tools and other accessories shall be secured to the workers' harnesses;
- work shall be carried out by at least two workers;

Deleted

- work must be properly planned and supervised, so that assistance can be rendered immediately to the worker in case of need;

- the workers concerned shall have received training specific to the operations envisaged, including rescue procedures.

Unchanged

4.1.4. Depending on the type of work equipment chosen on the basis of the foregoing requirements, the appropriate precautions to reduce the risks to which it gives rise shall be determined. If necessary, provision shall be made for the installation of collective fall prevention safeguards. These shall be of suitable configuration and of sufficient strength to prevent or arrest falls from a height and, as far as possible, to preclude injury to workers. prevention safeguards may be interrupted only at points of ladder or stairway access.

4.1.4. Depending on the type of work equipment chosen on the basis of the foregoing requirements, the appropriate precautions to minimise the risks to which it gives rise shall be determined. If necessary, provision shall be made for the installation of collective fall prevention safeguards. These shall be of suitable configuration and of sufficient strength to prevent or arrest falls from a height and, as far as possible, to preclude injury to workers. Collective fall prevention safeguards may be interrupted only at points of ladder or stairway access.

4.2. *Specific requirements for the use of ladders*

Unchanged

4.2.1. Ladders shall be so positioned as to ensure their stability during use. Portable ladders shall rest on a stable, strong, immobile and horizontal footing. Suspended ladders, other than rope ladders, shall be fixed in a secure manner and, in a manner which ensures they cannot be displaced and prevents swinging.

4.2.1. Ladders shall be so positioned as to ensure their stability during use. Portable ladders shall rest on a stable, strong, suitably dimensioned and immobile footing so that the rungs remain horizontal. Suspended ladders shall be attached in a secure manner and, with the exception of rope ladders, in a manner which ensures they cannot be displaced and prevents swinging.

INITIAL PROPOSAL

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4.2.2. Before portable ladders are brought into service, their feet shall be prevented from slipping by securing the styles at or near their upper or lower ends, by any anti-slip device or by any other arrangement of equivalent effectiveness. Ladders in several sections shall be so used as to ensure that components are prevented from moving relative to each other. Mobile ladders shall be immobilised before any person steps onto them.

4.2.2. When portable ladders are in use, their feet shall be prevented from slipping by securing the styles at or near their upper or lower ends, by any anti-slip device or by any other arrangement of equivalent effectiveness. Ladders used for access shall be long enough for their uprights to protrude sufficiently beyond the access platform. Ladders consisting of several assemblable components and extension ladders shall be so used as to ensure that components are prevented from moving relative to each other. Mobile ladders shall be immobilised before any person steps onto them.

4.2.3. Ladders shall be so used that a secure handhold and secure support are available to workers at all times.

4.2.3. Ladders shall be so used that a secure handhold and secure support are available to workers at all times. In particular, if a load has to be carried by hand on a ladder, it shall not preclude maintaining a safe handhold.

4.3. Specific requirements for the use of scaffolding

Unchanged

4.3.1. When no statement of the design calculations is available for the scaffolding selected or the statement does not cover the structural arrangements contemplated, stability calculations shall be carried out.

4.3.2. Depending on the complexity of the scaffolding chosen, an assembly, use and dismantling plan shall be drawn up. It may be in the form of a standard plan, supplemented by items relating to specific details of the scaffolding in question.

4.3.2. Depending on the complexity of the scaffolding chosen, an assembly, use and dismantling plan shall be drawn up by a competent person. It may be in the form of a standard plan, supplemented by items relating to specific details of the scaffolding in question.

4.3.3. The bearing components of a scaffold shall be prevented from slipping, either by attachment to the bearing surface or by provision of an anti-slip device or by any other means of equivalent effectiveness. Mobile scaffolds shall be provided with devices which prevent their accidental movement when ready for use. These devices must be in operation

4.3.3. The bearing components of a scaffold shall be prevented from slipping, either by attachment to the bearing surface or by provision of an anti-slip device or by any other means of equivalent effectiveness, and the load-bearing surface must have a sufficient capacity. Scaffolding shall be braced against movement. Mobile scaffolds shall be provided with devices which prevent their accidental movement when ready for use. These devices must be in operation before any person steps onto the scaffold.

4.3.4. The dimensions, of scaffold decks shall be appropriate to the nature of the work to be performed and the and shall allow passage without danger. They shall be of a thickness such that they are entirely safe, having regard to the distance between two supports and the loads to be withstood. Scaffold decks shall be so assembled that their components cannot move in normal use. There shall be no dangerous gaps between the deck components and the vertical collective safeguards.

4.3.4. The dimensions, form and arrangement of scaffold decks shall be appropriate to the nature of the work to be performed and the loads to be borne and shall allow safe working and passage. They shall be of a thickness such that they are entirely safe, having regard to the distance between two supports and the loads to be withstood. Scaffold decks shall be so assembled that their components cannot move in normal use. There shall be no dangerous gaps between the deck components and the vertical collective fall prevention safeguards.

4.3.5. When parts of scaffolding are not ready for use, for example during assembly, dismantling or alteration, they shall be marked with general warning signs and be suitably delimited by physical means preventing access to the danger zone in accordance with the national provisions transposing Directive 92/58/EEC.

Unchanged

INITIAL PROPOSAL

- 4.3.6. Scaffolding shall be assembled, dismantled or significantly altered only under the supervision of a competent person and only by workers who are trained in this type of work. Such training shall include interpretation of the assembly and dismantling plan; safety during assembly, dismantling or alteration of the scaffolding concerned; prevention of the risk of persons or objects falling; changing weather conditions load factors and any other risk which the operations may entail. During the work, the competent person and the workers concerned shall have available the assembly and dismantling plan mentioned in point 4.3.2 of the present Annex.
- 4.3.7. When the performance of a particular task requires a collective fall prevention safeguard to be removed temporarily, effective compensatory measures shall be taken.

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- 4.3.6. Scaffolding shall be assembled, dismantled or significantly altered only under the supervision of a competent person and only by workers who have received adequate training specific to the operations envisaged, in accordance with the provisions of Article 7, especially with a view to the following: understanding the plan for assembling, dismantling or altering the scaffolding concerned; safety during assembly, dismantling or alteration of the scaffolding concerned; measures to prevent the risk of persons or objects falling; safety measures in the event of changing weather conditions which may prejudice the safety of the scaffolding concerned; conditions relating to permitted load and any other risk which the abovementioned assembly, dismantling and alteration operations may entail. During the work, the competent person and the workers concerned shall have available the assembly and dismantling plan mentioned in point 4.3.2 of the present Annex.
- 4.3.7. When the performance of a particular task requires a collective fall prevention safeguard to be removed temporarily, effective compensatory measures shall be taken. The task may not be performed until such measures have been taken. Once that particular task is finished, either for good or temporarily, the collective prevention safeguards shall be put back in place.

Amended proposal for a Council Decision establishing a Community Action Programme to combat discrimination 2001-2006 ⁽¹⁾

(2001/C 62 E/07)

(Text with EEA relevance)

COM(2000) 649 final — 1999/0251(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 11 October 2000)

⁽¹⁾ OJ C 116 E, 26.4.2000, p. 16.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

Having regard to the Treaty establishing the European Community, and in particular Article 13 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

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

Whereas:

(1) Whereas the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States; whereas in accordance with Article 6(2) of the Treaty on European Union, the Union should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms, as general principles of Community Law;

(1) The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States; whereas in accordance with Article 6(2) of the Treaty on European Union, the Union should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community Law;

(2) Whereas the European Parliament has strongly and repeatedly urged the European Union to strengthen its policy in the field of equal treatment and equal opportunities across all grounds of discrimination;

(2) The European Parliament has strongly and repeatedly urged the European Union to develop and strengthen its policy in the field of equal treatment and equal opportunities across all grounds of discrimination;

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- (3) Whereas experience of action at Community level, in particular in the field of gender, has shown that combating discrimination in practice calls for a combination of measures and in particular of legislation and of practical action designed to be mutually reinforcing; whereas similar lessons can be drawn from experience dealing with racial and ethnic origin and disability; whereas the Commission has made proposals to this end ⁽¹⁾;
- (4) Whereas the programme should deal with all grounds of discrimination with the exception of sex, which is dealt with by specific Community action; whereas discrimination on different grounds can have similar features and can be combated in similar ways; whereas the experience built up over many years in combating discrimination on some grounds, including sex, can be used to the benefit of other grounds; whereas, however, the specific features of the diverse forms of discrimination should be accommodated; whereas, therefore, the particular needs of people with disabilities should be taken into account in terms of the accessibility of activities and results;

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- (3) Experience of action at Community level, in particular in the field of gender, has shown that combating discrimination in practice calls for a combination of measures and in particular of legislation and of practical action designed to be mutually reinforcing; whereas similar lessons can be drawn from experience dealing with racial and ethnic origin and disability; whereas the Commission has made proposals to this end ⁽¹⁾;
- (4) The programme should deal with all grounds of discrimination with the exception of sex, which is dealt with by specific Community action; whereas discrimination on different grounds can have similar features and can be combated in similar ways; whereas the experience built up over many years in combating discrimination on some grounds, including sex, can be used to the benefit of other grounds; whereas, however, the specific features of the diverse forms of discrimination should be accommodated; whereas, therefore, the particular needs of people with disabilities should be taken into account in terms of the accessibility of activities and results;
- (4A) There is no hierarchy of importance between the different forms of discrimination, which are all equally intolerable; whereas the programme is intended both to exchange existing good practice in the Member States and to promote the development of new practice and policy in combating discrimination, including multiple discrimination; whereas this proposal can help the Community in developing an overall strategy for combating discrimination on a range of grounds, which should now advance together;
- (4B) In implementing this programme, the Community, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and promote equality between men and women, especially since women are often the victims of multiple discrimination;

⁽¹⁾ See separate proposals for Directives establishing a General Framework for Employment Equality and implementing the Principle of Equal Treatment between persons irrespective of Racial and Ethnic Origin elsewhere in this package.

⁽¹⁾ See separate proposals for Directives establishing a General Framework for Employment Equality and implementing the Principle of Equal Treatment between persons irrespective of Racial and Ethnic Origin elsewhere in this package.

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- (5) Whereas many non-governmental organisations at the European level have experience and expertise in fighting discrimination, as well as acting at European level as the advocates of people who are exposed to discrimination; whereas they can therefore make an important contribution to understanding the diverse forms and effects of discrimination and to ensuring that the design, implementation and follow-up of the programme take account of the experience of people exposed to discrimination;
- (6) Whereas, 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 Decision should be adopted by use of the advisory procedure provided for in Article 3 of that Decision;
- (7) Whereas it is necessary, in order to reinforce the added value of Community action, that the Commission, in co-operation with the Member States, should ensure, at all levels, the coherence and complementarity of actions implemented in the framework of this Decision and other relevant Community policies, instruments and actions, in particular those under the European Social Fund and to promote social inclusion;
- (8) Whereas the Agreement on the European Economic Area (EEA Agreement) provides for greater co-operation in the social field between the European Community and its Member States, on the one hand, and the countries of the European Free Trade Association participating in the European Economic Area (EFTA/EEA), on the other; whereas provision should be made to open up this programme to participation by the candidate countries of central and eastern Europe, in accordance with the conditions established in the Europe Agreements, in their additional protocols and in the decisions of the respective Association Councils, to Cyprus and Malta, funded by additional appropriations in accordance with the procedures to be agreed with those countries, as well as to Turkey, funded by additional appropriations in accordance with the procedures to be agreed with that country;
- (9) Whereas it is necessary for the success of any Community action to monitor and evaluate the results set against the objectives
- (5) Many non-governmental organisations at the European level have experience and expertise in fighting discrimination, as well as acting at European level as the advocates of people who are exposed to discrimination; whereas they can therefore make an important contribution to understanding the diverse forms and effects of discrimination and to ensuring that the design, implementation and follow-up of the programme take account of the experience of people exposed to discrimination; whereas the Community has in the past provided core-funding to a range of organisations working in the field of discrimination; whereas therefore the core-funding of effective non-governmental organisations can be a valuable asset in combating discrimination;
- (6) 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 Decision should be adopted by use of the advisory procedure provided for in Article 3 of that Decision;
- (7) It is necessary, in order to reinforce the added value of Community action, that the Commission, in co-operation with the Member States, should ensure, at all levels, the coherence and complementarity of actions implemented in the framework of this Decision and other relevant Community policies, instruments and actions, in particular those under the European Social Fund, in the fields of education and training and equal opportunities between women and men and to promote social inclusion;
- (8) The Agreement on the European Economic Area (EEA Agreement) provides for greater co-operation in the social field between the European Community and its Member States, on the one hand, and the countries of the European Free Trade Association participating in the European Economic Area (EFTA/EEA), on the other; whereas provision should be made to open up this programme to participation by the candidate countries of central and eastern Europe, in accordance with the conditions established in the Europe Agreements, in their additional protocols and in the decisions of the respective Association Councils, to Cyprus and Malta, funded by additional appropriations in accordance with the procedures to be agreed with those countries, as well as to Turkey, funded by additional appropriations in accordance with the procedures to be agreed with that country;
- (8A) The annual appropriations for the programme will be determined by the budgetary authority within the limits of the financial perspectives;
- (9) It is necessary for the success of any Community action to monitor and evaluate the results set against the objectives

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

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(10) Whereas, in accordance with the principles of subsidiarity and proportionality as defined in Article 5 of the Treaty, the objectives of the proposed action concerning the contribution of the Community to combating discrimination cannot be sufficiently achieved by the Member States because, *inter alia*, of the need for multilateral partnerships, the transnational exchange of information and the Community-wide dissemination of good practice; whereas this Decision does not go beyond what is necessary to achieve those objectives;

HAS ADOPTED THIS DECISION:

*Article 1***Establishment of the Programme**

This Decision establishes a Community action programme to promote measures to combat discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation, hereinafter referred to as 'the programme', for the period from 1 January 2001 to 31 December 2006.

*Article 2***Principles**

1. For the purpose of this decision, discrimination shall be defined as one person or a group of persons being treated less favourably than another on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation; or as the application of an apparently neutral provision which is liable to disadvantage that person or group of persons on the same grounds, unless justified by objective reasons.

2. In designing, implementing and following up the activities under the programme, account will be taken of the experience of people exposed to discrimination

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(10) In accordance with the principles of subsidiarity and proportionality as defined in Article 5 of the Treaty, the objectives of the proposed action concerning the contribution of the Community to combating discrimination cannot be sufficiently achieved by the Member States because, *inter alia*, of the need for multilateral partnerships, the transnational exchange of information and the Community-wide dissemination of good practice; whereas this Decision does not go beyond what is necessary to achieve those objectives;

HAS DECIDED AS FOLLOWS:

Unchanged

2. In designing, implementing and following up the activities under the programme, account will be taken of the experience of people exposed to discrimination, in particular through relevant non-governmental organisations. The programme will take account of the impact of discrimination on its victims and, where appropriate, on people close to them.

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Article 3

Unchanged

Objectives

The programme shall support and supplement the efforts at the level of the Community and in the Member States to promote measures to combat discrimination, including by complementing legislative developments. It shall have the following objectives:

The programme shall support and supplement the efforts at the level of the Community and in the Member States to promote measures to prevent and combat discrimination and multiple discrimination taking account, where appropriate, of future legislative activities. It shall have the following objectives:

(a) improve the understanding of issues related to discrimination through improved knowledge and measurement and through the evaluation of the effectiveness of policies and practice;

Unchanged

(b) develop the capacity of target actors (in particular Member States, local and regional authorities, independent bodies responsible for the fight against discrimination, the social partners and non-governmental organisations) to address discrimination effectively, in particular through support for the exchange of information and good practice and networking at European level;

(b) develop the capacity of target actors (in particular Member States, local and regional authorities, independent bodies responsible for the fight against discrimination, the social partners and non-governmental organisations of varying sizes) to address and prevent discrimination effectively, in particular through the empowerment of their organisations and through support for the exchange of information and good practice and networking at European level, while taking account of the specific features of the diverse forms of discrimination;

(c) promote and disseminate the values and practices underlying the fight against discrimination.

(c) promote and disseminate the values and practices underlying the fight against discrimination, including through awareness-raising activities.

Article 4

Unchanged

Community actions

1. With a view to achieving the objectives set out in Article 3, the following actions may be implemented within a transnational framework:

(a) analysis of factors related to discrimination, including through the collection of statistics, studies and the development of indicators and benchmarks; and the evaluation of anti-discrimination legislation and practice, with a view to assessing its effectiveness and impact, with effective dissemination of the results;

(b) transnational co-operation between target actors and the promotion of networking at European level between non-governmental organisations active in the fight against discrimination;

(b) transnational co-operation between target actors and the promotion of networking at European level between non-governmental organisations active in the fight against and the prevention of discrimination;

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(c) awareness raising, in particular to emphasise the European dimension of the fight against discrimination and to publicise the results of the programme, in particular through communications, publications, campaigns and events.

Unchanged

2. Arrangements for the implementation of the Community Actions described in paragraph 1 are set out in the Annex.

Article 5

Implementation of the programme and co-operation with the Member States

1. The Commission shall:

(a) ensure the implementation of the Community actions covered by this programme in conformity with the Annex;

(b) have a regular exchange of views with representatives of non-governmental organisations and the social partners at European level on the design, implementation and follow-up of the programme and on related policy orientations. The Commission shall inform the Committee established under Article 6 of their opinions

(b) have a regular exchange of views with representatives of non-governmental organisations and the social partners at European level on the design, implementation and follow-up of the programme and on related policy orientations. To this end, the Commission shall make relevant information available to the non-governmental organisations and social partners. The Commission shall inform the Committee established under Article 6 of their opinions

(c) promote active partnership and dialogue between all the partners involved in the programme, *inter alia* to encourage an integrated and co-ordinated approach to the fight against discrimination.

Unchanged

2. The Commission, in co-operation with the Member States, shall take the necessary steps to:

(a) promote the involvement in the programme of all the parties concerned;

(a) promote the involvement in the programme of all the parties concerned, including non-governmental organisations of varying sizes;

(b) ensure the dissemination of the results of the actions undertaken within the framework of this programme;

Unchanged

(c) provide appropriate information, publicity and follow-up with regard to actions supported by this programme.

(c) provide accessible information, and appropriate publicity and follow-up with regard to actions supported by this programme.

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Article 6

Unchanged

Committee

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission (hereinafter referred to as 'the Committee').

2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply.

3. The representative of the Commission shall in particular consult the Committee on:

- (a) the general guidelines for the implementation of the programme;
- (b) the annual budgets and the distribution of funding between measures;
- (c) the annual plan of work for the implementation of the programme's actions;

The representative of the Commission shall also consult the Committee on other appropriate matters concerning the implementation of this programme.

4. To ensure the consistency and complementarity of this programme with other measures referred to in Article 7, the Commission shall keep the Committee regularly informed about other Community action contributing to the fight against discrimination. Where appropriate, the Commission shall establish regular and structured co-operation between this Committee and the monitoring committees established for other relevant policies, instruments and actions.

*Article 7***Consistency and complementarity**

1. The Commission shall, in co-operation with the Member States, ensure overall consistency with other Union and Community policies, instruments and actions, in particular by establishing appropriate mechanisms to co-ordinate the activities of this programme with relevant activities relating to research, employment, equality between women and men, social inclusion, education, training and youth policy and in the field of the Community's external relations.

1. The Commission shall, in co-operation with the Member States, ensure overall consistency with other Union and Community policies, instruments and actions, in particular by establishing appropriate mechanisms to co-ordinate the activities of this programme with relevant activities relating to research, employment, equality between women and men, social inclusion, culture, education, training and youth policy and in the field of the Community's external relations.

2. The Commission and the Member States shall ensure consistency and complementarity between action undertaken under this programme and other relevant Union and Community action, in particular under the Structural Funds and the Community Initiative EQUAL.

Unchanged

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3. The Member States shall make all possible efforts to ensure consistency and complementarity between activities under this programme and those carried out at national, regional and local levels.

*Article 8***Participation of the EFTA/EEA countries, the associated countries of central and eastern Europe, Cyprus, Malta and Turkey**

This programme shall be open to the participation of:

- (a) the EFTA/EEA countries in accordance with the conditions established in the EEA Agreement;
- (b) the candidate countries of central and eastern Europe (CEECs) in accordance with the conditions established in the Europe Agreements, in their additional protocols and in the decisions of the respective Association Councils;
- (c) Cyprus and Malta, funded by additional appropriations in accordance with procedures to be agreed with these countries;
- (d) Turkey, funded by additional appropriations in accordance with procedures to be agreed with that country.

*Article 9***Monitoring and evaluation**

1. The Commission shall regularly monitor this programme in co-operation with the Member States.

2. The programme shall be evaluated by the Commission with the assistance of independent experts. This evaluation will assess the relevance and effectiveness of actions implemented with regard to the objectives referred to in Article 2. It will also examine the impact of the programme as a whole.

The evaluation will also examine the complementarity between action under this programme and that pursued under other relevant Community policies, instruments and actions.

3. The Commission shall submit to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions an evaluation report on the implementation of the programme by 31 December 2005.

Article 8a

The annual appropriations for this programme shall be determined by the Budgetary Authority within the limits of the financial perspectives.

Unchanged

2. The programme shall be evaluated by the Commission with the assistance of independent experts, taking into account the views of non-governmental organisations as appropriate. This evaluation will assess the relevance, effectiveness and cost-effectiveness of actions implemented with regard to the objectives referred to in Article 2. It will also examine the impact of the programme as a whole.

Unchanged

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*Article 10***Entry into force**

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

ANNEX

INDICATIONS FOR THE IMPLEMENTATION OF THE PROGRAMME**I. General principles**

The Commission and the Member States shall make efforts to ensure that all texts, guidelines and calls for proposals issued under this programme are formulated in clear, simple and accessible language with a view to helping people participate in the programme.

Account will be taken of the need to provide special assistance where appropriate to enable people to overcome barriers to their participation in the programme.

In its activities, the programme will respect the principle of gender mainstreaming, giving attention to cases where the gender of the victim has an effect on the discrimination suffered.

I. Areas of action

The programme may operate in the following areas:

(a) Promotion of non-discrimination within and by public administrations (e.g. police, judicial systems, health, social security, education);

(b) promotion of non-discrimination within and by the media;

(c) the removal of discriminatory barriers to participation in decision-making and the democratic process;

(d) the removal of discriminatory barriers to access goods and services, including housing, transport, culture, leisure and sport;

(e) the identification of tools and methodologies for the effective monitoring of discrimination;

(f) the identification of tools and methodologies for the effective dissemination of information about rights to equal treatment and non-discrimination;

(g) the identification of methodologies for mainstreaming anti-discriminatory policies and practices.

II. Areas of action

Unchanged

(e) the identification of tools and methodologies for the effective monitoring of discrimination, including multiple discrimination;

Unchanged

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The programme themes may be adapted or supplemented in accordance with the procedure established under Article 6, on the basis of an annual review, taking into account the results of the preparatory actions for this programme and activities under other Community policies, instruments and actions.

In all its activities, the programme will respect the principle of gender mainstreaming.

Deleted

In carrying out the programme, the Commission may have recourse to technical and/or administrative assistance, to the mutual benefit of the Commission and of the beneficiaries, related to identification, preparation, management, monitoring, audit and control.

The Commission may also undertake information, publication and dissemination actions. It may also undertake evaluation studies and organise seminars, colloquia or other meetings of experts.

II. Actions**III. Actions***Strand 1 — Analysis and evaluation*

Unchanged

The following measures may be supported:

1. the development and dissemination of comparable statistical series on the scale of discrimination in the Community;
2. the development and dissemination of methodologies and indicators for evaluating the effectiveness of anti-discrimination policy and practice (benchmarking);
3. the analysis, by means of annual reports, of anti-discrimination legislation and practice, with a view to evaluating its effectiveness and disseminating lessons learned;
4. thematic studies within the framework of the priority themes comparing and contrasting approaches within and across the different grounds of discrimination.

In implementing this Strand, the Commission will in particular ensure consistency and complementarity with the activities of the European Monitoring Centre on Racism and Xenophobia and of the Community RTD Framework Programme.

In implementing this Strand, the Commission will in particular ensure consistency and complementarity with the activities of the European Monitoring Centre on Racism and Xenophobia and of the Community Research and Technical Development Framework Programme and the Community Statistical Programme.

Strand 2 — Capacity building

Unchanged

The following measures may be supported in order to improve the capacity and effectiveness of target actors involved in combating discrimination:

INITIAL PROPOSAL

1. Transnational exchange actions involving a range of actors from at least 4 Member States, consisting of the transfer of information, lessons learned and good practice. Activities may include the comparison of the effectiveness of processes, methods and tools related to the chosen themes; the mutual transfer and application of good practice; exchanges of personnel; the joint development of products, processes, strategy and methodology; the adaptation to different contexts of the methods, tools and processes identified as good practices; and/or the common dissemination of results, visibility materials and events.

2. Core funding for relevant European-level non-governmental organisations with experience of fighting discrimination and acting as advocates of people exposed to discrimination in order to promote the development of an integrated and co-ordinated approach to the fight against discrimination.

The criteria for determining the organisations to be supported shall be established in accordance with the procedure foreseen in Article 6.

Strand 3 — Awareness Raising

The following measures may be supported:

1. The organisation of conferences, seminars and events at European level;

2. The organisation of seminars by the Member States in support of the implementation of Community law in the field of non-discrimination; and the promotion of a European dimension to events organised at national level;

3. The organisation of European media campaigns and events to support the transnational exchange of information and the identification and dissemination of good practice, including the award of prizes to successful actions under Strand 2, to strengthen the visibility of the fight against discrimination;

4. The publication of materials to disseminate the results of the programme, including through the construction of an Internet Site providing examples of good practice, a forum for the exchange of ideas and a database of potential partners for transnational exchange actions.

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1. Transnational exchange actions involving a range of actors from at least 3 Member States, consisting of the transfer of information, lessons learned and good practice. Activities may include the comparison of the effectiveness of processes, methods and tools related to the chosen themes; the mutual transfer and application of good practice; exchanges of personnel; the joint development of products, processes, strategy and methodology; the adaptation to different contexts of the methods, tools and processes identified as good practices; and/or the common dissemination of results, visibility materials and events. In selecting applications for funding, the programme will take account of the diverse nature of discrimination.

2. Up to 90% core funding for relevant European-level non-governmental organisations with experience of fighting discrimination and acting as advocates of people exposed to discrimination in order to promote the development of an integrated and co-ordinated approach to the fight against discrimination.

The criteria for determining the organisations to be supported shall be established in accordance with the procedure foreseen in Article 6. These criteria may take account of the diverse and heterogeneous nature of groups facing discrimination.

Unchanged

INITIAL PROPOSAL

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III. Method of presenting applications for support**IV. Unchanged**

Strand 1: this Strand will be mainly implemented through calls for tender. For co-operation with National Statistical Offices, the EuroStat procedures will apply.

Unchanged

Strand 2: Strand 2.1 will be implemented in response to calls for proposals which will be submitted to the Commission.

Strand 2.2 will be implemented in response to calls for proposals which will be submitted to the Commission.

Strand 3: this Strand will be implemented, in general, in response to calls for tender. However, action under Strand 3.2 and 3.3 may be subsidised in response to requests for subsidies for example from the Member States.

Amended proposal for a Council Regulation on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia and amending Regulation (EEC) No 3906/89, Decision 97/256/EC and Regulation (EEC) No 1360/90

(2001/C 62 E/08)

COM(2000) 628 final — 2000/0111(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 12 October 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 from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The Community provides assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia.

(2) Most of this assistance is currently provided under Council Regulation (EC) No 1628/96 of 25 July 1996 relating to aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia⁽¹⁾ (Obnova), as last amended by Regulation (EC) No 2454/1999⁽²⁾ and under Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe⁽³⁾ (Phare), as last amended by Regulation (EC) No 1266/1999⁽⁴⁾. This means that the assistance is subject to different sets of procedures, which encumbers management. In the interests of efficiency it is therefore desirable to establish a single legal framework for this assistance. It is therefore appropriate to repeal Regulation (EC) No 1628/96 and to amend Regulation (EEC) No 3906/89. However, in order to ensure the continuity of the activities of the European Agency for Reconstruction, the provisions of Regulation (EC) No 1628/96 which concern the establishment of the Agency should be incorporated in another Regulation which should enter into force on the date of that repeal.

(3) The European Council which met in Lisbon on 23 and 24 March 2000 confirmed that its overall objective remained the fullest possible integration of the countries of the region into the political and economic mainstream of Europe and that the Stabilisation and Association Process was the centrepiece of its policy in the Balkans.

(4) The existing financial assistance should be expanded and redirected to adjust it to the European Union's political

objectives for the region and, particularly, to ensure that it contributes to the Stabilisation and Association Process.

(5) Assistance will therefore be focussed mainly on building up an institutional, legislative, economic and social framework directed at the values and models subscribed to by the European Union.

(6) A precondition of receiving assistance is that the recipients respect democratic principles, human and minority rights and other fundamental freedoms.

(7) The regional dimension of such assistance must be given special attention, with a view to stepping up regional cooperation and supporting the European Union's role within the Stability Pact.

(8) In view of the political situation in some areas and the nature of the various entities that have responsibility for implementing assistance there, it is desirable to provide that the assistance can be supplied in some cases directly to recipients other than the State.

(9) To make the assistance more effective and ensure it is properly implemented, the Commission should adopt general guidelines in accordance with the management procedure laid down in this Regulation.

(10) To promote cooperation within the region, provision should be made for all the candidate countries and the countries covered by the TACIS and MEDA programmes to participate in the tendering procedures and contracts.

(11) Provision should be made for checks and for the protection of the Community's financial interests *inter alia* by enabling the Commission, the Court of Auditors and OLAF to exercise their respective powers pursuant to Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities⁽⁵⁾ and Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests⁽⁶⁾.

⁽¹⁾ OJ L 204, 14.8.1996, p. 1.

⁽²⁾ OJ L 299, 20.11.1999, p. 1.

⁽³⁾ OJ L 375, 23.12.1989, p. 11.

⁽⁴⁾ OJ L 161, 26.6.1999, p. 68.

⁽⁵⁾ OJ L 292, 15.11.1996, p. 2.

⁽⁶⁾ OJ L 312, 23.12.1995, p. 1.

- (12) The assistance will be governed by annual and multi-annual programming, which will be put to the management committee set up by this Regulation for an opinion. This will situate the assistance within a medium-term outlook, and will make it possible to ensure that Community assistance complements and remains consistent with that of the Member States.
- (13) The measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision No 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾ and should be adopted in accordance with the management procedure provided for in Article 4 of that Decision.
- (14) In the case of Kosovo, provision should be made for the Commission to be able to adopt programmes for reconstruction in Kosovo put to it by the European Agency for Reconstruction. In other cases, programmes should be adopted using the management procedure.
- (15) In the light of the scope of this Regulation, consequent changes will need to be made to Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe (Phare), as last amended by Regulation (EC) No 1266/1999, to Council Decision 97/256/EC ⁽²⁾ of 14 April 1997 granting a Community guarantee to the European Investment Bank against losses under loans for projects outside the Community (Central and Eastern Europe countries, Mediterranean countries, Latin American and Asian countries, South Africa, the Former Yugoslav Republic of Macedonia and Bosnia and Herzegovina), as last amended by Decision 98/729/EC ⁽³⁾ and to Council Regulation (EEC) No 1360/90 ⁽⁴⁾ of 7 May 1990 establishing a European Training Foundation, as last amended by Regulation (EC) No 1572/98 ⁽⁵⁾.
- (16) The operations covered by this Regulation are part of the Community's Western Balkans policy and are needed to implement one of the Community's objectives. The Treaty does not provide, for the adoption of this Regulation, powers other than those under Article 308,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Community shall provide financial assistance, hereinafter referred to as 'Community assistance', to Albania, Bosnia

and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia.

2. The following shall be directly eligible for Community assistance: the State, federal, regional and local bodies, public and semi-public bodies, organisations providing support to businesses, cooperatives, mutual societies, associations, foundations and non-governmental organisations.

3. Authorities established by the international community to act as the civil administration in some areas, such as the High Representative in Bosnia and the United Nations Interim Administration Mission in Kosovo, shall be duly consulted on implementation of the Community assistance in their areas. Any programmes or projects they implement shall be eligible for Community assistance under this Regulation, except in the case of those entities' running costs. Where appropriate, such costs may draw on a grant provided under Council Regulation (EC) 1080/2000 ⁽⁶⁾ of 22 May 2000 on support for the United Nations Interim Mission in Kosovo (UNMIK) and the Office of the High Representative in Bosnia and Herzegovina (OHR).

Article 2

1. The main purpose of the Community assistance is to support participation by the recipient countries in the Stabilisation and Association Process.

2. The Community assistance is for, *inter alia*:

- (a) reconstruction, the return of refugees and stabilisation of the region;
- (b) the creation of an institutional and legislative framework to underpin democracy, the rule of law and human and minority rights;
- (c) sustainable economic and social development and market-economy orientated economic reform;
- (d) the development of closer relations among recipient countries, between them and the European Union, and between them and countries which are candidates for accession to the European Union;
- (e) fostering regional, trans-national, cross-border and inter-regional cooperation among the recipient countries and between them and the European Union, and between the recipient countries and other countries of the region.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 102, 19.4.1997.

⁽³⁾ OJ L 346, 22.12.1998.

⁽⁴⁾ OJ L 131, 23.5.1990.

⁽⁵⁾ OJ L 206, 23.7.1998.

⁽⁶⁾ OJ L 22, 24.5.2000.

3. The Community assistance shall be implemented by financing investment and institution-building programmes in accordance with the programming principles set out in the general guidelines adopted in accordance with the procedure referred to in Article 10(2).

Article 3

1. Save in exceptional, duly justified cases, assistance shall be provided as part of national and multi-beneficiary programmes drawn up on the basis of indicative multiannual programmes and annual action programmes adopted in accordance with the procedure referred to in Article 10(2).

2. Multiannual indicative programmes shall lay down the main objectives and broad guidelines for Community assistance; they shall include indicative financial estimates. Before adopting indicative programmes for the countries in question, the Commission shall examine with the Committee referred to in Article 10 the strategy framework (country strategy paper) on which programming is to be based.

3. Annual action programmes shall be based on the indicative programmes and shall set out, for a given operational year, the aims being pursued, the fields of action and the budget provided for.

Article 4

1. By way of derogation from Article 3, where assistance for Kosovo is implemented by the European Agency for Reconstruction, that assistance shall be provided under the annual programme for reconstruction.

2. The Governing Board of the European Agency for Reconstruction shall examine the strategy framework (restricted to assistance only) presented by the Commission, on which the annual programme for reconstruction is to be based.

3. The Director of the Agency shall submit the draft annual programme for reconstruction to the Commission, in accordance with Article 4(10)(b) of the Regulation (on the Agency).

The Commission may adopt the programme as submitted by the Agency. In other cases, the programme shall be adopted in accordance with the procedure laid down in Article 10(2).

The procedure laid down in Article 10(2) shall also be used to adopt programmes of assistance for Kosovo which are not due to be implemented by the Agency and which do not therefore figure in the annual programme for reconstruction.

Article 5

1. Respect for the principles of democracy and the rule of law and for human and minority rights and fundamental

freedoms is an essential element for the application of this Regulation and a precondition of eligibility for Community assistance. If these principles are not respected, the Council, acting by qualified majority on a proposal from the Commission, may take appropriate measures.

2. Community assistance shall also be subject to the conditions defined by the Council in its conclusions of 29 April 1997 ⁽¹⁾, in particular as regards the recipients' undertaking to carry out democratic, economic and institutional reforms.

Article 6

1. Community assistance shall be in the form of grants.

2. Community financing may be used to cover expenditure on preparing, implementing, monitoring, checking and evaluating projects and programmes, and on information.

3. Community financing may be used for cofinancing. Cofinancing of investment projects financed by loans from the European Investment Bank or other international financial institutions may take the form of interest rate subsidies.

4. In the event of the occurrence or threat of a serious political and economic crisis in one of the recipient countries and/or entities, the Community may provide exceptional budget assistance targeted on clearly identified items of expenditure. The Commission shall decide on such assistance, using the procedure laid down in Article 10(2).

Such assistance shall not take the place of macro-economic assistance (macro-financial and exceptional financial assistance), which shall be provided, where applicable, on the basis of specific instruments.

5. Community financing may not be used for paying taxes, duties or charges or for acquiring immovable property.

Article 7

1. The Commission shall implement the Community assistance in accordance with the Financial Regulation applicable to the general budget of the European Communities.

2. Participation in invitations to tender and contracts shall be open on equal terms to all natural and legal persons from Member States, States which are recipients under this Regulation, candidate countries and countries which are recipients under the TACIS and MEDA programmes.

3. In the case of cofinancing, the Commission may authorise participation in invitations to tender and contracts by nationals of other countries on a case-by-case basis.

⁽¹⁾ Bulletin 4-1997, point 2.2.1.

Article 8

1. Financing decisions and any agreements or contracts resulting therefrom shall expressly provide for monitoring and financial control by the Commission and audits by the Court of Auditors, if necessary on the spot.

2. In addition, the Commission may carry out on-the-spot checks and inspections in accordance with Regulation (Euratom, EC) No 2185/96. Measures taken by the Commission in accordance with the procedures referred to in Article 10(2) shall provide for adequate protection of the financial interests of the Community as required by Regulation (EC, Euratom) No 2988/95.

Article 9

Decisions amending decisions taken in accordance with the procedure referred to in Article 10(2) shall be adopted by the Commission without consulting the Committee where they do not comprise substantial changes to the nature of the original programmes and operations and, as regards the financial element, where they do not exceed 20 % of the total amount allocated for the programme or operation in question. The Committee shall be notified of all revised decisions.

Article 10

1. The Commission shall be assisted by a management committee composed of the 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 Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.

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

4. The Committee may examine any other question concerning the implementation of this Regulation which is submitted to it by the Chairman, whether or not at the request of the representative of a Member State, and in particular any question relating to the programming or general implementation of measures or to cofinancing.

Article 11

1. In the interests of making the assistance cohesive and more efficient and complementary, the Member States and the Commission shall exchange any relevant information on the operations they intend to implement.

2. Every year the Commission shall submit a progress report to the European Parliament and the Council on implementation of the Community assistance.

Article 12

Regulation (EC) No 1628/96 is repealed.

Article 13

In the Annex to Regulation (EC) No 3906/89, the names 'Bosnia and Herzegovina', 'Albania', 'Croatia', 'former Yugoslav Republic of Macedonia' and 'Yugoslavia' are deleted.

Article 14

The second subparagraph of Article 1a(5) of Council Decision 97/256/EC is replaced by the following:

'Financial decisions relating to this Decision shall be adopted in accordance with the procedures laid down in Regulation (CARDS).'

Article 15

The first subparagraph of Article 1 of Council Regulation (EEC) No 1360/90 is replaced by the following:

'This Regulation hereby establishes the European Training Foundation, hereinafter referred to as the "Foundation", whose objective shall be to contribute to the development of the vocational training systems of:

- the countries of Central and Eastern Europe designated as eligible for economic aid by the Council in Regulation (EEC) No 3906/89 or in any subsequent relevant legal act,
- the New Independent States of the former Soviet Union and Mongolia which are the beneficiaries of the programme to assist economic reform and recovery pursuant to Regulation (Euratom, EC) No 1279/96 or any subsequent relevant legal act,
- the Mediterranean non-member countries and territories which are the beneficiaries of the financial and technical measures to accompany the reform of their economic and social structures pursuant to Regulation (EC) No 1488/96 or any subsequent relevant legal act and
- the countries which are beneficiaries under Regulation (CARDS) or any subsequent relevant legal act.

Those countries shall be hereinafter referred to as the "eligible countries".'

Article 16

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

It shall apply until 31 December 2006.

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

Amended proposal for a Council Regulation concerning the European Agency for Reconstruction

(2001/C 62 E/09)

COM(2000) 628 final — 2000/0112(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 12 October 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 from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) Assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia has been implemented essentially under Council Regulation (Euratom, EC) No 2185/96 ⁽¹⁾, as last amended by Regulation (EC) No 2454/1999 ⁽²⁾, and under Council Regulation (EEC) No 3906/89 ⁽³⁾, as last amended by Regulation (EC) No 1266/1999 ⁽⁴⁾.
- (2) Regulation (EC) No 1628/96 as amended by Regulation (EC) No 2454/1999 set up the European Agency for Reconstruction, for which it was the legal basis.
- (3) On [date of adoption of CARDS] the Council adopted Regulation [CARDS] which lays down a single legal framework for assistance to those countries and repeals Regulation (EC) No 1628/96.
- (4) The provisions governing the creation and operation of the European Agency for Reconstruction should therefore be adapted to Regulation [CARDS] and incorporated in a new Regulation, and the appropriate changes made at the same time.
- (5) The European Council which met in Feira on 19 and 20 June 2000 emphasised that the Agency as an authority implementing the future CARDS programme should be allowed to use its full potential in order to achieve the goals set out by the European Council in Cologne.
- (6) The Treaty does not provide, for the adoption of this Regulation, powers other than those under Article 308,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Commission may delegate to an agency implementation of the assistance provided for in Article 1 of Regulation [CARDS], initially in Kosovo and also in other parts of the Federal Republic of Yugoslavia, when conditions permit.

⁽¹⁾ OJ L 204, 14.8.1996, p. 1.

⁽²⁾ OJ L 299, 20.11.1999, p. 1.

⁽³⁾ OJ L 375, 23.12.1989, p. 11.

⁽⁴⁾ OJ L 161, 26.6.1999, p. 68.

The European Agency for Reconstruction, hereinafter referred to as the 'Agency', shall be set up to that end with the aim of implementing the assistance referred to in the first subparagraph.

2. Any decision to extend the Agency's activities to parts of the FRY other than Kosovo, including decisions on the arrangements for determining the bodies referred to in Article 1(2) of Regulation [CARDS], shall be taken by the Council acting by a qualified majority on a proposal from the Commission. In the light of that decision, the Agency may establish other operational centres.

Article 2

1. To achieve the objective laid down in Article 1, the Agency shall carry out the following duties, within the bounds of its powers and in accordance with the decisions taken by the Commission:

- (a) gathering, analysing and communicating information to the Commission on:
 - (i) damage, the requirements for reconstruction and the return of refugees, and related initiatives taken by governments, local or regional authorities and the international community;
 - (ii) the urgent requirements of the communities concerned, taking account of the various population displacements and the possibilities for the return of those displaced;
 - (iii) the priority sectors and geographical areas requiring urgent assistance from the international community;
- (b) preparing draft programmes for the reconstruction of Kosovo and the return of refugees in accordance with guidelines provided by the Commission;
- (c) implementing the assistance referred to in Article 1, wherever possible in cooperation with the local population and where necessary by drawing on the services of operators selected by tender. The Commission may accordingly make the Agency responsible for all operations required to implement the programmes, including:

(i) drawing up terms of reference;

(ii) preparing and evaluating invitations to tender;

(iii) signing contracts;

(iv) concluding financing agreements;

- (v) awarding contracts, in accordance with the provisions of this Regulation;
- (vi) evaluating projects;
- (vii) checking project implementation;
- (viii) effecting payments.

2. Without prejudice to any operations cofinanced in the framework of the responsibilities entrusted to the Agency under Article 1, the Agency may implement reconstruction programmes and programmes for the return of refugees which the Member States and other donors entrust to it, *inter alia* under the arrangements for cooperation established by the Commission with the World Bank, international financial institutions and the European Investment Bank (EIB).

Such implementation shall be subject to the following conditions:

- (a) the financing must be provided in full by the other donors;
- (b) the financing must cover any associated administrative costs;
- (c) the duration of these tasks must be compatible with the deadline for winding up the Agency set in Article 13.

3. The Commission may also entrust the Agency with following up (including carrying out monitoring, evaluation and auditing) decisions regarding support for UNMK taken within the framework of Regulation (EC) No 1080/2000.

Article 3

The Agency shall have legal personality. It shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings. The Agency shall be non-profit-making.

The operational centre of the Agency, which shall have a considerable degree of management autonomy, shall be established initially in Pristina in order to embark on the reconstruction work in Kosovo, drawing on the Agency's general services located at its seat in Thessaloniki.

Article 4

1. The Agency shall have a Governing Board composed of one representative from each Member State and two representatives of the Commission.
2. The Member State representatives shall be appointed by the Member State concerned, paying due regard to experience and qualifications relevant to the Agency's activities.
3. The term of office of representatives shall be thirty months.

4. The Governing Board shall be chaired by a Commission representative. The Chairman shall not vote.

5. The EIB shall appoint a non-voting observer.

6. The Governing Board shall adopt its rules of procedure.

7. The Commission and Member State representatives on the Governing Board shall each have one vote.

Governing Board decisions shall be adopted by a two-thirds majority.

8. The Governing Board shall determine by unanimous decision the rules governing the languages used by the Agency.

9. The Governing Board shall be convened by the Chairman whenever necessary, and at least three times per year. It shall also be convened at the request of the Agency's Director or at least a simple majority of its members.

10. (a) The Governing Board shall examine the assistance strategy framework, presented by the Commission, on which the annual programme for reconstruction is to be based.

(b) Using as a basis this strategy framework and the Commission guidelines relating to it, the Director shall present to the Governing Board a draft annual programme for reconstruction. The draft programme shall set out for the operational year in question the aims being pursued, the fields of action and the budget provided for. Once the Governing Board has delivered an opinion on the draft annual programme for reconstruction, the Director shall forward the latter to the Commission.

(c) On a proposal from the Director, the Board shall decide on:

(i) proposals for programmes by other donors for possible implementation by the Agency;

(ii) setting the multiannual contractual framework with the provisional authority responsible for the administration of Kosovo, for implementation of the assistance referred to in Article 1(3) of Regulation [CARDS];

(iii) whether representatives of the countries and organisations delegating implementation of their programmes to the Agency should be present as observers on the Governing Board.

11. The Governing Board shall present a draft annual report to the Commission by 31 March each year at the latest on the Agency's activities in the previous year and how they were financed.

The Commission shall adopt the annual report and submit it to the European Parliament and the Council.

Article 5

1. The director of the Agency shall be appointed by the Governing Board on a proposal from the Commission for a term of office of thirty months. The term of office may be terminated by the same procedure.

The Director shall be responsible for:

- (a) preparing the draft annual programme for reconstruction referred to in Article 4(10)(b);
- (b) preparation and organisation of the work of the Governing Board;
- (c) day-to-day administration of the Agency;
- (d) preparation of the statement of revenue and expenditure and execution of the Agency's budget;
- (e) preparation and publication of the reports specified in this Regulation;
- (f) all staff matters;
- (g) implementation of the Governing Board's decisions and guidelines laid down for the Agency's activities.

2. The Director shall be accountable to the Governing Board for his activities and shall attend its meetings.

3. The Director shall be the legal representative of the Agency.

4. The Director shall hold the power of Appointing Authority.

5. The Director shall present a quarterly activity report to the European Parliament.

Article 6

1. Estimates of all the Agency's revenue and expenditure shall be prepared for each financial year, which shall correspond to the calendar year, and shall be shown in the Agency's budget, which shall include an establishment plan.

2. The revenue and expenditure shown in the Agency budget shall be in balance.

3. The Agency's revenue shall comprise, without prejudice to other types of income, a subsidy from the general budget of the European Union, payments made as remuneration for services performed and funding from other sources.

4. The budget shall also include details of any funds made available by the recipient countries themselves for projects receiving financial assistance from the Agency.

Article 7

1. The Director shall establish each year a draft budget for the Agency covering administrative expenditure and operational expenditure for the following financial year, and shall submit it to the Governing Board.

2. On this basis, the Governing Board shall adopt a draft budget for the Agency by 15 February of each year at the latest, and shall submit it to the Commission.

3. The Commission shall assess the draft budget of the Agency having regard to the priorities it has established and the overall financial guidelines for reconstruction assistance for Kosovo.

It shall establish on this basis and within the proposed limits of the overall amount to be made available for aid to Kosovo, the indicative annual contribution to the Agency budget to be included in the preliminary draft of the general budget of the European Union.

4. The Governing Board, after receiving the opinion of the Commission, shall adopt the budget of the Agency at the beginning of each financial year, adjusting it to the various contributions granted to the Agency and to funds from other sources. The budget shall also specify the number, grade and category of staff employed by the Agency during the financial year in question.

Article 8

1. The Director shall implement the budget of the Agency.

2. The competent departments of the Commission shall be responsible for financial checks.

3. By 31 March each year at the latest, the Director shall submit to the Commission, the Governing Board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous financial year.

The Court of Auditors shall examine the accounts in accordance with Article 248 of the Treaty. It shall publish a report on the Agency's activities every year.

4. On a recommendation from the Council, the European Parliament shall give a discharge to the Director in respect of the implementation of the Agency's budget.

Article 9

The Governing Board, having received the agreement of the Commission and the opinion of the Court of Auditors, shall adopt the Agency's Financial Regulation, specifying in particular the procedure to be used for drawing up and implementing the Agency's budget, in accordance with Article 142 of the Financial Regulation applicable to the general budget of the European Communities.

Article 10

The Agency's staff shall be subject to the rules and regulations applicable to officials and other servants of the European Communities. The Governing Board, in agreement with the Commission, shall adopt the necessary implementing rules.

The Agency's staff shall consist of a strictly limited number of officials assigned or seconded by the Commission or Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency for a period strictly limited to its requirements.

Article 11

The Governing Board shall decide on the Agency's accession to the Interinstitutional Agreement on internal investigations by the European Anti-Fraud Office (OLAF). It shall adopt the provisions necessary for the conduct of internal investigations by OLAF.

Financing decisions and any implementing instrument or contract arising therefrom shall expressly provide that the Court of Auditors and OLAF may, if necessary, carry out on-the-spot checks on recipients of Agency funds and on the intermediaries distributing them.

Article 12

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to laws of the Member States, make good any damage caused by the Agency or its servants in the performance of their duties.

The Court of Justice shall have jurisdiction in disputes relating to compensation for any such damage.

3. The personal liability of servants towards the Agency shall be governed by the relevant provisions applying to the staff of the Agency.

Article 13

Once the Commission considers that the Agency has fulfilled the mandate described in Article 1, it shall submit to the Council a proposal for the winding up of the Agency. In any event, at least six months before this Regulation expires, the Commission shall submit a proposal to the Council on the status of the Agency.

Article 14

The translation services necessary for the operation of the Agency shall, as a rule, be provided by the Translation Centre of the bodies of the European Union.

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*.

It shall apply until 31 December 2004.

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

Proposal for a Directive of the European Parliament and of the Council modifying Directive 94/25/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft

(2001/C 62 E/10)

(Text with EEA relevance)

COM(2000) 639 final — 2000/0262(COD)

(Submitted by the Commission on 12 October 2000)

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,

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

Whereas:

- (1) Developments since the adoption of Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft ⁽¹⁾, have made it necessary to amend that Directive.
- (2) It does not cover personal watercraft, while since its adoption some Member States have introduced laws, regulations and administrative provisions laying down technical requirements for such craft.
- (3) The propulsion engines on recreational craft and personal watercraft produce exhaust emissions of carbon monoxide (CO), hydrocarbons (HC), nitrogen oxides (NO_x) and noise emissions which affect both human health and the environment.
- (4) Noise and exhaust emissions produced by the engines of such recreational craft are also not covered by that Directive.
- (5) It is now necessary to integrate environmental protection requirements into the various Community activities in order to promote sustainable development. Such provisions, which are already the subject of the Council Resolution of 3 December 1992 concerning the relationship between industrial competitiveness and environmental protection ⁽²⁾, were recalled in the conclusions of the Industry Council of 29 April 1999.
- (6) Laws, regulations and administrative provisions are in force in some Member States limiting noise and exhaust emissions from engines in order to protect human health, the environment and, where appropriate, domestic animal health. Those provisions differ and are likely to affect the free movement of such products and constitute barriers to trade within the Community.
- (7) In the framework of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations ⁽³⁾, as amended by Directive 98/48/EC ⁽⁴⁾ the Member States have notified draft national regulations aimed at reducing noise and exhaust emissions from the engines of recreational craft; such technical regulations are considered, like the national provisions already in force, to be likely to affect the free movement of such products or to create obstacles to the proper functioning of the internal market. It is therefore necessary to draw up a binding Community instrument.
- (8) The harmonisation of national laws is the only way to abolish such barriers to trade and unfair competition found in the internal market. The objective of limiting noise and exhaust emissions cannot be satisfactorily met by the Member States individually. The measures provided for in this Directive lay down only the essential requirements for the free movement of all the types of engines to which it applies.
- (9) These measures are in accordance with the principles for the implementation of the new approach as set out in the Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards ⁽⁵⁾ and of making reference to harmonised European standards.

⁽¹⁾ OJ L 164, 30.6.1994, p. 15.

⁽²⁾ OJ C 331, 16.12.1992, p. 5.

⁽³⁾ OJ L 204, 21.7.1998, p. 37.

⁽⁴⁾ OJ L 217, 5.8.1998, p. 18.

⁽⁵⁾ OJ C 136, 4.6.1985, p. 1.

- (10) The provisions on emissions laid down in this Directive should apply to all engines, whether inboard, outboard or stern drive, and to personal watercraft in order to ensure optimum effectiveness in the protection of human health and the environment. Engines undergoing major alterations should also be included as regards gaseous emissions. Craft or partly completed craft with an inboard or stern drive engine, or one of such types of craft whose engine is undergoing major alterations should also comply with the provisions regarding noise emissions.
- (11) Conformity with the essential requirements for emissions from the engines concerned is essential to protect human health and the environment. Maximum authorised levels should be laid down for exhaust emissions of carbon monoxide (CO), hydrocarbons (HC), nitrogen oxide (NO_x) and particulate pollutants. As far as noise emissions are concerned, the maximum levels should be broken down as a function of the power of such engines and the number of engines on board. These measures are consistent with all other measures to reduce engine emissions in order to protect human beings and the environment.
- (12) For the two types of emission in question, the data certifying their conformity should always accompany the recreational craft.
- (13) Harmonised European standards, in particular as regards the measurement of levels and test methods, make it easier to demonstrate conformity with the essential requirements, also in the case of emissions from the recreational craft covered by this Directive.
- (14) In view of the nature of the risks involved, it is necessary to adopt conformity assessment procedures to ensure the necessary level of protection. The manufacturer or his authorised representative should ensure that the products covered by this Directive comply with relevant essential requirements, when they are placed on the market or put into service, relating to personal watercraft and recreational craft engines as appropriate. Adequate procedures should be laid down which provide a choice between procedures with equivalent stringency. Those procedures should comply with Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking which are intended to be used in technical harmonisation Directives⁽¹⁾.
- (15) As far as exhaust emissions are concerned, all types of engines, including personal watercraft and other similar powered craft, should bear the CE mark affixed by the manufacturer or his authorised representative within the Community, except inboard and stern drive engines, which should be accompanied by the manufacturer's certificate of conformity. As far as noise emissions are concerned, only outboard engines must bear the CE mark affixed by the manufacturer or his authorised representative within the Community. For noise emissions and for all types of engines, except outboard engines, the CE mark affixed on the craft demonstrates conformity with the relevant essential requirements.
- (16) Directive 94/25/EC should also be amended, to take account of manufacturing needs, which require a greater choice of certification procedures.
- (17) For the sake of legal certainty and to ensure the safe use of recreational craft, it is necessary to clarify the essential requirement concerning the maximum recommended load to be displayed on the builder's plate.
- (18) In order to facilitate the application of measures concerning the efficient functioning of legislation, the procedure establishing a close cooperation between the Commission and Member States in the framework of a Committee is maintained and reinforced.
- (19) The efficient functioning of legislation requires a mechanism for amending the technical provisions concerning the evolution of exhaust and noise emission limits and of exhaust duty cycles and test fuels in the light of advances in technology; a Regulatory Committee established following the Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽²⁾ would be required to advise the Commission on the measures to be taken,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 94/25/EC is hereby amended as follows:

1. Article 1 shall be replaced by the following:

'Article 1

Scope and definitions

1. This Directive shall apply:

- (a) with regard to design and construction, to:

- (i) recreational craft and partly completed boats,
- (ii) personal watercraft,

⁽¹⁾ OJ L 220, 30.8.1993, p. 23.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

- (iii) components referred to in Annex II when separate and when installed;
- (b) with regard to exhaust emissions, to:
- (i) propulsion engines intended for recreational craft and personal watercraft,
- (ii) propulsion engines installed on or in these craft that are subject to a "major engine modification";
- (c) with regard to noise emissions, to:
- (i) recreational craft and partly-completed boats, with stern drive or inboard propulsion engine installations,
- (ii) recreational craft, with stern drive or inboard propulsion engines that are subject to a "major craft conversion",
- (iii) personal watercraft,
- (iv) outboard engines intended for installation on recreational craft.
2. The following shall be excluded from the scope of this Directive:
- (a) with regard to paragraph 1(a):
- (i) craft intended solely for racing, including rowing racing boats and training rowing boats, labelled as such by the manufacturer;
- (ii) canoes and kayaks, gondolas and pedalos;
- (iii) sailing surfboards;
- (iv) surfboards, including powered surfboards;
- (v) original, and individual replicas of, historical craft designed before 1950, built predominantly with the original materials and labelled as such by the manufacturer;
- (vi) experimental craft, provided that they are not subsequently placed on the Community market;
- (vii) craft built for own use, provided that they are not subsequently placed on the Community market during a period of five years;
- (viii) craft specifically intended to be crewed and to carry passengers for commercial purposes, without prejudice to paragraph 3, subparagraph (a), in particular those defined in Council Directive 82/714/EEC of 4 October 1982 laying down technical requirements for inland waterway vessels⁽¹⁾, regardless of the number of passengers;
- (ix) submersibles;
- (x) air cushion vehicles;
- (xi) hydrofoils.
- (b) With regard to paragraph 1(b):
- (i) Propulsion engines installed or specifically intended for installation on the following:
- craft intended solely for racing and labelled as such by the manufacturer;
 - experimental craft, provided that they are not subsequently placed on the Community market;
 - craft specifically intended to be crewed and to carry passengers for commercial purposes, without prejudice to paragraph 3 subparagraph (a), in particular those defined in Council Directive 82/714/EEC of 4 October 1982 laying down technical requirements for inland waterway vessels, regardless of the number of passengers;
 - submersibles;
 - air cushion vehicles;
 - hydrofoils;
- (ii) Original and individual replicas of historical propulsion engines, which are based on a pre 1960 design, not produced in series and fitted on craft referred to in paragraph 2(a)(v).
- (c) With regard to paragraph 1(c):
- all craft referred to in point (b) of this paragraph.
3. For the purposes of this Directive the following definitions shall apply:
- (a) "recreational craft" shall mean any boat of any type intended for sports and leisure purposes of hull length from 2,5 m to 24 m, measured according to the harmonised standard, regardless of the means of propulsion; the fact that the same boat could be used for charter or for recreational boating training shall not prevent it being covered by this Directive when it is placed on the market for recreational purposes;

⁽¹⁾ OJ L 301, 28.10.1982, p. 1, Directive as amended by the Act of Accession of Austria, Finland and Sweden.

- (b) "personal watercraft" shall mean a vessel less than 4 m in length which uses an internal combustion engine having a water jet pump as its primary source of propulsion and designed to be operated by a person or persons sitting, standing or kneeling on, rather than within the confines of a hull;
- (c) "propulsion engine" shall mean any spark or compression ignition, internal combustion engine used for propulsion purposes, including 2-stroke and 4-stroke inboard, stern-drive and outboard engines;
- (d) "major engine modification" shall mean the modification of an engine which:
- could potentially cause the engine to exceed the emission limits set out in Annex I.B. excluding routine replacement of engine components that do not alter the emission characteristics; or
 - increases the rated power of the engine by more than 10 %.
- (e) "major craft conversion" shall mean a conversion of an existing craft which:
- changes the means of propulsion of the craft,
 - involves either a major engine modification or the replacement of the propulsion engine by a different type or size of engine,
 - alters the craft to such an extent that it is considered a new craft;
- (f) "means of propulsion" shall mean the mechanical method by which the craft is driven, in particular marine propellers or waterjet mechanical drive systems;
- (g) "engine family" shall mean the manufacturer's grouping of engines which through their design, are expected to have similar exhaust emission characteristics and which comply with the exhaust emissions requirements of this Directive;
- (h) "manufacturer" means any natural or legal person who designs and manufactures a product covered by this Directive or who has such a product designed and/or manufactured with a view to placing it on the market under his own name;
- (i) "authorised representative" means any natural or legal person established in the Community who has received a written mandate from the manufacturer to act on his behalf with regard to the latter's obligation under this Directive.'

2. In Article 4, the following paragraph 3a shall be inserted:

'3a Member States shall not prohibit, restrict or impede the placing on the market and putting into service of inboard and stern drive propulsion engines where the manufacturer or his authorised representative established in the Community declares in accordance with Annex XV.3 that the engine will meet the exhaust emission requirements of this Directive, when installed in a recreational craft or personal watercraft in accordance with the manufacturer's supplied instructions.'

3. The following Article 6a shall be inserted:

'Regulatory Committee

Article 6a

1. Amendments which are necessary, in the light of evolution of technical knowledge and new scientific evidence, to the requirements of Annex I.B.2, concerning limit values of exhaust emissions, duty cycles and reference fuels, and Annex I.C.1, concerning limit values of noise emissions, shall be adopted by the Commission assisted by the Standing Committee set up pursuant to Article 6(3), acting as a regulatory committee in accordance with the procedure referred to in Article 6a(2).

2. Where reference is made to this provision, 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 stipulated in Article 5(6) of Decision 1999/468/EC shall be three months.'

4. In Article 7 paragraph 1 shall be replaced by the following:

'1. Where a Member State ascertains that products falling within the scope of Article 1 and bearing the CE marking referred to in Annex IV, when correctly constructed, installed, maintained and used in accordance with their intended purpose may endanger the safety and health of persons, property or the environment, it shall take all appropriate interim measures to withdraw them from the market or prohibit or restrict their being placed on the market or put into service.'

5. Article 8 shall be replaced by the following:

'Article 8

1. Before producing and placing on the market products referred to in Article 1(1) the manufacturer or his authorised representative established in the Community shall apply the procedures referred to in paragraphs (2), (3), (4) of this Article.

In the absence of the manufacturer and of his authorised representative the responsibilities for the product's conformity to this Directive can be assumed by any natural or legal person established within the Community who places the product on the market under his own name.

2. With regard to design and construction of products referred to in Article 1(1)(a) the boat manufacturer or his authorised representative established in the Community shall apply the following procedures for boat design categories A, B, C and D as referred to in section 1 of Annex I.A:

(a) For categories A and B:

- (i) for boats of less than 12 m hull length: the internal production control plus tests (module Aa) referred to in Annex VI, or the EC type-examination (module B) as described in Annex VII, supplemented by module C (type conformity) referred to in Annex VIII, or any of the following modules: B + D or G or H.
- (ii) for boats from 12 m to 24 m hull length: the EC type-examination (module B) referred to in Annex VII supplemented by module C (type conformity) referred to in Annex VIII, or any of the following modules: B + D, or B + F, or G or H.

(b) For category C:

- (i) for boats from 2,5 m to 12 m hull length:
 - where the harmonised standards relating to Sections 3.2 and 3.3 of Annex I.A are complied with: the internal production control (module A), referred to in Annex V, or internal production control plus tests (module Aa) referred to in Annex VI, or the EC type-examination (module B) as described in Annex VII, supplemented by module C (type conformity) referred to in Annex VIII, or any of the following modules: B + D, or B + F, or G, or H.
 - where the harmonised standards relating to Sections 3.2 and 3.3 of Annex I.A are not complied with: the internal production control plus tests (module Aa) referred to in Annex VI, or the EC type-examination (module B) as described in Annex VII, supplemented by module C (type conformity) referred to in Annex VIII, or any of the following modules: B + D, or B + F, or G, or H.
- (ii) for boats from 12 m to 24 m hull length: the EC type-examination (module B) referred to in Annex VII followed by module C (type conformity) referred to in Annex VIII, or any of the following modules: B + D, or B + F, or G or H.

(c) For category D:

For boats from 2,5 m to 24 m hull length: the internal production control (module A) referred to in Annex V, or the internal production control plus tests (module Aa) referred to in Annex VI, or the EC type-examination (module B) as described in Annex VII, supplemented by module C (type conformity) referred to in Annex VIII, or any of the following modules: B + D, or B + F or G or H.

(d) For personal watercraft:

the EC type-examination (module B) as described in Annex VII followed by module C (type conformity) referred to in Annex VIII, or any of the following modules: B + D, B + E, B + F, or G, or H.

(e) For components referred to in Annex II: any of the following modules: B + C, or B + D, or B + F, or G or H.

3. With regard to exhaust emissions:

(a) for products referred to in Article 1(1)(b), the engine manufacturer or his authorised representative established in the Community shall apply the EC type-examination (module B) as described in Annex VII followed by module C (type conformity) referred to in Annex VIII, or any of the following modules: B + D, B + E, B + F, or G, or H.

(b) for compression ignition engines type-approved according to Directive 97/68/EC which are in compliance with stage II provided for in section 4.2.3 of Annex I to this Directive, the engine manufacturer or his authorised representative established in the Community shall apply the internal production control (Module A) referred to in Annex V.

(4) With regard to noise emissions:

(a) For products referred to in Article 1(1)(c)(i) and (ii), the boat manufacturer or his authorised representative established in the Community shall apply:

(i) where tests are conducted using the harmonised standard for noise measurement: either internal production control plus tests (module Aa) referred to in Annex VI, or unit verification (module G) referred to in Annex XI, or full quality assurance (module H) referred to in Annex XII.

(ii) where certified reference boat data, established in accordance with point (i), is used for assessment: either internal production control (A) referred to in Annex V, or internal production control plus supplementary requirements (module Aa) referred to in Annex VI, or unit verification (module G) referred to in Annex XI, or full quality assurance (module H) referred to in Annex XII.

- (b) For products referred to in Article 1(1)(c)(iii) and (iv), the personal watercraft/engine manufacturer or his authorised representative established in the Community shall apply: internal control plus supplementary requirements referred to in Annex VI (module Aa) or module G or H.'
6. In Article 10, paragraphs 1, 2 and 3 shall be replaced by the following:
- '1. When the following products are placed on the market, they must bear the CE marking of conformity:
- (a) recreational craft, personal watercraft and components referred to in Annex II, which are regarded as meeting the corresponding essential requirements set out in Annex I;
- (b) outboard engines which are regarded as meeting the essential requirements set out in Annex I.B and I.C.
2. The CE marking of conformity, as shown in Annex IV, must appear in a visible, legible and indelible form on the craft and the personal watercraft as in point 2.2 of Annex I.A, on components, as referred to in Annex II and/or on their packaging, and on outboard engines and personal watercraft engines as in point 1.1 of Annex I.B.
- The CE marking shall be accompanied by the identification number of the notified body responsible for implementation of the procedures set out in Annexes IX, X, XI, XII and XVI.
3. The affixing of markings or inscriptions on the craft, the personal watercraft, and on propulsion engines which are likely to mislead third parties with regard to the meaning or the form of the CE marking shall be prohibited. Any other markings may be affixed to the recreational craft and components as referred to in Annex II and/or on their packaging provided that the visibility and legibility of the CE marking is not thereby reduced.'
7. Annex I shall be amended in accordance with Part A of the Annex to this Directive.
8. Annex VI shall be replaced by the text in Part B of the Annex to this Directive.
9. In Annex VIII the following new point 4 is added:
- '4. With regard to the assessment of conformity with the exhaust emission requirements of this Directive, a notified body chosen by the manufacturer must carry out or have carried out product checks at random intervals. When the quality level appears unsatisfactory or when it seems necessary to verify the validity of the data presented by the manufacturer, the following procedure shall be used:

An engine is taken from the series and subjected to the test described in Annex I.B. Test engines shall have been run in, partially or completely, according to the manufacturer's specifications. If the specific exhaust emissions of the engine taken from the series exceed the limit values according to Annex I.B, the manufacturer may ask for measurements to be done on a sample of engines taken from the series and including the engine originally taken. To ensure the conformity of the sample of engines defined above with the requirements of the Directive, the statistical method described in Annex XVII shall be applied.'

10. In Annex X, point 5.3, a new subparagraph shall be added as follows:
- 'For the assessment of conformity with the exhaust emission requirements the procedure defined in Annex XVII shall be applied.'
11. Annex XIII shall be replaced by the text in Part C of the Annex to this Directive.
12. In Annex XIV, point 1, the first sentence shall be replaced by the following:
- '1. The body, its director and the staff responsible for carrying out the verification tests shall not be the designer, manufacturer, supplier or installer of the products referred to in Article 1 which they inspect, nor the authorised representative of any of these parties.'
13. Annex XV shall be replaced by the text in Part D of the Annex to this Directive.
14. A new Annex XVI is added, as set out in Part E of the Annex to this Directive.
15. A new Annex XVII is added, as set out in Part F of the Annex to this Directive.

Article 2

Two years after the implementation of this Directive by the Member States, the Commission shall submit a report to the European Parliament and the Council on how to implement a system of in-use compliance testing.

Article 3

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the requirements of this Directive not later than June 2003. They shall immediately inform the Commission thereof.

Member States shall apply such provisions as from December 2003.

2. Member States shall permit the placing on the market and putting into service of products which comply with the rules in force in their territory on the date of entry into force of this Directive, as follows:

- until December 2004 for the products falling under Article 1(1)(a);
- until December 2004 for compression ignition and 4-stroke spark ignition engines; and,
- until December 2005 for 2-stroke spark ignition engines.

3. When Member States adopt the provisions referred to in paragraph 1, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their

official publication. Member States shall determine how such reference is to be made.

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

Article 4

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

Article 5

This Directive is addressed to the Member States.

ANNEX

A — Annex I is amended as follows:

1. The heading is replaced by the following:

'ANNEX I: ESSENTIAL REQUIREMENTS

Preliminary observation

For the purposes of this Annex the term "craft" shall cover recreational craft and personal watercraft.

A. ESSENTIAL SAFETY REQUIREMENTS FOR THE DESIGN AND CONSTRUCTION OF CRAFT:

2. The paragraph under section 2. 'General requirements' is replaced by the following:

'Products falling under Article 1(1)(a) shall comply with the essential requirements in so far as they apply to them.'

3. In section 2.2 'Builder's plate', fourth indent, the following words shall be added at the end of the sentence:

'... excluding the weight of the fuel and water tanks when full.'

4. In section 3.6 'Manufacturer's maximum recommended load' the following words shall be deleted:

'... , as marked on the builder's plate, ...'

5. A new section shall be added in section 5 'Installation requirements':

'5.1.5. Personal watercraft running without driver. Personal watercraft shall be designed either with an automatic engine cut-off or with an automatic switch to provide reduced speed, circular, forward movement when the driver dismounts deliberately or falls overboard.'

6. Two new parts, B and C, shall be added to this Annex as follows:

'B. ESSENTIAL REQUIREMENTS FOR EXHAUST EMISSIONS FROM PROPULSION ENGINES

Propulsion engines shall comply with the following essential requirements for exhaust emissions.

1. ENGINE IDENTIFICATION

1.1. Each engine shall be clearly marked with the following information:

- engine manufacturer's trademark or trade-name;
- engine type, engine family, if applicable;

- a unique engine identification number;
- CE marking, if required under Article 10;

- 1.2. These marks must be durable for the normal life of the engine and must be clearly legible and indelible. If labels or plates are used, they must be attached in such a manner that the fixing is durable for the normal life of the engine, and the labels/plates cannot be removed without destroying or defacing them.
- 1.3. These marks must be secured to an engine part necessary for normal engine operation and not normally requiring replacement during the engine life.
- 1.4. These marks must be located so as to be readily visible to the average person after the engine has been assembled with all the components necessary for engine operation.

2. EXHAUST EMISSION REQUIREMENTS

Propulsion engines shall be designed, constructed and assembled so that when correctly installed and in normal use, emissions shall not exceed the limit values obtained from the following table:

Table 1

Type	Carbon monoxide $CO = A + B/P_N^n$ g/kWh			Hydrocarbons $HC = A + B/P_N^n$ g/kWh			Nitrogen oxides NO_x g/kWh	Particulates
	A	B	n	A	B	n		
Two-stroke spark ignition	150,0	600,0	1,0	30,0	100,0	0,75	10,0	Not applicable
Four-stroke spark ignition	150,0	600,0	1,0	6,0	50,0	0,75	15,0	Not applicable
Compression ignition	5,0	0	0	1,5	2,0	0,5	9,8	1,0

Where A, B and n are constants in accordance with the table, P_N is the rated engine power in kW and the exhaust emissions are measured in accordance with the harmonised standard.

For engines above 130 kW either E3 (IMO) or E5 (recreational marine) duty cycles may be used.

Reference fuels specified in Directive 98/69/EC shall be used for the emissions tests (Annex XI, Table 2 and Table 3).

3. DURABILITY

The manufacturer of the engine shall supply engine installation and maintenance instructions, which if applied should mean that the engine in normal use will continue to comply with the above limits throughout the normal life of the engine and under normal conditions of use.

This information shall be obtained by the engine manufacturer by use of prior endurance testing, based on normal operating cycles, and by calculation of component fatigue so that the necessary maintenance instructions may be prepared by the manufacturer and issued with all new engines when first placed on the market.

The normal life of the engine is considered to mean:

- Inboard or stern drive engines: 480 hours or 10 years, whichever occurs first
- Personal Watercraft engines: 350 hours or 5 years, whichever occurs first
- Outboard engines: 350 hours or 10 years, whichever occurs first.

4. OWNERS MANUAL

Each engine shall be provided with an Owners Manual in the Community language or languages, which may be determined by the Member State in which the engine is to be marketed in accordance with the Treaty. This manual should:

- Provide instructions for the installation and maintenance needed to assure the proper functioning of the engine to meet the requirements of paragraph 3, (Durability).
- Specify the power of the engine when measured in accordance with the harmonised standard.

C. ESSENTIAL REQUIREMENTS FOR NOISE EMISSIONS

Recreational craft with inboard or stern drive engines, personal watercraft and outboard engines shall comply with the following essential requirements for noise emissions.

1. NOISE EMISSION LEVELS

- 1.1. Recreational craft with inboard or stern drive engines, personal watercraft and outboard engines shall be designed, constructed and assembled so that noise emissions measured in accordance with tests defined in the harmonised standard shall not exceed the limit values in the following table:

Table 2

Engine Power In kW	Maximum Sound Pressure Level = L_{pASmax} In dB
$P_N \leq 10$	67
$10 < P_N \leq 40$	72
$P_N > 40$	75

where P_N = rated engine power in kW at rated speed and L_{pASmax} = maximum sound pressure level in dB.

For twin-engine and multiple-engine units an allowance of 3 dB may be applied.

- 1.2. As an alternative to sound measurement tests, recreational craft with inboard or stern drive engine configurations shall be deemed to comply with these noise requirements if their key design parameters are the same as or compatible with those of a certified reference boat to tolerances specified in the harmonised standard.
- 1.3. "Certified reference boat" shall mean a specific hull/inboard or stern drive engine combination that has been found to comply with the noise emission requirements, when measured in accordance with section 1.1 above, and for which all appropriate key design parameters and sound level measurements have been included subsequently in the published list of certified reference boats.

2. OWNERS MANUAL

For recreational craft with inboard or stern drive engines and personal watercraft, the Owners Manual required under Annex I.A Section 2.5, shall include information necessary to maintain the craft and exhaust system in a condition, that in so far as is practicable, will ensure compliance with the specified noise limit values when in normal use.

For outboard engines, the Owners Manual required under Annex I.B.4 shall provide instructions necessary to maintain the outboard engine in a condition, that in so far as is practicable, will ensure compliance with the specified noise limit values when in normal use.'

B — Annex VI is replaced as follows:

'ANNEX VI: INTERNAL PRODUCTION CONTROL PLUS TESTS (module Aa, option 1)

This module consists of module A, as referred to in Annex V, plus the following supplementary requirements:

A. Design and construction:

On one or several boats representing the production of the manufacturer one or more of the following tests, equivalent calculation or control shall be carried out by the manufacturer or on his behalf:

- test of stability according to point 3.2 of the Essential Requirements,
- test of buoyancy characteristics according to point 3.3 of the Essential Requirements.

Provisions common to both variations: These tests or calculations or control shall be carried out under the responsibility of a notified body chosen by the manufacturer.

B. Noise emissions:

For recreational craft fitted with inboard or stern drive engines and for personal watercraft:

On one or several craft representing the production of the craft manufacturer, the sound emission tests defined in Annex I.C shall be carried out by the craft manufacturer, or on his behalf, under the responsibility of a notified body chosen by the manufacturer.

For outboard engines:

On one or several engines of each engine family representing the production of the engine manufacturer, the sound emission tests defined in Annex I.C shall be carried out by the engine manufacturer, or on his behalf, under the responsibility of a notified body chosen by the manufacturer.

Where more than one engine of an engine family is tested, the statistical method described in Annex XVII shall be applied to ensure conformity of the sample.'

C — Annex XIII is replaced as follows:

'ANNEX XIII: TECHNICAL DOCUMENTATION SUPPLIED BY THE MANUFACTURER

The technical documentation referred to in Annexes V, VII, VIII, IX and XI must comprise all relevant data or means used by the manufacturer to ensure that components or craft comply with the essential requirements relating to them.

The technical documentation shall enable understanding of the design, manufacture and operation of the product, and shall enable assessment of conformity with the requirements of this Directive.

The documentation shall contain so far as relevant for assessment:

- a general description of the type,
- conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.,
- descriptions and explanations necessary for the understanding of said drawings and schemes and the operation of the product,
- a list of the standards referred to in Article 5, applied in full or in part, and descriptions of the solutions adopted to fulfil the essential requirements when the standards referred to in Article 5 have not been applied,
- results of design calculations made, examinations carried out, etc.,
- test reports, or calculations namely on stability according to point 3.2 of the Essential Requirements and on buoyancy according to point 3.3 of the Essential Requirements (Annex I.A),

- exhaust emissions test reports according to point 2 of the Essential Requirements (Annex I.B),
- sound emissions test reports or reference boat data according to point 1 of the Essential Requirements (Annex I.C).'

D — Annex XV is replaced as follows:

'ANNEX XV: WRITTEN DECLARATION OF CONFORMITY

1. The written declaration of conformity to the provisions of the Directive must always accompany:
 - the recreational craft and the personal watercraft and must be included with the owner's manual (Annex I.A point 2.5);
 - the components, as referred to in Annex II;
 - propulsion engines and must be included with the owner's manual (Annex I.B.4).
2. The written declaration of conformity shall include the following ⁽¹⁾:
 - name and address of the manufacturer or his authorised representative established in the Community ⁽²⁾;
 - description of the product defined in paragraph 1 above ⁽³⁾;
 - references to the relevant harmonised standards used, or references to the specifications in relation to which conformity is declared;
 - where appropriate, reference to the EC type-examination certificate issued by a notified body;
 - where appropriate, the name and address of the notified body;
 - identification of the person empowered to sign on behalf of the manufacturer or his authorised representative established within the Community.
3. With regard to inboard and stern drive propulsion engines the declaration of conformity shall include in addition to the information of point 2 above, a statement of the manufacturer that the engine will meet the exhaust emission requirements of this Directive, when installed in a recreational craft, in accordance with the manufacturer's supplied instructions and that this engine must not be put into service until the recreational craft into which it is to be installed has been declared in conformity with the relevant provision of the Directive.'

E — The following Annex XVI is added to

Directive 94/25/EC:

'ANNEX XVI: PRODUCT QUALITY ASSURANCE (MODULE E) — EXHAUST EMISSIONS

1. This module describes the procedure whereby the engine manufacturer who satisfies the obligations of point 2 ensures and declares that the products concerned are in conformity with the type as described in the EC type-examination certificate and satisfy the requirements of the directive that apply to them. The manufacturer or his authorised representative established within the Community must affix the CE mark to each product and draw up a written declaration of conformity. The CE mark must be accompanied by the identification symbol of the notified body responsible for surveillance as specified in point 4.
2. The manufacturer must operate an approved quality system for final product inspection and testing as specified in paragraph 3 and must be subject to surveillance as specified in point 4.

⁽¹⁾ And be drawn up in the language(s) as foreseen under point 2.5 of Annex I.A.

⁽²⁾ Business name and full address; authorised representative must also give the business name and address of the manufacturer.

⁽³⁾ Description of the product make, type, serial number, where appropriate

3. Quality system

- 3.1. The manufacturer must lodge an application for assessment of his quality system for the products concerned, with a notified body of his choice.

The application must include:

- all relevant information for the product category envisaged;
- the quality system's documentation;
- if applicable, the technical documentation of the approved type and a copy of the EC type-examination certificate.

- 3.2. Under the quality system, each product must be examined and appropriate tests as set out in the relevant standard(s) referred to in Article 5 or equivalent tests shall be carried out in order to ensure its conformity with the relevant requirements of the directive. All the elements, requirements and provisions adopted by the manufacturer must be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. This quality system documentation must ensure a common understanding of the quality programmes, plans, manuals and records.

It must contain in particular an adequate description of:

- the quality objectives and the organisational structure, responsibilities and powers of the management with regard to product quality;
- the examinations and tests that will be carried out after manufacture;
- the means to monitor the effective operation of the quality system;
- quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.

- 3.3. The notified body must assess the quality system to determine whether it satisfies the requirements referred to in point 3.2.

It presumes conformity with these requirements in respect of quality systems that implement the relevant harmonised standard.

The auditing team must have at least one member experienced as an assessor in the product technology concerned. The assessment procedure must include an assessment visit to the manufacturer's premises.

The decision must be notified to the manufacturer. The notification must contain the conclusions of the examination and the reasoned assessment decision.

- 3.4. The manufacturer must undertake to fulfil the obligations arising from the quality system as approved and to maintain it in an appropriate and efficient manner.

The manufacturer or his authorised representative must keep the notified body which has approved the quality system informed of any intended updating of the quality system.

The notified body must evaluate the modifications proposed and decide whether the modified quality system will still satisfy the requirements referred to in paragraph 3.2 or whether a re-assessment is required.

It must notify its decision to the manufacturer. The notification must contain the conclusions of the examination and the reasoned assessment decision.

4. Surveillance under the responsibility of the notified body

- 4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

- 4.2. The manufacturer must allow the notified body entrance for inspection purposes to the locations of inspection, testing and storage and shall provide it with all necessary information, in particular:
- the quality system documentation;
 - the technical documentation;
 - the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.
- 4.3. The notified body must periodically carry out audits to ensure that the manufacturer maintains and applies the quality system and must provide an audit report to the manufacturer.
- 4.4. Additionally, the notified body may pay unexpected visits to the manufacturer. At the time of such visits, the notified body may carry out tests or have them carried out in order to check the proper functioning of the quality system where necessary; it must provide the manufacturer with a visit report and, if a test has been carried out, with a test report.
5. The manufacturer must, for a period ending at least 10 years after the last product has been manufactured, keep at the disposal of the national authorities:
- the documentation referred to in the third indent of point 3.1;
 - the updating referred to in the second paragraph of point 3.4;
 - the decisions and reports from the notified body which are referred to in the final paragraph of point 3.4, points 4.3 and 4.4.
6. Each notified body must forward to the other notified bodies the relevant information concerning the quality system approvals issued and withdrawn.'

F — The following Annex XVII is added to

Directive 94/25/EC:

'ANNEX XVII: CONFORMITY OF PRODUCTION ASSESSMENT FOR EXHAUST EMISSIONS

1. For verifying the conformity of an engine family, a sample of engines is taken from the series. The manufacturer shall decide the size (n) of the sample, in agreement with the notified body.
2. The arithmetical mean X of the results obtained from the sample shall be calculated for each regulated component of the exhaust and noise emission. The production of the series shall be deemed to conform to the requirements ("pass decision") if the following condition is met:

$$X + k \cdot S \leq L$$

S is standard deviation, where:

$$S^2 = \Sigma (x - X)^2 / (n - 1)$$

X = the arithmetical mean of the results

x = the individual results of the sample

L = the appropriate limit value

n = the number of engines in the sample

k = statistical factor depending on n, see table

n	2	3	4	5	6	7	8	9	10
k	0,973	0,613	0,489	0,421	0,376	0,342	0,317	0,296	0,279
n	11	12	13	14	15	16	17	18	19
k	0,265	0,253	0,242	0,233	0,224	0,216	0,210	0,203	0,198

If $n \geq 20$ then $k = 0,860 / \sqrt{n}$

Amended proposal for a Council Directive establishing a general framework for equal treatment in employment and occupation ⁽¹⁾

(2001/C 62 E/11)

(Text with EEA relevance)

COM(2000) 652 final — 1999/0225(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 12 October 2000)

⁽¹⁾ OJ C 177 E, 27.6.2000, p. 42.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

Having regard to the Treaty establishing the European Community, and in particular Article 13 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Having regard to the opinion of the Committee of Regions,

Whereas:

(1) The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States. In accordance with Article 6(2) of the Treaty on European Union, the Union should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms, as general principles of Community law.

(1) The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States. In accordance with Article 6(2) of the Treaty on European Union, the Union should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

(2) Article 13 of the Treaty establishing the European Community empowers the Council to take appropriate actions to combat discrimination based on sex, racial or ethnic origin, religion or beliefs, disability, age or sexual orientation.

Unchanged

INITIAL PROPOSAL

AMENDED PROPOSAL

(3) The principle of equal treatment on grounds of sex is well established by a considerable body of Community law, in particular in Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions⁽¹⁾. The Treaty establishing the European Community empowers the Council to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

(4) In implementing the principle of equal treatment, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities and to promote equality between men and women, especially since women are often the victims of multiple discrimination.

(5) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, of which all Member States are signatories; whereas ILO Convention No 111 prohibits discrimination in the field of employment and occupation.

Unchanged

(6) The Community Charter of the Fundamental Social Rights of Workers the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly and disabled people.

(6) The Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly and disabled people.

(7) The Treaty establishing the European Community includes among its objectives the promotion of coordination between employment policies of the Member States. To this end, a new employment chapter was incorporated in the Treaty establishing the European Community, as a means of developing a coordinated European strategy for employment to promote a skilled, trained and adaptable workforce.

Unchanged

⁽¹⁾ OJ L 39, 14.2.1976, p. 40.

INITIAL PROPOSAL

AMENDED PROPOSAL

- (8) The 1999 Employment Guidelines agreed by the European Council at Vienna on 11 and 12 December 1998 stress the need to foster conditions for a more active participation in the labour market by formulating a coherent set of policies aimed at combating discrimination on grounds of disability and race or ethnic origin. The European Council Conclusions of Vienna emphasise the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.
- (9) Employment and occupation are key elements in guaranteeing equal opportunities for all and strongly contribute to the full participation of citizens in economic, cultural and social life
- (11) Discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the Treaty establishing the European Community, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity, and the fostering of the free movement of persons.
- (12) To this end any direct or indirect discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community;
- (13) Harassment which produces an intimidating, hostile, offensive or disturbing work environment in relation to any discriminatory ground should be deemed to be discrimination.
- (14) The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.
- (8) The 2000 Employment Guidelines agreed by the Helsinki European Council on 10 and 11 December 1999 reaffirm the need to foster a labour market conducive to social inclusion by formulating a coherent set of policies aimed at combating discrimination against groups such as the disabled. They also underline the need to pay particular attention to supporting older workers in order to increase their participation in the labour force.
- (9) Employment and occupation are key elements in guaranteeing equal opportunities for all and strongly contribute to the full participation of citizens in economic, cultural and social life, and to their personal self-realisation.
- (10) On 29 June 2000, the Council adopted Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, which already in itself provides protection against such discrimination in employment and occupation.
- (11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the Treaty establishing the European Community, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity, and the free movement of persons.
- (12) To this end any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community; this prohibition of discrimination also applies to third-country nationals but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry into and residence of third-country nationals and their access to employment and occupation.
- (13) Harassment should be deemed to be discrimination when an unwanted conduct related to religion or beliefs, disability, age or sexual orientation takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.
- Unchanged

INITIAL PROPOSAL

AMENDED PROPOSAL

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| <p>(17) A difference of treatment may be justified where a characteristic related to a discriminatory ground constitutes a genuine occupational qualification.</p> <p>(18) The European Union in its Declaration on the status of churches and non-confessional organisations, attached to the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status which churches and religious associations or communities enjoy in the Member States under national law and that it equally respects the status of philosophical and non-confessional organisations.</p> <p>(19) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures providing for specific advantages to prevent, reduce or eliminate inequalities associated with the above-mentioned discriminatory grounds</p> <p>(20) The provisions of this Directive lay down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.</p> <p>(21) It is important to ensure that persons who have been subject to discrimination have adequate means of legal protection. Associations or legal entities must also be empowered to exercise the right of defence on behalf of any victim.</p> <p>(22) The effective implementation of the principle of equality requires adequate judicial protection in civil matters against victimisation and an adjustment of the general rules on the burden of proof.</p> | <p>(15) Reasonable adjustment should be made, i.e. effective and practical measures aimed at adapting the workplace to a person's disability, for example by modifying facilities or equipment, working patterns, the allocation of tasks or the provision of training or personal assistance.</p> <p>(16) In order to determine whether the measures in question give rise to a disproportionate burden, particular account should be taken of the financial and other costs involved, of the size and turnover of the organisation or undertaking and of the availability of public funding or any other assistance.</p> <p>(17) A difference of treatment may be justified where a characteristic related to a discriminatory ground constitutes a genuine occupational requirement.</p> <p>Unchanged</p> <p>(19) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age or sexual orientation.</p> <p>Unchanged</p> <p>(21) Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should have adequate means of legal protection. To provide a more effective level of protection, associations, or other legal entities should also be empowered to exercise the rights of defence on behalf of or in support of the complainant.</p> <p>(22) The effective implementation of the principle of equality requires adequate judicial protection against victimisation and an adjustment of the general rules on the burden of proof in civil and administrative matters.</p> |
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INITIAL PROPOSAL

AMENDED PROPOSAL

(23) Member States should provide adequate information on the provisions adopted pursuant to this Directive.

Unchanged

(24) Member States should promote social dialogue between the social partners, to address different forms of discrimination in the workplace and to combat them.

(24) Member States should promote social dialogue between the social partners, and with non-governmental organisations, to address different forms of discrimination in the workplace and to combat them.

(25) Member States should take the necessary measures to ensure that any laws, regulations, administrative provisions, collective agreements, internal rules of undertakings or rules governing independent occupations, professions, or trade organisations which are contrary to the principle of equal treatment should be declared null and void or should be amended.

(25) Member States should take the necessary measures to ensure that any laws, regulations, administrative provisions, collective agreements, internal rules of undertakings or rules governing independent occupations, professions, or trade organisations which are contrary to the principle of equal treatment should be, or should be able to be, declared null and void or amended.

(26) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.

Unchanged

(27) The Member States may entrust management and labour, at their joint request, with the implementation of this Directive, as regards provisions falling within the scope of collective agreements, provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive.

(28) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty establishing the European Community, the objectives of this Directive, namely the creation, within the Community, of a level playing-field as regards equality in employment and occupation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose,

Unchanged

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

*Article 1***Purpose**

The purpose of this Directive is to put into effect in the Member States the principle of equal treatment as regards access to employment and occupation, including promotion, vocational training, employment conditions and membership of certain organisations, of all persons irrespective of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The purpose of this Directive is to put into effect in the Member States the principle of equal treatment as regards access to employment and occupation, including promotion, vocational training, employment conditions and membership of certain organisations, of all persons irrespective of religion or belief, disability, age or sexual orientation.

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 2

Unchanged

Concept of discrimination

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination whatsoever between persons on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

- (a) direct discrimination shall be taken to occur where, on any of the grounds referred to in Article 1, one person is treated less favourably than another is, has been or would be treated;
- (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice is liable to affect adversely a person or persons to whom any of the grounds referred to in Article 1 applies, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary.

Harassment of a person related to any of the discriminatory grounds and areas referred to in Article 1 which has the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment, shall be deemed to be discrimination within the meaning of paragraph 1.

In order to guarantee compliance with the principle of equal treatment for persons with disabilities, reasonable accommodation shall be provided, where needed, to enable such persons to have access to, participate in, or advance in employment, unless this requirement creates an undue hardship.

3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1 when an unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practices of the Member States.

4. In order to guarantee compliance with the principle of equal treatment for persons with disabilities, reasonable adjustment shall be made. This means that the employer shall take measures appropriate to the needs of a given situation in order to enable such persons to have access to, participate in, or advance in employment, or to have access to training, unless this requirement creates disproportionate burden.

5. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 3

Unchanged

Material scope

This Directive shall apply with regard to:

This Directive shall apply to all persons in both the public and private sectors, including public authorities, with regard to:

- (a) conditions for access to employment, self-employment and occupation, selection criteria and recruitment conditions, whatever the sector or branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) access to all types and to all levels, of vocational guidance, vocational training, advanced vocational training and retraining;
- (c) employment and working conditions, including dismissals and pay;
- (d) membership of and involvement in an organisation of workers or employers, or any other organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

- (a) conditions for access to employment, self-employment and occupation, unpaid or voluntary work, including selection criteria and recruitment conditions, whatever the sector or branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

Unchanged

*Article 4***Genuine occupational qualifications requirement****Genuine occupational requirement**

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the discriminatory grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine occupational qualification.

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the discriminatory grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may provide that, in the case of public or private organisations which pursue directly and essentially the aim of ideological guidance in the field of religion or belief with respect to education, information and the expression of opinions, and for the particular occupational activities within those organisations which are directly and essentially related to that aim, a difference of treatment based on a relevant characteristic related to religion or belief shall not constitute discrimination where, by reason of the nature of these activities, the characteristic constitutes a genuine occupational qualification.

2. Notwithstanding paragraph 1, the Member States may provide that in the case of public or private organisations based on religion or belief, and for the particular occupational activities within those organisations which are directly and essentially related to religion or belief, a difference in treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or the context in which they are carried out, a person's religion or belief constitute a genuine occupational requirement. This difference of treatment may not, however, give rise to any discrimination on the other grounds referred to in Article 13 of the EC Treaty.

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 5

Unchanged

Justification of differences of treatment on grounds of age

Notwithstanding Article 2(2)(a), the following differences of treatment, in particular, shall not constitute direct discrimination on grounds of age, if they are objectively and reasonably justified by a legitimate aim and are appropriate and necessary to the achievement of that aim:

Notwithstanding Article 2(2)(a), differences of treatment on grounds of age shall not constitute direct discrimination if they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy and labour market, and the means to achieve it are appropriate and necessary.

These differences may include:

(a) the prohibition on access to employment or the provision of special working conditions to ensure the protection of young people and older workers;

Unchanged

(b) the prohibition on access to employment or the provision of special working conditions to ensure the protection of young people and older workers;

(b) the fixing of a minimum age as a condition of eligibility for retirement or invalidity benefits under occupational social security schemes, including the fixing of different ages for workers or groups or categories of worker under occupational social security schemes on grounds of physical or mental occupational requirements;

(c) the fixing of different ages for employees or groups or categories of employees for entitlement to retirement or invalidity benefits on grounds of physical or mental occupational requirements;

(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement;

(d) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement;

Deleted

(e) the establishment of requirements concerning the length of professional experience;

(f) the establishment of age limits which are appropriate and necessary for the pursuit of legitimate labour market objectives.

Article 6

Unchanged

Positive action

This Directive shall be without prejudice to the right of the Member States to maintain or adopt measures intended to prevent or compensate for disadvantages concerning persons to whom any of the discriminatory grounds referred to in Article 1 apply.

In order to ensure full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures designed to prevent or compensate for disadvantages linked to any of the discriminatory grounds referred to in Article 1.

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 7

Unchanged

Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

CHAPTER II

REMEDIES AND ENFORCEMENT*Article 8***Defence of rights**

1. Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the employment relationship has ended.
2. Member States shall ensure that associations, organisations or other legal entities may pursue any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive on behalf of the complainant with his or her approval.

1. Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive, including, where they deem it appropriate, conciliation procedures, are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the employment relationship has ended.

2. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 shall be without prejudice to national rules relating to time-limits for bringing actions as regards the principle of equal treatment.

Article 9

Unchanged

Burden of proof

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

INITIAL PROPOSAL

AMENDED PROPOSAL

2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

3. Paragraph 1 shall not apply to criminal procedures, unless otherwise provided by the Member States.

4. Paragraphs 1, 2 and 3 shall apply to any legal proceedings commenced in accordance with Article 8(2).

*Article 10***Victimisation**

Member States shall introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

*Article 11***Dissemination of information**

1. Member States shall ensure that adequate information on the provisions adopted pursuant to this Directive is provided to vocational training and educational bodies and is adequately disseminated within the workplace.

2. Member States shall ensure that competent public authorities are informed by appropriate means as regards all national measures taken pursuant to this Directive.

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by all appropriate means, for example in the workplace, and throughout their territory.

Deleted

*Article 12***Social dialogue**

1. Member States shall take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.

2. Member States shall encourage the two sides of industry to conclude, at the appropriate level, including at undertaking level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect this Directive and the relevant national implementing measures.

Unchanged

1. In accordance with their national traditions and practices, Member States shall take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.

2. Member States shall encourage the two sides of industry, without prejudice to their autonomy, to conclude, at the appropriate level, including at undertaking level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect this Directive and the relevant national implementing measures.

INITIAL PROPOSAL

AMENDED PROPOSAL

*Article 13***Dialogue with non-governmental organisations**

Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on any of the grounds referred to in Article 1 with a view to promoting the principle of equal treatment.

Unchanged

CHAPTER III

FINAL PROVISIONS*Article 14***Compliance**

Member States shall take the necessary measures to ensure that:

a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;

b) any provisions contrary to the principle of equal treatment which are included in collective agreements, contracts of employment, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations, are declared null and void or are amended.

b) any provisions contrary to the principle of equal treatment which are included in individual or collective contracts or agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations, are or may be declared null and void or amended.

*Article 15***Penalties**

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 16 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Unchanged

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for, which may include payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 16 at the latest and shall notify it without delay of any subsequent amendment affecting them.

INITIAL PROPOSAL

AMENDED PROPOSAL

*Article 16***Implementation**

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002. They shall forthwith inform the Commission thereof.

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

*Article 17***Report**

Member States shall communicate to the Commission, within two years of the date mentioned in Article 16, all the information necessary to draw up a report to the European Parliament and the Council on the application of this Directive.

*Article 18***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 19***Addressees**

This Directive is addressed to the Member States.

Unchanged

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002, or may entrust the social partners, at their joint request, with the implementation of this Directive as regards the provisions falling under the scope of collective agreements. In such cases, Member States shall ensure that no later than the date on which the Directive should be transposed, the social partners introduced the necessary measures by agreement, the Member States concerned being required to take any necessary measure to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

Unchanged

1. Member States shall communicate to the Commission, within two years of the date mentioned in Article 16, and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. The Commission's report shall take account of the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of integration of equal-opportunities policy, this report shall, *inter alia*, evaluate the impact of measures on men and women. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

Unchanged

Proposal for a Council Decision on a Community financial contribution towards certain expenditure to implement certain management measures on highly migratory fish

(2001/C 62 E/12)

(Text with EEA relevance)

COM(2000) 651 final — 2000/0268(CNS)

(Submitted by the Commission on 18 October 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 European Community has been a Contracting Party to the International Convention for the conservation of Atlantic Tunas, hereinafter called 'the ICCAT Convention' since 14 November 1997.
- (2) The ICCAT Convention represents a framework for regional cooperation on the conservation and management of tunas and tuna-like species in the Atlantic Ocean and adjoining seas through the setting up of an International Commission for the Conservation of Atlantic Tunas, hereinafter called 'ICCAT', and the adoption of recommendations on conservation and management in the convention area which will become binding on the Contracting Parties.
- (3) At its 11th special meeting on 16 to 23 November 1998, ICCAT adopted a recommendation on the imposition of a time/area closure linked to the use of fish aggregating devices which became mandatory for the Contracting Parties on 21 June 1999. Whereas Council Regulation (...) incorporates this recommendation into Community law.
- (4) In order to ensure compliance with the measure, provision is made for an observer to remain on board each vessel during the period concerned. Detailed arrangements should be adopted therefore governing the assignment of observers, their tasks and the payment of the costs they incur.
- (5) Member States should ensure that vessels flying their flag and operating in the ICCAT area comply with the conservation and management measures applicable in the area. It is necessary for the Member States to see to it therefore that the system of observers is applied.
- (6) The Member States must take steps to ensure that observers are placed on board vessels flying their flags and are reimbursed the costs arising from their assignment.
- (7) In order to facilitate the application of the system of observers, provision should be made for a financial

contribution from the Community towards the expenditure incurred in assigning observers during the period 1 November 2000 to 31 January 2001. The contribution would be conditional on the costs being taken over by the Member States once the system has become routine,

HAS ADOPTED THIS DECISION:

Article 1

1. The costs arising from the assignment of observers deployed under the provisions of Article ... of Regulation ... shall be borne by the Member State which makes the appointment.
2. Member States may pass on these costs, in whole or in part, to the owners of the tuna seiners flying their flag or registered in their territory.

Article 2

1. In order to facilitate the introduction of the system of observers, the Community may contribute to the financing of the expenditure of the Member States arising from the assignment of the observers, for the period 1 November 2000 to 31 January 2001.
2. The Community contribution shall be 50 % of the expenditure from public funds incurred by each Member State in making the assignment.
3. Member States wishing to qualify for a financial contribution shall submit to the Commission by 1 April 2001 a detailed report on:
 - the number of observers assigned;
 - the number of vessels concerned;
 - the name of the vessel observed and the period for which each observer was assigned;
 - the final report of each observer.

4. Member States wishing to qualify for a financial contribution from the Community must submit an application for reimbursement of the expenditure referred to in paragraph 2 together with two copies of supporting documents by 1 May 2001 at the latest. The supporting documents shall include at least the main points of the agreement between the Member State and the service provider(s), and evidence of the payments concerned.

Member States shall provide assurances that the expenditure has been incurred in compliance with the principles of sound financial management and with the requirements of this Decision.

5. Member States shall provide the Commission with the information necessary to enable it to verify compliance with the requirements of this Decision, in particular regarding the assignment of observers in respect of whom the Community has made a financial contribution.

Article 3

Member States shall send the Commission by 1 May 2001 at the latest a comprehensive report assessing the content and conclusions of the reports of the observers assigned to vessels flying their flag.

Article 4

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

This Decision is addressed to the Member States.

Proposal for a Directive of the European Parliament and of the Council amending Council Directives 90/425/EEC and 92/118/EEC as regards health requirements for animal by-products

(2001/C 62 E/13)

(Text with EEA relevance)

COM(2000) 573 final — 2000/0230(COD)

(Submitted by the Commission on 19 October 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC⁽²⁾, should therefore be amended,

Having regard to the Treaty establishing the European Community, and in particular Article 152(4)(b) thereof,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Having regard to the proposal from the Commission,

In Directive 90/425/EEC, the seventh indent of Section 1 of Chapter I of Annex A is replaced by the following:

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

‘Regulation (EC) . . . / . . . of the European Parliament and of the Council laying down the health rules concerning animal by-products not intended for human consumption (OJ L . . .).’

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

Article 2

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

Directive 92/118/EEC is amended as follows:

Whereas:

(1) The animal and public health conditions for the processing and disposal of animal waste and for the production, placing on the market, trade and importation of products of animal origin not intended for human consumption were laid down in numerous Community acts.

1. In Article 2, points (e) and (g) are deleted;
2. In Article 3, in the first indent the following words are deleted: ‘together with gelatins not intended for human consumption’;
3. In Article 10(2), point (b) is replaced by the following:

‘(b) unless otherwise specified in Annex II, products must come from establishments on a Community list to be drawn up in accordance with the procedure laid down in Article 18’;

(2) The rules contained in those acts have been replaced by Regulation (EC) . . . / . . . of the European Parliament and of the Council of . . . laying down the health rules concerning animal by-products not intended for human consumption.

4. Annex I is amended as follows:
 - (a) Chapters 1, 3 and 4 are deleted;
 - (b) Chapter 5 is amended as follows:
 - (i) In the title, the following words are added:

‘intended for human consumption’;
 - (ii) In part A, the following is deleted:

‘A. where they are intended for human or animal consumption’;
 - (iii) Part B is deleted;
 - (c) Chapter 6 is amended as follows:
 - (i) In the title, the following words are added: ‘intended for human consumption’;

(3) In order to take account of those new rules, Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market⁽¹⁾ and Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A(I) to

⁽¹⁾ OJ L 224, 18.8.1990, p. 29. Directive as last amended by Directive 92/118/EEC.

⁽²⁾ OJ L 62, 15.3.1993, p. 49. Directive as last amended by Decision 1999/724/EC (OJ L 290, 12.11.1999, p. 32).

(ii) Part I is amended as follows:

— Paragraph (A) is replaced by the following:

‘A. as regards trade, to the production of document or certificate provided for in Directive 77/99/EEC stating that the requirements of that Directive have been complied with’;

— In paragraph (B)1, point (a) is replaced by the following:

‘(a) the products fulfil the requirements of Directive 80/215/EEC’;

(d) In Chapter 7, part II is deleted;

(e) Chapters 8, 10 and 12 to 15 are deleted.

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on 1 February 2003 ⁽¹⁾. They shall forthwith inform the Commission thereof.

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

Article 4

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

Article 5

This Directive is addressed to the Member States.

⁽¹⁾ This date must correspond to the date of application of the Regulation on animal by-products not intended for human consumption.

Proposal for a Council Decision concerning the conclusion of an agreement between the Community and the Republic of Cyprus adopting the terms and conditions for the participation of Cyprus in Community programmes in the fields of training, education and youth

(2001/C 62 E/14)

COM(2000) 661 final — 2000/0270(CNS)

(Submitted by the Commission on 20 October 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 149 and 150, in conjunction with Article 300(2) and the first sub-paragraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The participation of Cyprus in Community programmes is an important element of the pre-accession strategy for Cyprus as set out in the Council Regulation (EC) No 555/2000 of 13 March 2000 on the implementation of operations in the framework of the pre-accession strategy for the Republic of Cyprus and the Republic of Malta ⁽¹⁾.
- (2) Council Decision (1999/382/EC) of 26 April 1999 establishing the second phase of the Community vocational training action programme 'Leonardo da Vinci' ⁽²⁾, and in particular Article 10 thereof, Decision (253/2000/EC) of 24 January 2000 of the European Parliament and the Council establishing the second phase of the Community action programme in the field of education 'Socrates' ⁽³⁾, and in particular Article 12 thereof, and Decision (1031/2000/EC) of 13 April 2000 of the European Parliament and the Council establishing the 'Youth' Community action programme ⁽⁴⁾, and in particular Article 11 thereof, provide that these programmes shall be open to the participation of Cyprus.

(3) In conformity with the negotiating guidelines adopted by the Council on 14 February 2000, the Commission has negotiated, on behalf of the European Community, an agreement to enable Cyprus to participate in these programmes.

(4) This Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and Cyprus adopting the terms and conditions for the participation of Cyprus in Community programmes in the fields of training, education and youth is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to appoint the person(s) empowered to sign the Agreement in order to bind the Community.

Article 3

The President of the Council shall, on behalf of the Community, give the notifications provided for in Article 4 of the Agreement.

Article 4

This Decision shall be published in the *Official Journal of the European Communities*.

⁽¹⁾ OJ L 68, 16.3.2000, p. 3.

⁽²⁾ OJ L 146, 11.6.1999, p. 33.

⁽³⁾ OJ L 28, 3.2.2000, p. 1.

⁽⁴⁾ OJ L 117, 18.5.2000, p. 1.

Draft Agreement between the European Community and the Republic of Cyprus adopting the terms and conditions for the participation of the Republic of Cyprus in Community programmes in the fields of training, education and youth

THE EUROPEAN COMMUNITY,

of the one part, and

THE REPUBLIC OF CYPRUS, hereinafter referred to as Cyprus,

of the other part,

Whereas:

(1) Council Decision (1999/382/EC) of 26 April 1999 establishing the second phase of the Community vocational training action programme 'Leonardo da Vinci' ⁽¹⁾, and in particular Article 10 thereof, and Decision (253/2000/EC) of 24 January 2000 of the European Parliament and the Council establishing the second phase of the Community action programme in the field of education 'Socrates' ⁽²⁾, and in particular Article 12 thereof, and Decision (1031/2000/EC) of 13 April 2000 of the European Parliament and the Council establishing the 'Youth' Community action programme ⁽³⁾, and in particular Article 11 thereof, provide that these programmes shall be open to the participation of Cyprus.

(2) Cyprus has expressed the wish to participate in these programmes.

(3) The participation of Cyprus in these programmes constitutes a significant step in the pre-accession strategy of Cyprus as set out in the Council Regulation (EC) No 555/2000 of 13 March 2000 on the implementation of operations in the framework of the pre-accession strategy for the Republic of Cyprus and the Republic of Malta ⁽⁴⁾,

HAVE AGREED AS FOLLOWS:

Article 1

Cyprus shall participate, from 2001, in the second phase of the European Community programmes Leonardo da Vinci and Socrates ('Leonardo da Vinci II' and 'Socrates II') and in the 'Youth' Community action programme ('Youth') according to the terms and conditions set out in Annexes I and II which shall form an integral part of this Agreement.

Article 2

This Agreement shall apply from 1 January 2001 to the end of the programmes.

Article 3

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other, to the territory of Cyprus.

Article 4

This Agreement shall enter into force on the day of the notification by the Contracting Parties of the completion of their respective procedures.

Article 5

This Agreement is drawn up in duplicate in the Danish, Dutch, English, French, Finnish, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each of these texts being equally authentic.

⁽¹⁾ OJ L 146, 11.6.1999, p. 33.

⁽²⁾ OJ L 28, 3.2.2000, p. 1.

⁽³⁾ OJ L 117, 18.5.2000, p. 1.

⁽⁴⁾ OJ L 68, 16.3.2000, p. 3.

ANNEX I

Terms and conditions for the participation of Cyprus in Leonardo da Vinci II, Socrates II and Youth

1. Cyprus will participate in Leonardo da Vinci II, Socrates II and Youth ('the Programmes') in conformity, unless otherwise provided in this Agreement, with the objectives, criteria, procedures and deadlines as defined in Council Decision (1999/382/EC) of 26 April 1999, Decision (253/2000/EC) of 24 January 2000 of the European Parliament and of the Council, and Decision (1031/2000/EC) of 13 April 2000 of the European Parliament and of the Council establishing these Community action programmes. It will participate in all the activities of the Programmes, with the exception of certain activities within Youth which are devoted to cooperation with third countries which are not full participants in that programme.
2. In conformity with the terms of respective Articles 5 of the Decisions on Leonardo da Vinci II, Socrates II and Youth, and with the provisions relating to the responsibilities of the Member States and of the Commission of the European Communities concerning the Leonardo da Vinci, Socrates and Youth National Agencies adopted by the Commission, Cyprus shall establish the appropriate structures for the coordinated management of the implementation of the programme actions at national level and take the measures needed to ensure the adequate funding of these Agencies, which will receive programme grants for their activities. Cyprus will take all other necessary steps for the efficient running of the Programmes at national level.
3. To participate in the Programmes, Cyprus will pay each year a contribution to the general budget of the European Union according to the modalities described in Annex II.

If necessary in order to take into account programme developments, or the evolution of Cyprus's absorption capacity, the Association Council is entitled to adapt this contribution, so as to avoid budgetary imbalance in the implementation of the programmes.

4. The terms and conditions for the submission, assessment and selection of applications related to eligible institutions, organisations and individuals of Cyprus will be the same as those applicable to eligible institutions, organisations and individuals of the Community.

Cypriot experts may be taken into consideration by the Commission when appointing independent experts according to the relevant provisions of the decisions establishing the programmes to assist it in the project evaluation.
5. With a view to ensuring the Community dimension of the Programmes, to be eligible for Community financial support, projects and activities will have to include at least a partner from one of the Member States of the Community.
6. For the mobility activities referred to in Annex I, section III.1 of the Leonardo da Vinci II decision, and for the actions to be managed on a decentralised basis within Socrates and Youth, as well as for financial support to the activities of the National Agencies set up in accordance with point 2 above, funds will be allocated to Cyprus on the basis of the annual programme budget breakdown decided at Community level and Cyprus's contribution to the programme. The maximum amount of financial support to the activities of the National Agencies will not exceed 50 % of the budget for the National Agencies' work programmes.
7. The Member States of the Community and Cyprus will make every effort, within the framework of existing provisions, to facilitate the free movement and residence of students, teachers, trainees, trainers, university administrators, young people and other eligible persons moving between Cyprus and the Member States of the Community for the purpose of participating in activities covered by this Agreement.
8. Activities covered by this Agreement shall be exempt from imposition by Cyprus of indirect taxes, customs duties, prohibitions and restrictions on imports and exports in respect of goods and services intended for use under such activities.
9. Without prejudice to the responsibilities of the Commission of the European Communities and the Court of Auditors of the European Communities in relation to the monitoring and evaluation of the programmes pursuant to the decisions concerning Leonardo da Vinci II, Socrates II and Youth (Articles 13, 14 and 13 respectively), the participation of Cyprus in the programmes will be continuously monitored on a partnership basis involving the Commission of the European Communities and Cyprus. Cyprus will submit to the Commission relevant reports and take part in other specific activities set out by the Community in that context.
10. In conformity with the Community's financial regulations, contractual arrangements concluded with, or by, entities of Cyprus shall provide for controls and audits to be carried out by, or under the authority of, the Commission and the Court of Auditors. As far as financial audits are concerned, they may be carried out with the purpose of controlling such entities' income and expenditures, related to the contractual obligations towards the Community. In a spirit of cooperation and mutual interest, the relevant authorities of Cyprus shall provide any reasonable and feasible assistance as may be necessary or helpful under the circumstances to perform such controls and audits.

The provisions relating to the responsibilities of the Member States and of the Commission concerning the Leonardo da Vinci, Socrates and Youth National Agencies adopted by the Commission will apply to the relations between Cyprus, the Commission and the Cypriot National Agencies. In the event of irregularity, negligence or fraud imputable to the Cypriot National Agencies, the Cypriot authorities shall be responsible for the funds not recovered.

11. Without prejudice to the procedures referred to in Article 7 of the Decision on Leonardo da Vinci II and respective Articles 8 of the Decisions on Socrates II and Youth, representatives of Cyprus will participate as observers in the Programme Committees, for the points which concern them. These committees shall meet without the presence of representatives of Cyprus for the rest of the points, as well as at the time of voting.
12. The language to be used in all contacts with the Commission, as regards the application process, contracts, reports to be submitted and other administrative arrangements for the programmes, will be any of the official languages of the Community.
13. The Community and Cyprus may terminate activities under this Agreement at any time upon twelve months' notice in writing. Projects and activities in progress at the time of termination shall continue until their completion under the conditions laid down in this Agreement.

ANNEX II

Financial contribution of Cyprus to Leonardo da Vinci II, Socrates II and Youth

1. Leonardo da Vinci

The financial contribution to be paid by Cyprus to the budget of the European Union to participate in the Leonardo da Vinci II programme will be the following (in EUR):

Year 2001	Year 2002	Year 2003	Year 2004	Year 2005	Year 2006
497 000	529 000	552 000	574 000	603 000	626 000

2. Socrates

The financial contribution to be paid by Cyprus to the budget of the European Union to participate in the Socrates II programme will be the following (in EUR):

Year 2001	Year 2002	Year 2003	Year 2004	Year 2005	Year 2006
681 000	697 000	712 000	731 000	753 000	780 000

3. Youth

The financial contribution to be paid by Cyprus to the budget of the European Union to participate in the Youth programme will be the following (in EUR):

Year 2001	Year 2002	Year 2003	Year 2004	Year 2005	Year 2006
533 000	565 000	598 000	627 000	658 000	698 000

4. Cyprus will pay the contribution mentioned above partly from the Cypriot national budget, and partly from Cyprus's pre-accession funds. Subject to a separate programming procedure within the framework of the Council Regulation on the implementation of the pre-accession strategy for the Republic of Cyprus and the Republic of Malta, the requested pre-accession funds will be transferred to Cyprus by means of a separate Financing Memorandum. Together with the part coming from Cyprus's State budget, these funds will constitute Cyprus's national contribution, out of which it will make payments in response to annual calls for funds from the Commission.

5. The pre-accession funds will be requested according to the following schedule:

— for the contribution to the Leonardo da Vinci II programme, the following yearly amounts (in EUR)

Year 2001	Year 2002	Year 2003	Year 2004	Year 2005	Year 2006
200 000	200 000	200 000	200 000	200 000	150 000

— for the contribution to the Socrates II programme, the following yearly amounts (in EUR)

Year 2001	Year 2002	Year 2003	Year 2004	Year 2005	Year 2006
400 000	350 000	300 000	300 000	200 000	150 000

— for the contribution to the Youth programme, the following yearly amounts (in EUR)

Year 2001	Year 2002	Year 2003	Year 2004	Year 2005	Year 2006
400 000	300 000	250 000	200 000	200 000	150 000

The remaining part of the contribution of Cyprus will be covered from the Cypriot State budget.

6. The financial regulation applicable to the general budget of the European Union will apply, notably to the management of the contribution of Cyprus.

Travel costs and subsistence costs incurred by representatives and experts of Cyprus for the purposes of taking part as observers in the work of the committees referred to in Annex I, Point 11 or other meetings related to the implementation of the Programmes shall be reimbursed by the Commission on the same basis as and in accordance with the procedures currently in force for non-governmental experts of the Member States of the European Union.

7. After the entry into force of this Agreement and at the beginning of each following year, the Commission will send to Cyprus a call for funds corresponding to its contribution to each of the respective programmes under this Agreement.

This contribution shall be expressed in euros and paid into a euro bank account of the Commission.

Cyprus will pay its contribution according to the call for funds:

- by 1 May for the part financed from its national budget, provided that the call for funds is sent by the Commission before 1 April, or at the latest one month after the call for funds is sent if later;
- by 1 May for the part financed from the pre-accession funds, provided that the corresponding amounts have been sent to Cyprus by this time, or at the latest in a period of 30 days after these funds have been sent to Cyprus.

Any delay in the payment of the contribution shall give rise to the payment of interest by Cyprus on the outstanding amount from the due date. The interest rate corresponds to the rate applied by the European Central Bank, on the due date, for its operations in euro, increased by 1.5 percentage points.

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

(2001/C 62 E/15)

COM(2000) 660 final — 1993/0463(CNS)

(Submitted by the Commission pursuant to Article 250 (2) of the EC Treaty on 20 October 2000)⁽¹⁾ OJ C 248 E, 29.8.2000, p. 3.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

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

Having regard to the proposal ⁽¹⁾ from the Commission,Having regard to the proposal ⁽¹⁾ from the Commission,Having regard to the opinion of the European Parliament ⁽²⁾,Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Unchanged

Whereas:

(1) 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. 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. Therefore 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.

Unchanged

(2) Since only the Benelux countries have introduced a uniform design protection law, while is a matter for the relevant national law and is confined to the territory of the Member State concerned, identical designs may be protected differently in different Member States and for the benefit of different owners. This inevitably leads to conflicts in the course of trade between Member States.

(2) Since only the Benelux countries have introduced a uniform design protection law, while in all the other Member States the protection of designs is a matter for the relevant national law and is confined to the territory of the Member State concerned, identical designs may be protected differently in different Member States and for the benefit of different owners. This inevitably leads to conflicts in the course of trade between Member States.

⁽¹⁾ OJ C 29, 31.1.1994, p. 20.⁽³⁾ OJ C 110, 2.5.1995 and OJ C 75, 15.3.2000.⁽¹⁾ OJ C 29, 31.1.1994, p. 20 and COM(1999) 310 final of 22.6.1999.⁽²⁾ European Parliament Opinion of 16.6.2000.

INITIAL PROPOSAL

- (3) 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) 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, and hence constitutes an obstacle to the free movement of goods.
- (5) This calls for the creation of a Community design which is directly applicable in each Member State, 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.
- (6) 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 and a Community design authority can only be achieved by the Community.
- (7) Since 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, 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. Consequently a more accessible design-protection system adapted to the needs of the internal market is essential for Community industries.

AMENDED PROPOSAL

- (3) 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. Directive 98/71/EC of 13 October 1998 ⁽¹⁾ on the legal protection of designs approximates the design laws of the Member States and contributes to remedy this situation.
- (4) 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 design which is the subject of national rights held by different individuals, and hence constitutes an obstacle to the free movement of goods.
- (5) This calls for the creation of a Community design which is directly applicable in each Member State, 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

⁽¹⁾ OJ L 289, 28.10.1998, p. 28.

INITIAL PROPOSAL

AMENDED PROPOSAL

- (8) Such a design-protection system would constitute the prerequisite for seeking corresponding design protection in the most important export markets of the Community.
- (9) The substantive provisions of this regulation on design law, should be aligned with provisions in Directive 98/71/EC on the legal protection of designs.
- (10) Technological innovation not be hampered by granting design protection to features dictated solely by a technical function. It is understood that this does not entail that a design must have an aesthetic quality. Likewise, the interoperability of products of different makes not be hindered by extending protection to the design of mechanical fittings; consequently those features of a design which are excluded from protection for those reasons not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection.
- (11) 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 be eligible for protection.
- (12) Protection should not be extended to those component parts which are not visible during normal use of a product, or to those features of such part which are not visible when the part is mounted, or which would not, in themselves, fulfil the requirements as to novelty and individual character. Therefore, those features of design which are excluded from protection for these reasons should not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection.
- (13) 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. Therefore, 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. 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.
- (9) The substantive provisions of this regulation on design law should be aligned with the respective provisions in Directive 98/71/EC on the legal protection of designs.
- (10) Technological innovation must not be hampered by granting design protection to features dictated solely by a technical function. It is understood that this does not entail that a design must have an aesthetic quality. Likewise, the interoperability of products of different makes must not be hindered by extending protection to the design of mechanical fittings; consequently those features of a design which are excluded from protection for those reasons must not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection.
- (11) 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 must be eligible for protection.
- Unchanged

INITIAL PROPOSAL

- (14) The assessment as to whether a design has individual character should be based on whether the overall impression produced on an informed user viewing the design clearly differs from that produced on him by the existing design corpus, taking into consideration the nature of the product to which the design is applied or in which it is incorporated, and in particular the industrial sector to which it belongs and the degree of freedom of the designer in developing the design.
- (15) The provisions of this Regulation are without prejudice to the application of the competition rules pursuant to Articles 81 and 82 of the Treaty as regards, particularly, licence agreements.
- (16) A Community design should, as far as possible, serve the needs of all sectors of industry in the Community which are many and varied.
- (17) Some of those 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. 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.
- (18) This calls for two forms of protection, one being a short-term unregistered design and the other being a longer term registered design.
- (19) A registered Community design 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. This 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.
- (20) A Community design 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.

AMENDED PROPOSAL

- (19) A registered Community design 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. This 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

INITIAL PROPOSAL

AMENDED PROPOSAL

(21) 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. To this end it is 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.

(22) The exclusive nature of the right conferred by the registered Community design is consistent with its greater legal certainty. Therefore it is appropriate that the unregistered Community design should constitute a right only to prevent copying. This right, which should also extend to trade in products embodying infringing designs,

(23) 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. These should make it possible, irrespective of the jurisdiction under which enforcement is sought, to stop the infringing acts.

(24) Any third person who can establish that he has in good faith commenced use within the Community, or has made serious and effective preparations to that end, of a design included within the scope of protection of a registered Community design, which has not been copied from the latter, may be entitled to a limited exploitation of that design. To this purpose, 'use' must be understood as any use or serious and effective preparations thereof, including use for commercial purposes, which had commenced before the date of filing of the application for the registered Community design.

(25) 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.

(22) The exclusive nature of the right conferred by the registered Community design is consistent with its greater legal certainty. Therefore it is appropriate that the unregistered Community design should constitute a right only to prevent copying. This right, which should also extend to trade in products embodying infringing designs, should not extend however to design products which are the result of a design arrived at independently by a second designer.

Unchanged

INITIAL PROPOSAL

(26) Those 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. Furthermore there is also a need for these sectors to have easier recourse to the registered Community design, therefore the option of combining a number of designs in one multiple application would satisfy that need.

(27) 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; therefore the facility of publication for a reasonable period affords a solution in such cases.

(28) 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.

(29) It is therefore 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. Such a procedure would assist the development of uniform interpretation of the requirements governing the validity of Community designs.

(30) It is essential that the rights conferred by a Community design can be enforced in an efficient manner throughout the territory of the Community. Specific rules concerning litigation based on Community designs must therefore be provided in order to guarantee such a result. Moreover, 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. To that end Member States should designate Community design courts.

(31) The litigation system should avoid as far as possible 'forum shopping'. It is therefore necessary to establish clear rules of international jurisdiction.

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(26) Those 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. Furthermore there is also a need for these sectors to have easier recourse to the registered Community design, therefore the option of combining a number of designs in one multiple application would satisfy that need. However, the designs contained in a multiple application are independent of each other for the purposes of declaration of invalidity, surrender and the enforcement of rights.

(27) 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; therefore the facility of a deferment of publication for a reasonable period affords a solution in such cases.

Unchanged

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(32) According to Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities, as amended by Decision 93/350/Euratom, ECSC, EEC of 8 June 1993, that Court will exercise at the first instance the jurisdiction conferred on the Court of Justice by the Treaties establishing the Communities with particular regard to appeals lodged under the second subparagraph of Article 230 of the EC Treaty and by the acts adopted in implementation thereof, save as otherwise provided in an act setting up a body governed by Community law. Therefore, the jurisdiction which this Regulation confers on the Court of Justice to cancel and reform decisions of the appeal courts shall accordingly be exercised at the first instance by the Court in accordance with the above Decision.

(33) 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 designs, trade marks, patents and utility models, unfair competition or civil liability.

(34) 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.

(35) Since the measures necessary for implementing this Regulation are measures of general scope 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, they should be adopted in accordance with the regulatory procedure laid down in Article 5 of that Decision,

ADOPTED THIS REGULATION:

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(32) According to Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities ⁽¹⁾, as amended by Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 ⁽²⁾, that Court will exercise at the first instance the jurisdiction conferred on the Court of Justice by the Treaties establishing the Communities with particular regard to appeals lodged under the second subparagraph of Article 230 of the EC Treaty and by the acts adopted in implementation thereof, save as otherwise provided in an act setting up a body governed by Community law. Therefore, the jurisdiction which this Regulation confers on the Court of Justice to cancel and reform decisions of the appeal courts shall accordingly be exercised at the first instance by the Court in accordance with the above Decision.

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

Unchanged

(35) Since the measures necessary for implementing this Regulation are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾, they should be adopted in accordance with the regulatory procedure laid down in Article 5 of that Decision,

HAS ADOPTED THIS REGULATION:

⁽¹⁾ OJ L 319, 25.11.1988, p. 1, and corrigendum at OJ L 241, 17.8.1988, p. 4.

⁽²⁾ OJ L 144, 16.6.1993, p. 21.

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

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TITLE I

Unchanged

GENERAL PROVISIONS*Article 1***Community design**

1. A design which complies with the conditions contained in this Regulation is hereinafter referred to as a 'Community design'.

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

Unchanged

(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.

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.

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, nor shall its use be prohibited, 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 Trade Mark', shall carry out the tasks entrusted to it by this Regulation.

Unchanged

TITLE II

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, in particular, the lines, contours, colours, shape, and/or materials of the product itself and/or its ornamentation;

(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, texture and/or materials of the product itself and/or its ornamentation;

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- (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.

Unchanged

Article 4

Protection 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 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 use maintenance, servicing or repair.

3. 'Normal use' within the meaning of paragraph (2)(a) shall mean use by the end user, excluding maintenance, servicing or repair work.

Article 5

Novelty

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,
- (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.

Unchanged

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

Unchanged

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

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Article 6

Unchanged

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 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 or, if a priority is claimed, the date of priority.

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

Article 7

(deleted)

Date of reference*Article 8*

Unchanged

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.

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:

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

Unchanged

- (b) during the 12-month period preceding the date of filing of the application or, if priority is claimed, the date of priority.

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

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

2. A Community design 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.

3. Notwithstanding paragraph 2, a Community design 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 or morality**

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

*Article 10(a)***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⁾.

⁽¹⁾ OJ L 289, 28.10.1998, p. 28.

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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 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.

*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 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, 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.

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 in any way or, 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.

*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 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.

Unchanged

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*Article 13(a)***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 ending on 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.

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. 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:

(a) in the case of a registered Community design, by application of the law of the Member State where the registration has been applied for according to Article 37 or

(b) in the case of an unregistered Community design, by reference to the law of the Member State:

(i) in which all designers have their seat or their domicile on the relevant date,

(ii) where subparagraph (i) does not apply, where all designers have an establishment on the relevant date,

Unchanged

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3. 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.

Unchanged

Article 15

Plurality of designers

(deleted)

Article 16

Claims relating to the entitlement to a Community design

Unchanged

1. If an unregistered Community design is 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.

1. If an unregistered Community design is disclosed by, or a registered Community design has been registered or applied for, 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.

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.

Unchanged

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

3. Legal proceedings under paragraphs 1 and 2 may be instituted before a court only within a period of not more than two years after the date of publication of a registered Community design or the date of disclosure of the unregistered Community design. No time limit shall apply if the person who is not entitled to the Community design was acting in bad faith at the time when such design was applied for, disclosed or was transferred to him.

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

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;

Unchanged

(b) the final decision or any other termination of the proceedings;

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- (c) any change in the ownership of the registered Community design resulting from the final decision.

*Article 17***Effects of a judgement 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**

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

*Article 19***Right of the designer to be cited**

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 teamwork, the citation of the team may replace the citation of the individual designers.

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.

Unchanged

*Article 18***Presumption in favour of the registered holder of the design**

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 as well as in any other proceedings.

*Article 19***Right of the designer to be cited**

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 teamwork, the citation of the team may replace the citation of the individual designers.

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Section 4

Unchanged

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

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 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;
- (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.

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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 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.

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

Unchanged

Article 23

Use of a registered Community design for repair purposes

(deleted)

Article 24

Exhaustion of rights

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.

Unchanged

Article 25

Rights of prior use in respect of a registered Community design

1. A right of prior use shall exist for any third person who can establish that before the date of filing of the application, or if a priority is claimed, before the date of priority, he has in good faith commenced use within the Community, or has made serious and effective preparations to that end, of a design included within the scope of protection of a registered Community design, which has not been copied from the latter.

2. The right of prior use shall entitle the third person to exploit the design for the purposes for which its use had been effected, or for which serious and effective preparations had been made, before the filing or priority date of the registered Community design. The registered Community design shall not be effective against the third person with respect to such exploitation.

3. The right of prior use shall not extend to granting a licence to another person to exploit the design.

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Section 5

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

1. A registered Community design shall be declared invalid on application to the Office in accordance with the procedure in Titles VI and VII 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***Grounds for invalidity**

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

(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 10(a),

(c) if the right holder the Community design under Article 14,

(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 of a Member State, or by an application for such a right,

4. The right of prior use cannot be transferred except, where the third person is a business, along with that part of the business in the course of which the act was done or the preparations were made.

Unchanged

1. A registered Community design shall be declared invalid on application to the Office in accordance with the procedure in Titles VI and VII 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.

Unchanged

(c) if, by virtue of a court decision, the right holder is not entitled to the Community design under Article 14,

Unchanged

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- (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,
- (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 Article 14.

3. The grounds provided for in paragraph (1)(d), (e) and (f) may be invoked solely by the applicant for or holder of the right.

4. The ground provided for in paragraph (1)(g) may be invoked solely by the person or entity concerned by the use.

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.

Article 28
of invalidity

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3. The grounds provided for in paragraph (1)(d), (e) and (f) may be invoked solely by the applicant for or holder of the prior right.

Unchanged

5. Paragraphs 3 and 4 shall be without prejudice to the freedom of Member States to provide that the grounds provided for in paragraphs 1(d) and (g) may also be invoked by the appropriate authority of the Member State in question on its own initiative.

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 or a decision by the Office declaring the partial invalidity of the registered Community design.

Article 28
Consequences of invalidity

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

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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.

Unchanged

TITLE III

COMMUNITY DESIGNS AS OBJECTS OF PROPERTY

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

1. 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:

- (a) in the case of an unregistered Community design, by reference to the relevant joint holder designated by them by common agreement;

1. Unless 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:

Unchanged

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

Unchanged

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(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 egister.

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 of the registered Community design

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

(a) at the request of one of the parties, a transfer shall be entered in the egister and published;

(b) until such time as the transfer has been entered in the egister, the successor in title may not invoke the rights arising from the 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 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

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. request of one of the parties, rights mentioned in paragraph 1 shall be entered in the egister and published.

Article 32

Levy of execution

1. A registered Community design may be levied in execution.

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(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 seat of the Office is situated.

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 registration of the Community design;

Unchanged

2. On request of one of the parties, rights mentioned in paragraph 1 shall be entered in the Register and published.

Unchanged

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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***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.

2. 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 the products manufactured by the licensee.

3. 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. On request of one of the parties, levy of execution shall be entered in the Register and published.

Unchanged

1. The only Member State in which a Community design may be involved in bankruptcy or like proceedings shall be that on whose territory the debtor has his principal centre of interest.

2. In the case of joint proprietorship of a Community design, paragraph 1 shall apply to the share of the joint proprietor.

3. Where a Community design is involved in bankruptcy or like proceedings, on request of the competent national authority an entry to this effect shall be made in the Register provided for in Article 50 and published in the Community design Bulletin referred to in Article 77(1).

Unchanged

2. 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 was granted and the quality of the products manufactured by the licensee.

Unchanged

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4. 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.

5. 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 only have effect 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 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 within the meaning of national law or the regulations 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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5. 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.

Unchanged

2. However, as regards registered Community designs, legal acts referred to in Articles 30, 31 and 34 shall only have effect 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 concerning the registered Community design by way of transfer of the whole of the undertaking or by any other universal succession.

Unchanged

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

Unchanged

APPLICATION FOR A REGISTERED COMMUNITY DESIGN

Section 1

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

3. 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.

4. 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.

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.

Unchanged

*Article 38***Forwarding of the application**

(deleted)

*Article 39***Conditions with which applications must comply**

Unchanged

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

- (a) a request for registration,
- (b) information identifying the applicant,

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(c) a representation of the design suitable for reproduction.

2. The application shall further 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;

(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.

3. In addition, the application may contain:

(a) a description explaining the representation;

(b) a request for deferment of publication of the in accordance with Article 52.

4. The application shall be subject to the payment of the 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.

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

6. The information contained in the elements mentioned in paragraph 0(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.

(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;

Unchanged

(b) a request for deferment of publication of the registration in accordance with Article 52;

(c) information identifying the representative if the applicant has appointed one.

4. The application shall be subject to the payment of the application 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.

Unchanged

6. The information contained in the elements mentioned in paragraph (2) (a) and (b) and in paragraph (3) (a) does not affect the scope of protection of the design as such.

Unchanged

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 of the International Classification for Industrial Designs.

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2. Besides the fees referred to in Article 39(4), 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. 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.

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Unchanged

4. Each of the designs contained in a multiple application or registration can be enforced, licensed, be the subject of a right in rem, a levy of execution or bankruptcy and like proceedings, surrendered or declared invalid, independently. The renewal may be requested for less than all of the designs contained in a multiple application. The details are provided in the implementing Regulation.

Unchanged

*Article 41a***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 regular national filing, including where appropriate the priority claimed for the said application.

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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.

Section 2

Priority

Article 43

Right of priority

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 Organisation 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.

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

3. 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 rights 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.

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Unchanged

For the purpose of this Regulation, use shall be made of the latest available version 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.

Unchanged

1a. Where a registered Community design is filed by virtue of a right of priority based on the filing of a utility model, a right of priority of six months, as provided for in paragraph 1, will apply.

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

3. Regular 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.

Unchanged

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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 Organisation, 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 may require a translation of the previous application in one of the languages of the Office.

*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(1)(d) and 52(1).

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

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 Office may require a translation of the previous application in one of the languages of the Office.

Unchanged

(This Article has become Article 41a)

Unchanged

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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 for filing**

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;

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

(a) the application complies with the other requirements laid down in Article 39(2) to (5) and, in the case of a multiple application, Article 40(1) and (2);

Unchanged

3. The conditions for the examination as to the formal requirements for filing shall be laid down in the implementing Regulation.

*Article 49***Remediable deficiencies**

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 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.

Unchanged

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 accord 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.

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3. If the deficiencies concern the requirements, referred to in Article 48(2)(a) to (c) the applicant complies with the Office's request, the Office shall as the date of filing the date on which the 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)(d), failure to remedy them within the prescribed period shall result in the loss of the right of priority for the application.

*Article 49a***for non-registrability**

1. the Office, in carrying out the examination pursuant to Article 48, 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.

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.

*Article 50***Registration**

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 Article 49a, the Office shall register the application in the Community design register as a registered Community design. The registration shall bear the date.

*Article 51***Publication**

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.

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3. If the deficiencies concern the requirements, including the payment of fees, as referred to in Article 48(2)(a) to (c) and the applicant complies with the Office's request within the prescribed period, the Office shall accord as the date of filing the date on which the 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)(d), failure to remedy them within the prescribed period shall result in the loss of the right of priority for the application.

*Article 49a***Grounds for non-registrability**

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

(a) does not fulfil the requirement under Article 3(a), or

Unchanged

it shall refuse the application.

Unchanged

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 by virtue of Article 49a, the Office shall register the application in the Community design Register as a registered Community design. The registration shall bear the date of filing of the application referred to in Article 41.

Unchanged

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.

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Article 52

Unchanged

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 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.

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.

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.

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

Unchanged

5.

(deleted)

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.

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.

Article 53

(deleted)

Term of protection

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*Article 54***Renewal**

TITLE VI

**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.

4. Surrender shall be registered only with the agreement of the proprietor 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**

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

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(This Article has become Article 13a)

The whole former Title VI has been deleted

Unchanged

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 entered in the Register.

2. If a Community design which is subject to deferment of publication is surrendered it shall be deemed from the outset not to have had the effects specified in this Regulation.

3. A registered Community design may be partially surrendered provided that its amended form complies with the requirements for protection and the identity of the design is retained.

4. Surrender shall be registered only with the agreement of the proprietor 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.

5. If an action pursuant to Article 14 relating to the entitlement to a registered Community design has been brought before a Community design court, the Office will not enter the surrender in the Registry without the agreement of the claimant.

Unchanged

1. Subject to Article 27(2) to (5), 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 be deemed to have been filed until the fee has been paid.

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3. An 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 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.

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 to the other parties or 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. 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, 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.

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3. An 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.

Unchanged

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 from the other parties or issued by itself.

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

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 the Office, 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, as the one 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.

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TITLE

TITLE VII

APPEALS

Unchanged

*Article 59***Decisions subject to appeal**

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

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

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

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

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

Unchanged

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. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed.

Notice of appeal must be filed in writing at the Office within two months after the date of notification of the decision appealed from. The notice shall be deemed to have been filed only when the fee for appeal 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**

Unchanged

1. If the department whose decision is contested considers the appeal to be admissible and well founded, it shall its decision. This shall not apply where the appellant is opposed by another party to the proceedings.

1. If the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.

2. If the decision is not 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.

2. If the decision is not rectified 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**

Unchanged

1. If the appeal is admissible, the Board of Appeal shall examine whether the appeal is to be allowed.

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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 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.

2. If the Board of Appeal remits the case for further to the department whose decision was appealed, that department shall be bound by the ratio decidendi of the Board of Appeal, in so far as the facts are the same.

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 such action.

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

1. Actions may be brought before the Court of Justice against decisions of the Board 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 to 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.

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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 prosecution.

2. If the Board of Appeal remits the case for further prosecution to the department whose decision was appealed, that department shall be bound by the ratio decidendi of the Board of Appeal, in so far as the facts are the same.

3. The decisions of the Board 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 rejection of such action.

Unchanged

INITIAL PROPOSAL

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TITLE

TITLE VIII

PROCEDURE BEFORE THE OFFICE

Unchanged

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, except to the extent that the grounds of invalidity specified in Articles 27(1)(a), 10 and 10a are involved.

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

*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 decides otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

2. Oral proceedings, including delivery of the decision, shall be public, unless the department before which the proceedings are taking place 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;

(d) hearing witnesses;

Unchanged

(c) the production of documents and items of evidence;

Unchanged

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- (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.

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 of the Office.

*Article 71****Restitutio in integrum***

1. The applicant for or 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 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.

1. The applicant for or 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 vis-à-vis 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 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 (3) shall be deducted from the period of one year.

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 unobserved 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 13a(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.

Unchanged

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4. The department 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 Article 43(1).

6. Where the applicant for or holder of 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, the period between the loss of rights in the application 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 holder of 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 integrum in respect of time limits provided for in this Regulation and to be complied with vis-à-vis the authorities of such State.

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

In the absence of procedural provisions in this Regulation, the implementing Regulation, the fees Regulation 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 the 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.

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4. The department competent to decide on the omitted act shall decide upon the application.

Unchanged

6. Where the applicant for or holder of 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, in the course of the period between the loss of rights in the application for or registration of 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.

Unchanged

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.

Unchanged

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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 case the period shall end 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 Invalidation 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.

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

5. Where the parties conclude before the Invalidation 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 Invalidation 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 Invalidation Division or Board of Appeal on a request filed within the period prescribed by the implementing Regulation.

AMENDED PROPOSAL

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 this case the period shall end at the earliest one year after the judgement has acquired the authority of a final decision.

Unchanged

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*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.

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 in an irregular manner.

Section 3

Unchanged

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 designs, 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.

Register of Community designs

The Office shall keep a Register to be known as the Register of Community designs, 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.

Article 77

Unchanged

Periodical publications

1. This Office shall periodically publish a Community esign 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.

1. This Office shall periodically publish a Community Designs 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.

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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, referred to in Article 85 of the Regulation on the Community Trade Mark.

*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 holder of 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 holder of the 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.

*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.

AMENDED PROPOSAL

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, referred to in Article 85 of the Regulation on the Community Trade Mark.

Unchanged

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*Article 80***Exchange of publications**

1. The Office and the central industrial property 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 relating 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**

1. Representation of natural or legal persons in proceedings before the Office under this Regulation 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

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; the implementing Regulation may permit other exceptions.

Unchanged

Professional representation

Unchanged

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(b) any professional representatives whose name has been entered on the list of professional representatives referred to in Article 89(1)(b) of Regulation on the Community trade mark, or

(b) any professional representative whose name has been entered on the list of professional representatives referred to in Article 89(1)(b) of the Regulation 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.

Unchanged

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;

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

(c) he must be entitled to represent natural or legal persons in design matters before the central industrial property office of a Member State. 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.

(c) he must be entitled to represent natural or legal persons in design matters before the central industrial property office of a Member State or before the Benelux Office. 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

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

(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.

TITLE

TITLE IX

**JURISDICTION AND PROCEDURE IN LEGAL ACTIONS
RELATING TO COMMUNITY DESIGNS**

Unchanged

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 designs enjoying simultaneous protection.

2. 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.

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

- (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;
- (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.

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*Article 83a***Transitional Provision**

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.

4. The provisions of the Convention on Jurisdiction and Enforcement 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 paragraph 1 shall be governed in such a Member State by any bilateral or multilateral 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.

This Article has become Article 83(4)

Unchanged

*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.

Unchanged

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

The Community design courts shall have exclusive jurisdiction:

- (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 counterclaims 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 State where the Office.
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.

The Community design courts shall have exclusive jurisdiction:

Unchanged

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 any Member State 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 any Member State 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 State where the Office has its seat.
- Unchanged
 - (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.

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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.

Unchanged

*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.

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 counterclaim for a declaration of invalidity of a Community design**

1. An action or a counterclaim 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

2. The action or the counterclaim may be brought by the person entitled to it according to Article 27(2) to (5).

3. If the counterclaim 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.

Unchanged

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 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.

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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 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.

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 indicates in what way 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.

3. In proceedings referred to in paragraph 1 and 2, a plea relating to the invalidity of a Community design submitted otherwise than by way of counterclaim 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

*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 counterclaim 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 counterclaim.

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

2. The Community design court with which a counterclaim for a declaration of invalidity of a registered Community design has been filed shall inform the Office of the date on which the counterclaim was filed. The latter shall record this fact in the Register.

3. The Community design court hearing a counterclaim 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 counterclaim shall be deemed withdrawn. Article 95(3) shall apply.

Unchanged

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4. Where a Community design court has given a judgement which has become final on a counterclaim 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 counterclaim 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.

*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 in all the Member States the effects specified in Article 28.

*Article 92***Applicable law**

1. The Community design courts shall apply

2. 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.

*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, the following:

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

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4. Where a Community design court has given a judgement which has become final on a counterclaim 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.

Unchanged

1. The Community design courts shall apply on all matters their national law, including this Regulation in respect of the matters which it covers, and where appropriate its rules of private international law.

Unchanged

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, order the following measures:

Unchanged

INITIAL PROPOSAL

- (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 paragraph 1 and 2 are complied with.

*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 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 counterclaim relating to the invalidity of a Community design submitted by the defendant shall be admissible. Article 89(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.

AMENDED PROPOSAL

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.

Unchanged

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 in respect of 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.

Unchanged

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*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 counterclaim 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 counterclaim 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.

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.

Jurisdiction of Community design courts of second instance — Further appeal

Unchanged

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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 under Articles 83(1) or (4), 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 Article 83(1) and paragraph 1 of this Article may be heard before the courts of the Member State in which the Office.

*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*.

TITLE

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 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.

1. Within the Member State whose courts have jurisdiction under Articles 83(1) or (4), those courts shall have 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 the case of actions relating to a national design right in that State.

2. Actions relating to a Community designs other than those referred to in Article 85, for which no court has jurisdiction pursuant to Article 83(1) and (4) and paragraph 1 of this Article may be heard before the courts of the Member State in which the Office has his seat.

Unchanged

TITLE X

Unchanged

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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. 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 designs, 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.

TITLE

TITLE XI

SUPPLEMENTARY PROVISIONS CONCERNING THE OFFICE

Unchanged

Section 1

General provisions*Article 101***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.

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.

Articles 102 to 106

(deleted)

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Section 2

Unchanged

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

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.

Article 108

(deleted)

Appointment of senior officials

Section 3

Unchanged

Administrative Board*Article 109***Supplementary powers of the Administrative Board**

In addition to powers conferred on the Administrative Board by the Regulation on the Community Trade Mark or by other provisions of this Regulation,

In addition to the 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);

(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;

Unchanged

Articles 110 to 112

(deleted)

INITIAL PROPOSAL

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Section 4

Unchanged

Implementation of procedures*Article 113***Competence**

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;
- (c) Invalidation Divisions;
- (d) Boards of Appeal.

(b) The Administration of Trade Marks and Designs and Legal Division;

Unchanged

*Article 114***Examiners**

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

*Article 115***The Administration of Trade Marks and Designs and Legal Division****The Administration of Trade Marks and Designs and Legal Division**

1. The Administration of Trade Marks and Legal Division provided for by the Regulation on the Community Trade Mark shall become the Administration of Trade Marks and Designs and Legal Division.

Unchanged

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 Invalidation Division. It shall in particular be responsible for decisions in respect of entries in the register.

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 Invalidation Division. It shall in particular be responsible for decisions in respect of entries in the Register.

*Article 116***Invalidation Divisions**

Unchanged

1. An Invalidation Division shall be responsible for taking decisions in relation to applications for declarations of invalidity of registered Community designs.

2. An Invalidation Division shall consist of three members. At least of the members must be legally qualified.

2. An Invalidation Division shall consist of three members. At least one of the members must be legally qualified.

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Article 117

Unchanged

Boards of Appeal

In addition to the powers conferred upon it by the Regulation on the Community Trade Mark, the Boards 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 Designs and Legal Division .

In addition to the powers conferred upon it by the Regulation on the Community Trade Mark, the Boards 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 Designs and Legal Division as regards their decisions concerning Community designs.

Articles 118 to 123

(deleted)

TITLE

TITLE XII

FINAL PROVISIONS

Unchanged

*Article 124***Implementing Regulation**

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

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;
- (j) inspection of the files;

(i) issue of an extract from the Register;

Unchanged

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- (k) issue of copies of file documents;
- (l) communication of information in 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.

*Article 124a***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.

- (n) issue of certified copies 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 125.

Unchanged

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 125.

*Article 125 (new)***Establishment of a committee and procedure for the adoption of the implementing regulations**

1. The Commission shall be assisted by a committee designated 'Committee for issues relating to fees and to the rules for the implementation of the Regulation on the Community design', which shall be composed of representatives of the Member States and chaired by a representative of 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 accordance with the provisions of Article 7(3) of that Decision.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

Articles 125 (former) to 127

(deleted)

*Article 128***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*.

Unchanged

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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.

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.

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

Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status

(2001/C 62 E/16)

(Text with EEA relevance)

COM(2000) 578 final — 2000/0238(CNS)

(Submitted by the Commission on 24 October 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point (1)(d) of the first paragraph of Article 63 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) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.
- (2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as complemented by the New York Protocol of 31 January 1967, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement.
- (3) The Tampere Conclusions provide that a Common European Asylum System should include in the short term common standards for fair and efficient asylum procedures in the Member States and in the longer term Community rules leading to a common asylum procedure in the Community.
- (4) Minimum standards on procedures in Member States for granting or withdrawing refugee status are therefore a first measure on asylum procedures without prejudice to any other measures to be taken for the purpose of implementing point (1)(d) of the first paragraph of Article 63 of the Treaty and the objective of a common asylum procedure agreed on in the Tampere Conclusions.
- (5) Asylum procedures should not be so long and drawn out that persons in need of protection have to go through a long period of uncertainty before their cases are decided, and persons who have no need of protection but wish to remain on the territory of the Member States see an application for asylum as a means of prolonging their

stay by several years. At the same time, asylum procedures should contain the necessary safeguards to ensure that those in need of protection are correctly identified.

- (6) The minimum standards laid down in this Directive should therefore enable Member States to operate a simple and quick system that swiftly and correctly processes applications for asylum in accordance with the international obligations and constitutions of the Member States.
- (7) A simple and quick system for procedures in Member States could, provided the necessary safeguards are in place, consist of an initial review of the decision and the possibility of further appeal.
- (8) The necessary safeguards should include that, in the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1(A) of the Geneva Convention, every applicant has effective access to procedures, the opportunity to cooperate with the competent authorities to present the relevant facts of his case and sufficient procedural guarantees to pursue his case at and throughout all stages of the procedure.
- (9) On the other hand, in the interests of a system of swift recognition of those applicants in need of protection as refugees within the meaning of Article 1(A) of the Geneva Convention, provision should be made for Member States to operate specific procedures for processing applications for which it is not necessary to consider the substance and those that are suspected to be manifestly unfounded.
- (10) Member States are at liberty to decide whether or not to operate these procedures for inadmissible and manifestly unfounded cases, but if they do, they should abide by the common standards laid down in this Directive as regards the definition of these cases and the other requirements to apply the procedures, including time-limits for the decision-making process.
- (11) It is essential that these procedures contain the necessary safeguards to ensure that earlier doubts can be set aside so that those who are in need of protection can still be correctly identified. In so far as is possible, they should therefore contain, in principle, the same minimum procedural guarantees and requirements regarding the decision-making process as regular procedures. However, given the nature of the cases involved, decision making can and should be prioritised in both instances and further appeal may be restricted.

- (12) As minimum procedural guarantees for all applicants in all procedures should be considered, *inter alia*, the right to a personal interview before a decision is taken, the opportunity to communicate with the UNHCR, the opportunity to contact organisations or persons that provide legal assistance, the right to a written decision within the time-limits laid down and the right of the applicant to be informed at decisive moments in the course of his procedure, in a language he understands, of his legal position in order to be able to consider possible next steps.
- (13) In addition, specific procedural guarantees for persons with special needs, such as unaccompanied minors, should be laid down.
- (14) Minimum requirements regarding the decision-making process in all procedures should include that decisions are taken by authorities qualified in the field of asylum and refugee matters, that personnel responsible for examination of applications for asylum receives appropriate training, that decisions are taken individually, objectively and impartially, and that negative decisions state the reasons for the decision in fact and in law.
- (15) In order to enable every applicant to effectively pursue his case with the competent authorities of the Member States, the right to appeal should entail for all applicants in all procedures the opportunity for a review on both facts and points of law and should as a rule suspend enforcement of an adverse decision.
- (16) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is a refugee within the meaning of Article 1(A) of the Geneva Convention.
- (17) In this spirit, Member States are also invited to apply the provisions of this Directive to procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for persons who are found not to be refugees.
- (18) The Member States should provide for penalties in the event of infringement of the national provisions adopted pursuant to this Directive.
- (19) The implementation of this Directive should be evaluated at regular intervals.
- (20) In accordance with the principles of subsidiarity and proportionality, as set out in Article 5 of the Treaty, the objectives of the proposed action, namely to establish minimum standards on procedures in Member States for granting or withdrawing refugee status cannot be attained by the Member States and, by reason of the scale and effects of the proposed action can therefore only be achieved by the Community. This Directive confines itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status.

Article 2

For the purposes of this Directive:

- (a) 'Geneva Convention' means the Convention relating to the status of refugees done at Geneva on 28 July 1951, as complemented by the New York Protocol of 31 January 1967;
- (b) 'Application for asylum' means a request whereby a person asks for protection from a Member State and which can be understood to be on the grounds that he is a refugee within the meaning of Article 1(A) of the Geneva Convention. Any application for protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;
- (c) 'Applicant' or 'applicant for asylum' means a person who has made an application for asylum in respect of which a final decision has not yet been taken. A final decision is a decision in respect of which all possible remedies under this Directive have been exhausted;
- (d) 'Determining authority' means any judicial, quasi-judicial or administrative body in a Member State responsible for examining the admissibility and/or substance of applications for asylum and competent to take decisions in first instance in these cases. Any authority responsible for controlling the entry into the territory cannot be considered as a determining authority;
- (e) 'Reviewing body' means any judicial, quasi-judicial or administrative body in a Member State which is independent of and different from the relevant determining authority in that Member State and responsible for review of the decisions of this determining authority on facts and points of law;
- (f) 'Appellate Court' means a judicial body in a Member State independent of the government of the Member State in question and responsible for further appeal against the decision of any reviewing body;
- (g) 'Decision' means a decision by a determining authority or reviewing body in a Member State on the admissibility or substance of an application for asylum;
- (h) 'Refugee' means a person who fulfils the requirements of Article 1(A) of the Geneva Convention;

- (i) 'Refugee Status' means the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State;
- (j) 'Unaccompanied minor' means a person below the age of eighteen who arrives on the territory of the Member States unaccompanied by an adult responsible for him whether by law or by custom, and for as long as he is not effectively taken into the care of such an adult;
- (k) 'Detention' means confinement of an applicant for asylum by a Member State within a restricted area, such as prisons, detention facilities or airport transit zones, where his freedom of movement is substantially curtailed;
- (l) 'Withdrawal of refugee status' means the decision by a determining authority to withdraw the refugee status of a person on the basis of Article 1(C) of the Geneva Convention or Article 33(2) of the Geneva Convention;
- (m) 'Cancellation of refugee status' means the decision by a determining authority to cancel the refugee status of a person on the grounds that circumstances have come to light that indicate that this person should never have been recognised as a refugee in the first place.

Article 3

1. This Directive shall apply to all persons who make an application for asylum at the border or on the territory of Member States without prejudice to the Protocol on asylum for nationals of Member States of the European Union.

The provisions of this Directive shall also apply where examination of an application for asylum takes place within the context of a procedure to decide on the right of the applicant legally to enter the territory of a Member State.

2. This Directive shall not apply to requests for diplomatic or territorial asylum submitted to representations of Member States.

3. Member States may decide to apply the provisions of this Directive to procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for persons who are found not to be refugees.

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES

Article 4

1. The filing of an application for asylum shall not be subject to any prior formality.
2. Member States shall ensure that the applicant for asylum has an effective opportunity to lodge an application as early as possible.
3. Member States shall ensure that all authorities likely to be addressed by the applicant at the border or on the territory of

the Member State have instructions for dealing with applications for asylum, including the instruction to forward the applications to the competent authority for examination, together with all relevant information.

4. Where a person has made an application for asylum also on behalf of his dependants, each adult among these persons shall be informed in private of his right to make a separate application for asylum.

Article 5

Applicants for asylum shall be allowed to remain at the border or on the territory of the Member State in which the application for asylum has been made or is being examined as long as it has not been decided on.

Article 6

Member States shall ensure that decisions on applications for asylum are taken individually, objectively and impartially.

Article 7

With respect to all procedures provided for in this Directive, Member States shall ensure that all applicants for asylum enjoy the following guarantees:

- (a) They must be informed, prior to examination of their application for asylum, of the procedure to be followed and of their rights and obligations during the procedure, in a language which they understand.
- (b) They must be given the services of an interpreter, whenever necessary, for submitting their case to the competent authorities. These services must be paid for out of public funds, if the interpreter is called upon by the competent authorities.
- (c) They must be given the opportunity to communicate with the United Nations High Commissioner for Refugees (UNHCR) or with other organisations that are working on behalf of the UNHCR at all stages of the procedure.
- (d) They must be communicated decisions on applications for asylum in writing. If an application is rejected, the reasons for the decision in fact and in law shall be stated and information given on the possibility for review of the decision and, where applicable, on how to file an appeal and the relevant time-limits.
- (e) In the event of an adverse decision, they must be informed of the main purport of the decision and the possibility for review of the decision and, where applicable, of how to request an appeal and the relevant time-limits, in a language which they understand.
- (f) In the event of a positive decision, they must be informed of the decision and of any mandatory steps, if any, they should take as a result of this decision, in a language which they understand.

Article 8

1. Before a decision is taken by the determining authority, the applicant for asylum must be given the opportunity of a personal interview on the admissibility and/or substance of his application for asylum with an official competent under national law.
2. At the end of a personal interview as referred to in paragraph 1, the official must at least read out a transcript to the interviewee in order to be able to request his agreement with its contents.
3. Where a person has made an application for asylum also on behalf of his dependants, each adult among these persons must be given the opportunity to express his opinion in private and to be interviewed on the admissibility and/or substance of the application.
4. A personal interview on the substance of the application for asylum shall normally take place without the presence of family members.
5. Member States may permit the competent authorities to refrain from conducting a personal interview on the substance of the application for asylum in the case of persons who are not capable of attending this interview for psychological or medical reasons and minors below an age stipulated by national law or regulation, as long as this does not negatively affect the decision by the determining authority. In these cases, each person must be given the opportunity to be represented by a legal guardian, counsellor or adviser as appropriate.
6. In the regular procedure referred to in Articles 24, 25 and 26, hereinafter 'the regular procedure', each applicant for asylum must be given an opportunity, within a reasonable time-limit, to consult the transcript of a personal interview on the substance of his application for asylum and to make comments on it.
7. Member States shall ensure that an official and an interpreter of a sex chosen by the interviewee is involved in the personal interview on the substance of the application for asylum if there are reasons to believe that the person concerned finds it otherwise difficult to present the grounds for his application in a comprehensive manner owing to the experiences he has undergone or to his cultural origin.

Article 9

1. Member States shall ensure that all applicants for asylum have the opportunity to contact in an effective manner organisations or persons that provide legal assistance at all stages of the procedure.
2. In closed areas designated for the examination of applications for asylum, Member States may regulate the access of organisations providing legal assistance, provided such rules either serve the legitimate purpose of ensuring the quality of legal assistance or are objectively necessary to ensure

an efficient examination in accordance with the national rules pertaining to the procedure in these areas and do not render access impossible.

3. In the regular procedure, the applicant's legal adviser or counsellor shall have the opportunity to be present during the personal interview on the substance of the application for asylum. Member States shall provide for rules on the presence of legal advisers or counsellors at all other interviews in the asylum procedure, without prejudice to this paragraph and Articles 8(5) and 10(1)(b).

4. Member States shall ensure that all applicants for asylum have the right to a legal adviser or counsellor to assist them after an adverse decision by a determining authority. The assistance must be given free of charge at this stage of the procedure if the applicant has no adequate means to pay for it himself.

Article 10

1. With respect to all procedures provided for in this Directive, Member States shall ensure that all unaccompanied minors enjoy the following guarantees:

- (a) A legal guardian or adviser must be appointed as soon as possible to assist and represent them with respect to the examination of the application;
- (b) The appointed legal guardian or adviser must be given the opportunity to help prepare them for the personal interview on the admissibility and/or the substance of the application for asylum. Member States shall allow the legal guardian or adviser of an unaccompanied minor to be present at the personal interview and to ask questions or make comments.

2. Member States shall ensure that the personal interview on the admissibility and/or the substance of the application for asylum of an unaccompanied minor is conducted by an official trained with regard to the special needs of unaccompanied minors.

3. Member States shall ensure that:

- (a) The competent organisations that carry out medical examinations to determine the age of unaccompanied minors shall use methods that are safe and respect human dignity;
- (b) Unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they understand, about the possibility of age determination by a medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for asylum, including the consequences of refusal on the part of the unaccompanied minor to undergo the examination.

Article 11

1. Member States shall not hold an applicant for asylum in detention for the sole reason that his application for asylum needs to be examined. However, Member States may hold an applicant for asylum in detention for the purpose of taking a decision in the following cases, in accordance with a procedure prescribed by national law and only for as long as is necessary:

- (a) to ascertain or verify his identity or nationality;
- (b) to determine his identity or nationality when he has destroyed or disposed of his travel and/or identity documents or used fraudulent documents upon arrival in the Member State in order to mislead the authorities;
- (c) to determine the elements on which his application for asylum is based which in other circumstances could be lost;
- (d) in the context of a procedure, to decide on his right to enter the territory.

2. Member States shall provide by law for the possibility of an initial review and subsequent regular reviews of the order for detention of applicants for asylum detained pursuant to paragraph 1.

Article 12

Member States shall take appropriate measures to ensure that all competent authorities are adequately provided with staff and equipment so that they can discharge their duties as laid down in this Directive.

Article 13

1. Member States shall take appropriate measures to ensure that determining authorities are fully qualified in the field of asylum and refugee matters. To that end, each Member State shall ensure that its determining authorities have:

- (a) at their disposal specialised personnel with the necessary knowledge and experience in the field of asylum and refugee matters;
- (b) access to precise and up-to-date information from various sources, including information from the UNHCR, concerning the situation prevailing in the countries of origin of applicants for asylum and in transit countries;
- (c) the right to ask advice, whenever necessary, from experts on particular issues, for example, a medical or cultural issue.

2. Upon request of their reviewing bodies, Member States shall grant them the same treatment as determining authorities with respect to access to the part of the information mentioned at paragraph 1(b) that is considered public information. Member States may decide to grant them access to the part of the information mentioned at paragraph 1(b) that is

considered confidential information, if they abide by the same rules as the determining authorities with respect to the confidentiality of this information.

Article 14

1. Member States shall ensure that:

- (a) personnel likely to come into contact with persons at the stage where they may make an application for asylum, such as border officials and immigration officers, have received the necessary basic training to recognise an application for asylum and how to proceed further in accordance with the instructions referred to in Article 4(3);
- (b) personnel interviewing applicants for asylum have received the necessary basic training for this purpose;
- (c) personnel interviewing persons in a particularly vulnerable position and minors have received the necessary basic training with regard to the special needs of these persons;
- (d) personnel examining applications for asylum have received the necessary basic training with respect to international refugee law, national asylum law, relevant international human rights law, this Directive and the assessment of applications for asylum from persons with special needs, including unaccompanied minors;
- (e) personnel responsible for orders of detention have received the necessary basic training with respect to national asylum law, relevant international human rights law, this Directive and national rules for detention.

2. Upon request of their reviewing bodies, Member States shall grant their personnel the same treatment as the personnel of determining authorities with respect to the training mentioned at paragraph 1(c), where necessary, and (d).

Article 15

1. Member States shall take appropriate measures to ensure that information regarding individual applications for asylum is kept confidential.

2. Member States shall not disclose or share the information referred to in paragraph 1 with the authorities of the country of origin of the applicant for asylum.

3. Member States shall take appropriate measures to ensure that no information for the purpose of examining the case of an individual applicant shall be obtained from the authorities of his country of origin in a manner that would result in the fact of his having applied for asylum becoming known to those authorities.

4. This Article does not affect the UNHCR's access to information in the exercise of its mandate under the Geneva Convention in accordance with Article 17 of this Directive.

Article 16

1. In the event of a voluntary withdrawal of the application for asylum by the applicant, the determining authority shall enter a notice in the file discontinuing the examination of the application.
2. If an applicant for asylum has disappeared, the determining authority may discontinue the examination of the application if, without reasonable cause, the applicant has not complied with reporting duties or requests to provide information or to appear for a personal interview for at least 30 working days.
3. If the applicant places himself at the disposal of the authorities for the purpose of the examination of his application for asylum after the examination of the application has been discontinued pursuant to paragraphs 1 or 2, his request may be considered a new application for asylum.

Article 17

Member States shall take appropriate measures to enable the UNHCR or other organisations that are working on behalf of the UNHCR:

- (a) to have access to applicants for asylum, including those in detention and in airport transit zones;
- (b) to have access to information on individual applications for asylum, on the course of the procedure and on the decisions taken, provided that the applicant for asylum agrees;
- (c) to be able to make representations, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure.

CHAPTER III

ADMISSIBILITY*Article 18*

Member States may dismiss a particular application for asylum as inadmissible if:

- (a) another Member State is responsible for examining the application, according to the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country or stateless person in one of the Member States;
- (b) pursuant to Article 20, a third country is considered as a first country of asylum for the applicant;
- (c) pursuant to Articles 21 and 22, a third country is considered as a safe third country for the applicant.

Article 19

When a Member State requests another Member State to take the responsibility for examining a particular application for asylum, the requesting Member State shall inform the

applicant as soon as possible of the request, its content and the relevant time-limits in a language which he understands.

Article 20

A country can be considered as a first country of asylum for an applicant for asylum if he has been admitted to that country as a refugee or for other reasons justifying the granting of protection, and can still avail himself of this protection.

Article 21

1. Member States may consider that a third country is a safe third country for the purpose of examining applications for asylum only in accordance with the principles set out in Annex I.

2. Member States may retain or introduce legislation that allows for the designation by law or regulation of safe third countries. This legislation shall be without prejudice to Article 22.

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe third countries and wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and notify as soon as possible any subsequent relevant amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulations designating countries as safe third countries after the adoption of this Directive, as well as any subsequent relevant amendments.

Article 22

A country that is a safe third country in accordance with the principles set out in Annex I can only be considered as a safe third country for a particular applicant for asylum if, notwithstanding any list:

- (a) the applicant has a connection or close links with the country or has had the opportunity during a previous stay in that country to avail himself of the protection of its authorities;
- (b) there are grounds for considering that this particular applicant will be re-admitted to its territory; and
- (c) there are no grounds for considering that the country is not a safe third country in his particular circumstances.

Article 23

1. If a personal interview on the admissibility of the application for asylum with regard to Article 18(b) or (c) is conducted with an applicant, Member States shall ensure that the competent authorities conduct this personal interview within 40 working days after the application of the person concerned has been made.

2. Member States shall ensure that the determining authority takes a decision dismissing an application for asylum as inadmissible by virtue of Article 18(b) or (c) within 25 working days following the personal interview.

3. If no personal interview with the applicant has been conducted, the time-limit for taking a decision shall be 65 working days.

4. Non-compliance with the time-limits in this Article shall result in the application for asylum being processed under the regular procedure.

5. When implementing a decision based on Article 22, Member States may provide the applicant with a document in the language of the third country informing the authorities of that country that the application has not been examined in substance.

CHAPTER IV

SUBSTANTIVE DETERMINATION PROCEDURES

Section 1

The regular procedure

Article 24

1. Member States shall adopt by law or regulation a reasonable time-limit for examination of applications for asylum by the determining authority.

2. In cases in which the determining authority has not taken a decision within the time-limit referred to in paragraph 1, applicants shall have the right to request a decision from the reviewing body. Member States shall determine by law whether the decision of the reviewing body on this request is to be on the merits of the case or be a decision setting a time-limit for a decision by the determining authority. The Member States shall ensure that the reviewing body takes a decision in these cases as soon as possible.

3. The time-limit in paragraph 1 can be extended for six months if there is reasonable cause. Reasonable cause is, *inter alia*, assumed if the determining authority is awaiting clarification by the reviewing body or the Appellate Court on an issue that could affect the nature of the decision on the application.

If the time-limit is extended, the determining authority must serve written notice on the applicant. An extension of the time-limit in a particular case is not valid unless notice is served on the applicant.

Article 25

1. Member States shall take appropriate measures to ensure that an applicant for asylum is given the opportunity to cooperate with the competent authorities in order to present the relevant facts of his case as completely as possible and with all available evidence.

2. An applicant for asylum shall be considered to have sufficiently put forward the relevant facts of his case if he has provided statements on his age, background, identity, nationality, travel routes, identity and travel documents and

the reasons justifying his need for protection with a view to helping the competent authorities to determine the elements on which his application for asylum is based.

3. After the applicant has made an effort to support his statements concerning the relevant facts by any available evidence and has given a satisfactory explanation for any lack of evidence, the determining authority must assess the applicant's credibility and evaluate the evidence.

4. Member States shall ensure that if the applicant has made a genuine effort to substantiate his claim and the examiner finds the applicant's statements to be coherent and plausible, while not running counter to generally known facts, the determining authority gives the applicant the benefit of the doubt, despite a possible lack of evidence for some of the applicant's statements.

Article 26

1. Member States shall ensure that the determining authority may start an examination to withdraw or cancel the refugee status of a particular person as soon as information comes to light indicating that there are reasons to reconsider the validity of his refugee status.

2. Each cancellation or withdrawal of refugee status shall be examined under the regular procedure in accordance with the provisions of this Directive.

3. Member States may provide for derogation from Articles 7 and 8 in cases where it is impossible for the determining authority to comply with the provisions for reasons specifically relating to the grounds for withdrawal or cancellation.

Section 2

The accelerated procedure

Article 27

Member States may adopt or retain an accelerated procedure for the purpose of processing applications that are suspected to be manifestly unfounded pursuant to Article 28.

Article 28

1. Member States may dismiss applications for asylum as manifestly unfounded if:

- (a) the applicant has submitted, without reasonable cause, an application containing false information with respect to his identity or nationality;
- (b) the applicant has produced no identity or travel document and has not provided sufficient or sufficiently convincing information to determine his identity or nationality, and there are serious reasons for considering that the applicant has in bad faith destroyed or disposed of an identity or travel document that would help determine his identity or nationality;

- (c) a person has made an application for asylum at the last stage of a procedure to deport him and could have made it earlier;
- (d) in submitting and explaining his application, the applicant does not raise issues that justify protection on the basis of the Geneva Convention or Article 3 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms;
- (e) the applicant is from a safe country of origin within the meaning of Articles 30 and 31 of this Directive;
- (f) the applicant has submitted a new application raising no relevant new facts with respect to his particular circumstances or to the situation in his country of origin.

2. Member States shall not consider the following to be grounds for the dismissal of applications for asylum as manifestly unfounded:

- (a) the applicant has not sought refuge in a part of his country of origin or, if he is a stateless person, in a part of the country of former habitual residence, in which he can reasonably be expected not to be persecuted in the sense of the Geneva Convention;
- (b) there are serious reasons for considering that the grounds of Article 1(F) of the Geneva Convention apply with respect to the applicant.

Article 29

1. If a personal interview on the substance of the application for asylum is conducted with an applicant, Member States shall ensure that the competent authorities conduct this personal interview within 40 working days after the application of the person concerned has been made.
2. Member States shall ensure that the determining authority takes a decision dismissing an application for asylum as manifestly unfounded in accordance with Article 28 within 25 working days following the personal interview with the applicant.
3. If no personal interview with the applicant has been conducted, the time-limit for taking a decision shall be 65 working days.
4. Non-compliance with the time-limits in this Article shall result in the application for asylum being processed under the regular procedure.

Article 30

1. Member States may consider a country as a safe country of origin for the purpose of examining applications for asylum only in accordance with the principles set out in Annex II.
2. Member States may retain or introduce legislation that allows for the designation by law or regulation of safe countries of origin. This legislation shall be without prejudice to Article 31.

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe countries of origin and wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and notify as soon as possible any subsequent relevant amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulation designating countries as safe countries of origin after the adoption of this Directive, as well as any subsequent relevant amendments.

Article 31

A country that is a safe country of origin in accordance with the principles set out in Annex II can only be considered as a safe country of origin for a particular applicant for asylum if he has the nationality of that country or, if he is a stateless person, it is his country of former habitual residence, and if there are no grounds for considering the country not to be a safe country of origin in his particular circumstances.

CHAPTER V

APPEALS PROCEDURES

Article 32

Applicants for asylum have the right to appeal against any decision taken on the admissibility or the substance of their application for asylum.

Appeal may be on both facts and points of law.

Article 33

1. Appeal shall have suspensive effect. The applicant may remain in the territory or at the border of the Member State concerned awaiting the outcome of the decision of the reviewing body.
2. Member States may derogate from this rule:
 - (a) in cases where a country which is not a Member State is considered as a safe third country for the applicant pursuant to Articles 21 and 22;
 - (b) in cases that are dismissed as manifestly unfounded pursuant to Article 28;
 - (c) in cases where there are grounds of national security or public order.

3. If the suspensive effect of appeal is denied, the applicant shall have the right to apply to the competent authority for leave to remain on the territory or at the border of the Member State during the appeals procedure. No expulsion may take place until the competent authority has taken a decision on this request, except in cases where a country which is not a Member State is considered as a safe third country for the applicant pursuant to Articles 21 and 22.

4. Member States shall ensure that the competent authority processes the request as soon as possible.

Article 34

1. Member States shall lay down by law or regulation reasonable time-limits for giving notice of appeal and for filing the grounds of appeal. The time-limit for filing the grounds of appeal in regular cases shall in no case be less than 20 working days.

2. Member States shall lay down all other necessary rules for lodging appeal, including rules to extend the time-limit for filing the grounds of appeal for a reasonable cause.

3. Member States shall decide that the reviewing body either has the power to confirm or nullify the decision of the determining authority or that it must take a decision on the merits of the case.

4. Member States shall ensure that, if the reviewing body nullifies a decision, it remits the case to the determining authority for a new decision.

5. For the purposes of an expeditious procedure for legal entry to the territory in accordance with Article 3(2), Member States may provide for the reviewing body to take a decision on appeal within seven working days.

Article 35

1. Member States shall ensure that, in cases where an application has been found to be inadmissible or manifestly unfounded, the reviewing body takes a decision within 65 working days after notice of appeal has been given in accordance with Article 34(1).

2. Member States may adopt by law or regulation time-limits for examination by the reviewing body in other cases.

3. A time-limit in paragraph 1 or 2 may be extended if there is reasonable cause. Reasonable cause is, *inter alia*, assumed if the reviewing body is awaiting clarification by the Appellate Court on a point of law that could affect the nature of its decision.

If the time-limit is extended, the reviewing body must serve written notice on the applicant. An extension of the time-limit in a particular case is not valid unless notice is served on the applicant.

Article 36

1. Member States may introduce a procedure that provides for automatic review by a reviewing body of decisions by determining authorities finding cases to be inadmissible or manifestly unfounded.

2. If a Member State chooses to introduce such a procedure, it shall provide for reasonable time-limits for the applicant to submit written comments.

3. In a procedure providing for automatic review, the provisions of Articles 32(2), 33 and 34(3), (4) and (5) shall apply.

Article 37

Member States may provide that the reviewing body shall decide a case in accordance with the procedure in Article 35 or Article 36 if:

(a) the applicant has, without reasonable cause and in bad faith, withheld information at an early stage of the procedure which would have resulted in the application of Articles 18 or 28;

(b) the applicant has committed a serious offence on the territory of the Community;

(c) there are manifestly serious reasons for considering that the grounds of Article 1(F) of the Geneva Convention apply with respect to the applicant;

(d) there are reasonable grounds for regarding the applicant as a danger to the security of the Member State in which he is located;

(e) the applicant, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the Member State in which he is located;

(f) the applicant is held in detention.

Article 38

1. Member States shall ensure that in all cases applicants for asylum have a right to further appeal to the Appellate Court.

2. If the reviewing body is an administrative or quasi-judicial body, Member States shall ensure that the Appellate Court has the power to examine decisions on both facts and points of law. If the reviewing body is a judicial body, Member States may decide that the Appellate Court has to limit its examination of decisions to points of law.

3. Member States may provide that in cases where an application has been found to be inadmissible or manifestly unfounded, the Appellate Court is able to decide whether or not to give leave to appeal and, in cases in respect of which leave to appeal is granted, to examine the decisions in an abbreviated or accelerated procedure.

4. Member States may provide that in cases in which the reviewing body has not taken a decision within the time-limits provided for in Article 35(1) or (2), applicants and/or determining authorities shall have the right to request a decision from the Appellate Court setting a time-limit for a decision by the reviewing body. Member States may provide for a decision to be taken by the Appellate Court in these cases as soon as possible.

5. Member States shall lay down by law or regulation reasonable time-limits for giving notice of further appeal and for filing the grounds of further appeal. The time-limit for filing the grounds of further appeal shall in no case be less than 30 working days.

6. Member States shall lay down all other necessary rules for filing further appeals, including rules extending the time-limit for filing the grounds of further appeal for a reasonable cause.

Article 39

1. Member States shall lay down rules by law on suspensive effect pending the ruling of the Appellate Court.

2. In all cases in which suspensive effect is denied, the applicant for asylum shall have the right to apply to the Appellate Court for leave to remain on the territory or at the border of the Member State during further appeal. No expulsion may take place until a decision has been taken by the Appellate Court on this request.

3. Member States may provide for a decision to be taken by the Appellate Court in the cases referred to in paragraph 2 as soon as possible.

4. For the purposes of an expeditious procedure for legal entry to the territory in accordance with Article 3(2), Member States may require the Appellate Court to rule on the request pursuant to paragraph 2 within seven working days.

Article 40

Member States may decide that determining authorities also have the right to further appeal.

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article 41

Member States shall apply the provisions of this Directive to applicants for asylum without discrimination as to sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation or country of origin.

Article 42

The Member States shall lay down the penalties for infringements of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that they are enforced. The penalties laid down must be effective, proportionate and dissuasive. The Member States shall notify the Commission of these provisions by no later than the date specified in Article 44(1) and without delay of any subsequent amendments affecting them.

Article 43

No later than two years after the date specified in Article 44(1), the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. The Member States shall send the Commission all the information that is appropriate for drawing up this report not later than eighteen months after the date specified in Article 44(1).

After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.

Article 44

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.

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

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

Article 45

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

Article 46

This Directive is addressed to the Member States.

ANNEX I

PRINCIPLES WITH RESPECT TO THE DESIGNATION OF SAFE THIRD COUNTRIES

I. Requirements for designation

A country is considered as a safe third country if it fulfils, with respect to those foreign nationals or stateless persons to which the designation would apply, the following two requirements:

- A. it generally observes the standards laid down in international law for the protection of refugees;
- B. it generally observes basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation.

A. The standards laid down in international law for the protection of refugees

1. A safe third country is any country that has ratified the Geneva Convention, observes the provisions of that Convention with respect to the rights of persons who are recognised and admitted as refugees and has in place with respect to persons who wish to be recognised and admitted as refugees an asylum procedure in accordance with the following principles:

- The asylum procedure is prescribed by law.
- Decisions on applications for asylum are taken objectively and impartially.
- Applicants for asylum are allowed to remain at the border or on the territory of the country as long as the decision on their application for asylum has not been decided on.
- Applicants for asylum have the right to a personal interview, where necessary with the assistance of an interpreter.
- Applicants for asylum are given the opportunity to communicate with the UNHCR or other organisations that are working on behalf of the UNHCR.
- There is provision for appeal to a higher administrative authority or to a court of law against the decision on each application for asylum or there is an effective possibility to have the decision reviewed.
- The UNHCR or other organisations working on behalf of the UNHCR have, in general, access to asylum applicants and to the authorities to request information regarding individual applications, the course of the procedure and the decisions taken and, in the exercise of their supervisory responsibilities under Article 35 of the Geneva Convention, can make representations to these authorities regarding individual applications for asylum.

2. Notwithstanding the above, a country that has not ratified the Geneva Convention may still be considered a safe third country if:

- it generally observes the principle of non-refoulement as laid down in the OAU Convention governing the specific aspects of refugee problems in Africa of 10 September 1969 and has in place with respect to the persons who request asylum for this purpose a procedure that is in accordance with the abovementioned principles; or
- it has followed the conclusions of the 19-22 November 1984 Cartagena Declaration of Refugees to ensure that national laws and regulations reflect the principles and criteria of the Geneva Convention and that a minimum standard of treatment for refugees is established; or
- it nonetheless generally observes in practice the standards laid down in the Geneva Convention with respect to the rights of persons in need of international protection within the meaning of this Convention and has in place with respect to the persons who wish to be so protected a procedure which is in accordance with the abovementioned principles; or
- it complies in any other manner whatsoever with the need for international protection of these persons, either through cooperation with the Office of UNHCR or other organisations which may be working on behalf of the UNHCR or by other means deemed in general to be adequate for that purpose as evinced by the Office of the UNHCR.

B. The basic standards laid down in international human rights law

1. Any country that has ratified either the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the 'European Convention') or both the 1966 International Covenant on Civil and Political Rights (hereinafter referred to as the 'International Covenant') and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the 'Convention against Torture'), and generally observes the standards laid down therein with respect to the right to life, freedom from torture and cruel, inhuman or degrading treatment, freedom from slavery and servitude, the prohibition of retroactive criminal laws, the right to recognition as a person before the law, freedom from being imprisoned merely on the ground of inability to fulfil a contractual obligation and the right to freedom of thought, conscience and religion.
2. Observance of the standards for the purpose of designating a country as a safe third country also includes provision by that country of effective remedies that guarantee these foreign nationals or stateless persons from being removed in breach of Article 3 of the European Convention or Article 7 of the International Covenant and Article 3 of the Convention against Torture.

II. Procedure for designation

Every general assessment of the observance of these standards for the purpose of designating a country as a safe third country in general or with respect to certain foreign nationals or stateless persons in particular must be based on a range of sources of information, which may include reports from diplomatic missions, international and non-governmental organisations and press reports. Member States may in particular take into consideration information from the UNHCR.

The report of the general assessment shall be in the public domain.

ANNEX II

PRINCIPLES WITH RESPECT TO THE DESIGNATION OF SAFE COUNTRIES OF ORIGIN

I. Requirements for designation

A country is considered as a safe country of origin if it generally observes the basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation, and it:

- A. has democratic institutions and the following rights are generally observed there: the right to freedom of thought, conscience and religion, the right to freedom of expression, the right to freedom of peaceful assembly, the right to freedom of associations with others, including the right to form and join trade unions and the right to take part in government directly or through freely chosen representatives;
- B. allows monitoring by international organisations and NGOs of its observance of human rights;
- C. is governed by the rule of law and the following rights are generally observed there: the right to liberty and security of person, the right to recognition as a person before the law and equality before the law;
- D. provides for generally effective remedies against violations of these civil and political rights and, where necessary, for extraordinary remedies;
- E. is a stable country.

II. Procedure for designation

Every general assessment of the observance of these standards for the purpose of designating a country as a safe country of origin must be based on a range of sources of information, which may include reports from diplomatic missions, international and non-governmental organisations and press reports. Member States may in particular take into consideration information from the UNHCR.

The report of the general assessment shall be in the public domain.

Amended proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽¹⁾

(2001/C 62 E/17)

(Text with EEA relevance)

COM(2000) 689 final — 1999/0154(CNS)

(Submitted by the Commission pursuant to Article 250 (2) of the EC Treaty on 26 October 2000)

⁽¹⁾ OJ C 376 E, 28.12.1999.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee ⁽¹⁾,

Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is assured. In order to establish progressively such an area, the Community is to adopt, amongst other things, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market.
- (2) Differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities for rapid and simple recognition and enforcement of judgments are essential.
- (3) This area is within the field of judicial cooperation in civil matters within the meaning of Article 65 of the Treaty.
- (4) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore only be achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

⁽¹⁾ OJ C 117, 26.4.2000.

INITIAL PROPOSAL

AMENDED PROPOSAL

- (5) On 27 September 1968 the Member States, acting under Article 293, fourth indent, of the EC Treaty, concluded the Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters⁽¹⁾ ('the Brussels Convention'). Work has been undertaken for the revision of that Convention, which is part of the *acquis communautaire* and has been extended to all the new Member States, and the Council has approved the content of the revised text. Continuity in the results achieved in that revision should be ensured.
- (6) In order to attain the objective of free movement of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a Community legal instrument which is binding and directly applicable.
- (7) The scope of this Regulation must cover all the main civil and commercial matters. The matters excluded from its scope must be as limited as possible.
- (8) There must be a link between proceedings to which this Regulation applies and the territory of the Member States bound by this Regulation. Common rules should accordingly apply, in principle, when the defendant is domiciled in one of those Member States.
- (9) A defendant domiciled in a third country may be subject to the rules of conflict of jurisdiction applicable in the territory of the State of the court seised, and a defendant domiciled in a Member State not bound by this Regulation must remain subject to the Brussels Convention. For the purposes of the free movement of judgments, judgments given on the basis of these rules must be recognised and enforced throughout the Community in accordance with this Regulation
- (10) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

⁽¹⁾ See consolidated text in OJ C 27, 26.1.1998, p. 1.

INITIAL PROPOSAL

AMENDED PROPOSAL

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| <p>(11) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction in view of the close link between the court and the action or in order to facilitate the sound administration of justice.</p> <p>(12) In relation to insurance, employment and consumer contracts, the weaker party should be protected and there should be an exception from the general rule allowing that party in appropriate cases to bring the action in the courts for his domicile.</p> <p>(13) Account must be taken of the growing development of the new communication technologies, particularly in relation to consumers; whereas, in particular, electronic commerce in goods or services by a means accessible in another Member State constitutes an activity directed to that State. Where that other State is the State of the consumer's domicile, the consumer must be able to enjoy the protection available to him when he enters into a consumer contract by electronic means from his domicile.</p> <p>(14) The autonomy of the parties to a contract other than an employment, insurance or consumer contract to determine the courts having jurisdiction must be respected. Contractual clauses electing jurisdiction between parties with unequal negotiating strength must, however, be regulated</p> <p>(15) The necessary flexibility must be provided for in the general rules of this Regulation in order to take account of the specific procedural rules of certain Member States. Certain provisions of the Protocol annexed to the Brussels Convention should be incorporated in this Regulation.</p> <p>(16) In the interests of the harmonious administration of justice in the Community, it is necessary to ensure that irreconcilable judgments will not be given in two Member States which have jurisdiction. There must be a clear and automatic mechanism for resolving cases of <i>lis pendens</i> and related actions and, to obviate problems flowing from national differences as to the determination of the date on which a case is regarded as pending, that date should be defined autonomously.</p> <p>(17) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.</p> | <p>Deleted</p> <p>Unchanged</p> <p>(14a) With particular regard to choice-of-jurisdiction clauses in consumer contracts, a review of the planned system will be conducted after the entry into force of this Regulation in the light of developments in non-judicial dispute-settlement schemes, which should be speeded up.</p> <p>Unchanged</p> <p>(17) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute. The same applies to authentic instruments which, like judgments, are an emanation of public authority and accordingly have the same evidential value.</p> |
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- (18) By virtue of the same principle of mutual trust, the procedure for enforcement in one Member State of a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable must be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility of automatically raising any of the grounds for non-enforcement provided for by this Regulation.
- (18) By virtue of the same principle of mutual trust, the procedure for enforcement in one Member State of a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment or an authentic instrument is enforceable must be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility of automatically raising any of the grounds for non-enforcement provided for by this Regulation.
- (19) However, respect for the rights of the defence means that the defendant must be able to seek redress, in an adversarial procedure, against the judgment given if he believes one of the grounds for non-recognition to be present. Redress procedures must also be available to the claimant where his application for a declaration of enforceability has been rejected.
- Unchanged
- (20) Continuity between the Brussels Convention and this Regulation must be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of the Brussels Convention by the Court of Justice of the European Community ⁽¹⁾ and the 1971 Protocol must remain applicable to cases already pending when this Regulation enters into force.
- (21) In accordance with Articles 1 and 2 of the Protocols on the position of the United Kingdom and Ireland and the position of Denmark ⁽²⁾, those Member States are not taking part in the adoption of this Regulation. This Regulation is accordingly not binding on the United Kingdom, Ireland or Denmark and is not applicable to them.
- (22) Since the Brussels Convention remains in force in relations between the Member States that are bound by this Regulation and those that are not, there must be clear rules governing the relationship between this Regulation and the Brussels Convention.
- (23) Likewise for the sake of consistency, this Regulation should not affect rules governing jurisdiction and the recognition of judgments contained in specific Community instruments.

⁽¹⁾ See consolidated text in OJ C 27, 26.1.1998, p. 1 and p. 28.

⁽²⁾ OJ C 340, 10.11.1997, p. 99 and p. 101.

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

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

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE*Article 1*

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

This Regulation shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
2. bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
3. social security;
4. arbitration.

CHAPTER II

JURISDICTION

Section 1

General provisions*Article 2*

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

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

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

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

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Article 3

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

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

Article 4

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

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

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

Section 2

Special jurisdiction*Article 5*

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

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

(b) unless otherwise agreed, the place of performance of the obligation in question shall be:
 - in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered;
 - in the case of the provision of services, the place in a Member State where under the contract the services were provided or should have been provided;
- (c) if point (b) does not apply, then point (a) applies;

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2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or there is a risk of it occurring;
4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings.

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

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

5(a) as settler, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Contracting State in which the trust is domiciled;

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

Unchanged

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

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

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

Article 6

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

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided that the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;
2. as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case.

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

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

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

3. on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
4. in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of the Member State in which the property is situated.

Article 7

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

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Section 3

Jurisdiction in matter relating to insurance*Article 8*

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

Article 9

An insurer domiciled in a Member State may be sued:

1. in the courts of the Member State where he is domiciled, or
2. in another Member State, in the case of actions brought by the policy-holder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled, or
3. if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.

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

Article 10

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

Article 11

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

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

2. in another Member State, in the courts for the place where the policy-holder has his domicile, or, where the action is brought on an individual insurance contract by the policy-holder, the insured or the beneficiary, in the courts for the place where the claimant has his domicile, or

Unchanged

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

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

- of Germany, pursuant to Articles 68, 72, 73 and 74 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices,
- of Austria, as provided by Article 21 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices.

Article 12

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

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

Article 13

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

1. which is entered into after the dispute has arisen, or
2. which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or
3. which is concluded between a policy-holder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that Member State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that Member State, or
4. which is concluded with a policy-holder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State, or

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

Article 14

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

Section 4

Jurisdiction over consumer contracts*Article 15*

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

1. it is a contract for the sale of goods on instalment credit terms; or
2. it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
3. in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several countries including that Member State, and the contract falls within the scope of such activities.

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

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

Article 16

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

⁽¹⁾ OJ L 228, 16.8.1973, p. 3.

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

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

Article 17

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

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

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

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

Section 5

Jurisdiction over individual contracts of employment*Article 18*

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

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

Article 19

An employer domiciled in a Member State may be sued:

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

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2. in another Member State:

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

Article 20

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

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

Article 21

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

Section 6

Exclusive jurisdiction

Article 22

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

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

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

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

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

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

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

Section 7

Prorogation of jurisdiction*Article 23*

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

Such an agreement conferring jurisdiction shall be either:

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

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

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

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

Article 24

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

Section 8

Examination as to jurisdiction and admissibility*Article 25*

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

Article 26

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

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The court or courts of a Contracting State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settler, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

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

Unchanged

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

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

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

Section 9

Lis pendens* — Related actionsArticle 27*

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

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

Article 28

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

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

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

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Article 29

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

Article 30

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

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

Section 10

Provisional, including protective, measures*Article 31*

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

CHAPTER III

RECOGNITION AND ENFORCEMENT*Article 32*

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

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

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Section 1

Recognition*Article 33*

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

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

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

Section 2

Enforcement*Article 34*

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

Article 35

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

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

Article 36

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

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

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

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

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

Unchanged

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Article 37

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

Article 38

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

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

Article 39

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

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

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

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

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

Article 40

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

Article 41

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

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

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2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State addressed;
4. if it is irreconcilable with an earlier judgment given in another Member State or in a third country involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

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

Article 42

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

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

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

Article 43

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

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

Article 44

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

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

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

Article 45

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

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

Article 46

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

Article 47

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

Article 48

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

Article 49

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

INITIAL PROPOSAL

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Section 3

Common provisions*Article 50*

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

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

Article 51

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

Article 52

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

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

Article 53

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

CHAPTER IV

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS*Article 54*

Authentic instruments drawn up in a Member States shall be recognised in the other Member States without the need for any procedure.

INITIAL PROPOSAL

AMENDED PROPOSAL

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Member State shall, in another Member State, be declared enforceable there, on application made in accordance with the procedures provided for in Article 34 to 49.

The court with which an appeal is lodged under Article 39 or 40 shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is contrary to public policy in the Member State addressed.

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

Section 3 of Title III shall apply as appropriate.

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

Article 55

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

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

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

If an incidental question of recognition is raised in a court of a Member State, that court shall have jurisdiction to rule thereon.

Unchanged

The court with which an appeal is lodged under Article 39 or 40 shall refuse or revoke a declaration of recognition or enforceability only if recognition or enforcement of the instrument is contrary to public policy in the Member State addressed.

Unchanged

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

Unchanged

INITIAL PROPOSAL

AMENDED PROPOSAL

CHAPTER V

GENERAL PROVISIONS*Article 56*

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

Article 57

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

In order to determine whether a trust is domiciled in the Member State whose courts are seised of a matter, the court shall apply its rules of private international law.

CHAPTER VI

TRANSITIONAL PROVISIONS*Article 58*

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

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

Unchanged

CHAPTER VII

RELATIONS WITH OTHER INSTRUMENTS*Article 59*

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

INITIAL PROPOSAL

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Article 60

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

However, the Brussels Convention shall always be applicable:

1. where the defendant is domiciled in a Member State not bound by this Regulation and Articles 16 and 17 of the Brussels Convention confer jurisdiction on the courts of that State;
2. in matters of *lis pendens* and related actions as referred to in Articles 21 and 22 of the Brussels Convention, where claims are made in a Member State not bound by this Regulation and a Member State that is so bound.

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

Article 61

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

- the Convention between Belgium and France on jurisdiction and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Paris on 8 July 1899,
- the Convention between Belgium and the Netherlands on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 28 March 1925,
- the Convention between France and Italy on the enforcement of judgments in civil and commercial matters, signed at Rome on 3 June 1930,
- the Convention between Germany and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 9 March 1936,
- the Convention between Belgium and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments relating to maintenance obligations, signed at Vienna on 25 October 1957,

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- the Convention between Germany and Belgium on the mutual recognition and enforcement of judgments, arbitration awards and authentic instruments in civil and commercial matters, signed at Bonn on 30 June 1958,
- the Convention between the Netherlands and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 17 April 1959,
- the Convention between Germany and Austria on the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed at Vienna on 6 June 1959,
- the Convention between Belgium and Austria on the reciprocal recognition and enforcement of judgments, arbitral awards and authentic instruments in civil and commercial matters, signed at Vienna on 16 June 1959,
- the Convention between Greece and Germany for the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed in Athens on 4 November 1961,
- the Convention between Belgium and Italy on the recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at Rome on 6 April 1962,
- the Convention between the Netherlands and Germany on the mutual recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at The Hague on 30 August 1962,
- the Convention between the Netherlands and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at The Hague on 6 February 1963,
- the Convention between France and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at Vienna on 15 July 1966,
- the Convention between Spain and France on the recognition and enforcement of judgment arbitration awards in civil and commercial matters, signed at Paris on 28 May 1969,

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- the Convention between Luxembourg and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at Luxembourg on 29 July 1971,
- the Convention between Italy and Austria on the recognition and enforcement of judgments in civil and commercial matters, of judicial settlements and of authentic instruments, signed at Rome on 16 November 1971,
- the Convention between Spain and Italy regarding legal aid and the recognition and enforcement of judgments in civil and commercial matters, signed at Madrid on 22 May 1973,
- the Convention between Finland, Iceland, Norway, Sweden and Denmark on the recognition and enforcement of judgments in civil matters, signed at Copenhagen on 11 October 1977,
- the Convention between Austria and Sweden on the recognition and enforcement of judgments in civil matters, signed at Stockholm on 16 September 1982,
- the Convention between Spain and the Federal Republic of Germany on the recognition and judgments, settlements and enforceable authentic instruments in civil and commercial matters, signed at Bonn on 14 November 1983,
- the Convention between Austria and Spain on the recognition and enforcement of judgments, settlements and enforceable authentic instruments in civil and commercial matters, signed at Vienna on 17 February 1984,
- the Convention between Finland and Austria on the recognition and enforcement of judgments in civil matters, signed at Vienna on 17 November 1986, and
- the Treaty between Belgium, the Netherlands and Luxembourg in jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 24 November 1961, in so far as it is in force.

Article 62

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

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

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Article 63

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

- Convention on the grant of European patents, signed at Munich on 5 October 1973;
- Warsaw Convention of ...
- ...

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

1. this Regulation shall not prevent a court of a Member State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Member State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 26 of this Regulation;
2. judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation.

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

Article 64

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

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CHAPTER VIII

FINAL PROVISIONS

Article 65

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

No later than five years after the entry into force of this Regulation, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation, with specific reference to its impact on small and medium-sized enterprises and on consumers. The report shall be accompanied, if need be, by proposals for adaptations to this Regulation.

Article 66

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

Unchanged

Article 67

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

This Regulation shall enter into force on . . . (six months after its adoption).

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

Unchanged

ANNEX I

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

Unchanged

- in Belgium: Article 15 of the Civil Code (Code civil - Burgerlijk Wetboek) and Article 638 of the Judicial Code (Code judiciaire - Gerechtelijk Wetboek),
- in the Federal Republic of Germany: Article 23 of the Code of Civil Procedure (Zivilprozeßordnung),
- in Greece, Article 40 of the Code of Civil Procedure (Κώδικας πολιτικής δικονομίας),
- in France: Articles 14 and 15 of the Civil Code (Code civil),
- in Italy: Articles 3 and 4 of Act 218 of 31 May 1995,
- in Luxembourg: Articles 14 and 15 of the Civil Code (Code civil),
- in Austria: Article 99 of the Court Jurisdiction Act (Jurisdiktionsnorm),
- in the Netherlands: Articles 126(3) and 127 of the Code of Civil Procedure (Wetboek van Burgerlijke Rechtsvordering),

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- in Portugal: Article 65(1)(c), Article 65(2) and Article 65a(c) of the Code of Civil Procedure (Código de Processo Civil) and Article 11 of the Code of Labour Procedure (Código de Processo de Trabalho),
- in Finland: the second, third and fourth sentences of the first paragraph of Section 1 of Chapter 10 of the Code of Judicial Procedure (oikeudenkäymiskaari/rättegångsbalken),
- in Sweden: the first sentence of the first paragraph of Section 3 of Chapter 10 of the Code of Judicial Procedure (rättegångsbalken).

ANNEX II

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

- ...
- ...
- ...

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

Unchanged

ANNEX III

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

- ...
- ...
- ...

Unchanged

ANNEX IV

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

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, an appeal in cassation,
- in Germany, a 'Rechtsbeschwerde',
- in Austria, a 'Revisionsrekurs',
- in Portugal: an appeal on a point of law,
- in Finland, an appeal to the 'korkein oikeus/högsta domstolen',
- in Sweden an appeal to the 'Högsta domstolen'.

Unchanged

ANNEX V

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

(English, Inglès, anglais ...)

- 1. Country of origin
- 2. Court or authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel./Fax/E-mail
- 3. Court which delivered the judgment/approved the court settlement
 - 3.1. Type of court
 - 3.2. Place of court
- 4. Judgment/court settlement
 - 4.1. Date
 - 4.2. Reference number
 - 4.3. The parties to the judgment/court settlement
 - 4.3.1. Name(s) of plaintiff(s)
 - 4.3.2. Name(s) of defendant(s)
 - 4.3.3. Name(s) of other party(ies), if any
 - 4.4. Judgment was given in default of appearance
 - 4.4.1. Date of service of the document instituting the proceedings
 - 4.5. Text of the order as annexed to this certificate
- 5. Names of parties to whom legal aid has been granted

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

Name:

Done at, date

.....
(Signature and/or stamp)



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ANNEX VI

Certificate referred to in Article 54 of Council Regulation No ...

(English, Inglès, anglais ...)

- 1. Country of origin
- 2. Court or authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel./Fax/E-mail
- 3. authority which has given authenticity to the instrument
 - 3.1. authority involved in the drawing up of the authentic instrument (if applicable)
 - 3.1.1. Name and designation of authority
 - 3.1.2. Place of authority
 - 3.2. authority which has registered the authentic instrument (if applicable)
 - 3.2.1. Type of authority
 - 3.2.2. Place of authority
- 4. Authentic instrument
 - 4.1. Description of the instrument
 - 4.2. Date
 - 4.2.1. on which the instrument was drawn up
 - 4.2.2. if different: on which the instrument was registered
 - 4.3. Reference number
 - 4.4. Parties to the instrument
 - 4.4.1. Name of the creditor
 - 4.4.2. Name of the debtor
- 5. Text of the enforceable obligation as annexed to this certificate.

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

Name:

Done at, date

.....
(Signature and/or stamp)

AMENDED PROPOSAL

ANNEX VI

Certificate referred to in Article 54 of Council Regulation No ...

(English, Inglès, anglais ...)

- 1. Country of origin
- 2. Court or authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel./Fax/E-mail
- 3. Notary or authority which has given authenticity to the instrument
 - 3.1. Notary or authority involved in the drawing up of the authentic instrument (if applicable)
 - 3.1.1. Name and designation of authority or notary
 - 3.1.2. Place of authority or notary
 - 3.2. Notary or authority which has registered the authentic instrument (if applicable)
 - 3.2.1. Type of authority
 - 3.2.2. Place of authority or notary
- 4. Authentic instrument
 - 4.1. Description of the instrument
 - 4.2. Date
 - 4.2.1. on which the instrument was drawn up
 - 4.2.2. if different: on which the instrument was registered
 - 4.3. Reference number
 - 4.4. Parties to the instrument
 - 4.4.1. Name of the creditor
 - 4.4.2. Name of the debtor
- 5. Text of the enforceable obligation as annexed to this certificate.

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

Name:

Done at, date

.....
(Signature and/or stamp)



Proposal for a Council Decision on a financial contribution by the Community to certain expenditure incurred by the Member States in implementing the control, inspection and surveillance systems applicable to the common fisheries policy

(2001/C 62 E/18)

(Text with EEA relevance)

COM(2000) 684 final — 2000/0273(CNS)

(Submitted by the Commission on 27 October 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 common fisheries policy, which guarantees the long-term existence of fishery stocks and their employment in the sector, can achieve its objectives only if its rules are complied with and effectively controlled.
- (2) Those objectives and rules are primarily established by Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture⁽¹⁾, and by Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy⁽²⁾.
- (3) By implementing the control system applicable to the common fisheries policy, the Member States discharge an obligation of Community interest.
- (4) For some Member States the scale of the control task is particularly onerous and may be disproportionately burdensome.
- (5) The Community should therefore make a financial contribution towards certain control, inspection and surveillance expenditure incurred by some Member States.
- (6) Given the positive overall impact of the Community financial contribution under Council Decision 89/631/EEC⁽³⁾ for 1991 to 1995, and Council Decision 95/527/EC⁽⁴⁾ for 1996 to 2000, a follow-on to those Decisions is required, but not a simple renewal. Certain

expenditure should therefore be reduced in order to permit more active assistance in other areas.

- (7) A period of three years, from 2001 to 2003, allows the Community contribution to be set for a long enough period but without prejudging any modifications of the common policy that may be decided under Article 14 of Council Regulation (EEC) No 3760/92.
- (8) The corresponding financial resources should be entered as annual appropriations in the general budget of the European Communities.
- (9) The financial contribution by the Community should be conditional on the recipient Member State attaining a satisfactory standard of control both at sea and on land.
- (10) Recipient Member States should assess the objectives and the impact of their expenditure on control programmes, both annually and in the aggregate at the end of the three-year period (2001-2003),

HAS ADOPTED THIS DECISION:

Article 1

Under the conditions set out in this Decision, the Community may grant a financial contribution to control programmes established by the Member States' for implementation of the control, inspection and surveillance systems applicable to the common fisheries policy laid down in Council Regulation (EEC) No 2847/93.

The control programmes shall specify their objectives and the facilities to be deployed and expenditure envisaged, in particular for the action referred to in Article 2.

Article 2

The financial contribution provided for in Article 1 (hereinafter: 'the financial contribution') may be granted in respect of certain expenditure foreseen in the control programmes and intended to contribute to the following actions:

- (a) creation of the mechanisms and IT networks necessary for information exchange in connection with control;

⁽¹⁾ OJ L 389, 31.12.1992, p. 1, Regulation as last amended by Regulation (EC) No 1181/98 (OJ L 164, 9.6.1998, p. 1).

⁽²⁾ OJ L 261, 20.10.1993, p. 1, Regulation as last amended by Regulation (EC) No 2846/98 (OJ L 358, 31.12.1998, p. 5).

⁽³⁾ OJ L 364, 14.12.1989, p. 64, Decision as last amended by Decision 95/52/EC (OJ L 301, 14.12.1995, p. 35).

⁽⁴⁾ OJ L 301, 14.12.1995, p. 30.

- (b) experimentation with and implementation of new technologies to improve control of fishery activities;
- (c) training of control departments' officials;
- (d) implementation of new inspection and observer schedules in the framework of Regional Fishery Organisations (RFOs) to which the European Community is a contracting party;
- (e) acquisition and modernisation of inspection and monitoring equipment.

Under points (a), (b), (d) and (e), the financial contribution shall be limited to expenditure of an amount greater than EUR 13 200.

Article 3

The expenditure referred to in Article 2 arising from legal and financial commitments entered into by Member States' competent authorities during the period of application of this Decision in respect of which no other financial aid is received from the Community, shall be regarded as eligible. VAT shall not be regarded as eligible expenditure.

Expenditure shall be eligible to the extent to which it is actually used to implement the control programmes.

Article 4

1. The financial contribution shall relate to eligible expenditure effected by Member States between 1 January 2001 and 31 December 2003.
2. The Budgetary Authority shall set the appropriations available for each budget year. The financial contribution shall not exceed the appropriations allocated to this purpose in the general budget of the European Communities.
3. If appropriations available in the general budget of the European Communities do not permit a financial contribution to all eligible expenditure proposed by a Member State, priority shall be given to expenditure on the control measures provided for in the Community rules.

Article 5

1. Financial contributions towards the expenditure referred to in Article 2(a) shall cover eligible expenditure for the creation of systems for recording, managing and transmitting data relating to controls, including IT applications and software.
2. The annual financial contribution per Member State shall be, at most, 75 % of eligible expenditure.

Article 6

1. Financial contributions towards the expenditure referred to in Article 2(b) shall cover eligible expenditure for experi-

mentation with and the introduction of new technologies to improve controls on fishing and related activities.

2. The annual financial contribution per Member State shall be, at most, 50 % of eligible expenditure.

3. The Commission may decide on a rate of contribution higher than that provided for in paragraph 2 to enable financial contributions towards eligible expenditure, where necessary, extending the VMS provided for in Article 3 of Regulation (EEC) No 2847/93 to include vessels other than those referred to in Article 3(2) thereof, and towards recording information other than vessel position and installing electronic logbooks.

Article 7

1. Financial contributions towards the expenditure referred to in Article 2(c) shall cover, in accordance with the rules in Annex I, eligible expenditure on the training of national officials involved in control activities, including training in Member States other than the one in which they work, arising from the organisation of seminars or training courses of at least one day and from exchanges of national officials.
2. The annual financial contribution per Member State shall be, at most, 50 % of eligible expenditure.

Article 8

1. Financial contributions towards the expenditure referred to in Article 2(d) shall cover eligible expenditure on the introduction of new inspection and observer schedules adopted in the framework of RFOs to which the Community is a contracting party, including operating expenditure.
2. The annual financial contribution per Member State shall be, at most, 50 % of eligible expenditure.

Article 9

1. Financial contributions towards the expenditure referred to in Article 2(e) shall cover investment in the acquisition or modernisation of vessels and aircraft used for control, inspection and surveillance of fishery activities.
2. The annual financial contribution per Member State shall be, at most, 30 % of eligible expenditure.
3. The Commission may decide on a rate of contribution higher than that provided for in paragraph 2, of up to 50 % of eligible expenditure, in the following cases:

- (a) to Member States which have an Extensive Exclusive Economic Zone or Continental shelf to control and prove that resources available for that purpose do not permit sufficiently effective control;

(b) to Member States which assign control resources each year, during the period 2001-2003, to the regulatory zone of an RFO to which the European Community is a contracting party, in which vessels flying their flag operate.

Detailed rules for the application of point (b) of the first subparagraph shall be adopted by the Commission in consultation with the Member State(s) concerned.

Article 10

A special financial contribution of up to 50 % of eligible expenditure per Member State per year may be granted for implementing a system to assess expenditure incurred in controlling the common fisheries policy. This contribution shall be granted towards eligible expenditure on introducing and operating the system, including developing analytical accounting procedures permitting calculation of the cost of various control measures carried out by the competent authorities of the Member States.

Article 11

The annual budget allocation for action towards which a financial contribution of more than 50 % is paid shall be restricted to 20 % of the budget envelope.

Article 12

1. Member States wishing to receive a financial contribution shall send the Commission, by 31 March 2001 at the latest, a forecast programme of their annual expenditure for 2001, 2002 and 2003 for which they are seeking a financial contribution, accompanied by a three-year programme describing the controls they intend to carry out during the three-year period.

The control programme must describe the objectives of the control and inspection measures scheduled, the actual operational plan envisaged and the results anticipated, and must cover the full range of fishery control work relevant to the Member State.

Programmes received after 31 March 2001 shall be considered only in exceptional circumstances, justified by the Member States concerned.

2. The programmes shall include the details specified in Part A of Annex II, points 1 and 2.

Article 13

On the basis of the information provided by Member States, and with due regard to the criteria in point 3 of Part A of Annex II, the Commission shall decide before 30 June each year in accordance with the procedure laid down in Article 18 of Regulation (EEC) No 3760/92 on:

- (a) the eligibility of the expenditure scheduled for the current budget year;
- (b) the rate of the financial contribution;
- (c) any conditions applying to the financial contribution.

Article 14

1. At the reasoned request of a Member State the Commission may grant advances of up to 50% of the annual financial contribution. These shall be deducted from the final amount of the financial contribution towards the eligible expenditure actually incurred.

2. Member States' expenditure shall be committed both legally and financially within one year of the date of notification of the decision referred to in Article 13. Member States shall implement their scheduled expenditure within one year of this legal and financial commitment. If the legal and financial commitment is not made within the time specified, any advance granted shall be repaid forthwith.

Article 15

Where a Member State decides not to implement all or part of the eligible expenditure for which a financial contribution has been granted it shall immediately inform the Commission, stating the implications for its control programme.

Article 16

1. Member States shall submit their applications for reimbursement of expenditure by 31 May of the year following the year in which it was incurred at the latest.

2. When submitting applications for reimbursement Member States shall verify and certify that the expenditure has been incurred in compliance with the conditions laid down in this Decision and the Directives concerning the coordination of procedures for the award of public works, supply and service contracts, and in accordance with the detailed rules in point 4 of Part A of Annex II.

3. If it appears from the application that the conditions referred to in paragraph 2 have not been met, the Commission shall examine the situation thoroughly, requesting the Member State to submit its observations. If the examination confirms non-compliance, the Commission shall set a time-limit for the Member State to comply. If by the expiry of that time-limit the Member State has not acted in accordance with the recommendations, the Commission may reduce, suspend or cancel the financial contribution in the area concerned. All undue payments shall be reimbursed to the Commission with interest for the period in question.

4. Member States shall keep all supporting documentation for a period of three years from the date of the Commission's reimbursement of the expenditure.

Article 17

Member States shall submit their expenditure programmes and applications for reimbursement of expenditure and payment of advances in euro. Expenditure programmes not made out in euro shall not be admissible.

Member States not participating in the third stage of economic and monetary union shall specify the conversion rate used.

Article 18

Member States shall provide the Commission with any information it may request with a view to performing the tasks attributed to it by this Decision.

Member States shall provide the Commission with all information permitting it to verify the use made of the control, inspection and surveillance resources for which a financial contribution has been made under this Decision. They shall keep this information available to the Commission for at least three years from the date of the Commission's reimbursement of expenditure.

If the Commission considers that these resources are not being used for their proper purpose or in accordance with the conditions laid down in this Decision, it shall inform the Member State concerned, which shall conduct an administrative inquiry in which Commission officials may take part. The Member State shall inform the Commission of its progress and of the findings of that inquiry and send it without delay a copy of the report drawn up following the inquiry, notifying the main elements on which it is based. The Commission may decide to reclaim any sum unduly paid, with interest for the period in question.

Article 19

The Commission may make any checks it deems necessary to ensure that Member States comply with the conditions and execute the tasks specified in this Decision. Member States shall assist officials assigned to these checks by the Commission.

The first paragraph shall apply without prejudice to Article 29 of Regulation (EEC) No 2847/93.

Article 20

1. Member States shall send the Commission, before 30 April each year, an intermediate assessment report, with contents as specified in Annex III, covering the previous year's eligible expenditure, detailing the extent to which the anticipated progress has been made and the impact of the expenditure on the control programmes and reporting any need to adjust those programmes.

2. Member States shall send the Commission, by 31 May 2004 at the latest, a final assessment report, with contents as specified in Annex III, covering the impact of the financial contribution on the three-year control programme as a whole.

3. The information referred to in paragraphs 1 and 2 must enable the Commission to monitor properly the use made of the financial contribution.

Article 21

On the basis of the information provided by the Member States under Article 20(1), the Commission shall submit to the European Parliament and to the Council, by 31 December 2003 at the latest, a report on application of this Decision and make any appropriate proposals for further action.

Article 22

This Decision is addressed to the Member States.

ANNEX I

RULES APPLYING TO EXPENDITURE ON TRAINING OFFICIALS ENGAGED IN INSPECTION WORK

1. Expenditure on organising courses and seminars should in particular cover the hire of a room, purchase or hire of teaching materials and equipment, payment of the fees of trainers who are not officials of a national or Community administration, and travel and subsistence costs of the participating national officials and the trainers.
 2. Expenditure on exchanges of national officials should cover their travel and subsistence costs.
 3. Travel costs should be those for a return journey between an official's home and the destination by public transport.
 4. Subsistence costs should be those for accommodation, meals and local transport.
 5. Travel and subsistence costs are to be determined according to national reimbursement rules.
-

ANNEX II

Part A

1. The programme of annual expenditure referred to in Article 12 should state the expenditure scheduled for the years 2001, 2002 and 2003, specifying in particular:

- the expenditure timetable;
- the nature, cost and inspection objectives of the new technologies and IT networks;
- the nature, duration, number of participants, cost and purposes of the training for inspection officials;
- for inspection and monitoring equipment: technical characteristics, cost, planned mode of payment, inspection objectives and planned utilisation, including date of entry into service.

2. Member States must send the Commission all relevant information on the following:

- the objectives pursued by the proposed expenditure;
- the results expected from this expenditure;
- in connection with the purchase and modernisation of vessels and aircraft, an estimate of the period of time for which these will be used for fishery inspection and surveillance work;
- the Member State's use over previous years of the contribution granted under Decision 95/527/EC;
- the improvement in the effectiveness of the controls at sea and on land carried out by the Member State during the period preceding the application and the improvement that should result from the proposed expenditure.

Member States shall also complete and send to the Commission the forms, of which models are given in Part B.

3. Criteria to be considered when deciding on a financial contribution:

- the scale and efficiency of the human and physical resources actually devoted to inspection work;
- the degree of cooperation with other Member States and the Commission in policing fisheries;
- the Member State's contribution to inspection work and its compliance with obligations under inspection and observer schedules established by regional fishery organisations to which the Community is a contracting party;
- the extent of its controls on fishing by its own vessels on the high seas;
- the diversity of fishing activities in the Member State's fishery zone;
- the reliability of the catch figures notified to the Commission and the Member State's ability to prevent overrun of its quotas;
- the state of execution of the eligible expenditure for which a Community contribution has been approved under Council Decision 95/527/EC or under this Decision;
- the extent of prevention and detection of infringements of the common fisheries policy and the action taken to penalise them;
- the existence in national legislation and application in practice of penalties proportionate to the gravity of infringements that actually deter from further infringements of the same type;
- compliance with the requirement to notify the Commission of detected cases of behaviour seriously infringing common fishery policy rules, as required by Council Regulation (EC) No 1447/1999.

4. The completed questionnaires on public contracts must refer to the public tender notices published in the *Official Journal of the European Communities*. If notices have not been published in the Official Journal, the beneficiary must certify that the Community legislation on public contracts has been respected.

The Commission may call for any information it considers necessary to decide whether or not Community legislation on public contracts has been respected.

Reimbursement shall be conditional on submission of supporting documents (two copies) comprising at least the main elements of the agreement between the Member State and the supplier and the proof of payment. To be reimbursed, the individual items of expenditure must be listed in a summary statement clearly indicating for each its nature, link with the proposed programme and amount before VAT.

Part B

1. Vehicle inventory

Member State:

Date:

	(a) authority	(b) age	(c) life expectancy	(d) remaining life	(e) % time spent on enforcement	(g) FTE (e × l)
> 10 m vessel name/description						
1						
2						
3						
4						
5						
					Total	
aeroplane name/description						
1						
2						
3						
4						
5						
					Total	
helicopter name/description						
1						
2						
3						
4						
5						
					Total	
< 10 m vessels					(f) number	
		n/a	n/a	n/a		
		n/a	n/a	n/a		
		n/a	n/a	n/a		
		n/a	n/a	n/a		
		n/a	n/a	n/a		
					Total	
					Total	

Notes

Name/description — the vehicle name should be recorded, if applicable. If the vehicle does not have a name a brief description should be given e.g. the make and model. If the authority has more than one vehicle of the same make and model, the vehicle should be assigned a number. Whichever method is used to describe the vehicle, that method should be used in all records or correspondence relating to the vehicle.

(a) the name of the enforcement/government authority that operates the vehicle

(b) the age of the vehicle in years

(c) the operational life expectancy of the vehicle from new in years

(d) the remaining operational life of the vehicle in years (c — b)

(e) the percentage of operating time the vehicle spends engaged in enforcement activity

(f) total number of < 10 m vessels or land vehicles operated by each enforcement authority

(g) FTE (Full Time Equivalent) (percentage of operating time spent on enforcement × l) FTE should be less than 1.

Total — the sum of all FTE giving the total effective number of vehicles engaged in enforcement activity. The total should not exceed the number of vehicles used in MCS.

< 10 m vessels — number of < 10 m vessels operated by each enforcement authority

Land vehicles — number of land vehicles operated by each enforcement authority

2. Staff inventory

Member State:

Date:

(a) authority	(b) main area of operation	(c) number (FTE)	(d) % time spent on enforcement	(e) FTE enforcement staff
1	Sea/air based			
	Land based inspectors			
	Other land based staff (e.g administrative)			
	Total			
2	Sea/air based			
	Land based inspectors			
	Other land based staff (e.g administrative)			
	Total			
3	Sea/air based			
	Land based inspectors			
	Other land based staff (e.g administrative)			
	Total			
4	Sea/air based			
	Land based inspectors			
	Other land based staff (e.g administrative)			
	Total			
5	Sea/air based			
	Land based inspectors			
	Other land based staff (e.g administrative)			
	Total			
6	Sea/air based			
	Land based inspectors			
	Other land based staff (e.g administrative)			
	Total			
	Grand Total			

Notes

(a) the name of the enforcement/government authority

(b) the type of duty carried out by enforcement staff

(c) the FTE (Full Time Equivalent) number of people employed by each enforcement authority as sea and air based inspectors, land based inspectors and other land based staff

(d) percentage of total time sea and air based inspectors, land based inspectors and other land based staff spend on enforcement duties

(e) the FTE (Full Time Equivalent) number of enforcement staff (d × c). Should not exceed the FTE number of people employed (c)

3. Vehicle activity

Member State:

Date:

(a) authority	(b) vehicle type	(c) number	(d) FTE	(e) No days at sea (vessels)	(f) days per vessel	(g) No hours (planes/helis)	(h) hours per craft
1	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			
2	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			
3	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			
4	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			
5	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			
6	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			
Total	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			

Notes

(a) the name of the enforcement/government authority

(b) type of vehicle used for enforcement duties (< 10 m vessel, > 10 m vessel, plane, helicopter)

(c) total number of craft used for enforcement duties (from vehicles spreadsheet)

(d) FTE (Full Time Equivalent) number of vehicles used for enforcement duties (from vehicles spreadsheet)

(e) total number of days at sea all vessels spent on enforcement duties

(f) number of days spent at sea on enforcement duties per vessel (c/b)

(g) total number of hours at sea all planes and helicopters spent on enforcement duties

(h) number of hours spent at sea on enforcement duties per craft (e/b).

4. Budget

Member State:

Date:

(a) authority	(b) total budget (own currency)	(c) enforcement budget (own currency)
1		
2		
3		
4		
5		
6		
7		
Total		

Notes

- (a) the name of the enforcement/government authority with fisheries enforcement obligations
(b) total budget for each authority with fisheries enforcement duties
(c) budget spent on fisheries enforcement activity by each authority with enforcement duties — $c < \text{or} = b$.

5. Inspections ⁽¹⁾

Member State:

Date:

	(a) No of inspections		(b) No of infringements
	a1. Visual	a2. Other	
Inspection type			
In port/port controls			
At sea			
By air		n/a	
Total		n/a	
Nationality of vessel inspected			
Own State vessels			
Other Member State vessels			
Third country vessels			
Total			
ICES Area inspected (by sea)			
II			
III			
IVa			
IVb			
V			
VIa			
VIb			
VIIa			
VIIb-k			
VIII			
IX			
X			
Med			
Other			
Total			
ICES Area inspected (by air)			
II		n/a	
III		n/a	
IVa		n/a	
IVb		n/a	
V		n/a	
VIa		n/a	
VIb		n/a	
VIIa		n/a	
VIIb-k		n/a	
VIII		n/a	
IX		n/a	
X		n/a	
Med		n/a	
Other		n/a	
Total		n/a	
		(c) Number	(b) No of infringements
VMS			
No vessels fitted with VMS			

Notes

(a) number of inspections carried out by air, by sea and from land

a1. number of visual inspections carried out.

a2. number of other inspections carried out e.g. boarding vessel, checking logbook, etc.

(b) number of infringements detected.

Inspection type — number of inspections carried out at sea, from the air and in port.

Nationality of vessel inspected — number of inspections of own State vessels, other Member State vessels and third country vessels.

ICES Area inspected (by sea) — number of inspections carried out in each ICES Area by enforcement vessels.

ICES Area inspected (aerial) — number of inspections carried out in each ICES Area by enforcement planes/helicopters.

⁽¹⁾ In accordance with Title I of Council Regulation (EEC) No 2847/93.

6. Effort/physical characteristics

Member State:

Date:

	Number
Length of coast (km)	
Size of EEZ (km ²)	
Number of landing ports	
Fleet size	
< 10 m vessels	
> 10 m vessels	
Total	
Landings by nationality of vessel	Tonnes
Own State vessels	
Other Member State vessels	
Third country vessels	
Total	
Landings by ICES Area (own State vessels)	Tonnes
II	
III	
IVa	
IVb	
V	
VIa	
VIb	
VIIa	
VIIb-k	
VIII	
IX	
X	
Med	
Other	
Total	

Notes

Fleet size — number of own State vessels of each size (< 10 m and > 10 m)

Landings by nationality of vessel — landings into own State by own State vessels, other Member State vessels and third country vessels, in tonnes

Landings by ICES Area (own State vessels) — landings into own State by own State vessels by Area of capture

*ANNEX III***CONTENT OF ASSESSMENT REPORT**

Programme objectives

Resources deployed

Actual expenditure

Programme results

Programme impact

Cost-effectiveness of the expenditure

Impact of the Community contribution

Proposal for a Council Regulation on the conclusion of the Protocol establishing for the period 1 July 2000 to 30 June 2001 the fishing rights and financial compensation provided for in the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea

(2001/C 62 E/19)

COM(2000) 690 final — 2000/0284(CNS)

(Submitted by the Commission on 7 November 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Article 2

Having regard to the Treaty establishing the European Community, and in particular Article 37, in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Pursuant to the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea ⁽¹⁾, the two Parties conducted negotiations with a view to extending the Protocol which expired on 30 June 2000.

(2) As a result of these negotiations, a new Protocol establishing the fishing opportunities and financial compensation provided for in the abovementioned Agreement for the period 1 July 2000 to 30 June 2001 was initialled on 16 June 2000.

(3) It is in the Community's interest to approve the Protocol,

HAS ADOPTED THIS REGULATION:

Article 1

The Protocol establishing for the period 1 July 2000 to 30 June 2001 the fishing rights and financial compensation provided for in the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation.

The fishing opportunities provided for in the Protocol shall be allocated among the Member States as follows:

— tuna seiners:

France: 19 vessels

Spain: 10 vessels

Italy: 1 vessel

— surface longliners:

Spain: 25 vessels

Portugal: 5 vessels

— pole-and-line tuna vessels:

France: 8 vessels

If licence applications from those Member States do not exhaust the fishing opportunities provided for in the Protocol, the Commission may consider licence applications from any other Member State.

Article 3

The President of the Council is hereby authorised to designate the persons empowered to sign the Protocol in order to bind the Community.

Article 4

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

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

⁽¹⁾ OJ L 188, 16.7.1984, p. 2. Agreement amended by the Agreement approved by Regulation (EEC) No 252/87 (OJ L 29, 30.1.1987, p. 1).

PROTOCOL

establishing, for the period from 1 July 2000 to 30 June 2001, the fishing rights and financial compensation provided for in the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea*Article 1*

For a period of one year from 1 July 2000, the fishing rights granted under Article 2 of the Agreement shall be:

- freezer tuna seiners: 30 vessels,
- surface longliners: 30 vessels,
- pole-and-line tuna vessels: 8 vessels.

Article 2

1. The financial compensation referred to in Article 6 of the Agreement shall be, for the period referred to in Article 1, EUR 200 000. This compensation shall cover a catch weight in the waters of Equatorial Guinea of 4 000 tonnes of tuna. If the tuna caught by Community vessels in Equatorial Guinea's fishing zone exceeds this weight, the amount referred to above shall be proportionately increased.

2. The use to which its compensation is put shall be the sole responsibility of the Government of the Republic of Equatorial Guinea.

3. The financial compensation shall be paid into account No 4160 of the Treasury of Equatorial Guinea, opened at the Banque des États d'Afrique Centrale (BEAC) in Malabo. Any changes shall be notified to the Commission of the European Communities.

Article 3

The Community shall also contribute, during the period referred to in Article 1, the sum of EUR 16 700 towards the financing of an Equatorial Guinea scientific or technical programme to improve information on the fishery resources within the exclusive economic zone of Equatorial Guinea.

This sum shall be made available to the Government of the Republic of Equatorial Guinea and paid into the account indicated by the Equatorial Guinea authorities.

The competent authorities of Equatorial Guinea shall send the Commission a brief report on how the funds are used.

Article 4

The two Parties agree that improving the skills of those involved in sea fishing is a vital element in the success of

their cooperation. To that end, the Community shall make it easier for nationals of Equatorial Guinea to find places in training establishments in its Member States and shall provide for that purpose, during the period referred to in Article 1, awards for study and practical training in the various scientific, technical and economic disciplines relating to fisheries. The awards may also be used in any State linked with the Community by a cooperation agreement. The total cost of the awards may not exceed EUR 46 700. At the request of the Equatorial Guinea authorities, part of this sum may be used to cover the costs of participating in international meetings concerning fisheries.

The sum shall be payable as and when it is used.

Article 5

The Community shall also contribute EUR 56 700 to the financing of programmes for fisheries surveillance bodies and for non-industrial fishing.

These funds shall be made available to the Ministry of Fisheries and Forests, which shall communicate the bank account to which payment is to be made.

The sum shall be payable as and when it is used.

Article 6

Should the Community fail to make the payments provided for in Articles 2 and 3, the application of this Protocol may be suspended.

Article 7

The Annex to the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea is hereby repealed and replaced by the Annex to this Protocol.

Article 8

This Protocol shall enter into force on the date on which it is signed.

It shall apply with effect from 1 July 2000.

ANNEX

CONDITIONS FOR THE EXERCISE OF FISHING ACTIVITIES BY COMMUNITY VESSELS IN EQUATORIAL GUINEA'S FISHING ZONE**A. Licence application and issuing formalities**

The procedure for applications for, and issue of, licences enabling vessels flying the flags of the Member States of the Community to fish in Equatorial Guinea's fishing zone shall be as follows.

The competent authorities of the Community shall present to the Ministry of Fisheries and Forests of the Republic of Equatorial Guinea, via the Delegation of the Commission of the European Communities in Equatorial Guinea, an application for each vessel wishing to fish under the Agreement.

Applications shall be made on the forms provided for that purpose by the competent authorities of the Republic of Equatorial Guinea, a specimen of which is attached hereto (Appendix 1).

Once signed, the licences shall be issued by the Equatorial Guinea authorities to the shipowners or their representatives via the Delegation of the Commission of the European Communities in Equatorial Guinea within 15 working days of the date on which the application was submitted.

However, in cases of proven *force majeure*, at the request of the European Community a vessel's licence shall be replaced by a new licence for another vessel with identical characteristics. The owner of the vessel being replaced shall return the cancelled licence to the Ministry of Fisheries and Forests of the Republic of Equatorial Guinea via the Delegation of the Commission of the European Communities.

The new licence shall indicate:

- the date of issue,
- the fact that the licence cancels and replaces that granted to the previous vessel.

In this case, no new lump sum shall be due.

The licence document must be held on board at all times. However, on receipt of the notification of the advance payment sent by the Commission of the European Communities to the authorities of Equatorial Guinea, the vessel will be included on a list to be notified to the fisheries control authorities of Equatorial Guinea. Pending receipt of the licence document, a fax copy of this licence document may be obtained and shall be kept on board, which will authorise the vessel to fish pending delivery on board of the licence document.

Licences shall be valid for a period of one year. They shall be renewable.

The fees shall be EUR 20 per tonne caught within Equatorial Guinea's fishing zone.

The competent authorities of Equatorial Guinea shall indicate the detailed rules for payment of the fees, in particular the bank accounts and currencies to be used.

Licences shall be issued following payment of a lump sum of EUR 1 300 a year for each tuna seiner, EUR 200 a year for each pole-and-line tuna vessel and EUR 300 a year for each surface longliner.

B. Declaration of catches and breakdown of fees due by shipowners

The captain shall complete a fishing form corresponding to the model given in Appendix 2 for each period spent fishing in Equatorial Guinea's fishing zone.

The form, which must be legible and signed by the captain of the ship, shall be sent without delay to the Office of Overseas Scientific and Technical Research (ORSTOM) or the Spanish Oceanographical Institute (IEO), for processing.

Should this provision not be adhered to, the Government of Equatorial Guinea reserves the right to suspend the licence of the offending vessel until the formality has been complied with and to apply the penalties laid down under Fisheries Law No 2/1987 of 16 February 1987.

Member States shall inform the Commission of the European Communities before 15 April of the tonnages caught during the past year, as confirmed by the scientific institutes. On the basis of those figures the Commission shall establish a breakdown of the fees due for the fishing year, which it shall then send to the authorities of the Republic of Equatorial Guinea.

Shipowners shall be notified by the Commission of the European Communities of this breakdown by the end of April at the latest and shall have 30 days in which to meet their financial obligations. The shipowner cannot recover the balance in cases where the amount payable in respect of actual fishing operations is less than the advance payment.

C. Inspection and monitoring

Any Community vessel fishing in Equatorial Guinea's fishing zone shall allow on board any official of Equatorial Guinea responsible for inspection and monitoring and shall assist him in the accomplishment of his duties. The official must not remain on board any longer than is necessary for the verification of catches by random checks and for any other inspection relating to fishing activities.

D. Fishing zones

The vessels referred to in Article 1 of the Protocol shall be authorised to fish in waters beyond four nautical miles from the base lines.

E. Entering and leaving the zone

Within three hours of entering or leaving the zone and every three days during their fishing activities in Equatorial Guinea's waters, vessels shall be obliged to communicate their position and the volume of the catch on board direct to the Equatorial Guinea authorities, preferably by fax or, failing that, by radio in the case of vessels not equipped with fax.

The fax number and radio frequency shall be notified on issue of the licence.

A copy of the fax messages or record of radio communications shall be kept by the Equatorial Guinea authorities and the shipowners until both parties have approved the final statement of fees referred to in point B.

A vessel caught fishing without having notified the Equatorial Guinea authorities of its presence shall be considered an unlicensed vessel.

F. Procedure in case of boarding

1. The Delegation of the Commission of the European Communities in Equatorial Guinea shall be notified within two working days of any boarding within the Equatorial Guinea exclusive economic zone of a fishing vessel flying the flag of a Member State of the Community and fishing under an agreement concluded between the Community and a third country. The Delegation shall at the same time receive a brief report of the circumstances and reasons leading to the boarding.
2. Before any measures regarding the master or the crew of the vessel or any action regarding the cargo and equipment of the vessel are considered, other than those to safeguard evidence relating to the presumed infringement, a consultation meeting shall be held, within one working day after receipt of the abovementioned information, between the Delegation of the Commission of the European Communities in Equatorial Guinea, the Fisheries Department and the inspection authorities, possibly attended by a representative of the Member State concerned. At the meeting, the parties shall exchange any relevant documentation or information helping to clarify the circumstances of the established facts. The shipowner or his representative shall be informed of the outcome of the meeting and of any measures resulting from the boarding.
3. Before any judicial proceedings, an attempt shall be made to resolve the presumed infringement through a compromise procedure. This procedure shall end no later than three working days after the boarding.
4. Should the case not be settled by means of compromise, and the master therefore be brought before a competent Equatorial Guinea judicial body, a reasonable bank security shall be fixed by the competent authority within two working days, following the conclusion of the compromise procedure, pending the judicial decision. The bank security shall be released by the competent authority once the master of the vessel concerned has been acquitted by the judicial decision.
5. The vessel and its crew shall be released either:
 - at the end of the consultation meeting, if the established facts permit, or
 - on receipt of payment of a fine (compromise procedure), or
 - once a bank security is deposited (judicial proceedings).
6. Should one of the Parties consider that there is a problem in the application of the abovementioned procedure, it may request urgent consultations under Article 8 of the Agreement.

Appendix 1

REPUBLIC OF EQUATORIAL GUINEA
APPLICATION FORM FOR A FISHING LICENCE

- 1. Period of validity: from to
- 2. Name of vessel:
- 3. Name of shipowner:
- 4. Port and registration number:
- 5. Type of fishing:
- 6. Authorised mesh size:
- 7. Length of vessel:
- 8. Width of vessel:
- 9. Gross registered tonnage:
- 10. Hold capacity:
- 11. Engine rating:
- 12. Type of construction:
- 13. Usual number of seamen aboard:
- 14. Radio/electrical equipment:
- 15. Master's name:

The above information is the sole responsibility of the shipowner or his representative.

Date of application:

Amended proposal for a Council Regulation amending the Financial Regulation and separating the internal audit function from the *ex ante* financial control function (Article 24, paragraph 5, of the Financial Regulation)

(2001/C 62 E/20)

COM(2000) 693 final — 2000/0135(CNS)

(Submitted by the Commission pursuant to Article 250 (2) of the EC Treaty on 8 November 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 279 thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 78h thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 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 Court of Auditors,

Whereas:

- (1) The accumulation of the internal audit function and the control *ex ante* by the financial controller under Article 24, paragraph 5, second sentence of the Financial Regulation may give rise to a dispersal of the two functions without necessarily ensuring the right balance between the two.
- (2) Pending the adoption of the Financial Regulation, the internal audit function should be separated from the financial controller's other functions as soon as possible. The result of this would be that the financial controller will continue to fulfil his present functions, including *ex ante* control, but not that of internal audit, which will be performed by an internal auditor independent of the financial controller.
- (3) Given, however, the volume of budget appropriations, the staff responsible for management and control and the limited number of transactions of certain European institutions (within the meaning of the Financial Regulation), which are therefore subject to fewer management risks, this separation should be compulsory only for the European Parliament, the Council and the Commission.
- (4) The internal auditor will enjoy the same benefits and prerogatives as those granted to the financial controller in Article 24 of the Financial Regulation and will report, as does the financial controller, to his institution, and to it alone.
- (5) In order to enhance the transparency of budget implementation and to facilitate the exchange of good practices between institutions, each institution will send to the other institutions the annual report drawn up by the

financial controller and the annual internal audit report illustrating the main lessons to be learned from *ex ante* control and internal audit in the previous year.

- (6) All the institutions in respect of their own sections of the budget, shall ensure that the financial controller has the resources and independence required to perform his *ex ante* control functions in accordance with Article 24 of the Financial Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 24 of the Financial Regulation is amended as follows:

1. The second paragraph is replaced by the following:

'He shall carry out his duties in accordance with the principles laid down in Article 2 and the provisions of Article 22(3). He shall report to his institution on any problem he uncovers regarding the management of Community finances. He shall produce an annual report on his work which his institution shall transmit to the other institutions.'

2. The fifth paragraph is replaced by the following:

'Monitoring shall be carried out by that official by means of inspection of the files relating to expenditure and revenue and, if necessary, on the spot.'

Article 2

An Article 24a is added:

'Article 24a

1. The European Parliament, the Council and the Commission shall each appoint an internal auditor who is independent of the financial controller. He shall be appointed in each institution in the same way as the financial controller and, in order to be able to exercise his duties, shall have access to the same information as the financial controller as set out in the second sentence of the fourth paragraph and the fifth and sixth paragraphs of Article 24. In the performance of his duties the internal auditor shall be accountable only to the institution which appointed him; he shall report directly to that institution and shall enjoy the same guarantees as are granted to the financial controller in accordance with the second, eighth and ninth paragraphs of Article 24.

The internal audit shall include an evaluation of the effectiveness of the management and control systems designed to ensure the regularity of operations. These duties shall be exercised in accordance with the implementing rules provided for in Article 139.

The internal auditor may be neither authorising officer nor accounting officer.

2. The Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the Ombudsman may each appoint an internal auditor in accordance with paragraph 1.

If no internal auditor is appointed, the financial controller shall perform the institution's internal audit in accordance with the implementing rules provided for in Article 139.

3. Each institution shall send to the other institutions its annual internal audit report showing the number and nature of the audits performed, the main recommendations to which they have given rise and the action taken on these recommendations.

4. Each institution shall consider whether the recommendations made in the internal audit reports of the other institutions can apply to its own management and control systems.'

Article 3

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

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

Amended proposal for a Council Decision on Guidelines for Member States' employment policies for the year 2001 ⁽¹⁾

(2001/C 62 E/21)

(Text with EEA relevance)

COM(2000) 735 final — 2000/0225(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 14 November 2000)

⁽¹⁾ OJ C 29 E, 30.1.2001.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

Having regard to the Treaty establishing the European Community, and in particular Article 128(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

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

Having regard to the opinion of the Employment Committee,

Whereas:

- (1) The Luxembourg process, based on the implementation of the coordinated European Employment Strategy, was launched by the extraordinary European Council meeting on Employment on 20 and 21 November 1997. The Council Resolution of 15 December 1997 on the 1998 Employment Guidelines, confirmed by the European Council, has launched a process with high visibility, strong political commitment and a wide-ranging acceptance by all parties concerned.
- (2) The Council Decision of 13 March 2000 on the 2000 Employment Guidelines has allowed consolidation of the Luxembourg process through compliance with those Guidelines.

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- (3) The Lisbon European Council on 23 and 24 March 2000 set a new strategic goal for the European Union to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion. The attainment of this goal will enable the Union to regain the conditions of full employment.
- (4) Consistency and synergy between the Employment Guidelines and the Broad Economic Policy Guidelines must be ensured.
- (5) In implementing the employment guidelines, Member States should aim at a high degree of consistency with two other priorities highlighted by the Lisbon Summit, modernising social protection and the promotion of social inclusion, while ensuring that work pays, and the long-term sustainability of social protection systems is secured.
- (6) The Lisbon European Council stressed the need to adapt European education and training systems both to the demands of the knowledge society and to the need for an improved level and quality of employment, and called upon Member States, the Council and the Commission to pursue a substantial annual increase in per capita investment in human resources.
- (7) The Santa Maria da Feira European Council on 19 and 20 June 2000 invited the social partners to play a more prominent role in defining, implementing and evaluating the employment guidelines which depend on them, focusing particularly on modernising work organisation, lifelong learning and increasing the employment rate, particularly for women.
- (8) The 2000 Joint Employment Report, drawn up by the Council and the Commission, describes the employment situation in the Community and examines the action taken by the Member States in implementing their employment policy in line with the 2000 Employment Guidelines, and the Council recommendation of 14 February 2000 on the implementation of Member States' employment policies.
- (9) On [...] the Council adopted a further recommendation on the implementation of Member States' employment policies.

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- (10) The mid-term Review of the Luxembourg Process conducted in 2000 at the request of the Lisbon European Council should be taken into account in revising the Employment Guidelines 2001, without changing the basic four pillar structure, and in improving the efficiency of the Luxembourg Process.
- (11) The Member States should strengthen their efforts to include and make visible a gender perspective across all the pillars.
- (12) The implementation of the guidelines may vary according to their nature, the parties to whom they are addressed and the different situations in the Member States. They should respect the principle of subsidiarity and Member States' responsibilities with regard to employment.
- (13) In implementing the Employment Guidelines, Member States should be able to take regional situations into account, while fully respecting the attainment of national targets and the principle of equal treatment.
- (14) At all levels (Community, national and local) checks should be made to ensure that the budget policies adopted are consistent with the strategies and priorities laid down by the employment Guidelines, in order to translate agreed targets, commitments and the measures into appropriate budget allocations, possibly on a multi-annual basis.
- (15) Council Directive 1999/85/EC ⁽¹⁾, which provides for the possibility of applying a reduced VAT rate on labour-intensive services on an experimental basis, should be followed up in order to examine, in particular, the impact of national initiatives in terms of job potential.
- Unchanged
- (16) The contribution of the Structural Funds, and in particular the European Social Fund to the European Employment Strategy in the new programming period should be highlighted.
- (16) The contribution of the Structural Funds, and in particular the European Social Fund and the Community Initiative EQUAL to the European Employment Strategy in the new programming period should be highlighted, as well as the role of the EIB.
- (17) Greater engagement of civil society and great opportunity for informed participation by citizens should be ensured at all levels.

⁽¹⁾ OJ L 277, 28.10.1999, p. 34.

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(19) Sustainable development and the integration of environmental concerns into other Community policies are objectives of the Treaty. Member States are invited to give effect to such integration within their national employment strategies by promoting employment creation in the environmental field,

(18) There is a need to further develop comparable indicators, to ensure an effective assessment of progress as well as to set benchmarks and facilitate the identification and exchange of best practice.

Unchanged

HAS ADOPTED THIS DECISION:

Article 1

The guidelines for Member States' employment policies for the year 2001, annexed hereto, are hereby adopted. They shall be taken into account by the Member States in their employment policies.

Article 2

This Decision is addressed to the Member States.

ANNEX

THE EMPLOYMENT GUIDELINES FOR 2001

Unchanged

Horizontal objectives — building conditions for full employment in a knowledge-based society

The careful build-up, over the last decade, of a macroeconomic framework for stability and growth coupled with consistent efforts to reform labour, capital and services markets, as well as favourable prospects in the world economy, has created a favourable economic outlook for the European Union which will bring the attainment of some of its key fundamental objectives within reach. Further progress, however, is not automatic: it requires leadership, commitment and concerted action.

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This is why the European Council embraced full employment as an overarching objective of the EU's employment and social policy. It committed the Member States to reach the strategic goal of making the Union the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion. The achievement of these objectives requires simultaneous efforts by the Community and the Member States. It also requires a continued implementation of an effective and well balanced and mutually supportive policy mix, based on macroeconomic policy, structural reforms promoting adaptable and flexible labour markets, innovation and competitiveness, and an active welfare state promoting human resources development, participation, inclusion and solidarity.

Preparing the transition to a knowledge-based economy, reaping the benefits of the information and communication technologies, modernising the European social model by investing in people and combating social exclusion and promoting equal opportunities are key challenges for the Luxembourg process. In order to achieve the goal of full employment set at Lisbon, the Member States should articulate their response to the guidelines under the four pillars in a coherent overall strategy which incorporates the following horizontal objectives:

- (A) Enhancing job opportunities and providing adequate incentives for all those willing to take up gainful employment with the aim of moving towards full employment. To this end, Member States should set national targets for raising the rate of employment, in order to contribute to the overall European objectives of reaching by 2010 an overall employment rate of 70 per cent and an employment rate of more than 60 per cent for women. In pursuing these targets, the aim of increasing the quality of jobs should also be taken into consideration.
- (B) Member States shall develop comprehensive and coherent strategies for Lifelong Learning, in order to help people acquire and update the skills needed to cope with economic and social changes throughout the entire life cycle. In particular, the strategies should cover the development of systems for initial, secondary and tertiary education, further education and vocational training for young people and adults to improve their employability, adaptability and skills, as well as their participation in the knowledge-based society. Such strategies should articulate the shared responsibility of public authorities, enterprises, the social partners and individuals, with relevant contribution from civil society, to contribute to the realisation of a Knowledge-Based Society. In this context, the Social Partners should negotiate and agree on measures to improve further education and training of adults to enhance the adaptability of workers and competitiveness of business. To this end, Member States should set national targets for an increase in investment in human resources as well as in participation in further education and training (whether formal or informal) and monitor regularly progress towards such targets.

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- (C) The Member States shall develop a comprehensive partnership with the Social Partners for the implementation, the monitoring and the follow-up of the Employment Strategy. The Social Partners at all levels are invited to step up their action in support of the Luxembourg process. Within the overall framework and the objectives set by these guidelines, the Social Partners are invited to develop, in accordance with their national traditions and practices, their own process of implementing the guidelines for which they have the key responsibility, identify the issues upon which they will negotiate, and report regularly on progress as well as the impact of their actions on employment and labour market functioning. The Social Partners at European level are invited to define their own contribution and to monitor, encourage and support efforts undertaken at national level.
- (D) In translating the Employment Guidelines into national policies, Member States will give due attention to all four pillars and the horizontal objectives by setting their priorities in a balanced manner, so as to respect the integrated nature and equal value of the guidelines. The National Action Plans will develop the strategy for employment, comprising an identification of the policy mix based on the four pillars and the horizontal objectives which should make explicit how policy initiatives under different guidelines are structured in order to reach long term goals.
- (E) The Member States and the Commission should strengthen the development of quantitative common indicators in order to evaluate adequately progress under all four pillars and to underpin the setting of benchmarks and the identification of good practice. The Social Partners should develop appropriate indicators and benchmarks and supporting statistical databases to measure progress in the actions for which they are responsible.

I. IMPROVING EMPLOYABILITY

Tackling youth unemployment and preventing long-term unemployment

In order to influence the trend in youth and long-term unemployment, the Member States will intensify their efforts to develop preventive and employability-oriented strategies, building on the early identification of individual needs; within a period to be determined by each Member State which may not exceed two years and which may be longer in Member States with particularly high unemployment, Member States will ensure that:

1. Every unemployed person is offered a new start before reaching six months of unemployment in the case of young people, and twelve months of unemployment in the case of adults, in the form of training, retraining, work practice, a job, or other employability measure, and, if necessary, with accompanying individual vocational guidance and counselling with a view to effective integration into the labour market.

In order to influence the trend in youth and long-term unemployment, the Member States will intensify their efforts to develop preventive and employability-oriented strategies, building on the early identification of individual needs; within a period to be determined by each Member State which may not exceed two years, Member States will ensure that:

Unchanged

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These preventive and employability measures should be combined with measures to reduce the stock of long term unemployed by promoting their reinsertion in the labour market.

In this context, Member States should pursue the modernisation of their Public Employment Services and their partnership with other service providers so as to make that they can deal with the strategy of prevention and activation in the more effective way.

A more employment friendly approach: benefits, taxes and training systems

Benefit, tax and training systems — where that proves necessary — must be reviewed and adapted to ensure that they actively support the employability of unemployed persons. Moreover, these systems should interact appropriately to encourage the return to the labour market of those inactive persons willing and able to take up a job. Particular attention should be given to promoting incentives for unemployed or inactive people to seek and take up work, as well as measures to upgrade their skills and enhance job opportunities, in particular for those with greatest difficulties.

2. Each Member State will

- review and, where appropriate, reform its benefit and tax system to remove poverty traps, and provide incentives for unemployed or inactive people to seek and take up work
- endeavour to increase significantly the proportion of persons benefiting from active measures to improve their employability with a view to effective integration into the labour market, and will increase, in the light of its starting situation, its per capita expenditure on active measures, taking into account cost effectiveness and the overall budgetary balance.

Developing a policy for active ageing

In-depth changes in the prevailing social attitudes towards older workers, as well as a revision of tax-benefit systems are called for, in order to reach full employment, to help ensure the long-term fairness and sustainability of social security systems, and to make the best use of older workers' experience.

3. Member States will therefore develop policies for active ageing with the aim of enhancing the capacity of and incentives for older workers to remain in the labour force as long as possible, in particular by:

- adopting positive measures to maintain working capacity and skills of older workers, to introduce flexible working arrangements and to raise employers' awareness of the potential of older workers,

In this context, Member States should pursue the modernisation of their Public Employment Services by monitoring progress, setting clear deadlines and providing adequate retraining. Member States should encourage cooperation with other service providers so as to make the strategy of prevention and activation more effective.

Unchanged

- adopting positive measures to maintain working capacity and skills of older workers, to introduce flexible working arrangements, including part-time work to enable gradual retirement on a voluntary basis, and to raise employers' awareness of the potential of older workers,

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- ensuring that older workers have sufficient access to further education and training to allow them to participate on an equal footing in a knowledge-based labour market; and
- reviewing tax and social protection systems with the aim of removing disincentives and creating new incentives for older workers to remain active in the labour market.

Unchanged

Developing skills for the new labour market in the context of Lifelong Learning

Effective and well functioning educational and training systems responsive to labour market needs are key to the development of the knowledge-based economy and to the improvement of the level and quality of employment. They are also crucial to the delivery of lifelong learning to allow for a smooth transition from school to work, lay the foundations for productive human resources equipped with core and specific skills and enable people to adapt positively to social and economic change. The development of an employable labour force involves providing people with the capacity to access and reap the benefits of the knowledge-based society, addressing skill gaps and preventing the erosion of skills resulting from unemployment, non-participation and exclusion throughout the lifecycle.

4. Member States will therefore improve the quality of their education and training systems, as well as the relevant curricula, including the modernisation of apprenticeship systems, and the development of multi-purpose local learning centres, in order to:

4. Member States will therefore increase per capita investment in human resources and improve the quality of their education and training systems, as well as the relevant curricula, including the modernisation and greater effectiveness of apprenticeship systems and of in-work-training, and the development of multi-purpose local learning centres, in order to:

- Equip young people with the basic skills, including IT and language skills, relevant to the labour market and needed to participate in lifelong learning.
- Eradicate illiteracy and reduce substantially the number of young people who drop out of the school system early, in particular by developing appropriate support for young people with learning difficulties. Member States will in this context develop measures aimed at halving by 2010 the number of 18 to 24 year olds with only lower-secondary level education who are not in further education and training.
- Promote conditions to facilitate better access of adults, including those with atypical contracts, to lifelong learning, so as to approach gradually the proportion of adult working-age population (25-64 year olds) participating at any given time in education and training in the best performing Member States, doubling the existing levels by 2005, to reach at least 10 % by 2010.

Unchanged

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- Ensure that their education systems deliver a continuously updated package of core skills.

In order to facilitate mobility and encourage lifelong learning, Member States should improve the recognition of qualifications, acquired knowledge and skills.

5. Member States will aim at developing e-learning for all citizens. In particular, Member States will ensure that all education and training institutions have access to the internet and multimedia resources by the end of 2001 and that all the teachers and trainers concerned are skilled in the use of these technologies by the end of 2002 in order to provide all pupils with a broad digital literacy.

6. Member States will promote measures for unemployed people to acquire or upgrade skills including IT and communication skills, thereby facilitating their access to the labour market and reducing skills gaps. To this end, each Member State will fix a target for active measures involving training offered to the unemployed, thereby aiming at gradually achieving the average of the three most advanced Member States, and at least 20 per cent.

Active policies to develop job matching and to prevent and combat emerging bottlenecks

In all Member States unemployment and exclusion from the labour market coexist with labour shortages in certain sectors, occupations and regions. With the improvement of the employment situation and accelerating pace of technological change, these bottlenecks are increasing. An insufficiency of active policies to prevent and combat emerging labour shortages will harm competitiveness, increase inflationary pressures and keep structural unemployment high.

7. Member States will, as appropriate with the social partners, step up their efforts to identify and prevent emerging bottlenecks, in particular by:

- developing the job-matching capacities of employment services,
- developing policies to prevent skills shortages
- promoting occupational and geographical mobility
- enhancing the functioning of labour markets by improving databases on jobs and learning opportunities, which should be interconnected at European level, making use of modern information technologies and experience already available at European level.

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Combating discrimination and promoting social inclusion by access to employment

Many groups and individuals experience particular difficulties in acquiring relevant skills and in gaining access to, and remaining in, the labour market. This may increase the risk of exclusion. A coherent set of policies which promote social inclusion by supporting the integration of disadvantaged groups and individuals into the world of work, and combat discrimination in access to, and on, the labour market is called for.

8. Each Member State will

- Develop pathways consisting of effective preventive and active policy measures to promote the integration into the labour market of groups and individuals at risk or with a disadvantage, in order to avoid marginalisation, the emergence of 'working poor' and a drift into exclusion.
- Identify and combat discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in access to the labour market and education and training.
- Implement appropriate measures to meet the needs of the disabled, ethnic minorities and migrant workers as regards their integration into the labour market and set national targets for this purpose, in accordance with the national situation.

II. DEVELOPING ENTREPRENEURSHIP AND JOB CREATION

Making it easier to start up and run businesses

The development of new businesses in general, and the contribution to the growth of small and medium-sized enterprises (SMEs) in particular, is essential for job creation and for the expansion of training opportunities for young people. This process must be promoted by encouraging greater entrepreneurial awareness across society and in educational curricula, by providing a clear, stable and predictable set of rules and regulations by improving the conditions for the development of, and access to, risk capital markets. The Member States should also reduce and simplify the administrative and tax burdens on SMEs. These policies should strengthen the prevention of undeclared work.

9. The Member States will give particular attention to reducing significantly the overhead costs and administrative burdens for businesses, in particular when an enterprise is being set up and when hiring additional workers. Also, the Member States should, when designing new regulations, assess their eventual impact on such administrative burdens and overhead costs for businesses.

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10. The Member States will encourage the take up of entrepreneurial activities

- by examining, with the aim of reducing, any obstacles which may exist, especially those within tax and social security regimes, to moving to self-employment and the setting up of small businesses.
- by promoting education for entrepreneurship and self-employment, targeted support services as well as training for entrepreneurs and would-be entrepreneurs.
- by combating undeclared work and encouraging the transformation of such work into regular employment, making use of all relevant means of action, including regulatory measures, incentives and tax and benefit reform, in partnership with the Social Partners.

New opportunities for employment in the knowledge-based society and in services

If the European Union wants to deal successfully with the employment challenge, all possible sources of jobs and new technologies must be exploited effectively. Innovative enterprises must find a supportive environment because they can make an essential contribution to mobilising the job creation potential of the knowledge-based society. A considerable potential exists in particular in the services sector. To this end:

11. The Member States will remove barriers to the provision of services and develop framework conditions to exploit fully the employment potential of the services sector to create more and better jobs, across the full range of traditional and non-traditional services, business-related and personal services. In particular, the employment potential of the knowledge society and the environmental sector should be tapped.

Local action for employment

All actors at the regional and local levels must be mobilised to implement the European Employment Strategy by identifying the potential of job creation at local level and strengthening partnerships to this end.

12. Member States will

- Encourage local and regional authorities to develop strategies for employment in order to exploit fully the possibilities offered by job creation at local level
- Promote partnerships between all actors concerned, including the social partners, in the implementation of such strategies at the local level.

- Promote partnerships between all institutional and social local actors concerned, including the social partners, in the implementation of such strategies at the local level.

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- Promote measures to enhance the competitive development and job creation capacity of the social economy, especially the provision of goods and services linked to needs not yet satisfied by the market, and examine, with the aim of reducing, any obstacles in the way of such measures.

- Strengthen the role of the Public Employment Services at all levels in identifying local employment opportunities and improving the functioning of local labour markets.

Unchanged

Tax reforms for employment and training

It is important to deepen the examination of the employment impact of the tax burden, and make the taxation system more employment friendly by reversing the long-term trend towards higher taxes and charges on labour. Tax reforms must also take into account the need to increase investment in people, by business, public authorities and individuals themselves, in view of the longer term impact on employment and competitiveness.

13. Each Member State will

- set a target, if necessary and taking account of its present level, for gradually reducing the overall tax burden and, where appropriate, set a target for gradually reducing the fiscal pressure on labour and non-wage labour costs, in particular on relatively unskilled and low-paid labour. Such reforms should be undertaken without jeopardising the recovery of public finances or the financial equilibrium of social security systems,
- provide incentives and remove tax obstacles to investment in human resources,
- examine the desirability of using alternative sources of tax revenue, inter alia energy and pollutant emissions, taking into account current market trends, notably in oil markets.

III. ENCOURAGING ADAPTABILITY OF BUSINESSES AND THEIR EMPLOYEES

The opportunities created by the knowledge-based economy and the prospect of an improved level and quality of employment require a consequent adaptation of work organisation and the contribution to the implementation of Lifelong Learning strategies by all actors, including enterprises, in order to meet the needs of workers and employers.

Modernising work organisation

In order to promote the modernisation of work organisation and forms of work, a strong partnership should be developed at all appropriate levels (European, national, sectoral, local and enterprise levels).

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14. The social partners are invited to negotiate and implement at all appropriate levels agreements to modernise the organisation of work, including flexible working arrangements, with the aim of making undertakings productive and competitive, achieving the required balance between flexibility and security, and increasing the quality of jobs. Subjects to be covered may, for example, include the introduction of new technologies, new forms of work (e.g. telework) and working time issues such as the expression of working time as an annual figure, the reduction of working hours, the reduction of overtime, the development of part-time working, and access to career breaks. Within the context of the Luxembourg Process, the social partners are invited to report annually on which aspects of the modernisation of the organisation of work have been covered by the negotiations as well as the status of their implementation and impact on employment and labour market functioning.

15. Member States will, where appropriate with the social partners

— review the existing regulatory framework, and examine proposals for new provisions and incentives to make sure they will contribute to reducing barriers to employment, to facilitate the introduction of modernised work organisation and to helping the labour market adapt to structural change in the economy;

— endeavour to ensure a better application at workplace level of existing health and safety legislation by stepping up and strengthening enforcement, by providing guidance to help enterprises, especially SMEs, to comply with existing legislation, by improving training on occupational health and safety, and by setting target figures for reduction of occupational accidents and diseases in traditional high risk sectors;

— at the same time, taking into account the fact that forms of employment are increasingly diverse, examine the possibility of incorporating in national law more flexible types of contract, and ensure that those working under new flexible contracts enjoy adequate security and higher occupational status, compatible with the needs of business.

Supporting adaptability in enterprises as a component of Lifelong Learning

In order to renew skill levels within enterprises as a key component to lifelong learning:

16. The Social partners are invited, at all relevant levels, to:

— conclude agreements on lifelong learning to facilitate adaptability and innovation, particularly in the field of information and communication technologies. In this context, the conditions for giving every worker the opportunity to achieve information society literacy by 2003 should be established;

15. Member States will, where appropriate in partnership with the social partners or drawing upon agreements negotiated by the social partners,

Unchanged

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- encourage companies to identify and disseminate best practices on lifelong learning and to develop a European award for particularly progressive firms.

IV. STRENGTHENING EQUAL OPPORTUNITIES POLICIES FOR WOMEN AND MEN

Gender-mainstreaming approach

In order to meet the objective of equal opportunity and reach the target of an increased employment rate for women in line with the conclusions of the Lisbon European Council, Member States' policies towards gender equality should be strengthened and should address all relevant conditions influencing women's decisions to take up employment.

Women still face particular problems in gaining access to employment, in career advancement, in earnings and in reconciling professional and family life. It is therefore important, inter alia:

- to ensure that active labour market policies are made available for women in proportion to their share of unemployment;
- to pay particular attention to the gender impact of tax and benefit systems. Wherever tax-benefit structures are identified that impact negatively on women's participation in the labour force, they should be reviewed;
- to pay particular attention to ensuring the application of the principle of equal pay for equal work or work of equivalent value;
- to give particular attention to obstacles which hinder women who wish to set up new businesses or become self-employed;
- to ensure that women are able to benefit positively from flexible forms of work organisation, on a voluntary basis and without loss of job quality.

17. Therefore, the Member States will adopt a gender-mainstreaming approach in implementing the Guidelines across all four pillars:

- developing and reinforcing consultative systems with gender equality bodies
- applying procedures for gender impact assessment under each guideline
- developing indicators to measure progress in gender equality in relation to each guideline.

In order meaningfully to evaluate progress, Member States will need to provide for adequate data collection systems and procedures.

In order meaningfully to evaluate progress, Member States will need to provide for adequate data collection systems and procedures, and ensure a gender breakdown of employment statistics.

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Tackling gender gaps

Member States and the Social Partners should pay attention to the imbalance in the representation of women or men in certain economic sectors and occupations, as well as to the improvement of female career opportunities.

18. Member States will, where appropriate with the Social Partners:

- strengthen their efforts to reduce the gap in unemployment rates between women and men by actively supporting the increased employment of women
- take action to bring about a balanced representation of women and men in all sectors and occupations.
- initiate positive steps to promote equal pay for equal work or work of equal value and to diminish differentials in incomes between women and men: actions to address gender pay gaps are necessary in the public and private sector, and the impact of the policies on gender pay gaps should be identified and addressed.
- consider an increased use of measures for the advancement of women in order to reduce gender gaps.

- actively support the increased employment of women and set national targets to reduce substantially within a period of five years the gap in employment and unemployment rates between women and men.

Unchanged

Reconciling work and family life

Policies on career breaks, parental leave and part-time work, as well as flexible working arrangements which serve the interests of both employers and employees, are of particular importance to women and men. Implementation of the various Directives and social-partner agreements in this area should be accelerated and monitored regularly. There must be an adequate provision of good quality care for children and other dependants in order to support women's and men's entry and continued participation in the labour market. An equal sharing of family responsibilities is crucial in this respect. Those returning to the labour market after an absence may also have outmoded skills, and experience difficulty in gaining access to training. Reintegration of women and men into the labour market after an absence must be facilitated. In order to strengthen equal opportunities,

19. Member States and the social partners will:

- design, implement and promote family-friendly policies, including affordable, accessible and high quality care services for children and other dependants, as well as parental and other leave schemes.
- consider setting a national target, in accordance with their national situation, a national target for increasing the availability of care facilities,
- give specific attention to women, and men, considering a return to the paid workforce after an absence and, to that end, they will examine the means of gradually eliminating the obstacles in the way of such return.

- consider setting, in accordance with their national situation, a national target for increasing the availability of care facilities, aimed at gradually reaching the average level of the three Member States with the best performance.

Unchanged

Proposal for a Council Regulation establishing measures to be applicable in 2001 for the recovery of the stock of cod in the Irish Sea (ICES Division VIIa)

(2001/C 62 E/22)

(Text with EEA relevance)

COM(2000) 745 final — 2000/0292(CNS)

(Submitted by the Commission on 22 November 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) In November 1999, the International Council for the Exploration of the Sea (ICES) indicated that the stock of cod in the Irish Sea (ICES Division VIIa) is at serious risk of collapse;
- (2) The advice from ICES also indicated that quantities of mature cod in the Irish Sea will remain at a very low level during 2000 and 2001;
- (3) 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⁾ as last modified by Regulation (EC) No 660/2000 ⁽²⁾ put in place measures to protect adult cod during the spawning season of 2000;
- (4) During the period of application of these measures, further scientific work has been completed and practical experience has been gained which imply that the precise conditions applicable in 2000 require to be modified for 2001;
- (5) Therefore, conditions similar to those established in 2000 need to be established for 2001;
- (6) In particular, two types of fishing which had previously been prohibited within an area of the Irish Sea are now permitted;
- (7) Furthermore, these types of fishing should be subject to observation and to conditions whereby such activities will cease if the by-catch of cod becomes excessive,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down measures to protect mature cod during their spawning season of 2001 in 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 ⁽³⁾).

Article 2

1. In the period 14 February to 30 April 2001 it shall be prohibited to use any demersal trawl, seine or similar towed net, any gill net, trammel net, tangle net or similar static net or any fishing gear incorporating hooks within that part of ICES Division VIIa enclosed by:

— the east coast of Ireland and the east coast of Northern Ireland and

— straight lines sequentially joining the following geographical coordinates;

a point on the east coast of the Ards peninsula in Northern Ireland at 54°30'N.

54°30'N, 04°50'W

53°15'N, 04°50'W

a point on the east coast of Ireland at 53°15'N.

2. By way of derogation from paragraph 1: within the area and time period referred to therein,

(a) the use of demersal otter trawls shall be permitted provided that no other type of fishing gear is retained on board and that such nets:

(i) are of mesh size either 70 mm to 79 mm or 80 mm to 89 mm and

(ii) are of only one of the permitted mesh size ranges and

(iii) incorporate no individual mesh, irrespective of its position within the net, of mesh size greater than 300 mm and

(iv) are deployed only within an area enclosed by sequentially joining with straight lines the following geographical coordinates:

53°30'N, 05°30'W

53°30'N, 05°20'W

54°20'N, 04°50'W

54°30'N, 05°10'W

⁽¹⁾ OJ L 35, 10.2.2000, p. 10.

⁽²⁾ OJ L 80, 31.3.2000, p. 14.

⁽³⁾ OJ L 365, 31.12.1991, p. 1.

54°30'N, 05°20'W

54°00'N, 05°50'W

54°00'N, 06°10'W

53°45'N, 06°10'W

53°45'N, 05°30'W

53°30'N, 05°30'W.

Furthermore, catches retained on board and taken by demersal otter trawls under these conditions shall not be landed unless their percentage composition complies with conditions laid down in Annex I to Regulation (EC) No 850/98 of 30 March 1998 for the protection of juveniles of marine organisms⁽¹⁾ with respect to towed gears of mesh size range 70 mm to 79 mm.

(b) The use of separator trawls shall be permitted provided that no other type of fishing gear is retained on board and that such nets:

(i) comply with the conditions laid down in subparagraphs (i), (a), (b), (c) and

(ii) are constructed in conformity with the technical details provided in the Annex and

(iii) are deployed only within an area enclosed by straight lines sequentially joining the following geographical coordinates:

53°45'N, 06°00'W

53°45'N, 05°30'W

53°30'N, 05°30'W

53°30'N, 06°00'W

53°45'N, 06°00'W.

Furthermore, whenever the total weight of cod retained on board a fishing vessel deploying under these conditions a separator trawl is greater than 18 % of the weight of the totality of marine organisms retained on board, that vessel shall immediately cease fishing in this area and shall not return to fish in this area until a period of at least 24 hours has elapsed.

(c) The use of semi-pelagic trawls shall be permitted provided that no other type of fishing gear is retained on board and such nets:

(i) are of mesh size equal to or greater than 100 mm

(ii) incorporate at least 500 individual meshes of mesh size at least 300 mm

(iii) are deployed only in the period 14 February to 22 March

(iv) are deployed only within the area enclosed by straight lines sequentially joining the following geographical coordinates:

54°30'N, 05°30'W

54°30'N, 04°50'W

53°15'N, 04°50'W

53°15'N, 05°30'W

54°30'N, 05°30'W.

Furthermore, whenever the total weight of cod retained on board a fishing vessel deploying under these conditions a semi-pelagic trawl is greater than 15 % of the weight of the totality of marine organisms retained on board, that vessel shall immediately cease fishing in this area and shall not return to fish in this area until a period of at least 24 hours has elapsed.

Article 3

The authorities of Member States shall ensure that, on at least 50 fishing voyages, observers shall be present on board fishing vessels deploying either semi-pelagic trawls or separator trawls under the conditions laid down in Article 2.

For fishing activities carried out under the conditions laid down in Article 2, the observers shall record:

(a) The total quantity by weight of all marine organisms caught by each operation of the fishing gear

(b) The total quantity by weight of cod caught by each operation of the fishing gear

(c) The length to the nearest centimetre below the absolute length of each cod caught

(d) The total quantity of all marine organisms landed

(e) The total quantity of cod landed

(f) The length to the nearest centimetre below the absolute length of each cod landed.

Article 4

This Regulation shall enter into force on 14 February 2001.

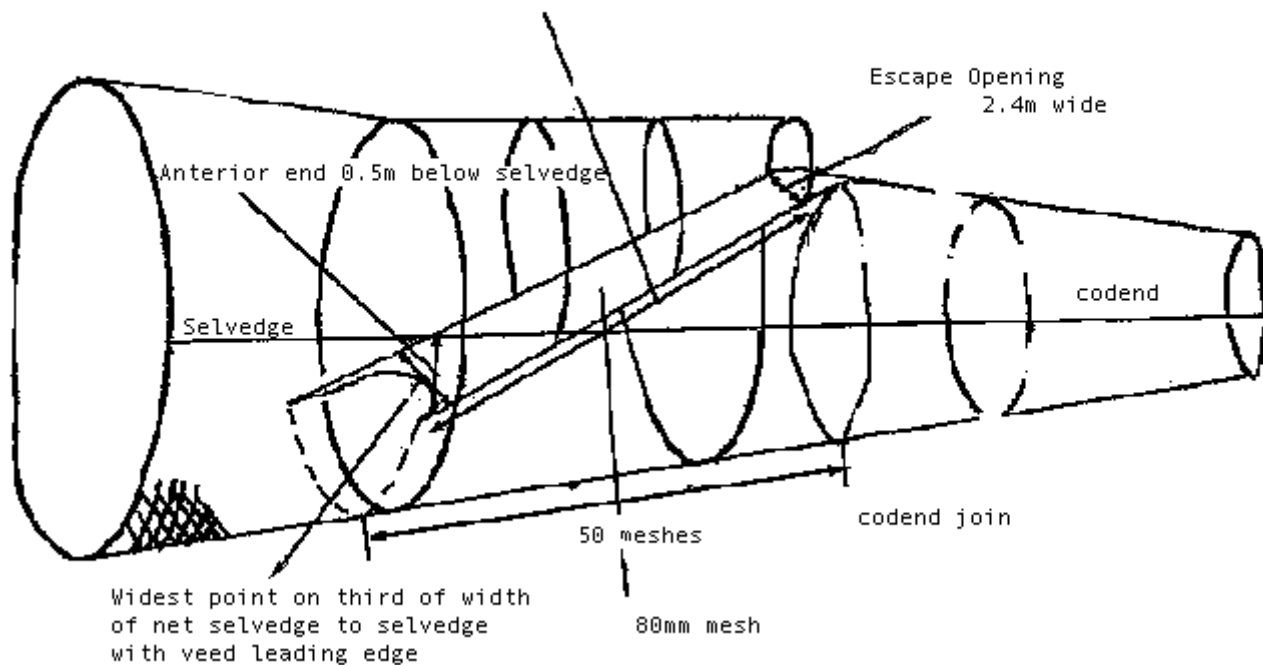
This Regulation shall be binding in its entirety and directly applicable in all Member States.

⁽¹⁾ OJ L 125, 27.4.1998, p. 1.

ANNEX

TECHNICAL DETAILS OF SEPARATOR TRAWL

Panel 3m long at angle of 30 degrees to selvedge



Amended proposal for a Regulation of the European Parliament and of the Council on unbundled access to the local loop ⁽¹⁾

(2001/C 62 E/23)

(Text with EEA relevance)

COM(2000) 761 final — 2000/0185(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 22 November 2000)

⁽¹⁾ OJ C 365 E, 19.12.2000.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

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,

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

Deleted

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

Unchanged

Whereas:

(1) The conclusions of the special European Council of Lisbon of 23 and 24 March 2000 note that, for Europe to fully seize the growth and job potential of the digital, knowledge-based economy, businesses and citizens must have access to an inexpensive, world-class communications infrastructure and a wide range of services. The Member States, together with the Commission, are called upon 'to work towards introducing greater competition in local access networks before the end of 2000 and unbundling the local loop, in order to help bring about a substantial reduction in the costs of using the Internet'. The Feira European Council of 20 June 2000 endorsed the proposed eEurope Action Plan ⁽¹⁾ which identifies unbundled access to the local loop as a short-term priority.

(1a) Local loop unbundling will complement the existing provisions in Community law guaranteeing universal service and affordable access for all citizens in the European Union by enhancing competition, ensuring economic efficiency and bringing maximum benefit to users.

⁽¹⁾ COM(2000) 330 final.

INITIAL PROPOSAL

AMENDED PROPOSAL

(2) The 'local loop' is the physical copper line circuit in the local access network connecting the customer's premises to the operator's local switch, concentrator or equivalent facility. As noted in the Commission's Fifth Report on the implementation of the telecommunications regulatory package ⁽¹⁾, the local access network remains one of the least competitive segments of the liberalised telecommunications market. New entrants do not have wide-spread alternative network infrastructures and are unable, with traditional technologies to match the economies of scale and scope of operators notified as having significant market power in the fixed public telephone network market ('notified operators'). This results from the fact that operators rolled out their old copper local access networks over significant periods of time protected by exclusive rights and were able to fund investment costs through monopoly rents.

(2) The 'local loop' is the physical twisted metallic pair circuit in the fixed public telephone network connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility. As noted in the Commission's Fifth Report on the implementation of the telecommunications regulatory package ⁽¹⁾, the local access network remains one of the least competitive segments of the liberalised telecommunications market. New entrants do not have wide-spread alternative network infrastructures and are unable, with traditional technologies to match the economies of scale and scope of operators notified as having significant market power in the fixed public telephone network market (hereinafter referred to as 'notified operators'). This results from the fact that these operators rolled out their old metallic local access infrastructures over significant periods of time protected by exclusive rights and were able to fund investment costs through monopoly rents.

(3) The European Parliament Resolution of 13 June 2000 on the Commission communication on the 1999 Communications review ⁽²⁾ stresses the importance of enabling the sector to develop infrastructures which promote the growth of electronic communications and e-commerce and the importance of regulating in a way that supports this growth. It notes that the unbundling of the local loop is currently mainly relevant to the copper infrastructure of a dominant entity and that investment in alternative infrastructures must have the possibility of ensuring a reasonable rate of return, since that might facilitate the expansion of these infrastructures in areas where their penetration is still low.

Unchanged

(4) The provision of new loops with high capacity optical fibre directly to major users is a specific market that is developing under competitive conditions with new investments. This Regulation therefore does not address unbundled access to fibre local loops.

(4) The provision of new loops with high capacity optical fibre directly to major users is a specific market that is developing under competitive conditions with new investments. This Regulation therefore addresses access to metallic local loops, without prejudice to national obligations regarding other types of access to local infrastructures.

⁽¹⁾ COM(1999) 537.

⁽²⁾ AS-0145/2000.

⁽¹⁾ COM(1999) 537.

INITIAL PROPOSAL

(5) It would not be economically viable for new entrants to duplicate the incumbent's copper local loop access infrastructure in its entirety and within a reasonable time. Alternative infrastructures such as cable television, satellite, wireless local loops do not generally offer the same functionality or ubiquity.

(6) It is appropriate to mandate unbundled access to the copper local loops only of notified operators. The Commission has already published an initial list of operators of fixed public telephone networks notified by the national regulatory authorities as having significant market power ⁽¹⁾.

AMENDED PROPOSAL

(5) It would not be economically viable for new entrants to duplicate the incumbent's metallic local access infrastructure in its entirety and within a reasonable time. Alternative infrastructures such as cable television, satellite, wireless local loops do not generally offer the same functionality or ubiquity for the time being, though situations in Member States may differ.

(5a) Unbundled access to the local loop allows new entrants to compete with notified operators in offering high bit-rate data transmission services for continuous Internet access and for multimedia applications based on digital subscriber line (DSL) technology as well as voice telephony services. A reasonable request for unbundled access implies that the access is necessary for the provision of the services of the beneficiary, and that refusal of the request would prevent, restrict or distort competition in this sector.

(6) This regulation mandates unbundled access to the metallic local loops only of those network operators that have been designated by the national regulatory authorities as having significant market power in the fixed public telephone network supply network under the relevant Community provisions. Member States have already notified to the Commission the names of those fixed public network operators that have significant market power under Annex I Part 1 of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP), and Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision to voice telephony and on universal service for telecommunications in a competitive environment.

(6a) A notified operator cannot be required to provide types of access which are not within its powers to provide, for example where fulfilment of a request would cause a violation of the legal rights of an independent third party. The obligation to provide unbundled access to the local loop does not imply that notified operators should install entirely new local network infrastructure specifically to meet beneficiaries' requests.

⁽¹⁾ OJ C 112, 23.4.1999, p. 2.

INITIAL PROPOSAL

AMENDED PROPOSAL

- (7) Although commercial negotiation is the preferred method for reaching agreement on technical and pricing issues for local loop access, experience shows that in most cases regulatory intervention is necessary due to imbalance in negotiating power between the new entrant and the notified operator, and lack of other alternatives. Notified operators should provide information and unbundled access to third parties under the same conditions and of the same quality as they provide for their own services or those of their subsidiaries or partners. To this end, the publication by the notified operator of an adequate reference offer for unbundled access to the local loop, within a short time-frame and ideally on Internet, and under the supervisory control of the national regulatory authority, would contribute to creating transparent and non-discriminatory market conditions. In certain circumstances the national regulatory authority may, in accordance with Community law, intervene at its own initiative to impose terms, including pricing rules, designed to ensure interoperability of services, maximise economic efficiency and benefit end-users.
- (8) Costing and pricing rules for local loops and associated facilities (such as collocation and leased transmission capacity) should be transparent, non-discriminatory and be objective to ensure fairness. Pricing rules should ensure that the local loop provider is able to cover its appropriate costs in this regard plus a reasonable return. Pricing rules for local loops should foster fair and sustainable competition and ensure that there is no distortion of competition, in particular no margin squeeze between prices of wholesale and retail services of the notified operator. In this regard, it is considered important that competition authorities be consulted.
- (7) Although commercial negotiation is the preferred method for reaching agreement on technical and pricing issues for local loop access, experience shows that in most cases regulatory intervention is necessary due to imbalance in negotiating power between the new entrant and the notified operator, and lack of other alternatives. In certain circumstances the national regulatory authority may, in accordance with Community law, intervene at its own initiative in order to ensure fair competition, economic efficiency and maximum benefit for end-users. Failure of the notified operator to meet lead times should entitle the beneficiary to receive compensation.
- (8) Costing and pricing rules for local loops and related facilities should be transparent, non-discriminatory and be objective to ensure fairness. Pricing rules should ensure that the local loop provider is able to cover its appropriate costs in this regard plus a reasonable return, in order to ensure the long term development and upgrade of local access infrastructure. Pricing rules for local loops should foster fair and sustainable competition, bearing in mind the need for investment in alternative infrastructures, and ensure that there is no distortion of competition, in particular no margin squeeze between prices of wholesale and retail services of the notified operator. In this regard, it is considered important that competition authorities be consulted.
- (8a) Notified operators should provide information and unbundled access to third parties under the same conditions and of the same quality as they provide for their own services or those of their associated companies or partners. To this end, the publication by the notified operator of an adequate reference offer for unbundled access to the local loop, within a short time-frame and ideally on the Internet, and under the supervisory control of the national regulatory authority, would contribute to the creation of transparent and non-discriminatory market conditions.

INITIAL PROPOSAL

- (9) In Recommendation 2000/417/EC of 25 May 2000 on unbundled access to the local loop: enabling the competitive provision of a full range of electronic communications services including broadband multimedia and high-speed Internet ⁽¹⁾ and the Communication of 26 April 2000 ⁽²⁾, the Commission set out detailed guidance to assist national regulatory authorities on the fair regulation of different forms of unbundled access to the local loop and on the application of existing Community law.
- (10) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objective of achieving a harmonised framework for unbundled access to the local loop in order to enable the competitive provision of an inexpensive, world-class communications infrastructure and a wide range of services for all businesses and citizens in the Community cannot be achieved by the Member States in a secure, harmonised and timely manner and can therefore be better achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

AMENDED PROPOSAL

- (9) In Recommendation 2000/417/EC of 25 May 2000 on unbundled access to the local loop: enabling the competitive provision of a full range of electronic communications services including broadband multimedia and high-speed Internet ⁽¹⁾ and the Communication of 26 April 2000 ⁽²⁾, the Commission set out detailed guidance to assist national regulatory authorities on the fair regulation of different forms of unbundled access to the local loop.
- (10) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objective of achieving a harmonised framework for unbundled access to the local loop in order to enable the competitive provision of an inexpensive, world-class communications infrastructure and a wide range of services for all businesses and citizens in the Community cannot be achieved by the Member States in a secure, harmonised and timely manner and can therefore be better achieved by the Community. The provisions of this Regulation confine themselves to the minimum required in order to achieve those objectives and do not go beyond what is necessary for that purpose. They are adopted without prejudice to national provisions complying with this Regulation which set out more detailed measures, for example dealing with virtual collocation.
- (10a) The provisions of this Regulation complement the regulatory framework for telecommunications, in particular Directives 97/33/EC and 98/10/EC; it is envisaged that the new regulatory framework for electronic communications will include appropriate provisions to replace this Regulation,

HAVE ADOPTED THIS REGULATION:

Unchanged

Article 1

Scope

Aim and scope

1. This Regulation aims at intensifying competition and stimulating technological innovation on the local access market, through the setting of harmonised conditions for unbundled access to the local loop, to foster the competitive provision of a wide range of electronic communications services.

⁽¹⁾ OJ L 156, 29.6.2000, p. 44.

⁽²⁾ COM(2000) 237.

⁽¹⁾ OJ L 156, 29.6.2000, p. 44.

⁽²⁾ COM(2000) 237.

INITIAL PROPOSAL

1. This Regulation shall apply to unbundled access to the local loops of network operators that have been notified to the Commission by the national regulatory authority as having significant market power in the provision of fixed public telephone networks and services in accordance with the relevant Community provisions (hereinafter referred to as 'notified operators')

2. This Regulation shall apply without prejudice to the obligation under the relevant Community provisions for notified operators to comply with the principle of non-discrimination when using the fixed public telephone network to provide high speed access and transmission services to third parties under the same conditions as to its own services.

*Article 2***Definitions**

For the purposes of this Regulation:

(a) 'local loop' means the physical copper line circuit in the local access network connecting the customer's premises to the fixed public telephone network operator's local switch, concentrator or equivalent facility

AMENDED PROPOSAL

This Regulation shall apply to unbundled access to the local loops and related facilities of fixed public telephone network operators that have been designated by the national regulatory authority as having significant market power in the provision of fixed public telephone network in relation to Annex I part 1 to Directive 97/33/EC or Directive 98/10/EC.

2. This Regulation shall apply without prejudice to the obligations for notified operators to comply with the principle of non-discrimination when using the fixed public telephone network to provide high speed access and transmission services to third parties under the same conditions as to its own services or to associated companies, in accordance with Community provisions.

2a. This Regulation is without prejudice to the rights of Member States to maintain or introduce measures in conformity with Community law, that contain more detailed provisions than those set out in this Regulation and/or are outside the scope of this Regulation *inter alia* with respect to other types of access to local infrastructures.

Unchanged

(a) 'notified operator' means operators of fixed public telephone networks that have been designated by their national regulatory authority as having significant market power in the provision of fixed public telephone networks and services under Annex I Part 1 to Directive 97/33/EC or Directive 98/10/EC;

(b) 'beneficiary' means a third party duly authorised in accordance with Directive 97/13/EC or entitled to provide communications services under national legislation, and which is eligible for unbundled access to a local loop;

(a) 'local loop' means the physical twisted metallic pair circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public telephone network;

(aa) 'local sub-loop' means a partial local loop connecting the network termination point at the subscriber's premises to a concentration point or a specified intermediate access point in the fixed public telephone network;

INITIAL PROPOSAL

- (b) 'unbundled access to the local loop' means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the copper local loop;
- (c) 'full unbundled access to the local loop' means the provision of access to the copper local loop of the incumbent operator, in such a way that the new entrant has exclusive use of the full frequency spectrum of the copper line and can offer a full range of voice and data services to end-users;
- (d) 'shared access to the local loop' means the provision of access to the non-voice frequency spectrum of a copper line over which the basic telephone service is being provided to the end-user by the incumbent operator allowing a new entrant to deploy technologies — such as asymmetrical digital subscriber line (ADSL) systems — to provide the end-user with additional services such as high-speed Internet access
- (e) 'collocation' means the provision of physical space and technical conditioning necessary to reasonably accommodate and connect the equipment of a new entrant to access the local loop

*Article 3***Provision of unbundled access**

1. Notified operators shall make available to third parties, by 31 December 2000 at the latest, unbundled access to the local loop, under transparent, fair and non-discriminatory conditions. Notified operators shall provide competitors with the same facilities as they provide to themselves or to their associated companies, and with the same conditions and time-scales

AMENDED PROPOSAL

- (b) 'unbundled access to the local loop' means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the local loop;
- (c) 'full unbundled access to the local loop' means the provision to a beneficiary of access to the local loop or sub-loop of the notified operator authorising the use of the full frequency spectrum of the twisted metallic pair;
- (d) 'shared access to the local loop' means the provision to a beneficiary of access to the local loop or local sub-loop of the notified operator, authorising the use of the non-voice band frequency spectrum of the twisted metallic pair; the local loop continues to be used by the notified operator to provide the telephone service to the public;
- (e) 'collocation' means the provision of physical space and technical facilities necessary to reasonably accommodate and connect the relevant equipment of a beneficiary, as mentioned in section B of the Annex;
- (f) 'related facilities' means the facilities associated with the provision of unbundled access to the local loop, notably collocation, cable connections and relevant information technology systems, access to which is necessary for a beneficiary to provide services on a competitive and fair basis.

Unchanged

1. Notified operators shall publish from 31 December 2000, and keep updated, a reference offer for unbundled access to their local loops and related facilities, which shall include at least the items listed in the Annex. The offer shall be sufficiently unbundled so that the beneficiary does not have to pay for network elements or facilities which are not necessary for the supply of its services, and shall contain a description of the component offerings, associated terms and conditions, including charges.

INITIAL PROPOSAL

2. Notified operators shall provide physical access for third parties to any technically feasible point of the copper local loop or sub-loop where the new entrant can collocate and connect its own network equipment and facilities in order to deliver services to its customer, either in the local switch, concentrator or equivalent facility

3. Notified operators shall publish, by 31 December 2000 at the latest, a reference offer for the unbundled access to the local loops and associated facilities including collocation, sufficiently unbundled, and containing a description of the component offerings and the associated terms and conditions, including prices, taking account of the list in the Annex to Recommendation 2000/417/EC.

Regulatory Supervision

1. For as long as the level of competition in the local access network is insufficient to prevent excessive pricing, national regulatory authorities shall ensure that the prices for unbundled access to the local loop charged by notified operators follow the principle of cost orientation. National regulatory authorities shall be competent where justified to impose changes in the reference offer for the unbundled access to the local loop, including prices. In adopting pricing rules and price decisions on unbundled access to the local loop, national regulatory authorities shall ensure that they foster fair and sustainable competition.

AMENDED PROPOSAL

2. Notified operators shall from 31 December 2000 meet reasonable requests from beneficiaries for unbundled access to their local loops and related facilities, under transparent, fair and non-discriminatory conditions. Requests shall only be refused on the basis of objective criteria, relating to technical feasibility or the need to maintain network integrity. Where access is refused, the aggrieved party may submit the case to the dispute resolution procedure referred to in Article 4(2). Notified operators shall provide beneficiaries with the equivalent facilities as they provide to themselves or to their associated companies, and with the same conditions and time-scales.

2a. Notified operators shall charge prices for unbundled access to the local loop and related facilities set on the basis of cost-orientation. The national regulatory authority shall lift the obligation for prices to be set on the basis of cost-orientation in accordance with Article 4(1c).

Deleted

Article 4

Supervision by the national regulatory authority

1. The national regulatory authority shall ensure that charging for unbundled access to the local loop fosters fair and sustainable competition.

1a. The national regulatory authority shall have the power to:

(a) impose changes on the reference offer for unbundled access to the local loop and related facilities, including prices, where such changes are justified; and

INITIAL PROPOSAL

2. National regulatory authorities shall be competent to resolve Disputes between undertakings concerning issues included in this Regulation, in a prompt, fair and transparent manner.

*Article 5***Entry into force**

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.

AMENDED PROPOSAL

(b) require notified operators to supply information relevant for the implementation of this Regulation.

1b. The national regulatory authority may intervene, where justified, on its own initiative in order to ensure non-discrimination, fair competition, economic efficiency and maximum benefit for users.

1c. When the national regulatory authority determines that the local access market is sufficiently competitive, it shall relieve the notified operators of the obligation laid down in Article 3(2a) for prices to be set on the basis of cost-orientation.

2. Disputes between undertakings concerning issues included in this Regulation shall be subject to the national dispute resolution procedures established in conformity with Directive 97/33/EC and shall be handled promptly, fairly and transparently.

Unchanged

ANNEX

MINIMUM LIST OF ITEMS TO BE INCLUDED IN A REFERENCE OFFER FOR UNBUNDLED ACCESS TO THE LOCAL LOOP TO BE PUBLISHED BY NOTIFIED OPERATORS**A. Conditions for unbundled access to the local loop**

1. Network elements to which access is offered, covering in particular the following elements:
 - access to local loops,
 - access to non-voice band frequency spectrum of a local loop, in the case of shared access to the local loop;
2. Information concerning the locations of physical access sites (Availability of this information may be restricted to only interested parties to avoid concerns on public security), availability of local loops in specific parts of the access network;
3. Technical conditions related to access and use of local loops, including the technical characteristics of the twisted metallic pair in the local loop;
4. Ordering and provisioning procedures, usage restrictions.

B. Collocation services

5. Information on the notified operator's relevant sites (Availability of this information may be restricted to only interested parties to avoid concerns on public security);
6. Collocation options at the sites indicated under point B5 (including physical collocation and, as appropriate, distant collocation and virtual collocation);
7. Equipment characteristics: restrictions, if any, on equipment that can be collocated;
8. Security issues: measures put in place by notified operators to ensure the security of their locations;
9. Access conditions for staff of competitive operators;
10. Safety standards;
11. Rules for the allocation of space where collocation space is limited;
12. Conditions for beneficiaries to inspect the locations at which physical collocation is available, or sites where collocation has been refused on grounds of lack of capacity.

C. Information systems

13. Conditions for access to notified operator's operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing.

D. Supply conditions

14. Lead time for responding to requests for supply of services and facilities; service level agreements, fault resolution, escalation procedures and quality of service parameters;
 15. Standard contract terms, including, where appropriate, compensation provided for failure to meet lead times;
 16. Prices or pricing formulae for each feature, function and facility listed above.
-

Proposal for a Council Framework Decision on combating trafficking in human beings

(2001/C 62 E/24)

COM(2000) 854 final/2 — 2001/0024(CNS)

(Submitted by the Commission on 22 January 2001)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29, 31(e) and 34(2)(b) thereof,

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Action Plan of the Council and the Commission on how to best implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice⁽¹⁾, the Tampere European Council on 15-16 October 1999, the Santa Maria da Feira European Council on 19-20 June 2000, the Commission in the Scoreboard⁽²⁾ and the European Parliament in its Resolution of 19 May 2000⁽³⁾ indicate or call for legislative action against trafficking in human beings, including common definitions, incriminations and sanctions.
- (2) The Joint Action of 24 February 1997 concerning action to combat trafficking in human beings and the sexual exploitation of children⁽⁴⁾ needs to be followed by further legislative action addressing the divergence of legal approaches in the Member States and contributing to the development of an efficient judicial and law enforcement cooperation against trafficking in human beings.
- (3) Trafficking in human beings constitute serious violations of fundamental human rights and human dignity and involves ruthless practices such as the abuse and deception of vulnerable persons, as well as the use of violence, threats, debt bondage and coercion.
- (4) The important work performed by international organisations, in particular the UN, must be complemented by that of the European Union.

⁽¹⁾ OJ C 19, 23.1.1999.

⁽²⁾ COM(2000) 167 final, p. 2.4, Management of migration flows and p. 4.3 Fight against certain forms of crime.

⁽³⁾ A5-0127/2000.

⁽⁴⁾ OJ L 63, 4.3.1997.

(5) It is necessary that the serious criminal offence trafficking in human beings be addressed by a comprehensive approach in which constituent elements of criminal law common to all Member States, including effective, proportionate and dissuasive sanctions, form an integral part together with the widest possible judicial cooperation; in accordance with the principles of subsidiarity and proportionality this Framework Decision confines itself to the minimum required in order to achieve those objectives at European level and does not go beyond what is necessary for that purpose.

(6) It is necessary to introduce sanctions on perpetrators sufficiently severe to allow for trafficking in human beings to be included within the scope of instruments already adopted for the purpose of combating organised crime such as the 98/699/JHA Joint Action⁽⁵⁾ on money laundering, the identification, tracing, freezing, seizing and confiscation of the instrumentalities and the proceeds from crime and the 98/733/JHA Joint Action⁽⁶⁾ on making it a criminal offence to participate in a criminal organisation.

(7) This Framework Decision should contribute to the fight against and prevention of trafficking in human beings by complementing the instruments adopted by the Council such as the 96/700/JHA Joint Action⁽⁷⁾ establishing an incentive and exchange programme for combating trade in human beings and sexual exploitation of children (STOP), the 96/748/JHA Joint Action⁽⁸⁾ extending the mandate given to the Europol Drugs Unit, the Decision of the Council and the European Parliament 293/2000/EC⁽⁹⁾ on the Daphne programme on preventive measures to fight violence against children, young persons and women, the Joint Action 98/428/JHA⁽¹⁰⁾ on the creation of a European Judicial Network, the Joint Action 96/277/JHA⁽¹¹⁾, concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union and the Joint Action 98/427/JHA⁽¹²⁾ on good practice in mutual legal assistance in criminal matters,

⁽⁵⁾ OJ L 333, 9.12.1998, p. 1.

⁽⁶⁾ OJ L 351, 29.12.1998, p. 1.

⁽⁷⁾ OJ L 322, 12.12.1996.

⁽⁸⁾ OJ L 342, 31.12.1996.

⁽⁹⁾ OJ L 34, 9.2.2000.

⁽¹⁰⁾ OJ L 191, 7.7.1998, p. 4.

⁽¹¹⁾ OJ L 105, 27.4.1996.

⁽¹²⁾ OJ L 191, 7.7.1998.

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Offences concerning trafficking in human beings for the purpose of labour exploitation

Each Member State shall take the necessary measures to ensure that the recruitment, transportation or transfer of a person, including harbouring and subsequent reception and the exchange of control over him or her is punishable, where the fundamental rights of that person have been and continue to be suppressed for the purpose of exploiting him or her in the production of goods or provision of services in infringement of labour standards governing working conditions, salaries and health and safety, and:

- (a) use is made of coercion, force or threats, including abduction, or
- (b) use is made of deceit or fraud, or
- (c) there is a misuse of authority, influence or pressure, or
- (d) there is another form of abuse.

Article 2

Offences concerning trafficking in human beings for the purpose of sexual exploitation

Each Member State shall take the necessary measures to ensure that the recruitment, transportation or transfer of a person, including harbouring and subsequent reception and the exchange of control over him or her is punishable, where the purpose is to exploit him or her in prostitution or in pornographic performances or in production of pornographic material, and:

- (a) use is made of coercion, force or threats, including abduction, or
- (b) use is made of deceit or fraud, or
- (c) there is a misuse of authority, influence or pressure, or
- (d) there is another form of abuse.

Article 3

Instigation, aiding, abetting, and attempt

Each Member State shall take the necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Articles 1 and 2 is punishable.

Article 4

Penalties and aggravating circumstances

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 1, 2, and 3 is punishable by effective, proportionate and dissuasive penalties,

including by terms of imprisonment with a maximum penalty that is not less than six years.

2. Without prejudice to additional definitions in national legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 1, 2, and 3 is punishable by terms of imprisonment with a maximum penalty that is not less than ten years when:

- it involves particular ruthlessness, or
- it generates substantial proceeds, or
- it is committed within the framework of a criminal organisation.

Article 5

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for an offence referred to in Article 1, 2 and 3, committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person, or
- (b) an authority to take decisions on behalf of the legal person, or
- (c) an authority to exercise control within the legal person.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 have rendered possible the commission of an offence referred to in Articles 1, 2, and 3 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in an offence referred to in Articles 1, 2, and 3.

4. For the purpose of this Framework Decision legal person shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations.

Article 6

Sanctions on legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid, or
- (b) temporary or permanent disqualification from the practice of commercial activities, or
- (c) placing under judicial supervision, or
- (d) a judicial winding-up order, or
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 7

Jurisdiction and prosecution

1. Each Member State shall take the necessary measures to establish its jurisdiction over an offence referred to in Articles 1, 2, and 3 where:
 - (a) the offence is committed in whole or in part within its territory, or
 - (b) the offender is one of its nationals, or
 - (c) the offence is committed for the benefit of a legal person established in the territory of that Member State.
2. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(b) and 1(c) as far as the offence is committed outside its territory.
3. A Member State which, under its laws, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over and to prosecute, where appropriate, an offence referred to in Articles 1, 2, and 3 when it is committed by its own nationals outside its territory.
4. Member States shall inform the General Secretariat of the Council and the Commission accordingly where they decide to apply paragraph 2, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

Article 8

Victims

Each Member State shall ensure that a victim of an offence provided for in this Framework Decision is given adequate legal protection and standing in judicial proceedings. In particular Member States shall ensure that criminal investigations and judicial proceedings do not cause any additional damage for a victim.

Article 9

Cooperation between Member States

1. In accordance with the applicable conventions, multi-lateral or bilateral agreements or arrangements, Member States shall afford each other mutual assistance to the widest extent possible in respect of judicial proceedings relating to the offences provided for in this Framework Decision.
2. Where several Member States have jurisdiction over the offences envisaged by this Framework Decision, those States shall consult one another with a view to coordinating their action in order to prosecute effectively. Appropriate use shall be made of existing cooperation mechanisms, such as the liaison magistrates and the European Judicial Network.
3. For the purpose of exchange of information relating to the offences referred to in Articles 1, 2, and 3, Member States shall establish operational points of contact or make use of existing cooperation mechanisms. In particular, Member States shall ensure that Europol, within the limits of its mandate, is fully involved.
4. Each Member State shall inform the General Secretariat of the Council and the Commission of its appointed point of contact for the purpose of exchanging information pertaining to trafficking in human beings. The General Secretariat shall inform all other Member States about the appointed points of contact.

Article 10

Implementation

1. Member States shall take the necessary measures to comply with this Framework Decision on 31 December 2002 at the latest.
2. By the same date, the Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. The Council will, by 30 June 2004 at the latest, on the basis of a report established on the basis of this information and a written report transmitted by the Commission, assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

Article 11

Repeal of the 97/154/JHA Joint Action

The Joint Action of 24 February adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children 1997 is repealed by this Framework Decision.

Article 12

Entry into force

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

Proposal for a Council Framework Decision on combating the sexual exploitation of children and child pornography

(2001/C 62 E/25)

COM(2000) 854 final/2 — 2001/0025(CNS)

(Submitted by the Commission on 22 January 2001)

THE COUNCIL OF THE EUROPEAN UNION,

framework decision establishing minimum rules relating to the constituent elements of these criminal acts.

Having regard to the Treaty on European Union, and in particular Articles 29, 31(e) and 34(2)(b) thereof,

(4) Sexual exploitation of children and child pornography constitute serious violations of human rights and of the fundamental right of a child to a harmonious upbringing and development.

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament,

(5) Child pornography, a particularly serious form of sexual exploitation of children, is increasing and spreading through the use of new technologies and the Internet.

Whereas:

(1) The Action Plan of the Council and the Commission on how to best implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice ⁽¹⁾, the conclusions from the Tampere European Council, the Commission in the Scoreboard ⁽²⁾, the European Parliament in its Legislative Resolution of 11 April 2000 ⁽³⁾, include or call for legislative action against sexual exploitation of children and child pornography, including common definitions, incriminations and sanctions.

(6) The important work performed by international organisations must be complemented by that of the European Union.

(2) The Joint Action of 24 February 1997 concerning action to combat trafficking in human beings and the sexual exploitation of children ⁽⁴⁾ and the Council Decision to combat child pornography on the Internet ⁽⁵⁾ need to be followed by further legislative action addressing the divergence of legal approaches in the Member States and contributing to a further development of an efficient judicial and law enforcement cooperation against sexual exploitation of children and child pornography.

(7) It is necessary that the serious criminal offences sexual exploitation of children and child pornography be addressed by a comprehensive approach in which constituent elements of criminal law, common to all Member States, including effective, proportionate and dissuasive sanctions, form an integral part together with the widest possible judicial cooperation; in accordance with the principles of subsidiarity and proportionality this Framework Decision confines itself to the minimum required in order to achieve those objectives at European level and does not go beyond what is necessary for that purpose.

(3) The European Parliament in its resolution of 30 March 2000 ⁽⁶⁾ on the Commission Communication on the implementation of measures to combat child sex tourism ⁽⁷⁾ reiterates that child sex tourism is a criminal act closely linked to those of sexual exploitation of children and of child pornography, requiring the Commission to submit to the Council a proposal for a

(8) It is necessary to introduce sanctions on perpetrators sufficiently severe to allow for sexual exploitation of children and child pornography to be included within the scope of instruments already adopted for the purpose of combating organised crime such as the 98/699/JHA Joint Action ⁽⁸⁾ on money laundering, the identification, tracing, freezing, seizing and confiscation of the instrumentalities and the proceeds from crime and the 98/733/JHA Joint Action ⁽⁹⁾ on making it a criminal offence to participate in a criminal organisation.

⁽¹⁾ OJ C 19, 23.1.1999.

⁽²⁾ COM(2000) 167 final, p. 4.3 (Fight against certain forms of crime).

⁽³⁾ A5-0090/2000.

⁽⁴⁾ OJ L 63, 4.3.1997.

⁽⁵⁾ OJ L 138, 9.6.2000, p. 1.

⁽⁶⁾ A5-0052/2000.

⁽⁷⁾ COM(1999) 262.

⁽⁹⁾ This Framework Decision is without prejudice to the powers of the European Community.

⁽⁸⁾ OJ L 333, 9.12.1998, p. 1.

⁽⁹⁾ OJ L 351, 29.12.1998, p. 1.

(10) This Framework Decision should contribute to the fight against sexual exploitation of children and child pornography by complementing the instruments adopted by the Council, such as the 96/700/JHA Joint Action ⁽¹⁾ establishing an incentive and exchange programme for combating trade in human beings and sexual exploitation of children (STOP), the 96/748/JHA Joint Action ⁽²⁾ extending the mandate given to the Europol Drugs Unit, the Decision of the Council and the European Parliament 293/2000/EC ⁽³⁾ on the Daphne programme on preventive measures to fight violence against children, young persons and women, the Joint Action 98/428/JHA ⁽⁴⁾ on the creation of a European Judicial Network, the Action Plan against illegal and harmful content on the Internet ⁽⁵⁾; the Joint Action 96/277/JHA ⁽⁶⁾, concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union and the Joint Action 98/427/JHA ⁽⁷⁾ on good practice in mutual legal assistance in criminal matters,

- (a) coercing, exploiting, inducing, profiting from or otherwise facilitating the prostitution of a child;
- (b) engaging a child in sexual conduct, where:
 - (i) use is made of inducement or coercion, violence or threats, or
 - (ii) money, other items of economic value or other forms of remuneration, is given to a child in exchange for sexual services, or
 - (iii) use is made of authority or influence over the child's vulnerability.

Article 3

Offences concerning child pornography

1. Each Member State shall take the necessary measures to ensure that the following intentional conduct, whether undertaken by means of a computer system or not, is punishable:

- (a) production of child pornography, or
- (b) distribution, dissemination, or transmission of child pornography, or
- (c) offering or otherwise making child pornography available, or
- (d) acquisition and possession of child pornography.

2. Each Member State shall also take the necessary measures to ensure, without prejudice to definitions otherwise provided for in this Framework Decision, that the conduct referred to in paragraph 1 is punishable when involving pornographic material that visually represents a child engaged in sexually explicit conduct, unless it is established that the person representing a child was over the age of eighteen years at the time of the depiction.

Article 4

Instigation, aiding, abetting and attempt

1. Each Member State shall take the necessary measures to ensure that the instigation of, aiding or abetting an offence referred to in Articles 2 and 3 is punishable.

2. Each Member State shall take the necessary measures to ensure that attempt to commit the conduct referred to in Articles 2 and 3(1)(a) to (c) are punishable.

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this Framework Decision:

- (a) 'child' shall mean any person below the age of eighteen years;
- (b) 'child pornography' shall mean pornographic material that visually depicts a child engaged in sexually explicit conduct;
- (c) 'computer system' shall mean any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;
- (d) 'legal person' shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations

Article 2

Offences concerning sexual exploitation of children

Each Member State shall take the necessary measures to ensure that the following conduct is punishable:

- ⁽¹⁾ OJ L 322, 12.12.1996.
- ⁽²⁾ OJ L 342, 31.12.1996.
- ⁽³⁾ OJ L 34, 9.2.2000.
- ⁽⁴⁾ OJ L 191, 7.7.1998, p. 1.
- ⁽⁵⁾ OJ L 33, 6.2.1999.
- ⁽⁶⁾ OJ L 105, 27.4.1996.
- ⁽⁷⁾ OJ L 191, 7.7.1998.

*Article 5***Penalties and aggravating circumstances**

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2, 3(1)(a) to (c) and Article 4 is punishable by effective, proportionate and dissuasive penalties, including by terms of imprisonment with a maximum penalty that is not less than four years and, as regards an offence referred to in Article 3(1)(d) not less than one year.

2. Without prejudice to additional definitions in the Member State's legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2(a) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than eight years when:

- it involves a child below the age of ten years, or
- it involves particular ruthlessness, or
- it generates substantial proceeds, or
- it is committed within the framework of a criminal organisation.

3. Without prejudice to additional definitions in the Member State's legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2(b) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than eight years when:

- it involves a child below the age of ten years, or
- it involves particular ruthlessness.

4. Without prejudice to additional definitions in the Member State's legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 3(1)(a) to (c) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than eight years when:

- it involves depictions of a child below the age of ten years, or
- it involves depictions of a child being exposed to violence or force, or
- it generates substantial proceeds, or
- it is committed within the framework of a criminal organisation.

5. Each Member State shall also consider prohibiting natural persons from exercising, temporarily or permanently, activities related to the supervision of children where they have been convicted of an offence referred to in Articles 2, 3, or 4.

*Article 6***Liability of legal persons**

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 2, 3, and 4 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person, or
- (b) an authority to take decisions on behalf of the legal person, or
- (c) an authority to exercise control within the legal person.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 have rendered possible the commission of an offence referred to in Articles 2, 3, and 4 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in offences referred to in Articles 2, 3, and 4.

*Article 7***Sanctions on legal persons**

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:

- (a) exclusion from entitlement to public benefits or aid, or
- (b) temporary or permanent disqualification from the practice of commercial activities, or
- (c) placing under judicial supervision, or
- (d) a judicial winding-up order, or
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

*Article 8***Jurisdiction and prosecution**

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 2, 3, and 4 where:

- (a) the offence is committed in whole or in part within its territory; or
- (b) the offender is one of its nationals; or
- (c) the offence is committed for the benefit of a legal person established in the territory of that Member State.

2. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(b) and 1(c) as far as the offence is committed outside its territory.

3. A Member State which, under its laws, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over and to prosecute, where appropriate, an offence referred to in Articles 2, 3, and 4 when it is committed by its own nationals outside its territory.

4. Member States shall inform the General Secretariat of the Council and the Commission accordingly where they decide to apply paragraph 2, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

5. For the purpose of establishing jurisdiction over an offence referred to in Article 3, the offence shall be considered to be committed in whole or in part within its territory where the offence is committed by means of a computer system accessed from its territory, whether or not the computer system itself is on its territory.

*Article 9***Victims**

Each Member State shall ensure that a victim of an offence provided for in this Framework Decision is given the adequate legal protection and the standing in judicial proceedings. In particular Member State's shall ensure that criminal investigations and judicial proceedings do not cause any additional damage for a victim.

*Article 10***Cooperation between Member States**

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

2. Where several Member States have jurisdiction over of the offences envisaged by this Framework Decision, those States shall consult one another with a view to coordinating their action in order to prosecute effectively. Appropriate use shall be made of existing cooperation mechanisms, such as the liaison magistrates and the European Judicial Network.

3. For the purpose of exchange of information relating to the offences referred to in Articles 2, 3, and 4, and in accordance with data protection rules, Member States shall establish operational points of contact or make use of existing cooperation mechanisms. In particular, Member States shall ensure that Europol, within the limits of its mandate, and the communicated points of contact under the Council Decision to combat child pornography are fully involved.

4. Each Member State shall inform the General Secretariat of the Council and the Commission of its appointed point of contact for the purpose of exchanging information relating sexual exploitation of children and child pornography. The General Secretariat shall inform all other Member States about the appointed points of contact.

*Article 11***Implementation**

1. Member States shall take the necessary measures to comply with this Framework Decision on 31 December 2002 at the latest.

2. By the same date, the Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national legislation, the obligations imposed on them under this Framework Decision. The Council will, by 30 June 2004 at the latest, on the basis of a report established on the basis of this information and a written report transmitted by the Commission, assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

*Article 12***Entry into force**

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