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[1] Text with EEA relevance

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II

(Preparatory Acts)

COMMISSION

Amended proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation [1]

(2002/C 227 E/01)

(Text with EEA relevance)

COM(2002) 30 final — 2000/0069(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 4 February 2002)

[1] OJ C 311 E, 31.10.2000, p. 13.

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 80(2) thereof,	
Having regard to the proposal from the Commission,	
Having regard to the opinion of the Economic and Social Committee,	
Having regard to the opinion of the Committee of the Regions,	
Acting in accordance with the procedure laid down in Article 251 of the Treaty,	
Whereas:	
(1) Council Regulation (EEC) No 3922/91 [1] provides for common safety standards listed in Annex II to that Regulation with respect to the design, manufacturing, operation and maintenance of aircraft, as well as persons and organisations involved in those tasks. Those harmonised safety standards apply to all aircraft operated by Community operators whether registered in a Member State or in a third country. Article 4(1) of that Regulation requires the Council to adopt common technical requirements and administrative procedures on the basis of Article 80(2) of the Treaty for the fields not listed in Annex II to the Regulation.	
(2) Article 9 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers [2] provides that the granting and validity at any time of an operating licence is to be dependent upon the possession of a valid Air Operator Certificate specifying the activities covered by the operating licence and complying with the criteria established in the relevant Council Regulation. It is now appropriate to establish such criteria.	

[1] OJ L 373, 31.12.1991, p. 4, as last amended by Commission Regulation (EC) No 2871/2000 (OJ L 333, 29.12.2000, p. 47).

[2] OJ L 240, 24.8.1992, p. 1.

INITIAL PROPOSAL	AMENDED PROPOSAL
(3) The Joint Aviation Authority (JAA) has adopted a set of harmonised rules for commercial air transportation by aeroplane, called JAR-OPS 1. JAR-OPS 1 (Change 1 of 1 March 1998) provides for the level of safety required for this type of operation and therefore constitutes a good basis for Community law, covering the operation of aeroplanes. Changes had to be made to this text in order to bring it into conformity with Community legislation and policies, account being taken of its numerous implications in the economic and social field. The revised text differs from JAR-OPS 1 and cannot therefore be introduced into Community law by a simple reference to its title in Annex II to Regulation (EEC) No 3922/91. A new Annex III containing the necessary requirements should therefore be added to that Regulation.	(3) The Joint Aviation Authority (JAA) has adopted a set of harmonised rules for commercial air transportation by aeroplane, called JAR-OPS 1. JAR-OPS 1 (Amendment 2 of 1 July 2000) provides for the level of safety required for this type of operation and therefore constitutes a good basis for Community law, covering the operation of aeroplanes. Changes had to be made to this text in order to bring it into conformity with Community legislation and policies, account being taken of its numerous implications in the economic and social field. The revised text differs from JAR-OPS 1 and cannot therefore be introduced into Community law by a simple reference to its title in Annex II to Regulation (EEC) No 3922/91. A new Annex III containing the necessary requirements should therefore be added to that Regulation.
(4) Air operators should be given sufficient flexibility to address unforeseen urgent operational circumstances, or operational needs of a limited duration, or to demonstrate that they can achieve an equivalent level of safety by means other than the application of the common rules in Annex III. The same kind of flexibility is also necessary in the application of other JARs listed in Annex II to Regulation (EEC) No 3922/91. Member States should therefore be empowered to grant exemptions to the common technical requirements and administrative procedures. Such exemptions could, in certain cases, undermine the common safety requirements or create distortions in the market, and their scope should therefore be strictly limited and their granting subject to the appropriate Community control. In that respect, the Commission should be empowered to take safeguard measures.	Unchanged
(5) The provisions of Regulation (EEC) No 3922/91 concerning the committee procedure Committee procedure should be adapted to take account 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]).	(5) The provisions of Regulation (EEC) No 3922/91 concerning the committee procedure should be adapted to take account 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]).
(6) Regulation (EEC) No 3922/91 should therefore be amended accordingly,	Unchanged
HAVE ADOPTED THIS REGULATION:	

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

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

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 1	
Regulation (EEC) No 3922/91 is amended as follows:	
1. Article 1(1) is replaced by the following:	
'1. This Regulation shall apply to the harmonisation of technical requirements and administrative procedures in the field of civil aviation safety as listed in Annex II and Annex III, and in particular with respect to:	
(a) the design, manufacture, operation and maintenance of aircraft,	
(b) persons and organisations involved in these tasks.'	
2. Article 3 is replaced by the following:	
'*Article 3*	
1. Without prejudice to Article 11, the common technical requirements and administrative procedures applicable in the Community with regard to the fields listed in Annex II shall be the relevant codes referred to in that Annex and in force on 1 January 1992.	
2. Without prejudice to Article 11, the common technical requirements and administrative procedures applicable in the Community with regard to commercial transportation by aeroplane shall be those specified in Annex III.'	
3. Article 4(1) is replaced by the following:	
'1. With regard to the fields not covered by Annexes II or III, the Council shall adopt common technical requirements and administrative procedures on the basis of Article 80(2) of the Treaty. The Commission shall, where appropriate and as soon as possible, submit suitable proposals in these fields.'	
4. Article 8 is replaced by the following:	
'*Article 8*	
1. The provisions in Articles 3 to 7 shall not prevent a Member State from reacting immediately to a safety problem which involves a product, a person or a body subject to the provisions of this Regulation. In such a case the Member States shall notify to the Commission and to the other Member States the measures taken and the reasons therefor.	1. The provisions in Articles 3 to 7 shall not prevent a Member State from reacting immediately to a safety problem which involves a product, a person or a body subject to the provisions of this Regulation.
	If the safety problem results from an inadequate level of safety provided by the common technical requirements and administrative procedures, or shortcomings in the common technical requirements and administrative procedures, the Member State shall immediately inform the Commission and the other Member States of the measures taken and the reasons therefor.

INITIAL PROPOSAL	AMENDED PROPOSAL
2. The Commission shall decide, in accordance with the procedure referred to in Article 12(2), whether an inadequate level of safety or a shortcoming in the common technical requirements and administrative procedures justifies the continuing application of the measures adopted pursuant to paragraph 1 of this Article. In such case, it shall also take the necessary steps to amend the related common technical requirements and administrative procedures in accordance with Article 4 or Article 11. If the Member State's measures are found not to be justified, the Member State shall revoke the measures in question.	2. The Commission shall decide, in accordance with the procedure referred to in Article 12(2), whether an inadequate level of safety or a shortcoming in the common technical requirements and administrative procedures justifies the continuing application of the measures adopted pursuant to paragraph 1 of this Article. In such case, it shall also take the necessary steps to amend the common technical requirements and administrative procedures concerned in accordance with Article 4 or Article 11. If the Member State's measures are found not to be justified, the Member State shall revoke the measures in question.
3. Member States may grant exemptions from the technical requirements and administrative procedures specified by this Regulation in the case of unforeseen urgent operational circumstances or operational needs of a limited duration. In these cases the Commission and the other Member States shall be informed as soon as possible of the exemptions granted.	3. Member States may grant exemptions from the technical requirements and administrative procedures specified by this Regulation in the case of unforeseen urgent operational circumstances or operational needs of a limited duration. The Commission and the other Member States shall be informed of the exemptions granted as soon as these are of a repetitive nature, or if they have been granted for a period of time greater than two months.
4. the Commission shall decide on safeguard measures in accordance with the procedure referred to in Article 12a(2that exemptions granted in accordance with paragraph 3 of this Article do not comply with the general safety objectives of this Regulation or any other rule of Community law. In such a case the Member State shall revoke the exemption.	4. When the Commission and the other Member States are informed of exemptions granted by a Member State in accordance with paragraph 3 of this Article, the Commission shall examine whether the exemptions comply with the safety objectives of this Regulation or any other rule of Community law. If it finds that the exemptions granted do not comply with the safety objectives of this Regulation or any other rule of Community law the Commission shall decide on safeguard measures in accordance with the procedure referred to in Article 12a. Unchanged
5. In circumstances where a safety level equivalent to that attained by the application of the common technical requirements and administrative procedures included in Annexes I, II and III to this Regulation can be achieved by other means, Member States may, without discrimination on grounds of nationality of the applicants and having regard to the need not to distort competition, grant approval derogating from these provisions. In such cases the Member State concerned shall notify the Commission before granting such approval and give reasons demonstrating the need to derogate from the common technical requirements and administrative procedures, as well as the conditions foreseen to ensure an equivalent level of safety is achieved.	5. In cases where a safety level equivalent to that attained by the application of the common technical requirements and administrative procedures included in Annexes I, II and III to this Regulation can be achieved by other means, Member States may, without discrimination on grounds of nationality of the applicants and having regard to the need not to distort competition, grant approval derogating from these provisions. In such cases the Member State concerned shall notify the Commission of its intention to grant such approval and the conditions foreseen to ensure an equivalent level of safety is achieved.

INITIAL PROPOSAL	AMENDED PROPOSAL
6. The Commission, following the procedure referred to in Article 12(2), shall decide whether an approval proposed in accordance with paragraph 5 of this Article presents an equivalent level of safety and can be granted.	6. The Commission shall, within a period of 3 months following the notification by a Member State in accordance with the provisions of paragraph 5, initiate the procedure referred to in Article 12(2) in order to decide whether the approval proposed meets the conditions laid down in paragraph 5 and can be granted.
In such a case it shall notify its decision to all Member States which shall also be entitled to apply that measure. The relevant provisions of Annexes II and III may also be amended to reflect such a measure.	In such a case it shall notify its decision to all Member States which shall then also be entitled to apply that measure. The relevant provisions of Annexes II and III may also be amended to reflect such a measure.
The provisions of Articles 6(1) and 7 shall apply to the measure in question.'	Unchanged
5. Article 11(1) is replaced by the following:	
'1. The Commission, following the procedure referred to in Article 12(2), shall make the amendments necessitated by scientific and technical progress to the common technical requirements and administrative procedures listed in the Annexes.'	
6. In Article 12, paragraphs 2 and 3 are replaced by the following:	
'2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Council Decision 1999/468/EC (*) shall apply, in compliance with Articles 7 and 8 thereof.	
3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.	
(*) OJ L 184, 17.7.1999, p. 23.'	
	7. The following Article 12a is inserted:
	'*Article 12a*
	Where reference is made to this Article, the safeguard procedure laid down in Article 6 of Decision 1999/468/EC shall apply.
	Before adopting its decision, the Commission shall consult the committee established by Article 12(1).
	The period provided for in Article 6(b) of Decision 1999/468/EC shall be three months.
	When a Commission decision is referred to the Council by a Member State, the Council, acting by a qualified majority, may take a different decision within a period of three months.'

INITIAL PROPOSAL	AMENDED PROPOSAL
8. The text in the Annex to this Regulation is added as Annex III.	Unchanged
Article 2	
This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.	
	Without prejudice to the provisions of Article 11 of Regulation (EEC) No 3922/91 as amended by this Regulation Annex III shall apply with effect from [six months after entry into force of this Regulation].
This Regulation shall be binding in its entirety and directly applicable in all Member States.	Unchanged

ANNEX

'ANNEX III

COMMON TECHNICAL REQUIREMENTS AND ADMINISTRATIVE PROCEDURES APPLICABLE TO COMMERCIAL TRANSPORTATION BY AIRCRAFT

OPS 1: Commercial Air Transportation (Aeroplanes) Unchanged

Contents (General layout)

INITIAL PROPOSAL	AMENDED PROPOSAL
SUBPART A	
APPLICABILITY	
OPS 1.001	
Applicability	
(See Appendix 1 to OPS 1.001)	
(a) OPS Part 1 prescribes requirements applicable to the operation of any civil aeroplane for the purpose of commercial air transportation by any operator whose principal place of business and, if any, its registered office is in a Member State, thereafter called operator. OPS 1 does not apply to aeroplanes when used in military, customs and police services.	OPS Part 1 prescribes requirements applicable to the operation of any civil aeroplane for the purpose of commercial air transportation by any operator whose principal place of business and, if any, registered office is in a Member State, hereafter called operator. OPS 1 does not apply to aeroplanes when used in military, customs and police services.
(b) The requirements in OPS Part 1 are applicable:	Deleted
1. For operators of aeroplanes over 10 tonnes Maximum Take-Off Mass or a maximum approved passenger seating configuration of 20 or more, or with mixed fleets of aeroplanes above and below this discriminant, no later than ... unless otherwise indicated.	
2. For operators of all other aeroplanes, no later than ... unless otherwise indicated.	
Appendix 1 to OPS 1.001	Unchanged
Late compliance dates contained in OPS 1	
Some of the provisions included in OPS 1 have dates of compliance which are later than the applicability date of OPS 1. The provisions where this is the case, and the associated later dates of compliance, are as follows:	
— OPS 1.470 (f) ...	Deleted
— OPS 1.652 "Notes" ...	
— OPS 1.652 (m) ...	
— OPS 1.665 (a)(2) ...	
— OPS 1.668 (a)(1) ...	
— OPS 1.668 (a)(2)	— OPS 1.668 (2) 1.1.2005
— OPS 1.670 (a)(3) ...	Deleted
— OPS 1.685	— OPS 1.685 1.4.2002
— OPS 1.705 (a) ...	Deleted
— OPS 1.725 (a) ...	
— OPS 1.780 (a) ...	
— OPS 1.805 (a)(2) ...	
— OPS 1.805 (c)(2) ...	

INITIAL PROPOSAL	AMENDED PROPOSAL
SUBPART B **GENERAL**	Unchanged
OPS 1.005 **General**	
(a) An operator shall not operate an aeroplane for the purpose of commercial air transportation other than in accordance with OPS Part 1.	
(b) An operator shall comply with any airworthiness requirements applicable to aeroplanes operated for the purpose of commercial air transportation.	
(c) Each aeroplane shall be operated in compliance with the terms of its Certificate of Airworthiness and within the approved limitations contained in its Aeroplane Flight Manual.	
OPS 1.010 **Exemptions**	
Subject to the applicable common review procedures the Authority may exceptionally and temporarily grant an exemption from the provisions of OPS Part 1 when satisfied that there is a need and subject to compliance with any supplementary condition the Authority considers necessary in order to ensure an acceptable level of safety in the particular case.	
OPS 1.015 **Operational Directives**	
(a) Subject to the applicable common review procedures the Authority may direct by means of an Operational Directive that an operation shall be prohibited, limited or subject to certain conditions, in the interests of safe operations.	
(b) Operational Directives state:	
1. The reason for issue;	
2. Applicability and duration; and	
3. Action required by the operator(s).	
(c) Operational Directives are supplementary to the provisions of OPS Part 1.	

INITIAL PROPOSAL	AMENDED PROPOSAL

OPS 1.020

Laws, regulations and procedures — Operator's responsibilities

An operator must ensure that:

1. All employees are made aware that they shall comply with the laws, regulations and procedures of those States in which operations are conducted and which are pertinent to the performance of their duties; and

2. All crew members are familiar with the laws, regulations and procedures pertinent to the performance of their duties.

OPS 1.025

Common language

(a) An operator must ensure that all crew members can communicate in a common language.

(b) An operator must ensure that all operations personnel are able to understand the language in which those parts of the Operations Manual which pertain to their duties and responsibilities are written.

OPS 1.030

Minimum equipment lists — Operator's responsibilities

(a) An operator shall establish, for each aeroplane, a Minimum Equipment List (MEL) approved by the Authority. This shall be based upon, but no less restrictive than, the relevant Master Minimum Equipment List (MMEL) (if this exists) accepted by the Authority.

(b) An operator shall not operate an aeroplane other than in accordance with the MEL unless permitted by the Authority. Any such permission will in no circumstances permit operation outside the constraints of the MMEL.

OPS 1.035

Quality System

(a) An operator shall establish one Quality System and designate one Quality Manager to monitor compliance with, and adequacy of, procedures required to ensure safe operational practices and airworthy aeroplanes. Compliance monitoring must include a feed-back system to the Accountable Manager (See also OPS 1.175 (h)) to ensure corrective action as necessary.

(b) The Quality System must include a Quality Assurance Programme that contains procedures designed to verify that all operations are being conducted in accordance with all applicable requirements, standards and procedures.

(c) The Quality System, and the Quality Manager, must be acceptable to the Authority.

INITIAL PROPOSAL	AMENDED PROPOSAL
(d) The Quality System must be described in relevant documentation.	
(e) Notwithstanding sub-paragraph (a) above, the Authority may accept the nomination of two Quality Managers, one for operations and one for maintenance provided that the operator has designated one Quality Management Unit to ensure that the Quality System is applied uniformly throughout the entire operation.	
OPS 1.037	
Accident prevention and flight safety programme	
An operator shall establish an accident prevention and flight safety programme, which may be integrated with the Quality System, including:	
1. A programme to achieve and maintain risk awareness by all persons involved in operations; and	
2. Evaluation of relevant information relating to accidents and incidents and the promulgation of related information.	
OPS 1.040	OPS 1.040
Additional crew members	**Crew members**
An operator shall ensure that crew members who are not required flight or cabin crew members have also been trained in, and are proficient to perform, their assigned duties.	(a) An operator shall ensure that all operating flight and cabin crew members have been trained in, and are proficient to perform, their assigned duties.
	(b) Where there are crew members, other than cabin crew members, who carry out their duties in the passenger compartment of an aeroplane, an operator shall ensure that these
	1. are not confused by the passengers with the cabin crew members;
	2. do not occupy cabin crew stations;
	3. do not impede the cabin crew members in their duties.
OPS 1.050	Unchanged
Search and rescue information	
An operator shall ensure that essential information pertinent to the intended flight concerning search and rescue services is easily accessible on the flight deck.	

INITIAL PROPOSAL

AMENDED PROPOSAL

OPS 1.055

Information on emergency and survival equipment carried

An operator shall ensure that there are available for immediate communication to rescue coordination centres, lists containing information on the emergency and survival equipment carried on board all of his aeroplanes. The information shall include, as applicable, the number, colour and type of life-rafts and pyrotechnics, details of emergency medical supplies, water supplies and the type and frequencies of emergency portable radio equipment.

OPS 1.060

Ditching

An operator shall not operate an aeroplane with an approved passenger seating configuration of more than 30 passengers on overwater flights at a distance from land suitable for making an emergency landing, greater than 120 minutes at cruising speed, or 400 nautical miles, whichever is the lesser, unless the aeroplane complies with the ditching requirements prescribed in the applicable airworthiness code.

OPS 1.065

Carriage of weapons of war and munitions of war

(a) An operator shall not transport weapons of war and munitions of war by air unless an approval to do so has been granted by all States concerned.

(b) An operator shall ensure that weapons of war and munitions of war are:

1. Stowed in the aeroplane in a place which is inaccessible to passengers during flight; and

2. In the case of firearms, unloaded,

unless, before the commencement of the flight, approval has been granted by all States concerned that such weapons of war and munitions of war may be carried in circumstances that differ in part or in total from those indicated in this sub-paragraph.

(c) An operator shall ensure that the commander is notified before a flight begins of the details and location on board the aeroplane of any weapons of war and munitions of war intended to be carried.

OPS 1.070

Carriage of sporting weapons and ammunition

(a) An operator shall take all reasonable measures to ensure that any sporting weapons intended to be carried by air are reported to him.

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) An operator accepting the carriage of sporting weapons shall ensure that they are: 1. Stowed in the aeroplane in a place which is inaccessible to passengers during flight unless the Authority has determined that compliance is impracticable and has accepted that other procedures might apply; and 2. In the case of firearms or other weapons that can contain ammunition, unloaded. (c) Ammunition for sporting weapons may be carried in passengers' checked baggage, subject to certain limitations, in accordance with the Technical Instructions (see OPS 1.1160 (b)(5)) as defined in OPS 1.1150 (a)(14).	
OPS 1.075 **Method of carriage of persons** An operator shall take all reasonable measures to ensure that no person is in any part of an aeroplane in flight which is not a part designed for the accommodation of persons unless temporary access has been granted by the commander to any part of the aeroplane: 1. For the purpose of taking action necessary for the safety of the aeroplane or of any person, animal or goods therein; or 2. In which cargo or stores are carried, being a part which is designed to enable a person to have access thereto while the aeroplane is in flight.	
	OPS 1.080 **Offering dangerous goods for transport by air** An operator shall take all reasonable measures to ensure that no person offers or accepts dangerous goods for transport by air unless the person has been trained and the goods are properly classified, documented, certificated, described, packaged, marked, labelled and in a fit condition for transport as required by the Technical Instructions.
OPS 1.085 **Crew responsibilities** (a) A crew member shall be responsible for the proper execution of his duties that: 1. Are related to the safety of the aeroplane and its occupants; and 2. Are specified in the instructions and procedures laid down in the Operations Manual.	Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) A crew member shall:	
1. Report to the commander any incident that has endangered, or may have endangered, safety; and	
2. Make use of the operator's incident reporting schemes in accordance with OPS 1.420. In all such cases, a copy of the report(s) shall be communicated to the commander concerned.	
(c) A crew member shall not perform duties on an aeroplane:	
1. While under the influence of any drug that may affect his faculties in a manner contrary to safety;	1. While under the influence of any drug that the authority considers may affect his faculties in a manner contrary to safety;
2. Following deep sea diving except when a reasonable time period has elapsed;	Unchanged
3. Following blood donation except when a reasonable time period has elapsed;	
4. If he is in any doubt of being able to accomplish his assigned duties; or	4. If applicable medical requirements are not fulfilled, or if he is in any doubt of being able to accomplish his assigned duties; or
5. If he knows or suspects that he is suffering from fatigue, or feels unfit to the extent that the flight may be endangered.	Unchanged
(d) A crew member shall not:	(d) A crew member shall be subject to appropriate requirements on the consumption of alcohol which shall be established by the operator and acceptable by the Authority, and which shall not be less restrictive than the following:
1. Consume alcohol less than 8 hours prior to the specified reporting time for flight duty or the commencement of standby;	1. No alcohol shall be consumed less than 8 hours prior to the specified reporting time for flight duty or the commencement of standby;
2. Commence a flight duty period with a blood alcohol level in excess of 0-2 promille;	2. The blood alcohol level shall not exceed 0-2 promille at the start of a flight duty period;
3. Consume alcohol during the flight duty period or whilst on standby.	3. No alcohol shall be consumed during the flight duty period or whilst on standby.
(e) The commander shall:	Unchanged
1. Be responsible for the safe operation of the aeroplane and safety of its occupants during flight time;	
2. Have authority to give all commands he deems necessary for the purpose of securing the safety of the aeroplane and of persons or property carried therein;	
3. Have authority to disembark any person, or any part of the cargo, which, in his opinion, may represent a potential hazard to the safety of the aeroplane or its occupants;	

INITIAL PROPOSAL	AMENDED PROPOSAL
4. Not allow a person to be carried in the aeroplane who appears to be under the influence of alcohol or drugs to the extent that the safety of the aeroplane or its occupants is likely to be endangered;	
5. Have the right to refuse transportation of inadmissible passengers, deportees or persons in custody if their carriage poses any risk to the safety of the aeroplane or its occupants;	
6. Ensure that all passengers are briefed on the location of emergency exits and the location and use of relevant safety and emergency equipment;	
7. Ensure that all operational procedures and check lists are complied with in accordance with the Operations Manual;	
8. Not permit any crew member to perform any activity during take-off, initial climb, final approach and landing except those duties required for the safe operation of the aeroplane;	
9. Not permit:	
(i) A flight data recorder to be disabled, switched off or erased during flight nor permit recorded data to be erased after flight in the event of an accident or an incident subject to mandatory reporting;	
(ii) A cockpit voice recorder to be disabled or switched off during flight unless he believes that the recorded data, which otherwise would be erased automatically, should be preserved for incident or accident investigation nor permit recorded data to be manually erased during or after flight in the event of an accident or an incident subject to mandatory reporting;	
10. Decide whether or not to accept an aeroplane with unserviceabilities allowed by the CDL or MEL; and	
11. Ensure that the pre-flight inspection has been carried out.	
(f) The pilot-in-command shall, in an emergency situation that requires immediate decision and action, take any action he considers necessary under the circumstances. In such cases he may deviate from rules, operational procedures and methods in the interest of safety.	(f) The commander shall, in an emergency situation that requires immediate decision and action, take any action he considers necessary under the circumstances. In such cases he may deviate from rules, operational procedures and methods in the interest of safety.
OPS 1.090	Unchanged
Authority of the commander	
An operator shall take all reasonable measures to ensure that all persons carried in the aeroplane obey all lawful commands given by the commander for the purpose of securing the safety of the aeroplane and of persons or property carried therein.	

INITIAL PROPOSAL

AMENDED PROPOSAL

OPS 1.100

Admission to flight deck

(a) An operator must ensure that no person, other than a flight crew member assigned to a flight, is admitted to, or carried in, the flight deck unless that person is:

1. An operating crew member;

2. A representative of the Authority responsible for certification, licensing or inspection if this is required for the performance of his official duties; or

3. Permitted by, and carried in accordance with instructions contained in the Operations Manual.

(b) The commander shall ensure that:

1. In the interests of safety, admission to the flight deck does not cause distraction and/or interfere with the flight's operation; and

2. All persons carried on the flight deck are made familiar with the relevant safety procedures.

(c) The final decision regarding the admission to the flight deck shall be the responsibility of the commander.

OPS 1.105

Unauthorised carriage

An operator shall take all reasonable measures to ensure that no person secretes himself or secretes cargo on board an aeroplane.

OPS 1.110

Portable electronic devices

An operator shall not permit any person to use, and take all reasonable measures to ensure that no person does use, on board an aeroplane a portable electronic device that can adversely affect the performance of the aeroplane's systems and equipment.

OPS 1.115

Alcohol and drugs

An operator shall not permit any person to enter or be in, and take all reasonable measures to ensure that no person enters or is in, an aeroplane when under the influence of alcohol or drugs to the extent that the safety of the aeroplane or its occupants is likely to be endangered.

INITIAL PROPOSAL	AMENDED PROPOSAL
OPS 1.120	
Endangering safety	
An operator shall take all reasonable measures to ensure that no person recklessly or negligently acts or omits to act	
1. so as to endanger an aeroplane or person therein;	
2. so as to cause or permit an aeroplane to endanger any person or property.	
OPS 1.125	
Documents to be carried	
(a) An operator shall ensure that the following documents or copies thereof are carried on each flight:	
1. Certificate of Registration;	
2. Certificate of Airworthiness;	
3. Noise Certificate (if applicable);	
4. Air Operator Certificate;	
5. Aircraft Radio Licence; and	
6. Third party liability Insurance Certificate(s).	
(b) Each flight crew member shall, on each flight, carry a valid flight crew licence with appropriate rating(s) for the purpose of the flight.	
	(c) Each operating cabin crew member shall, on each flight, carry a valid attestation of professional competence showing the dates and content of the training received appropriate to the aeroplane type or variant to be operated.
OPS 1.130	Unchanged
Manuals to be carried	
An operator shall ensure that:	
1. The current parts of the Operations Manual relevant to the duties of the crew are carried on each flight;	
2. Those parts of the Operations Manual which are required for the conduct of a flight are easily accessible to the crew on board the aeroplane; and	
3. The current Aeroplane Flight Manual is carried in the aeroplane unless the Authority has accepted that the Operations Manual prescribed in OPS 1.1045, Appendix 1, Part B contains relevant information for that aeroplane.	

INITIAL PROPOSAL

AMENDED PROPOSAL

OPS 1.135

Additional information and forms to be carried

(a) An operator shall ensure that, in addition to the documents and manuals prescribed in OPS 1.125 and OPS 1.130, the following information and forms, relevant to the type and area of operation, are carried on each flight:

1. Operational Flight Plan containing at least the information required in OPS 1.1060;
2. Aeroplane Technical Log containing at least the information required in OPS 1.915 (a);
3. Details of the filed ATS flight plan;
4. Appropriate NOTAM/AIS briefing documentation;
5. Appropriate meteorological information;
6. Mass and balance documentation as specified in Subpart J;
7. Notification of special categories of passenger such as security personnel, if not considered as crew, handicapped persons, inadmissible passengers, deportees and persons in custody;
8. Notification of special loads including dangerous goods including written information to the commander as prescribed in OPS 1.1215 (d);
9. Current maps and charts and associated documents as prescribed in OPS 1.290 (b)(7);
10. Any other documentation which may be required by the States concerned with this flight, such as cargo manifest, passenger manifest etc; and
11. Forms to comply with the reporting requirements of the Authority and the operator.

(b) The Authority may permit the information detailed in sub-paragraph (a) above, or parts thereof, to be presented in a form other than on printed paper. An acceptable standard of accessibility, usability and reliability must be assured.

OPS 1.140

Information retained on the ground

(a) An operator shall ensure that:

At least for the duration of each flight or series of flights;

(i) Information relevant to the flight and appropriate for the type of operation is preserved on the ground; and

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(ii) The information is retained until it has been duplicated at the place at which it will be stored in accordance with OPS 1.1065; or, if this is impracticable,

(iii) The same information is carried in a fireproof container in the aeroplane.

(b) The information referred to in subparagraph (a) above includes:

1. A copy of the operational flight plan where appropriate;

2. Copies of the relevant part(s) of the aeroplane technical log;

3. Route specific NOTAM documentation if specifically edited by the operator;

4. Mass and balance documentation if required (OPS 1.625 refers); and

5. Special loads notification.

OPS 1.145

Power to inspect

An operator shall ensure that any person authorised by the Authority is permitted at any time to board and fly in any aeroplane operated in accordance with an AOC issued by that Authority and to enter and remain on the flight deck provided that the commander may refuse access to the flight deck if, in his opinion, the safety of the aeroplane would thereby be endangered.

OPS 1.150

Production of documentation and records

(a) An operator shall:

1. Give any person authorised by the Authority access to any documents and records which are related to flight operations or maintenance; and

2. Produce all such documents and records, when requested to do so by the Authority, within a reasonable period of time.

(b) The commander shall, within a reasonable time of being requested to do so by a person authorised by an Authority, produce to that person the documentation required to be carried on board.

OPS 1.155

Preservation of documentation

An operator shall ensure that:

1. Any original documentation, or copies thereof, that he is required to preserve is preserved for the required retention period even if he ceases to be the operator of the aeroplane; and

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2. Where a crew member, in respect of whom an operator has kept flight duty, duty and rest period records, becomes a crew member for another operator, that record is made available to the new operator.

OPS 1.160

Preservation, production and use of flight recorder recordings

(a) *Preservation of recordings*

1. Following an accident, the operator of an aeroplane on which a flight recorder is carried shall, to the extent possible, preserve the original recorded data pertaining to that accident, as retained by the recorder for a period of 60 days unless otherwise directed by the investigating authority.

2. Unless prior permission has been granted by the Authority, following an incident that is subject to mandatory reporting, the operator of an aeroplane on which a flight recorder is carried shall, to the extent possible, preserve the original recorded data pertaining to that incident, as retained by the recorder for a period of 60 days unless otherwise directed by the investigating authority.

3. Additionally, when the Authority so directs, the operator of an aeroplane on which a flight recorder is carried shall preserve the original recorded data for a period of 60 days unless otherwise directed by the investigating authority.

4. When a flight data recorder is required to be carried aboard an aeroplane, the operator of that aeroplane shall:

(i) Save the recordings for the period of operating time as required by OPS 1.715, 1.720 and 1.725 except that, for the purpose of testing and maintaining flight data recorders, up to one hour of the oldest recorded material at the time of testing may be erased; and

(ii) Keep a document which presents the information necessary to retrieve and convert the stored data into engineering units.

(b) *Production of recordings*

The operator of an aeroplane on which a flight recorder is carried shall, within a reasonable time after being requested to do so by the Authority, produce any recording made by a flight recorder which is available or has been preserved.

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(c) *Use of recordings*	
1. The cockpit voice recorder recordings may not be used for purposes other than for the investigation of an accident or incident subject to mandatory reporting except with the consent of all crew members concerned. 2. The flight data recorder recordings may not be used for purposes other than for the investigation of an accident or incident subject to mandatory reporting except when such records are: (i) Used by the operator for airworthiness or maintenance purposes only; or (ii) De-identified; or (iii) Disclosed under secure procedures.	The operator of an aeroplane on which a flight recorder is carried may not: 1. Use the cockpit voice recorder recordings for purposes other than for the investigation of an accident or incident subject to mandatory reporting except with the consent of all crew members concerned; and 2. Use the flight data recorder recordings for purposes other than for the investigation of an accident or incident subject to mandatory reporting except when such records are: (i) Used by the operator for airworthiness or maintenance purposes only; or (ii) De-identified; or (iii) Disclosed under secure procedures.
OPS 1.165	Unchanged
Leasing	
(a) *Terminology* Terms used in this paragraph have the following meaning: 1. Dry lease — Is when the aeroplane is operated under the AOC of the lessee. 2. Wet lease — Is when the aeroplane is operated under the AOC of the lessor.	
(b) *Leasing of aeroplanes between operators* 1. Wet lease-out. An operator providing an aeroplane and complete crew to another operator, and retaining all the functions and responsibilities prescribed in Subpart C, shall remain the operator of the aeroplane. 2. All leases except wet lease-out (i) Except as provided by subparagraph (b)(1) above, an operator utilising an aeroplane from, or providing it to, another operator, must obtain prior approval for the operation from his respective Authority. Any conditions which are part of this approval must be included in the lease agreement. (ii) Those elements of lease agreements which are approved by the Authority, other than lease agreements in which an aeroplane and complete crew are involved and no transfer of functions and responsibilities is intended, are all to be regarded, with respect to the leased aeroplane, as variations of the AOC under which the flights will be operated.	

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(c) *Leasing of aeroplanes between an operator and any entity other than another operator*	
1. Dry lease-in	
(i) An operator shall not dry lease-in an aeroplane from an entity other than another operator, unless approved by the Authority. Any conditions which are part of this approval must be included in the lease agreement.	
(ii) An operator shall ensure that, with regard to aeroplanes that are dry leased-in, any differences from the requirements prescribed in Subparts K, L, and/or from any applicable airworthiness requirements, are notified to and are acceptable to the Authority.	
2. Wet lease-in	
(i) An operator shall not wet lease-in an aeroplane from an entity other than another operator without the approval of the Authority.	
(ii) An operator shall ensure that, with regard to aeroplanes that are wet leased-in:	
(A) The safety standards of the lessor with respect to maintenance and operation are equivalent to JARs;	
(B) The lessor is an operator holding an AOC issued by a State which is a signatory to the Chicago Convention:	
(C) The aeroplane has a standard Certificate of Airworthiness issued in accordance with ICAO Annex 8; and	
(D) Any requirement made applicable by the lessee's Authority is complied with.	
3. Dry lease-out	
An operator may dry lease-out an aeroplane for the purpose of commercial air transportation to any operator of a State which is signatory to the Chicago Convention provided that the following conditions are met:	
(A) The Authority has exempted the operator from the relevant provisions of OPS Part 1 and, after the foreign regulatory authority has accepted responsibility in writing for surveillance of the maintenance and operation of the aeroplane(s), has removed the aeroplane from its AOC; and	
(B) The aeroplane is maintained according to an approved maintenance programme.	

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4. Wet lease-out An operator providing an aeroplane and complete crew to another entity and retaining all the functions and responsibilities prescribed in Subpart C, shall remain the operator of the aeroplane.	
SUBPART C **OPERATOR CERTIFICATION AND SUPERVISION**	
OPS 1.175 **General rules for Air Operator Certification**	
Note 1: Appendix 1 to this paragraph specifies the contents and conditions of the AOC.	
Note 2: Appendix 2 to this paragraph specifies the management and organisation requirements.	
(a) An operator shall not operate an aeroplane for the purpose of commercial air transportation otherwise than under, and in accordance with, the terms and conditions of an Air Operator Certificate (AOC).	
(b) An applicant for an AOC, or variation of an AOC, shall allow the Authority to examine all safety aspects of the proposed operation.	
(c) An applicant for an AOC must: 1. Not hold an AOC issued by another Authority unless specifically approved by the Authorities concerned; 2. Have his principal place of business and, if any, his registered office located in the State responsible for issuing the AOC; 3. Satisfy the Authority that he is able to conduct safe operations.	
(d) If an operator has aeroplanes registered in different Member States, appropriate arrangements shall be made to ensure that safety oversight is conducted centrally by the Authority issuing the AOC.	
(e) An operator shall grant the Authority access to his organisation and aeroplanes and shall ensure that, with respect to maintenance, access is granted to any associated JAR-145 maintenance organisation, to determine continued compliance with OPS.	(e) An operator shall grant the Authority access to his organisation and aeroplanes and shall ensure that, with respect to maintenance, access is granted to any associated JAR-145 maintenance organisation, to determine continued compliance with OPS 1.

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(f) An AOC will be varied, suspended or revoked if the Authority is no longer satisfied that the operator can maintain safe operations.	Unchanged
(g) The operator must have a management organisation capable of exercising operational control and supervision over any flight operated under the terms of its AOC.	
(h) The operator must have nominated an accountable manager acceptable to the Authority who has corporate authority for ensuring that all operations and maintenance activities can be financed and carried out to the standard required by the Authority.	
(i) The operator must have nominated post holders, acceptable to the Authority, who are responsible for, 1. Flight operations; 2. The maintenance system; 3. Crew training; and 4. Ground operations.	
(j) The operator must ensure that every flight is conducted in accordance with the provisions of the Operations Manual.	
(k) The operator must arrange appropriate ground handling facilities to ensure the safe handling of its flights.	
(l) The operator must ensure that its aeroplanes are equipped and its crews are qualified, as required for the area and type of operation.	
(m) The operator must comply with the maintenance requirements, in accordance with Subpart M, for all aeroplanes operated under the terms of its AOC.	
(n) The operator must provide the Authority with a copy of the Operations Manual, as specified in Subpart P and all amendments or revisions to it.	
(o) The operator must maintain operational support facilities at the main operating base, appropriate for the area and type of operation.	

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OPS 1.180	
Issue, variation and continued validity of an AOC	
(a) An operator will not be granted an AOC, or a variation to an AOC, and that AOC will not remain valid unless:	
1. Aeroplanes operated have a standard Certificate of Airworthiness issued in accordance with ICAO Annex 8 by a Member State.	1. Aeroplanes operated have been certified in accordance with the applicable requirements.
2. The maintenance system has been approved by the Authority in accordance with Subpart M; and	Unchanged
3. He has satisfied the Authority that he has the ability to:	
(i) Establish and maintain an adequate organisation;	
(ii) Establish and maintain a quality system in accordance with OPS 1.035;	
(iii) Comply with required training programmes;	
(iv) Comply with maintenance requirements, consistent with the nature and extent of the operations specified, including the relevant items prescribed in OPS 1.175 (g) to (o); and	
(v) Comply with OPS 1.175.	
(b) Notwithstanding the provisions of OPS 1.185 (f), the operator must notify the Authority as soon as practicable of any changes to the information submitted in accordance with sub-paragraph (a) above.	(b) Notwithstanding the provisions of OPS 1.185 (f), the operator must notify the Authority as soon as practicable of any changes to the information submitted in accordance with OPS 1.185(a) below.
(c) If the Authority is not satisfied that the requirements of subparagraph (a) above have been met, the Authority may require the conduct of one or more demonstration flights, operated as if they were commercial air transport flights.	Unchanged
OPS 1.185	
Administrative requirements	
(a) An operator shall ensure that the following information is included in the initial application for an AOC and, when applicable, any variation or renewal applied for:	
1. The official name and business name, address and mailing address of the applicant;	
2. A description of the proposed operation;	
3. A description of the management organisation;	
4. The name of the accountable manager;	

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5. The names of major post holders, including those responsible for flight operations, the maintenance system, crew training and ground operations together with their qualifications and experience; and	
6. The Operations Manual.	
(b) In respect of the operator's maintenance system only, the following information must be included in the initial application for an AOC and, when applicable, any variation or renewal applied for, and for each aeroplane type to be operated:	
1. The maintenance management exposition;	1. The operator's maintenance management exposition;
2. The operator's aeroplane maintenance programme(s);	Unchanged
3. The aeroplane technical log;	
4. Where appropriate, the technical specification(s) of the maintenance contract(s) between the operator and any JAR-145 approved maintenance organisation;	
5. The number of aeroplanes.	
(c) The application for an initial issue of an AOC must be submitted at least 90 days before the date of intended operation except that the Operations Manual may be submitted later but not less than 60 days before the date of intended operation.	
(d) The application for the variation of an AOC must be submitted at least 30 days, or as otherwise agreed, before the date of intended operation.	
(e) The application for the renewal of an AOC must be submitted at least 30 days, or as otherwise agreed, before the end of the existing period of validity.	
(f) Other than in exceptional circumstances, the Authority must be given at least 10 days prior notice of a proposed change of a nominated post holder.	
Appendix 1 to OPS 1.175	
Contents and conditions of the Air Operator Certificate	
An AOC specifies the:	
(a) Name and location (main place of business) of the operator;	(a) Name and location (principal place of business) of the operator;
(b) Date of issue and period of validity;	Unchanged
(c) Description of the type of operations authorised;	

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(d) Type(s) of aeroplane(s) authorised for use;

(e) Registration markings of the authorised aeroplane(s) except that operators may obtain approval for a system to inform the Authority about the registration markings for aeroplanes operated under its AOC;

(f) Authorised areas of operation;

(g) Special limitations; and

(h) Special authorisations/approvals e.g.:

— CAT II/CAT III (including approved minima)

— (MNPS) Minimum Navigation Performance Specifications

— (ETOPS) Extended Range Operation Twin Engined Aeroplanes

— (RNAV) Area Navigation

— (RVSM) Reduced Vertical Seperation Minima

— Transportation of Dangerous Goods.

Appendix 2 to OPS 1.175

The management and organisation of an AOC holder

(a) *General*

1. An operator must have a sound and effective management structure in order to ensure the safe conduct of air operations. Nominated post holders must have proven competency in civil aviation.

2. In the context of this Appendix, "competency" means that an individual has a technical qualification and managerial experience acceptable to the Authority, as appropriate.

(b) *Nominated post holders*

1. A description of the functions and the responsibilities of the nominated post holders, including their names, must be contained in the Operations Manual and the Authority must be given notice in writing of any intended or actual change in appointments or functions.

2. The operator must make arrangements to ensure continuity of supervision in the absence of nominated post holders.

3. The operator must satisfy the Authority that the management organisation is suitable and properly matched to the operating network and scale of operation.

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4. A person nominated as a post holder by the holder of an AOC must not be nominated as a post holder by the holder of any other AOC, unless acceptable to the Authority. Nominated post holders must be contracted to work sufficient hours such that the individual can fulfil the management functions associated with the size and scope of the operator's business.

5. More than one of the nominated posts may be filled by one person if acceptable to the Authority.

Note: The requirements relating to the appointment of the nominated post holder responsible for the maintenance system in accordance with OPS 1.175 (i)(2) are prescribed in OPS 1.895.

(c) *Adequacy and supervision of staff*

1. Crew members

The operator must employ sufficient flight and cabin crew for the planned operation, trained and checked in accordance with Subpart N and Subpart O as appropriate.

2. Ground Staff

(i) The number of ground staff is dependent upon the nature and the scale of operations. Operations and ground handling departments, in particular, must be staffed by trained personnel who have a thorough understanding of their responsibilities within the organisation.

(ii) An operator contracting other organisations to provide certain services, retains responsibility for the maintenance of proper standards. In such circumstances, a nominated post holder must be given the task of ensuring that any contractor employed meets the required standards.

3. Supervision

(i) The number of supervisors to be appointed is dependent upon the structure of the operator and the number of staff employed. The duties and responsibilities of these supervisors must be defined, and any flying commitments arranged so that they can discharge their supervisory responsibilities.

(ii) The supervision of all crew members must be exercised by individuals possessing experience and personal qualities sufficient to ensure the attainment of the standards specified in the operations manual.

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(d) *Accommodation facilities*

1. An operator must ensure that working space available at each operating base is sufficient for personnel pertaining to the safety of flight operations. Consideration must be given to the needs of ground staff, those concerned with operational control, the storage and display of essential records, and flight planning by crews.

2. Office services must be capable, without delay, of distributing operational instructions and other information to all concerned.

(e) *Documentation*

The operator must make arrangements for the production of manuals, amendments and other documentation.

SUBPART D

OPERATIONAL PROCEDURES

OPS 1.195

Operational control and supervision

An operator shall exercise operational control and establish and maintain a method of supervision of flight operations approved by the Authority.

OPS 1.200

Operations manual

An operator shall provide an Operations Manual in accordance with Subpart P for the use and guidance of operations personnel.

OPS 1.205

Competence of operations personnel

An operator shall ensure that all personnel assigned to, or directly involved in, ground and flight operations are properly instructed, have demonstrated their abilities in their particular duties and are aware of their responsibilities and the relationship of such duties to the operation as a whole.

OPS 1.210

Establishment of procedures

(a) An operator shall establish procedures and instructions, for each aeroplane type, containing ground staff and crew members' duties for all types of operation on the ground and in flight.

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(b) An operator shall establish a check-list system to be used by crew members for all phases of operation of the aeroplane under normal, abnormal and emergency conditions as applicable, to ensure that the operating procedures in the Operations Manual are followed.	
(c) An operator shall not require a crew member to perform any activities during critical phases of the flight other than those required for the safe operation of the aeroplane.	
OPS 1.215	
Use of Air Traffic Services	
An operator shall ensure that Air Traffic Services are used for all flights whenever available.	
OPS 1.220	
Authorisation of aerodromes by the operator	
An operator shall only authorise use of aerodromes that are adequate for the type(s) of aeroplane and operation(s) concerned.	
OPS 1.225	
Aerodrome operating minima	
(a) An operator shall specify aerodrome operating minima, established in accordance with OPS 1.430 for each departure, destination or alternate aerodrome authorised to be used in accordance with OPS 1.220.	
(b) These minima must take into account any increment by the specified values imposed by the Authority.	(b) Any increment imposed by the Authority must be added to the minima specified in accordance with sub-paragraph (a) above.
(c) The minima for a specific type of approach and landing procedure are considered applicable if:	Unchanged
1. The ground equipment shown on the respective chart required for the intended procedure is operative;	
2. The aeroplane systems required for the type of approach are operative;	
3. The required aeroplane performance criteria are met; and	
4. The crew is qualified accordingly.	
OPS 1.230	
Instrument departure and approach procedures	
(a) An operator shall ensure that instrument departure and approach procedures established by the State in which the aerodrome is located are used.	

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(b) Notwithstanding sub-paragraph (a) above, a commander may accept an ATC clearance to deviate from a published departure or arrival route, provided obstacle clearance criteria are observed and full account is taken of the operating conditions. The final approach must be flown visually or in accordance with the established instrument approach procedure.

(c) Different procedures to those required to be used in accordance with sub-paragraph (a) above may only be implemented by an operator provided they have been approved by the State in which the aerodrome is located, if required, and accepted by the Authority.

OPS 1.235

Noise abatement procedures

(a) An operator shall establish operating procedures for noise abatement during instrument flight operations in compliance with ICAO PANS OPS Volume 1 (Doc 8168-OPS/611).

(b) Take-off climb procedures for noise abatement specified by an operator for any one aeroplane type should be the same for all aerodromes.

OPS 1.240

Routes and areas of operation

(a) An operator shall ensure that operations are only conducted along such routes or within such areas, for which:

1. Ground facilities and services, including meteorological services, are provided which are adequate for the planned operation;

2. The performance of the aeroplane intended to be used is adequate to comply with minimum flight altitude requirements;

3. The equipment of the aeroplane intended to be used meets the minimum requirements for the planned operation;

4. Appropriate maps and charts are available (OPS 1.135 (a)(9) refers);

5. If two-engined aeroplanes are used, adequate aerodromes are available within the time/distance limitations of OPS 1.245.

6. If single-engine aeroplanes are used, surfaces are available which permit a safe forced landing to be executed.

(b) An operator shall ensure that operations are conducted in accordance with any restriction on the routes or the areas of operation, imposed by the Authority.

OPS 1.241

Operation in defined airspace with Reduced Vertical Separation Minima (RVSM)

An operator shall not operate an aeroplane in defined portions of airspace where, based on Regional Air Navigation Agreement, a vertical separation minimum of 300 m (1 000 ft) is applied unless approved to do so by the Authority (RVSM Approval). (See also OPS 1.872).

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OPS 1.243

Operation in areas with specific navigation performance requirements

An operator shall not operate an aeroplane in defined areas, or a defined portion of specified airspace, based on Regional Air Navigation Agreements where minimum navigation performance specifications are prescribed unless approved to do so by the Authority (MNPS/RNP/RNAV Approval). See also OPS 1.865 (c)(2) and OPS 1.870).

OPS 1.245

Maximum distance from an adequate aerodrome for two-engined aeroplanes without an ETOPS Approval

(a) Unless specifically approved by the Authority in accordance with OPS 1.246 (a) (ETOPS Approval), an operator shall not operate a two-engined aeroplane over a route which contains a point further from an adequate aerodrome than, in the case of:

1. Performance Class A aeroplanes with either:

(i) A maximum approved passenger seating configuration of 20 or more; or

(ii) A maximum take-off mass of 45,360 kg or more,

the distance flown in 60 minutes at the one-engine-inoperative cruise speed determined in accordance with subparagraph (b) below;

2. Performance Class B or C aeroplanes:

(i) The distance flown in 120 minutes at the one-engine-inoperative cruise speed determined in accordance with subparagraph (b) below; or

(ii) 300 nautical miles,

whichever is less.

(b) An operator shall determine a speed for the calculation of the maximum distance to an adequate aerodrome for each two-engined aeroplane type or variant operated, not exceeding V_{MO}, based upon the true airspeed that the aeroplane can maintain with one-engine-inoperative under the following conditions:

1. International Standard Atmosphere (ISA);

2. Level flight

(i) For turbojet aeroplanes at:

(A) FL 170; or

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(B) At the maximum flight level to which the aeroplane, with one engine inoperative, can climb, and maintain, using the gross rate of climb specified in the AFM,

whichever is less.

(ii) For propeller driven aeroplanes at:

(A) FL 80; or

(B) At the maximum flight level to which the aeroplane, with one engine inoperative, can climb, and maintain, using the gross rate of climb specified in the AFM,

whichever is less.

3. Maximum continuous thrust or power on the remaining operating engine;

4. An aeroplane mass not less than that resulting from:

(i) Take-off at sea-level at maximum take-off mass; and

(ii) All engines climb to the optimum long range cruise altitude; and

(iii) All engines cruise at the long range cruise speed at this altitude,

until the time elapsed since take-off is equal to the applicable threshold prescribed in subparagraph (a) above.

(c) An operator must ensure that the following data, specific to each type or variant, is included in the Operations Manual:

1. The one-engine-inoperative cruise speed determined in accordance with subparagraph (b) above; and

2. The maximum distance from an adequate aerodrome determined in accordance with subparagraphs (a) and (b) above.

Note: The speed and altitudes (flight levels) specified above are only intended to be used for establishing the maximum distance from an adequate aerodrome.

OPS 1.246

Extended range operations with two-engined aeroplanes (ETOPS)

(a) An operator shall not conduct operations beyond the threshold distance determined in accordance with OPS 1.245 unless approved to do so by the Authority (ETOPS approval).

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(b) Prior to conducting an ETOPS flight, an operator shall be ensure that a suitable ETOPS en-route alternate is available, within either the approved diversion time, or a diversion time based on the MEL generated serviceability status of the aeroplane, whichever is shorter. (See also OPS 1.297 (d)).	(b) Prior to conducting an ETOPS flight, an operator shall ensure that a suitable ETOPS en-route alternate is available, within either the approved diversion time, or a diversion time based on the MEL generated serviceability status of the aeroplane, whichever is shorter. (See also OPS 1.297 (d)).
OPS 1.250	Unchanged
Establishment of minimum flight altitudes	
(a) An operator shall establish minimum flight altitudes and the methods to determine those altitudes for all route segments to be flown which provide the required terrain clearance taking into account the requirements of Subparts F to I.	
(b) The method for establishing minimum flight altitudes must be approved by the Authority.	(b) Every method for establishing minimum flight altitudes must be approved by the Authority.
(c) Where minimum flight altitudes established by States overflown are higher than those established by the operator, the higher values shall apply.	Unchanged
(d) An operator shall take into account the following factors when establishing minimum flight altitudes:	
1. The accuracy with which the position of the aeroplane can be determined;	
2. The probable inaccuracies in the indications of the altimeters used;	
3. The characteristics of the terrain (e.g. sudden changes in the elevation) along the routes or in the areas where operations are to be conducted.	
4. The probability of encountering unfavourable meteorological conditions (e.g. severe turbulence and descending air currents); and	
5. Possible inaccuracies in aeronautical charts.	
(e) In fulfilling the requirements prescribed in sub-paragraph (d) above due consideration shall be given to:	
1. Corrections for temperature and pressure variations from standard values;	
2. The ATC requirements; and	
3. Any contingencies along the planned route.	3. Any foreseeable contingencies along the planned route.
OPS 1.255	Unchanged
Fuel policy	
(a) An operator must establish a fuel policy for the purpose of flight planning and in-flight replanning to ensure that every flight carries sufficient fuel for the planned operation and reserves to cover deviations from the planned operation.	

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(b) An operator shall ensure that the planning of flights is only based upon: 1. Procedures and data contained in or derived from the Operations Manual or current aeroplane specific data; and 2. The operating conditions under which the flight is to be conducted including: (i) Realistic aeroplane fuel consumption data; (ii) Anticipated masses; (iii) Expected meteorological conditions; and (iv) Air Traffic Services procedures and restrictions.	
(c) An operator shall ensure that the pre-flight calculation of usable fuel required for a flight includes: 1. Taxying fuel; 2. Trip fuel; 3. Reserve fuel consisting of: (i) Contingency fuel; (ii) Alternate fuel, if a destination alternate is required. (This does not preclude selection of the departure aerodrome as the destination alternate); (iii) Final reserve fuel; and (iv) Additional fuel, if required by the type of operation (e.g. ETOPS); and 4. Extra fuel if required by the commander.	
(d) An operator shall ensure that in-flight replanning procedures for calculating usable fuel required when a flight has to proceed along a route or to a destination other than originally planned includes: 1. Trip fuel for the remainder of the flight; 2. Reserve fuel consisting of: (i) Contingency fuel; (ii) Alternate fuel, if a destination alternate is required (This does not preclude selection of the departure aerodrome as the destination alternate); (iii) Final reserve fuel; and (iv) Additional fuel, if required by the type of operation (e.g. ETOPS); and 3. Extra fuel if required by the commander.	

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OPS 1.260

Carriage of persons with reduced mobility

(a) An operator shall establish procedures for the carriage of persons with reduced mobility (PRMs).

(b) An operator shall ensure that PRMs are not allocated, nor occupy, seats where their presence could:

1. Impede the crew in their duties;

2. Obstruct access to emergency equipment; or

3. Impede the emergency evacuation of the aeroplane.

(c) The commander must be notified when PRMs are to be carried on board.

OPS 1.265

Carriage of inadmissible passengers, deportees or persons in custody

An operator shall establish procedures for the transportation of inadmissible passengers, deportees or persons in custody to ensure the safety of the aeroplane and its occupants. The commander must be notified when the abovementioned persons are to be carried on board.

OPS 1.270

Stowage of baggage and cargo

(See Appendix 1 to OPS 1.270)

(a) An operator shall establish procedures to ensure that only such hand baggage is carried into an aeroplane and taken into the passenger cabin as can be adequately and securely stowed.

(b) An operator shall establish procedures to ensure that all baggage and cargo on board, which might cause injury or damage, or obstruct aisles and exits if displaced, is placed in stowages designed to prevent movement.

OPS 1.280

Passenger seating

An operator shall establish procedures to ensure that passengers are seated where, in the event that an emergency evacuation is required, they may best assist and not hinder evacuation from the aeroplane.

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OPS 1.285

Passenger briefing

An operator shall ensure that:

(a) *General*

1. Passengers are verbally briefed about safety matters, parts or all of which may be given by an audio-visual presentation.

2. Passengers are provided with a safety briefing card on which picture type instructions indicate the operation of emergency equipment and exits likely to be used by passengers.

(b) *Before take-off*

1. Passengers are briefed on the following items if applicable:

   (i) Smoking regulations;

   (ii) Back of the seat to be in the upright position and tray table stowed;

   (iii) Location of emergency exits;

   (iv) Location and use of floor proximity escape path markings;

   (v) Stowage of hand baggage;

   (vi) Restrictions on the use of portable electronic devices; and

   (vii) The location and the contents of the safety briefing card,

   and,

2. Passengers receive a demonstration of the following:

   (i) The use of safety belts and/or safety harnesses, including how to fasten and unfasten the safety belts and/or safety harnesses;

   (ii) The location and use of oxygen equipment if required (OPS 1.770 and OPS 1.775 refer). Passengers must also be briefed to extinguish all smoking materials when oxygen is being used; and

   (iii) The location and use of life jackets if required (OPS 1.825 refers).

(c) *After take-off*

Passengers are reminded of the following if applicable:

(i) Smoking regulations; and

(ii) Use of safety belts and/or safety harnesses.

INITIAL PROPOSAL	AMENDED PROPOSAL

(d) *Before landing*

Passengers are reminded of the following if applicable:

(i) Smoking regulations;

(ii) Use of safety belts and/or safety harnesses;

(iii) Back of the seat to be in the upright position and tray table stowed;

(iv) Re-stowage of hand baggage; and

(v) Restrictions on the use of portable electronic devices.

(e) *After landing*

Passengers are reminded of the following:

(i) Smoking regulations; and

(ii) Use of safety belts and/or safety harnesses.

(f) In an emergency during flight, passengers are instructed in such emergency action as may be appropriate to the circumstances.

OPS 1.290

Flight preparation

(a) An operator shall ensure that an operational flight plan is completed for each intended flight.

(b) The commander shall not commence a flight unless he is satisfied that:

1. The aeroplane is airworthy;

2. The aeroplane configuration is in accordance with the Configuration Deviation List (CDL);

3. The instruments and equipment required for the flight to be conducted, in accordance with Subparts K and L, are available;

4. The instruments and equipment are in operable condition except as provided in the MEL;

5. Those parts of the operations manual which are required for the conduct of the flight are available;

6. The documents, additional information and forms required to be available by OPS 1.125 and OPS 1.135 are on board;

7. Current maps, charts and associated documents or equivalent data are available to cover the intended operation of the aeroplane including any diversion which may reasonably be expected;

INITIAL PROPOSAL	AMENDED PROPOSAL
8. Ground facilities and services required for the planned flight are available and adequate;	
9. The provisions specified in the operations manual in respect of fuel, oil and oxygen requirements, minimum safe altitudes, aerodrome operating minima and availability of alternate aerodromes, where required, can be complied with for the planned flight;	
10. The load is properly distributed and safely secured;	
11. The mass of the aeroplane, at the commencement of take-off roll, will be such that the flight can be conducted in compliance with Subparts F to I as applicable; and	
12. Any operational limitation in addition to those covered by sub-paragraphs (9) and (11) above can be complied with.	
OPS 1.295	
Selection of aerodromes	
(a) An operator shall establish procedures for the selection of destination and/or alternate aerodromes in accordance with OPS 1.220 when planning a flight.	
(b) An operator must select and specify in the operational flight plan a take-off alternate if it would not be possible to return to the aerodrome of departure for meteorological or performance reasons. The take-off alternate shall be located within:	
1. For two-engined aeroplanes, either:	
(i) One hour flight time at a one-engine-inoperative cruising speed according to the AFM in still air standard conditions based on the actual take-off mass; or	
(ii) Two hours or the approved ETOPS diversion time, whichever is less, at the one-engine-inoperative cruising speed according to the AFM in still air standard conditions for aeroplanes and crews authorised for ETOPS; or	
2. Two hours flight time at a one-engine-inoperative cruising speed according to the AFM in still air standard conditions based on the actual take-off mass for three and four-engined aeroplanes; and	
3. If the AFM does not contain a one-engine-inoperative cruising speed, the speed to be used for calculation must be that which is achieved with the remaining engine(s) set at maximum continuous power.	

INITIAL PROPOSAL

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(c) An operator must select at least one destination alternate for each IFR flight unless:

1. Both:

(i) The duration of the planned flight from take-off to landing does not exceed 6 hours; and

(ii) Two separate runways are available at the destination and the meteorological conditions prevailing are such that, for the period from one hour before until one hour after the expected time of arrival at destination, the approach from the relevant minimum sector altitude and the landing can be made in VMC

or

2. The destination is isolated and no adequate destination alternate exists.

(d) An operator must select two destination alternates when the appropriate weather reports or forecasts for the destination, or any combination thereof, indicate that:

1. During a period commencing 1 hour before and ending 1 hour after the estimated time of arrival the weather conditions will be below the applicable planning minima; or

2. When no meteorological information is available.

(e) An operator shall specify any required alternate(s) in the operational flight plan.

OPS 1.297

Planning minima for IFR flights

(a) *Planning minima for take-off alternates*

An operator shall not select an aerodrome as a take-off alternate aerodrome unless the appropriate weather reports or forecasts or any combination thereof indicate that, during a period commencing 1 hour before and ending 1 hour after the estimated time of arrival at the aerodrome, the weather conditions will be at or above the applicable landing minima specified in accordance with OPS 1.225. The ceiling must be taken into account when the only approaches available are non-precision and/or circling approaches. Any limitation related to one engine inoperative operations must be taken into account.

INITIAL PROPOSAL

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(b) *Planning minima for destination and destination alternate aerodromes*

An operator shall only select the destination aerodrome and/or destination alternate aerodrome(s) when the appropriate weather reports or forecasts, or any combination thereof, indicate that, during a period commencing 1 hour before and ending 1 hour after the estimated time of arrival at the aerodrome, the weather conditions will be at or above the applicable planning minima as follows:

1. Planning minima for a destination aerodrome:

(i) RVR/visibility specified in accordance with OPS 1.225; and

(ii) For a non-precision approach or a circling approach, the ceiling at or above MDH; and

2. Planning minima for destination alternate aerodrome(s):

Table 1

Planning minima — En-route and destination alternates

Type of approach	Planning minima
Cat II and III	Cat I (Note 1)
Cat I	Non-precision (Notes 1 and 2)
Non-precision	Non-precision (Notes 1 and 2) plus 200 ft/1 000 m
Circling	Circling

Note 1: RVR.

Note 2: The ceiling must be at or above the MDH.

(c) *Planning minima for an en-route alternate aerodrome*

An operator shall not select an aerodrome as an en-route alternate aerodrome unless the appropriate weather reports or forecasts, or any combination thereof, indicate that, during a period commencing 1 hour before and ending 1 hour after the expected time of arrival at the aerodrome, the weather conditions will be at or above the planning minima in accordance with Table 1 above.

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(d) *Planning minima for an ETOPS en-route alternate*

An operator shall not select an aerodrome as an ETOPS en-route alternate aerodrome unless the appropriate weather reports or forecasts, or any combination thereof, indicate that, during a period commencing 1 hour before and ending 1 hour after the expected time of arrival at the aerodrome, the weather conditions will be at or above the planning minima prescribed in Table 2 below, and in accordance with the operator's ETOPS approval.

Table 2

Planning minima — ETOPS

Type of approach	Planning minima	
(RVR/visibility required and ceiling if applicable)		
	Aerodrome with	
	at least 2 separate approach procedures based on 2 separate aids serving 2 separate runways. (see IEM OPS 1.295 (c) (i) (ii))	at least 2 separate approach procedures based on 2 separate aids serving 1 runway or, at least 1 approach procedure based on 1 aid serving 1 runway
Precision approach Cat II,III (ILS, MLS)	Precision approach Cat I Minima	Non-precision approach minima
Precision approach Cat I (ILS, MLS)	Non-precision approach minima	Circling minima or if not available, non-precision approach minima plus 200 ft/ 1 000 m
Non-precision approach	The lower of non-precision approach minima plus 200 ft/ 1 000 m or circling minima	The higher of circling minima or non-precision approach minima plus 200 ft/ 1 000 m
Circling approach	Circling minima	

AMENDED PROPOSAL

Table 2

Planning minima — ETOPS

Type of approach	Planning minima	
(RVR/visibility required and ceiling if applicable)		
	Aerodrome with	
	at least 2 separate approach procedures based on 2 separate aids serving 2 separate runways	at least 2 separate approach procedures based on 2 separate aids serving 1 runway or, at least 1 approach procedure based on 1 aid serving 1 runway
Precision approach Cat II,III (ILS, MLS)	Precision approach Cat I Minima	Non-precision approach minima
Precision approach Cat I (ILS, MLS)	Non-precision approach minima	Circling minima or if not available, non-precision approach minima plus 200 ft/ 1 000 m
Non-precision approach	The lower of non-precision approach minima plus 200 ft/ 1 000 m or circling minima	The higher of circling minima or non-precision approach minima plus 200 ft/ 1 000 m
Circling Approach	Circling minima	

INITIAL PROPOSAL	AMENDED PROPOSAL
OPS 1.300 **Submission of ATS flight plan** An operator shall ensure that a flight is not commenced unless an ATS flight plan has been submitted, or adequate information has been deposited in order to permit alerting services to be activated if required.	Unchanged
OPS 1.305 **Re/defuelling with passengers embarking, on board or disembarking** (See Appendix 1 to OPS 1.305) An operator shall ensure that no aeroplane is re/defuelled with Avgas or wide cut type fuel (eg. Jet-B or equivalent) or when a mixture of these types of fuel might occur, when passengers are embarking, on board or disembarking. In all other cases necessary precautions must be taken and the aeroplane must be properly manned by qualified personnel ready to initiate and direct an evacuation of the aeroplane by the most practical and expeditious means available.	
OPS 1.307 **Refuelling/defuelling with wide-cut fuel** An operator shall establish procedures for refuelling/defuelling with wide-cut fuel (eg. Jet B or equivalent) if this is required.	
OPS 1.310 **Crew members at stations** (a) *Flight crew members* 1. During take-off and landing each flight crew member required to be on flight deck duty shall be at his station. 2. During all other phases of flight each flight crew member required to be on flight deck duty shall remain at his station unless his absence is necessary for the performance of his duties in connection with the operation, or for physiological needs provided at least one suitably qualified pilot remains at the controls of the aeroplane at all times. (b) *Cabin crew members* On all the decks of the aeroplane that are occupied by passengers, required cabin crew members shall be seated at their assigned stations during take-off and landing, and whenever deemed necessary by the commander in the interest of safety.	

INITIAL PROPOSAL	AMENDED PROPOSAL

OPS 1.315

Assisting means for emergency evacuation

An operator shall establish procedures to ensure that before taxying, take-off and landing, and when safe and practicable to do so, an assisting means for emergency evacuation that deploys automatically, is armed.

OPS 1.320

Seats, safety belts and harnesses

(a) *Crew members*

1. During take-off and landing, and whenever deemed necessary by the commander in the interest of safety, each crew member shall be properly secured by all safety belts and harnesses provided.

2. During other phases of the flight each flight crew member on the flight deck shall keep his safety belt fastened while at his station.

(b) *Passengers*

1. Before take-off and landing, and during taxying, and whenever deemed necessary in the interest of safety, the commander shall ensure that each passenger on board occupies a seat or berth with his safety belt, or harness where provided, properly secured.

2. An operator shall make provision for, and the commander shall ensure that multiple occupancy of aeroplane seats may only be allowed on specified seats and does not occur other than by one adult and one infant who is properly secured by a supplementary loop belt or other restraint device.

OPS 1.325

Securing of passenger cabin and galley(s)

(a) An operator shall establish procedures to ensure that before taxying, take-off and landing all exits and escape paths are unobstructed.

(b) The commander shall ensure that before take-off and landing, and whenever deemed necessary in the interest of safety, all equipment and baggage is properly secured.

INITIAL PROPOSAL

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OPS 1.330

Accessibility of emergency equipment

The commander shall ensure that relevant emergency equipment remains easily accessible for immediate use.

OPS 1.335

Smoking on board

(a) The commander shall ensure that no person on board is allowed to smoke:

1. Whenever deemed necessary in the interest of safety;

2. While the aeroplane is on the ground unless specifically permitted in accordance with procedures defined in the Operations Manual;

3. Outside designated smoking areas, in the aisle(s) and in the toilet(s);

4. In cargo compartments and/or other areas where cargo is carried which is not stored in flame resistant containers or covered by flame resistant canvas; and

5. In those areas of the cabin where oxygen is being supplied.

OPS 1.340

Meteorological conditions

(a) On an IFR flight a commander shall not:

1. Commence take-off; nor

2. Continue beyond the point from which a revised flight plan applies in the event of in-flight replanning,

unless information is available indicating that the expected weather conditions at the destination and/or required alternate aerodrome(s) prescribed in OPS 1.295 are at or above the planning minima, prescribed in OPS 1.297.

(b) On an IFR flight a commander shall not continue beyond:

1. The decision point when using the decision point procedure; or

2. The pre-determined point when using the pre-determined point procedure,

unless information is available indicating that the expected weather conditions at the destination and/or required alternate aerodrome(s) prescribed in OPS 1.295 are at or above the applicable aerodrome operating minima prescribed in OPS 1.225.

INITIAL PROPOSAL

AMENDED PROPOSAL

(c) On an IFR flight, a commander shall not continue towards the planned destination aerodrome unless the latest information available indicates that, at the expected time of arrival, the weather conditions at the destination, or at least one destination alternate aerodrome, are at or above the planning applicable aerodrome operating minima.

(d) On a VFR flight a commander shall not commence take-off unless current meteorological reports or a combination of current reports and forecasts indicate that the meteorological conditions along the route or that part of the route to be flown under VFR will, at the appropriate time, be such as to render compliance with these rules possible.

OPS 1.345

Ice and other contaminants

(a) An operator shall establish procedures to be followed when ground de-icing and anti-icing and related inspections of the aeroplane(s) are necessary.

(b) A commander shall not commence take-off unless the external surfaces are clear of any deposit which might adversely affect the performance and/or controllability of the aeroplane except as permitted in the Aeroplane Flight Manual.

(c) A commander shall not commence a flight under known or expected icing conditions unless the aeroplane is certificated and equipped to cope with such conditions.

OPS 1.350

Fuel and oil supply

A commander shall not commence a flight unless he is satisfied that the aeroplane carries at least the planned amount of fuel and oil to complete the flight safely, taking into account the expected operating conditions.

OPS 1.355

Take-off conditions

Before commencing take-off, a commander must satisfy himself that, according to the information available to him, the weather at the aerodrome and the condition of the runway intended to be used should not prevent a safe take-off and departure.

OPS 1.360

Application of take-off minima

Before commencing take-off, a commander must satisfy himself that the RVR or visibility in the take-off direction of the aeroplane is equal to or better than the applicable minimum.

INITIAL PROPOSAL

AMENDED PROPOSAL

OPS 1.365

Minimum flight altitudes

The commander or the pilot to whom conduct of the flight has been delegated shall not fly below specified minimum altitudes except when necessary for take-off or landing.

OPS 1.370

Simulated abnormal situations in flight

An operator shall establish procedures to ensure that abnormal or emergency situations requiring the application of part or all of abnormal or emergency procedures and simulation of IMC by artificial means, are not simulated during commercial air transportation flights.

OPS 1.375

In-flight fuel management

(See Appendix 1 to OPS 1.375)

(a) An operator shall establish a procedure to ensure that in-flight fuel checks and fuel management are carried out.

(b) A commander shall ensure that the amount of usable fuel remaining in flight is not less than the fuel required to proceed to an aerodrome where a safe landing can be made, with final reserve fuel remaining.

(c) The commander shall declare an emergency when the actual usable fuel on board is less than final reserve fuel.

OPS 1.385

Use of supplemental oxygen

A commander shall ensure that flight crew members engaged in performing duties essential to the safe operation of an aeroplane in flight use supplemental oxygen continuously whenever cabin altitude exceeds 10 000 ft for a period in excess of 30 minutes and whenever the cabin altitude exceeds 13 000 ft.

OPS 1.390

Cosmic radiation

(a) *Active monitoring*

1. An operator shall not operate an aeroplane above 15 000 m (49 000 ft) unless the equipment specified in OPS 1.680 is serviceable. and

2. The commander or the pilot to whom conduct of the flight has been delegated shall initiate a descent as soon as practicable when the limit values specified in the Operations Manual are exceeded.

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) *Passive monitoring* An operator shall take account of the in-flight exposure to cosmic radiation of their flight crew and cabin crew and shall take the following measures for those crew liable to be subject to exposure of more than 1 mSv per year: 1. assess their exposure; 2. arrange their working schedules, where practicable, to keep exposure below 6 mSv per year; 3. inform them of the health risk associated with the likely exposure; 4. ensure that the working schedules for female crew, once they have notified the operator that they are pregnant, keep the equivalent dose to the foetus as low as can reasonably be achieved and in any case ensure that the dose does not exceed 1 mSv for the remainder of the pregnancy; 5. ensure that where exposure is considered likely to exceed 6 mSv per year, records are kept for each flight or cabin crew member affected, and that appropriate medical surveillance is applied.	Deleted
OPS 1.395 **Ground proximity detection** When undue proximity to the ground is detected by any flight crew member or by a ground proximity warning system, the commander or the pilot to whom conduct of the flight has been delegated shall ensure that corrective action is initiated immediately to establish safe flight conditions.	Unchanged
OPS 1.400 **Approach and landing conditions** Before commencing an approach to land, the commander must satisfy himself that, according to the information available to him, the weather at the aerodrome and the condition of the runway intended to be used should not prevent a safe approach, landing or missed approach, having regard to the performance information contained in the Operations Manual.	
OPS 1.405 **Commencement and continuation of approach** (a) The commander or the pilot to whom conduct of the flight has been delegated may commence an instrument approach regardless of the reported RVR/Visibility but the approach shall not be continued beyond the outer marker, or equivalent position, if the reported RVR/visibility is less than the applicable minima.	

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) Where RVR is not available, the pilot-in-command may derive an RVR value by converting the reported visibility in accordance with Appendix 1 to OPS 1.430, sub-paragraph (h).	(b) Where RVR is not available, RVR values may be derived by converting the reported visibility in accordance with Appendix 1 to OPS 1.430, sub-paragraph (h).
(c) If, after passing the outer marker or equivalent position in accordance with (a) above, the reported RVR/visibility falls below the applicable minimum, the pilot-in-command may continue the approach to DA/H or MDA/H.	(c) If, after passing the outer marker or equivalent position in accordance with (a) above, the reported RVR/visibility falls below the applicable minimum, the approach may be continued to DA/H or MDA/H.
(d) Where no outer marker or equivalent position exists, the pilot-in-command shall make the decision to continue or abandon the approach before descending below 1 000 ft above the aerodrome on the final approach segment.	(d) Where no outer marker or equivalent position exists, the commander or the pilot to whom conduct of the flight has been delegated shall make the decision to continue or abandon the approach before descending below 1 000 ft above the aerodrome on the final approach segment.
(e) A pilot may continue the approach below DA/H or MDA/H and the landing may be completed provided that the required visual reference is established at the DA/H or MDA/H and is maintained.	(e) The approach may be continued below DA/H or MDA/H and the landing may be completed provided that the required visual reference is established at the DA/H or MDA/H and is maintained.
OPS 1.410	Unchanged
Operating procedures — Threshold crossing height	
An operator must establish operational procedures designed to ensure that an aeroplane being used to conduct precision approaches crosses the threshold by a safe margin, with the aeroplane in the landing configuration and attitude.	
OPS 1.415	
Journey log	
A commander shall ensure that the Journey log is completed.	
OPS 1.420	
Occurrence reporting	
(a) *Flight incidents*	
1. The operator or commander of an aeroplane shall submit a report to the Authority of any incident that has endangered or may have endangered safe operation of a flight.	
2. Reports shall be despatched within 72 hours of the event, unless exceptional circumstances prevent this.	
(b) *Technical defects and exceedance of technical limitations*	
A commander shall ensure that all technical defects and exceedances of technical limitations occurring while he was responsible for the flight are recorded in the aeroplane's Technical Log.	

INITIAL PROPOSAL	AMENDED PROPOSAL

(c) *Air traffic incidents*

A commander shall submit an air traffic incident report in accordance with ICAO PANS RAC whenever an aeroplane in flight has been endangered by:

1. A near collision with any other flying device; or

2. Faulty air traffic procedures or lack of compliance with applicable procedures by Air Traffic Services or by the flight crew; or

3. A failure of ATS facilities.

(d) *Bird hazards and strikes*

1. A commander shall immediately inform the appropriate ground station whenever a potential bird hazard is observed.

2. A commander shall submit a written bird strike report after landing whenever an aeroplane for which he is responsible suffers a bird strike.

(e) *In-flight emergencies with dangerous goods on board*

If an in-flight emergency occurs and the situation permits, a commander shall inform the appropriate Air Traffic Services unit of any dangerous goods on board.

(f) *Unlawful interference*

Following an act of unlawful interference on board an aeroplane, a commander shall submit a report, as soon as practicable, to the local Authority and/or the Authority.

(g) *Irregularities of ground and navigational facilities and hazardous conditions*

A commander shall notify the appropriate ground station as soon as practicable whenever a potentially hazardous condition such as:

1. An irregularity in a ground or navigational facility; or

2. A meteorological phenomenon; or

3. A volcanic ash cloud; or

4. A high radiation level,

is encountered during flight.

INITIAL PROPOSAL	AMENDED PROPOSAL
OPS 1.425	
Accident reporting	
(a) An operator shall establish procedures to ensure that the nearest appropriate authority is notified by the quickest available means of any accident, involving the aeroplane, resulting in serious injury (as defined in ICAO Annex 13) or death of any person or substantial damage to the aeroplane or property.	
(b) A commander shall submit a report to the Authority of any accident on board, resulting in serious injury to, or death of, any person on board while he was responsible for the flight.	
Appendix 1 to OPS 1.270	
Stowage of baggage and cargo	
Procedures established by an operator to ensure that hand baggage and cargo is adequately and securely stowed must take account of the following:	
1. Each item carried in a cabin must be stowed only in a location that is capable of restraining it;	
2. Mass limitations placarded on or adjacent to stowages must not be exceeded;	
3. Underseat stowages must not be used unless the seat is equipped with a restraint bar and the baggage is of such size that it may adequately be restrained by this equipment;	
4. Items must not be stowed in toilets or against bulkheads that are incapable of restraining articles against movement forwards, sideways or upwards and unless the bulkheads carry a placard specifying the greatest mass that may be placed there;	
5. Baggage and cargo placed in lockers must not be of such size that they prevent latched doors from being closed securely;	
6. Baggage and cargo must not be placed where it can impede access to emergency equipment; and	
7. Checks must be made before take-off, before landing, and whenever the pilot-in-command illuminates the fasten seat belts signs (or otherwise so orders) to ensure that baggage is stowed where it cannot impede evacuation from the aircraft or cause injury by falling (or other movement) as may be appropriate to the phase of flight.	7. Checks must be made before take-off, before landing, and whenever the fasten seat belts signs are illuminated or it is otherwise so ordered to ensure that baggage is stowed where it cannot impede evacuation from the aircraft or cause injury by falling (or other movement) as may be appropriate to the phase of flight.

INITIAL PROPOSAL	AMENDED PROPOSAL
Appendix 1 to OPS 1.305	Unchanged
Re/defuelling with passengers embarking, on board or disembarking	
An operator must establish operational procedures for re/defuelling with passengers embarking, on board or disembarking to ensure the following precautions are taken:	
1. One qualified person must remain at a specified location during fuelling operations with passengers on board. This qualified person must be capable of handling emergency procedures concerning fire protection and fire-fighting, handling communications and initiating and directing an evacuation;	
2. Crew, staff and passengers must be warned that re/defuelling will take place;	
3. "Fasten Seat Belts" signs must be off;	
4. "NO SMOKING" signs must be on, together with interior lighting to enable emergency exits to be identified;	
5. Passengers must be instructed to unfasten their seat belts and refrain from smoking;	
6. Sufficient qualified personnel must be on board and be prepared for an immediate emergency evacuation;	
7. If the presence of fuel vapour is detected inside the aeroplane, or any other hazard arises during re/defuelling, fuelling must be stopped immediately;	
8. The ground area beneath the exits intended for emergency evacuation and slide deployment areas must be kept clear; and	
9. Provision is made for a safe and rapid evacuation.	
Appendix 1 to OPS 1.375	
In-flight fuel management	
(a) *In-flight fuel checks*	
1. A commander must ensure that fuel checks are carried out in-flight at regular intervals. The remaining fuel must be recorded and evaluated to:	
(i) Compare actual consumption with planned consumption;	
(ii) Check that the remaining fuel is sufficient to complete the flight; and	
(iii) Determine the expected fuel remaining on arrival at the destination.	
2. The relevant fuel data must be recorded.	

INITIAL PROPOSAL

AMENDED PROPOSAL

(b) *In-flight fuel management*

If, as a result of an in-flight fuel check, the expected fuel remaining on arrival at the destination is less than the required alternate fuel plus final reserve fuel, the commander must take into account the traffic and the operational conditions prevailing at the destination aerodrome, along the diversion route to an alternate aerodrome and at the destination alternate aerodrome, when deciding to proceed to the destination aerodrome or to divert, so as to land with not less than final reserve fuel.

(c) If, as a result of an in-flight fuel check on a flight to an isolated destination aerodrome, the expected fuel remaining at the point of last possible diversion is less than the sum of:

1. Fuel to divert to an en-route alternate aerodrome selected in accordance with OPS 1.297 (c);

2. Contingency fuel; and

3. Final reserve fuel,

the commander must either:

(i) Divert; or

(ii) Proceed to the destination, provided that two separate runways are available at the destination and the expected weather conditions at the destination comply with those specified for planning in OPS 1.297 (b)(1).

SUBPART E

ALL WEATHER OPERATIONS

OPS 1.430

Aerodrome operating minima — General

(See Appendix 1 to OPS 1.430)

(a) An operator shall establish, for each aerodrome planned to be used, aerodrome operating minima that are not lower than the values given in Appendix 1. The method of determination of such minima must be acceptable to the Authority. Such minima shall not be lower than any that may be established for such aerodromes by the State in which the aerodrome is located, except when specifically approved by that State.

Note: The above paragraph does not prohibit in-flight calculation of minima for a non-planned alternate aerodrome if carried out in accordance with an accepted method.

INITIAL PROPOSAL

AMENDED PROPOSAL

(b) In establishing the aerodrome operating minima which will apply to any particular operation, an operator must take full account of:

1. The type, performance and handling characteristics of the aeroplane;

2. The composition of the flight crew, their competence and experience;

3. The dimensions and characteristics of the runways which may be selected for use;

4. The adequacy and performance of the available visual and non-visual ground aids

5. The equipment available on the aeroplane for the purpose of navigation and/or control of the flight path, as appropriate, during the take-off, the approach, the flare, the landing, roll-out and the missed approach;

6. The obstacles in the approach, missed approach and the climb-out areas required for the execution of contingency procedures and necessary clearance;

7. The obstacle clearance altitude/height for the instrument approach procedures; and

8. The means to determine and report meteorological conditions.

(c) The aeroplane categories referred to in this Subpart must be derived in accordance with the method given in Appendix 2 to OPS 1.430(c).

OPS 1.435

Terminology

Terms used in this Subpart and not defined in JAR-1 have the following meaning:

1. Circling. The visual phase of an instrument approach to bring an aircraft into position for landing on a runway which is not suitably located for a straight-in approach.

2. Low Visibility Procedures (LVP). Procedures applied at an aerodrome for the purpose of ensuring safe operations during Category II and III approaches and Low Visibility Take-Offs.

3. Low Visibility Take-Off (LVTO). A take-off where the Runway Visual Range (RVR) is less than 400 m.

4. Flight control system. A system which includes an automatic landing system and/or a hybrid landing system.

5. Fail-passive flight control system. A flight control system is fail-passive if, in the event of a failure, there is no significant out-of-trim condition or deviation of flight path or attitude but the landing is not completed automatically. For a fail-passive automatic flight control system the pilot assumes control of the aeroplane after a failure.

INITIAL PROPOSAL

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6. Fail-operational flight control system. A flight control system is fail-operational if, in the event of a failure below alert height, the approach, flare and landing, can be completed automatically. In the event of a failure, the automatic landing system will operate as a fail-passive system.

7. Fail-operational hybrid landing system. A system which consists of a primary fail-passive automatic landing system and a secondary independent guidance system enabling the pilot to complete a landing manually after failure of the primary system.

   Note: A typical secondary independent guidance system consists of a monitored head-up display providing guidance which normally takes the form of command information but it may alternatively be situation (or deviation) information.

8. Visual approach. An approach when either part or all of an instrument approach procedure is not completed and the approach is executed with visual reference to the terrain.

OPS 1.440

Low visibility operations — General operating rules

(See Appendix 1 to OPS 1.440)

(a) An operator shall not conduct Category II or III operations unless:

   1. Each aeroplane concerned is certificated for operations with decision heights below 200 ft, or no decision height, and equipped in accordance with JAR-AWO or an equivalent accepted by the Authority;

   2. A suitable system for recording approach and/or automatic landing success and failure is established and maintained to monitor the overall safety of the operation;

   3. The operations are approved by the Authority;

   4. The flight crew consists of at least 2 pilots; and

   5. Decision Height is determined by means of a radio altimeter.

(b) An operator shall not conduct low visibility take-offs in less than 150 m RVR (Category A, B and C aeroplanes) or 200 m RVR (Category D aeroplanes) unless approved by the Authority.

OPS 1.445

Low visibility operations — Aerodrome considerations

(a) An operator shall not use an aerodrome for Category II or III operations unless the aerodrome is approved for such operations by the State in which the aerodrome is located.

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(b) An operator shall verify that Low Visibility Procedures (LVP) have been established, and will be enforced, at those aerodromes where low visibility operations are to be conducted.

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OPS 1.450

Low visibility operations — Training and qualifications

(See Appendix 1 to OPS 1.450)

An operator shall ensure that, prior to conducting Low Visibility Take-Off, Category II and III operations:

1. Each flight crew member:

   (i) Completes the training and checking requirements prescribed in Appendix 1 including simulator training in operating to the limiting values of RVR and Decision Height appropriate to the operator's Category II/III approval; and

   (ii) Is qualified in accordance with Appendix 1;

2. The training and checking is conducted in accordance with a detailed syllabus approved by the Authority and included in the Operations Manual. This training is in addition to that prescribed in Subpart N; and

3. The flight crew qualification is specific to the operation and the aeroplane type.

OPS 1.455

Low visibility operations — Operating procedures

(See Appendix 1 to OPS 1.455)

(a) An operator must establish procedures and instructions to be used for Low Visibility Take-Off and Category II and III operations. These procedures must be included in the Operations Manual and contain the duties of flight crew members during taxying, take-off, approach, flare, landing, roll-out and missed approach as appropriate.

(b) The commander shall satisfy himself that:

   1. The status of the visual and non-visual facilities is sufficient prior to commencing a Low Visibility Take-Off or a Category II or III approach;

   2. Appropriate LVPs are in force according to information received from Air Traffic Services, before commencing a Low Visibility Take-off or a Category II or III approach; and

   3. The flight crew members are properly qualified prior to commencing a Low Visibility Take-off in an RVR of less than 150 m (Category A, B and C aeroplanes) or 200 m (Cat D aeroplanes) or a Category II or III approach.

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OPS 1.460

Low visibility operations — Minimum equipment

(a) An operator must include in the Operations Manual the minimum equipment that has to be serviceable at the commencement of a Low Visibility Take-off or a Category II or III approach in accordance with the AFM or other approved document.

(b) The commander shall satisfy himself that the status of the aeroplane and of the relevant airborne systems is appropriate for the specific operation to be conducted.

OPS 1.465

VFR operating minima

(See Appendix 1 to OPS 1.465)

An operator shall ensure that:

1. VFR flights are conducted in accordance with the Visual Flight Rules and in accordance with the Table in Appendix 1 to OPS 1.465.

2. Special VFR flights are not commenced when the visibility is less than 3 km and not otherwise conducted when the visibility is less than 1,5 km.

Appendix 1 to OPS 1.430

Aerodrome operating minima

(a) *Take-off minima*

1. General

(i) Take-off minima established by the operator must be expressed as visibility or RVR limits, taking into account all relevant factors for each aerodrome planned to be used and the aeroplane characteristics. Where there is a specific need to see and avoid obstacles on departure and/or for a forced landing, additional conditions (e.g. ceiling) must be specified.

(ii) The commander shall not commence take-off unless the weather conditions at the aerodrome of departure are equal to or better than applicable minima for landing at that aerodrome unless a suitable take-off alternate aerodrome is available.

(iii) When the reported meteorological visibility is below that required for take-off and RVR is not reported, a take-off may only be commenced if the commander can determine that the RVR/visibility along the take-off runway is equal to or better than the required minimum.

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(iv) When no reported meteorological visibility or RVR is available, a take-off may only be commenced if the commander can determine that the RVR/visibility along the take-off runway is equal to or better than the required minimum.

2. Visual reference

The take-off minima must be selected to ensure sufficient guidance to control the aeroplane in the event of both a discontinued take-off in adverse circumstances and a continued take-off after failure of the critical power unit.

3. Required RVR/Visibility

(i) For multi-engined aeroplanes, whose performance is such that, in the event of a critical power unit failure at any point during take-off, the aeroplane can either stop or continue the take-off to a height of 1 500 ft above the aerodrome while clearing obstacles by the required margins, the take-off minima established by an operator must be expressed as RVR/Visibility values not lower than those given in Table 1 below except as provided in paragraph (4) below:

Table 1

RVR/Visibility for take-off

Take-off RVR/Visibility	
Facilities	RVR/Visibility (Note 3)
Nil (Day only)	500 m
Runway edge lighting and/or centreline marking	250/300 m (Notes 1 and 2)
Runway edge and centerline lighting	200/250 m (Note 1)
Runway edge and centerline lighting and multiple RVR information	150/200 m (Notes 1 and 4)

Note 1: The higher values apply to Category D aeroplanes.

Note 2: For night operations at least runway edge and runway end lights are required.

Note 3: The reported RVR/Visibility value representative of the initial part of the take-off run can be replaced by pilot assessment.

Note 4: The required RVR value must be achieved for all of the relevant RVR reporting points with the exception given in Note 3 above.

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(ii) For multi-engined aeroplanes whose performance is such that they cannot comply with the performance conditions in sub-paragraph (a)(3)(i) above in the event of a critical power unit failure, there may be a need to re-land immediately and to see and avoid obstacles in the take-off area. Such aeroplanes may be operated to the following take-off minima provided they are able to comply with the applicable obstacle clearance criteria, assuming engine failure at the height specified. The take-off minima established by an operator must be based upon the height from which the one engine inoperative net take-off flight path can be constructed. The RVR minima used may not be lower than either of the values given in Table 1 above or Table 2 below.

Table 2

Assumed engine failure height above the runway versus RVR/Visibility

Take-off RVR/Visibility — flight path	
Assumed engine failure height above the take-off runway	RVR/Visibility (Note 2)
< 50 ft	200 m
51-100 ft	300 m
101-150 ft	400 m
151-200 ft	500 m
201-300 ft	1 000 m
> 300 ft	1 500 m (Note 1)

Note 1: 1 500 m is also applicable if no positive take-off flight path can be constructed.

Note 2: The reported RVR/Visibility value representative of the initial part of the take-off run can be replaced by pilot assessment.

(iii) When reported RVR, or meteorological visibility is not available, the commander shall not commence take-off unless he can determine that the actual conditions satisfy the applicable take-off minima.

4. Exceptions to paragraph (a)(3)(i) above:

(i) Subject to the approval of the Authority, and provided the requirements in paragraphs (A) to (E) below have been satisfied, an operator may reduce the take-off minima to 125 m RVR (Category A, B and C aeroplanes) or 150 m RVR (Category D aeroplanes) when:

(A) Low Visibility Procedures are in force;

(B) High intensity runway centreline lights spaced 15 m or less and high intensity edge lights spaced 60 m or less are in operation;

(C) Flight crew members have satisfactorily completed training in a simulator approved for this procedure;

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(D) A 90 m visual segment is available from the cockpit at the start of the take-off run; and

(E) The required RVR value has been achieved for all of the relevant RVR reporting points.

(ii) Subject to the approval of the Authority, an operator of an aeroplane using an approved lateral guidance system for take-off may reduce the take-off minima to an RVR less than 125 m (Category A, B and C aeroplanes) or 150 m (Category D aeroplanes) but not lower than 75 m provided runway protection and facilities equivalent to Category III landing operations are available.

(b) *Non-precision approach*

1. System minima

An operator must ensure that system minima for non-precision approach procedures, which are based upon the use of ILS without glidepath (LLZ only), VOR, NDB, SRA and VDF are not lower than the MDH values given in Table 3 below.

Table 3

System minima for non-precision approach aids

System minima	
Facility	Lowest MDH
ILS (no glide path — LLZ)	250 ft
SRA (terminating at ½ NM)	250 ft
SRA (terminating at 1 NM)	300 ft
SRA (terminating at 2 NM)	350 ft
VOR	300 ft
VOR/DME	250 ft
NDB	300 ft
VDF (QDM and QGH)	300 ft

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2. Minimum descent height

An operator must ensure that the minimum descent height for a non-precision approach is not lower than either:

(i) The OCH/OCL for the category of aeroplane; or

(ii) The system minimum.

3. Visual Reference

A pilot may not continue an approach below MDA/MDH unless at least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot:

(i) Elements of the approach light system;

(ii) The threshold;

(iii) The threshold markings;

(iv) The threshold lights;

(v) The threshold identification lights;

(vi) The visual glide slope indicator;

(vii) The touchdown zone or touchdown zone markings;

(viii) The touchdown zone lights;

(ix) Runway edge lights; or

(x) Other visual references accepted by the Authority.

4. Required RVR

The lowest minima to be used by an operator for non-precision approaches are:

Table 4a

RVR for non-precision approach — full facilities

Non-precision approach minima Full facilities (Notes 1, 5, 6 and 7)				
MDH	RVR/Aeroplane Category			
	A	B	C	D
250-299 ft	800 m	800 m	800 m	1 200 m
300-449 ft	900 m	1 000 m	1 000 m	1 400 m
450-649 ft	1 000 m	1 200 m	1 200 m	1 600 m
650 ft and above	1 200 m	1 400 m	1 400 m	1 800 m

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Table 4b

RVR for non-precision approach — intermediate facilities

Non-precision approach minima Intermediate facilities (Notes 2, 5, 6 and 7)				
MDH	RVR/Aeroplane Category			
	A	B	C	D
250-299 ft	1 000 m	1 100 m	1 200 m	1 400 m
300-449 ft	1 200 m	1 300 m	1 400 m	1 600 m
450-649 ft	1 400 m	1 500 m	1 600 m	1 800 m
650 ft and above	1 500 m	1 500 m	1 800 m	2 000 m

Table 4c

RVR for non-precision approach — basic facilities

Non-precision approach minima Basic facilities (Notes 3, 5, 6 and 7)				
MDH	RVR/Aeroplane Category			
	A	B	C	D
250-299 ft	1 200 m	1 300 m	1 400 m	1 600 m
300-449 ft	1 300 m	1 400 m	1 600 m	1 800 m
450-649 ft	1 500 m	1 500 m	1 800 m	2 000 m
650 ft and above	1 500 m	1 500 m	2 000 m	2 000 m

Table 4d

RVR for non-precision approach — Nil approach light facilities

Non-precision approach minima Nil approach light facilities (Notes 4, 5, 6 and 7)				
MDH	RVR/Aeroplane Category			
	A	B	C	D
250-299 ft	1 000 m	1 500 m	1 600 m	1 800 m
300-449 ft	1 500 m	1 500 m	1 800 m	2 000 m
450-649 ft	1 500 m	1 500 m	2 000 m	2 000 m
650 ft and above	1 500 m	1 500 m	2 000 m	2 000 m

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Note 1: Full facilities comprise runway markings, 720 m or more of HI/MI approach lights, runway edge lights, threshold lights and runway end lights. Lights must be on.	
Note 2: Intermediate facilities comprise runway markings, 420-719 m of HI/MI approach lights, runway edge lights, threshold lights and runway end lights. Lights must be on.	
Note 3: Basic facilities comprise runway markings, < 420 m of HI/MI approach lights, any length of LI approach lights, runway edge lights, threshold lights and runway end lights. Lights must be on.	
Note 4: Nil approach light facilities comprise runway markings, runway edge lights, threshold lights, runway end lights or no lights at all.	
Note 5: The tables are only applicable to conventional approaches with a nominal descent slope of not greater than 4i. Greater descent slopes will usually require that visual glide slope guidance (e.g. PAPI) is also visible at the Minimum Descent Height.	*Note 5:* The tables are only applicable to conventional approaches with a nominal descent slope of not greater than 4°. Greater descent slopes will usually require that visual glide slope guidance (e.g. PAPI) is also visible at the Minimum Descent Height.
Note 6: The above figures are either reported RVR or meteorological visibility converted to RVR as in sub-paragraph (h) below.	Unchanged
Note 7: The MDH mentioned in Table 4a, 4b, 4c and 4d refers to the initial calculation of MDH. When selecting the associated RVR, there is no need to take account of a rounding up to the nearest ten feet, which may be done for operational purposes, e.g. conversion to MDA.	
5. Night operations For night operations at least runway edge, threshold and runway end lights must be on.	
(c) *Precision approach — Category I operations*	
1. General A Category I operation is a precision instrument approach and landing using ILS, MLS or PAR with a decision height not lower than 200 ft and with a runway visual range not less than 550 m.	

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2. Decision Height	
An operator must ensure that the decision height to be used for a Category I precision approach is not lower than:	
(i) The minimum decision height specified in the Aeroplane Flight Manual (AFM) if stated;	
(ii) The minimum height to which the precision approach aid can be used without the required visual reference;	
(iii) The OCH/OCL for the category of aeroplane; or	
(iv) 200 ft.	
3. Visual reference	
A pilot may not continue an approach below the Category I decision height, determined in accordance with sub-paragraph (c)(2) above, unless at least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot:	
(i) Elements of the approach light system;	
(ii) The threshold;	
(iii) The threshold markings;	
(iv) The threshold lights;	
(v) The threshold identification lights;	
(vi) The visual glide slope indicator;	
(vii) The touchdown zone or touchdown zone markings;	
(viii) The touchdown zone lights; or	
(ix) Runway edge lights.	
4. Required RVR	
The lowest minima to be used by an operator for Category I operations are:	

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Table 5

RVR for Cat I approach vs. facilities and DH

Category I minima

Decision height (Note 7)	Facilities/RVR (Note 5)			
	Full (Notes 1 and 6)	Interm. (Notes 2 and 6)	Basic (Notes 3 and 6)	Nil (Notes 4 and 6)
200 ft	550 m	700 m	800 m	1 000 m
201-50 ft	600 m	700 m	800 m	1 000 m
251-300 ft	650 m	800 m	900 m	1 200 m
301 ft and above	800 m	900 m	1 000 m	1 200 m

Note 1: Full facilities comprise runway markings, 720 m or more of HI/MI approach lights, runway edge lights, threshold lights and runway end lights. Lights must be on.

Note 2: Intermediate facilities comprise runway markings, 420-719 m of HI/MI approach lights, runway edge lights, threshold lights and runway end lights. Lights must be on.

Note 3: Basic facilities comprise runway markings, < 420 m of HI/MI approach lights, any length of LI approach lights, runway edge lights, threshold lights and runway end lights. Lights must be on.

Note 4: Nil approach light facilities comprise runway markings, runway edge lights, threshold lights, runway end lights or no lights at all.

Note 5: The above figures are either the reported RVR or meteorological visibility converted to RVR in accordance with paragraph (h).

Note 6: The table is applicable to conventional approaches with a glide slope angle up to and including 4° (degree).

Note 7: The DH mentioned in the Table 5 refers to the initial calculation of DH. When selecting the associated RVR, there is no need to take account of a rounding up to the nearest ten feet, which may be done for operational purposes, (e.g. conversion to DA).

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Table 5

RVR for Cat I approach vs. facilities and DH

Category I minima

Decision height (Note 7)	Facilities/RVR (Note 5)			
	Full (Notes 1 and 6)	Interm. (Notes 2 and 6)	Basic (Notes 3 and 6)	Nil (Notes 4 and 6)
200 ft	550 m	700 m	800 m	1 000 m
201-250 ft	600 m	700 m	800 m	1 000 m
251-300 ft	650 m	800 m	900 m	1 200 m
301 ft and above	800 m	900 m	1 000 m	1 200 m

Unchanged

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5. Single pilot operations

For single pilot operations, an operator must calculate the minimum RVR for all approaches in accordance with OPS 1.430 and this Appendix. An RVR of less than 800 m is not permitted except when using a suitable autopilot coupled to an ILS or MLS, in which case normal minima apply. The decision height applied must not be less than 1,25 × the minimum use height for the autopilot.

6. Night operations

For night operations at least runway edge, threshold and runway end lights must be on.

(d) *Precision approach — Category II operations*

1. General

A Category II operation is a precision instrument approach and landing using ILS or MLS with:

(i) A decision height below 200 ft but not lower than 100 ft; and

(ii) A runway visual range of not less than 300 m.

2. Decision height

An operator must ensure that the decision height for a Category II operation is not lower than:

(i) The minimum decision height specified in the AFM, if stated;

(ii) The minimum height to which the precision approach aid can be used without the required visual reference;

(iii) The OCH/OCL for the category of aeroplane;

(iv) The decision height to which the flight crew is authorised to operate; or

(v) 100 ft.

3. Visual reference

A pilot may not continue an approach below the Category II decision height determined in accordance with sub-paragraph (d)(2) above unless visual reference containing a segment of at least 3 consecutive lights being the centre line of the approach lights, or touchdown zone lights, or runway centre line lights, or runway edge lights, or a combination of these is attained and can be maintained. This visual reference must include a lateral element of the ground pattern, i.e. an approach lighting crossbar or the landing threshold or a barette of the touchdown zone lighting.

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4. Required RVR

The lowest minima to be used by an operator for Category II operations are:

Table 6

RVR for Cat II approach vs DH

Category II minima		
Decision height	Auto-coupled to below DH (see Note 1)	
	RVR/Aeroplane Category A, B and C	RVR/Aeroplane Category D
100 ft-120 ft	300 m	300 m (Note 2)/350 m
121 ft-140 ft	400 m	400 m
141 ft and above	450 m	450 m

Note 1: The reference to "auto-coupled to below DH" in this table means continued use of the automatic flight control system down to a height which is not greater than 80 % of the applicable DH. Thus airworthiness requirements may, through minimum engagement height for the automatic flight control system, affect the DH to be applied.

Note 2: 300 m may be used for a Category D aeroplane conducting an autoland.

(e) *Precision approach — Category III operations*

1. *General*

Category III operations are subdivided as follows:

(i) Category III A operations

A precision instrument approach and landing using ILS or MLS with:

(A) A decision height lower than 100 ft; and

(B) A runway visual range not less than 200 m.

(ii) Category III B operations

A precision instrument approach and landing using ILS or MLS with:

(A) A decision height lower than 50 ft, or no decision height; and

(B) A runway visual range lower than 200 m but not less than 75 m.

Note: Where the decision height (DH) and runway visual range (RVR) do not fall within the same category, the RVR will determine in which category the operation is to be considered.

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2. Decision height For operations in which a decision height is used, an operator must ensure that the decision height is not lower than: (i) The minimum decision height specified in the AFM, if stated; (ii) The minimum height to which the precision approach aid can be used without the required visual reference; or (iii) The decision height to which the flight crew is authorised to operate.	Unchanged
3. No decision height operations Operations with no decision height may only be conducted if: (i) The operation with no decision height is authorised in the AFM; (ii) The approach aid and the aerodrome facilities can support operations with no decision height; and	(ii) The approach aid and the aerodrome facilities can support operations with no decision height; and
(iii) The operator has an approval for CAT III operations with no decision height. *Note:* In the case of a CAT III runway it may be assumed that operations with no decision height can be supported unless specifically restricted as published in the AIP or NOTAM.	Unchanged
4. Visual reference (i) For Category III A operations, a pilot may not continue an approach below the decision height determined in accordance with sub-paragraph (e)(2) above unless a visual reference containing a segment of at least 3 consecutive lights being the centreline of the approach lights, or touchdown zone lights, or runway centre line lights, or runway edge lights, or a combination of these is attained and can be maintained.	(i) For Category III A operations, and for category III B operations with fail-passive flight control systems, a pilot may not continue an approach below the decision height determined in accordance with sub-paragraph (e)(2) above unless a visual reference containing a segment of at least 3 consecutive lights being the centreline of the approach lights, or touchdown zone lights, or runway centre line lights, or runway edge lights, or a combination of these is attained and can be maintained.
(ii) For Category III B operations with a decision height, a pilot may not continue an approach below the decision height, determined in accordance with sub-paragraph (e)(2) above, unless a visual reference containing at least one centreline light is attained and can be maintained.	(ii) For Category III B operations with fail-operational flight control systems using a decision height, a pilot may not continue an approach below the decision height, determined in accordance with sub-paragraph (e)(2) above, unless a visual reference containing at least one centreline light is attained and can be maintained.
(iii) For Category III operations with no decision height there is no requirement for visual contact with the runway prior to touchdown.	Unchanged

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5. Required RVR

The lowest minima to be used by an operator for Category III operations are:

Table 7

RVR for Cat III approach vs. flight control systems and DH

Category III minima

Approach Category	Decision Height (ft)	Flight Control System/RVR (metres)			
		Fail Passive	Fail Operational		
			Without roll-out system	With roll-out guidance or control system	
				Fail Passive	Fail Operational
III A	Less than 100 ft	200 m (Note 1)	200 m	200 m	200 m
III B	Less than 50 ft	Not authorised	Not authorised	125 m	75 m
III B	No DH	Not authorised	Not authorised	Not authorised	75 m

Note 1: For operations to actual RVR values less than 300 m, a go-around is assumed in the event of an autopilot failure at or below DH.

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Table 7

RVR for Cat III approach vs. DH and roll-out control/guidance system

Category III minima

Approach category	Decision height (ft) (Note 2)	Roll-out Control/ Guidance System	RVR (m)
III A	Less than 100 ft	Not required	200 m
III B	Less than 100 ft	Fail-passive	150 m (Note 1)
III B	Less than 50 ft	Fail-passive	125 m
III B	Less than 50 ft or no decision height	Fail-operational	75 m

Note 1: For aeroplanes certificated in accordance with JAR-AWO 321(b)(3) or equivalent.

Note 2: Flight control system redundancy is determined under JAR-AWO by the minimum certificated decision height.

(f) *Circling*

Unchanged

1. The lowest minima to be used by an operator for circling are:

Table 8

Visibility and MDH for circling vs. aeroplane category

	Aeroplane category			
	A	B	C	D
MDH	400 ft	500 ft	600 ft	700 ft
Minimum meteorological visibility	1 500 m	1 600 m	2 400 m	3 600 m

2. Circling with prescribed tracks is an accepted procedure within the meaning of this paragraph

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(g) Visual Approach

An operator shall not use an RVR of less than 800 m for a visual approach.

(h) Conversion of Reported Meteorological Visibility to RVR

1. An operator must ensure that a meteorological visibility to RVR conversion is not used for calculating take-off minima, Category II or III minima or when a reported RVR is available.

2. When converting meteorological visibility to RVR in all other circumstances than those in sub-paragraph (h)(1) above, an operator must ensure that the following Table is used:

Table 9

Conversion of visibility to RVR

Lighting elements in operation	RVR = Reported Met. Visibility x	
	Day	Night
HI approach and runway lighting	1,5	2,0
Any type of lighting installation other than above	1,0	1,5
No lighting	1,0	Not applicable

Appendix 2 to OPS 1.430 (c)

Aeroplane categories — All weather operations

(a) *Classification of aeroplanes*

The criteria taken into consideration for the classification of aeroplanes by categories is the indicated airspeed at threshold (V_{AT}) which is equal to the stalling speed (V_{SO}) multiplied by 1,3 or V_{S1G} multiplied by 1,23 in the landing configuration at the maximum certificated landing mass. If both V_{SO} and V_{S1G} are available, the higher resulting V_{AT} shall be used. The aeroplane categories corresponding to V_{AT} values are in the Table below:

Aeroplane category	VAT
A	Less than 91 kt
B	From 91 to 120 kt
C	From 121 to 140 kt
D	From 141 to 165 kt
E	From 166 to 210 kt

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The landing configuration which is to be taken into consideration shall be defined by the operator or by the aeroplane manufacturer.

(b) *Permanent change of category (maximum landing mass)*

1. An operator may impose a permanent, lower, landing mass, and use this mass for determining the V_{AT} if approved by the Authority.

2. The category defined for a given aeroplane shall be a permanent value and thus independent of the changing conditions of day-to-day operations.

Appendix 1 to OPS 1.440

Low visibility operations — General operating rules

(a) *General*

The following procedures apply to the introduction and approval of low visibility operations.

(b) *Airborne systems operational demonstration*

An operator must comply with the requirements prescribed in paragraph (c) below when introducing an aeroplane type which is new to the Member States into Category II or III service.

Note: For aeroplane types already used for Category II or III operations in another Member State, the in-service proving programme in paragraph (f) applies instead.

1. Operational reliability

The Category II and III success rate must not be less than that required by JAR-AWO.

2. Criteria for a successful approach

An approach is regarded as successful if:

(i) The criteria are as specified in JAR-AWO or its equivalent;

(ii) No relevant aeroplane system failure occurs.

(c) *Data collection during airborne system demonstration — General*

1. An operator must establish a reporting system to enable checks and periodic reviews to be made during the operational evaluation period before the operator is authorised to conduct Category II or III operations. The reporting system must cover all successful and unsuccessful approaches, with reasons for the latter, and include a record of system component failures. This reporting system must be based upon flight crew reports and automatic recordings as prescribed in paragraphs (d) and (e) below.

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2. The recordings of approaches may be made during normal line flights or during other flights performed by the operator.	
(d) *Data collection during airborne system demonstration — Operations with DH not less than 50 ft*	
1. For operations with DH not less than 50 ft, data must be recorded and evaluated by the operator and evaluated by the Authority when necessary.	
2. It is sufficient for the following data to be recorded by the flight crew:	
(i) Aerodrome and runway used;	
(ii) Weather conditions;	
(iii) Time;	
(iv) Reason for failure leading to an aborted approach;	
(v) Adequacy of speed control;	
(vi) Trim at time of automatic flight control system disengagement;	
(vii) Compatibility of automatic flight control system, flight director and raw data;	
(viii) An indication of the position of the aeroplane relative to the ILS centreline when descending through 30 m (100 ft); and	
(ix) Touchdown position.	
3. The number of approaches, as approved by the Authority, made during the initial evaluation must be sufficient to demonstrate that the performance of the system in actual airline service is such that a 90 % confidence and a 95 % approach success will result.	
(e) *Data collection during airborne system demonstration — Operations with DH less than 50 ft or no DH*	
1. For operations with DH less than 50 ft or no DH, a flight data recorder, or other equipment giving the appropriate information, must be used in addition to the flight crew reports to confirm that the system performs as designed in actual airline service. The following data is required:	
(i) Distribution of ILS deviations at 30 m (100 ft), at touchdown and, if appropriate, at disconnection of the roll-out control system and the maximum values of the deviations between those points; and	
(ii) Sink rate at touchdown.	

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2. Any landing irregularity must be fully investigated using all available data to determine its cause.	
(f) *In-service proving*	
Note: An operator fulfilling the requirements of sub-paragraph (b) above will be deemed to have satisfied the in-service proving requirements contained in this paragraph.	
1. The system must demonstrate reliability and performance in line operations consistent with the operational concepts. A sufficient number of successful landings, as determined by the Authority, must be accomplished in line operations, including training flights, using the autoland and roll-out system installed in each aeroplane type.	
2. The demonstration must be accomplished using a Category II or Category III ILS. However, if the operator chooses to do so, demonstrations may be made on other ILS facilities if sufficient data is recorded to determine the cause of unsatisfactory performance.	
3. If an operator has different variants of the same type of aeroplane utilising the same basic flight control and display systems, or different basic flight control and display systems on the same type of aeroplane, the operator shall show that the variants comply with the basic system performance criteria, but the operator need not conduct a full operational demonstration for each variant.	
4. Where an operator introduces an aeroplane type which has already been approved by the Authority of any Member State for Category II and/or III operations a reduced proving programme may be approved.	
(g) *Continuous monitoring*	
1. After obtaining the initial authorisation, the operations must be continuously monitored by the operator to detect any undesirable trends before they become hazardous. Flight crew reports may be used to achieve this.	
2. The following information must be retained for a period of 12 months:	
(i) The total number of approaches, by aeroplane type, where the airborne Category II or III equipment was utilised to make satisfactory, actual or practice, approaches to the applicable Category II or III minima; and	

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(ii) Reports of unsatisfactory approaches and/or automatic landings, by aerodrome and aeroplane registration, in the following categories:

(A) Airborne equipment faults;

(B) Ground facility difficulties;

(C) Missed approaches because of ATC instructions; or

(D) Other reasons.

3. An operator must establish a procedure to monitor the performance of the automatic landing system of each aeroplane.

(h) *Transitional periods*

1. Operators with no previous Category II or III experience

(i) An operator without previous Category II or III operational experience may be approved for Category II or III A operations, having gained a minimum experience of 6 months of Category I operations on the aeroplane type.

(ii) On completing 6 months of Category II or III A operations on the aeroplane type the operator may be approved for Category III B operations. When granting such an approval, the Authority may impose higher minima than the lowest applicable for an additional period. The increase in minima will normally only refer to RVR and/or a restriction against operations with no decision height and must be selected such that they will not require any change of the operational procedures.

2. *Operators with previous Category II or III experience*

An operator with previous Category II or III experience may obtain authorisation for a reduced transition period by application to the Authority.

(i) *Maintenance of Category II, Category III and LVTO equipment*

Maintenance instructions for the on-board guidance systems must be established by the operator, in liaison with the manufacturer, and included in the operator's aeroplane maintenance programme prescribed in OPS 1.910 which must be approved by the Authority.

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Appendix 1 to OPS 1.450

Low visibility operations — Training and qualifications

(a) *General*

An operator must ensure that flight crew member training programmes for low visibility operations include structured courses of ground, simulator and/or flight training. The operator may abbreviate the course content as prescribed by sub-paragraphs (2) and (3) below provided the content of the abbreviated course is acceptable to the Authority.

1. Flight crew members with no Category II or Category III experience must complete the full training programme prescribed in sub-paragraphs (b), (c) and (d) below.

2. Flight crew members with Category II or Category III experience with another operator may undertake an abbreviated ground training course.

3. Flight crew members with Category II or Category III experience with the operator may undertake an abbreviated ground, simulator and/or flight training course. The abbreviated course is to include at least the requirements of sub-paragraphs (d)(1), (d)(2)(i) or (d)(2)(ii) as appropriate and (d)(3)(i).

(b) *Ground training*

An operator must ensure that the initial ground training course for low visibility operations covers at least:

1. The characteristics and limitations of the ILS and/or MLS;

2. The characteristics of the visual aids;

3. The characteristics of fog;

4. The operational capabilities and limitations of the particular airborne system;

5. The effects of precipitation, ice accretion, low level wind shear and turbulence;

6. The effect of specific aeroplane malfunctions;

7. The use and limitations of RVR assessment systems;

8. The principles of obstacle clearance requirements;

9. Recognition of and action to be taken in the event of failure of ground equipment;

10. The procedures and precautions to be followed with regard to surface movement during operations when the RVR is 400 m or less and any additional procedures required for take-off in conditions below 150 m (200 m for Category D aeroplanes);

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11. The significance of decision heights based upon radio altimeters and the effect of terrain profile in the approach area on radio altimeter readings and on the automatic approach/landing systems;	
12. The importance and significance of Alert Height if applicable and the action in the event of any failure above and below the Alert Height;	
13. The qualification requirements for pilots to obtain and retain approval to conduct low visibility take-offs and Category II or III operations; and	
14. The importance of correct seating and eye position.	
(c) *Simulator training and/or flight training*	
1. An operator must ensure that simulator and/or flight training for low visibility operations includes:	
(i) Checks of satisfactory functioning of equipment, both on the ground and in flight;	
(ii) Effect on minima caused by changes in the status of ground installations;	
(iii) Monitoring of automatic flight control systems and autoland status annunciators with emphasis on the action to be taken in the event of failures of such systems;	
(iv) Actions to be taken in the event of failures such as engines, electrical systems, hydraulics or flight control systems;	
(v) The effect of known unserviceabilities and use of minimum equipment lists;	
(vi) Operating limitations resulting from airworthiness certification;	
(vii) Guidance on the visual cues required at decision height together with information on maximum deviation allowed from glidepath or localiser; and	
(viii) The importance and significance of Alert Height if applicable and the action in the event of any failure above and below the Alert Height.	
2. An operator must ensure that each flight crew member is trained to carry out his duties and instructed on the coordination required with other crew members. Maximum use should be made of suitably equipped flight simulators for this purpose.	

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3. Training must be divided into phases covering normal operation with no aeroplane or equipment failures but including all weather conditions which may be encountered and detailed scenarios of aeroplane and equipment failure which could affect Category II or III operations. If the aeroplane system involves the use of hybrid or other special systems (such as head up displays or enhanced vision equipment) then flight crew members must practise the use of these systems in normal and abnormal modes during the simulator phase of training.	
4. Incapacitation procedures appropriate to low visibility take-offs and Category II and III operations shall be practised.	
5. For aeroplanes with no type specific simulator, operators must ensure that the flight training phase specific to the visual scenarios of Category II operations is conducted in a simulator approved for that purpose by the Authority. Such training must include a minimum of 4 approaches. The training and procedures that are type specific shall be practised in the aeroplane.	
6. Initial Category II and III training shall include at least the following exercises:	
(i) Approach using the appropriate flight guidance, autopilots and control systems installed in the aeroplane, to the appropriate decision height and to include transition to visual flight and landing;	
(ii) Approach with all engines operating using the appropriate flight guidance systems, autopilots and control systems installed in the aeroplane down to the appropriate decision height followed by missed approach; all without external visual reference;	
(iii) Where appropriate, approaches utilising automatic flight systems to provide automatic flare, landing and roll-out; and	
(iv) Normal operation of the applicable system both with and without acquisition of visual cues at decision height.	
7. Subsequent phases of training must include at least:	
(i) Approaches with engine failure at various stages on the approach;	
(ii) Approaches with critical equipment failures (e.g. electrical systems, auto flight systems, ground and/or airborne ILS/MLS systems and status monitors);	

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(iii) Approaches where failures of autoflight equipment at low level require either:	
(A) Reversion to manual flight to control flare, landing and roll out or missed approach; or	
(B) Reversion to manual flight or a downgraded automatic mode to control missed approaches from, at or below decision height including those which may result in a touchdown on the runway;	
(iv) Failures of the systems which will result in excessive localiser and/or glideslope deviation, both above and below decision height, in the minimum visual conditions authorised for the operation. In addition, a continuation to a manual landing must be practised if a head-up display forms a downgraded mode of the automatic system or the head-up display forms the only flare mode; and	
(v) Failures and procedures specific to aeroplane type or variant.	
8. The training programme must provide practice in handling faults which require a reversion to higher minima.	
9. The training programme must include the handling of the aeroplane when, during a fail passive Category III approach, the fault causes the autopilot to disconnect at or below decision height when the last reported RVR is 300 m or less.	
10. Where take-offs are conducted in RVRs of 400 m and below, training must be established to cover systems failures and engine failure resulting in continued as well as rejected take-offs.	
(d) *Conversion training requirements to conduct low visibility take-off and Category II and III Operations*	
An operator shall ensure that each flight crew member completes the following low visibility procedures training if converting to a new type or variant of aeroplane in which low visibility take-off and Category II and III Operations will be conducted. The flight crew member experience requirements to undertake an abbreviated course are prescribed in sub-paragraphs (a)(2) and (a)(3), above:	
1. Ground training	
The appropriate requirements prescribed in sub-paragraph (b) above, taking into account the flight crew member's Category II and Category III training and experience.	

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2. Simulator training and/or flight training

(i) A minimum of 8 approaches and/or landings in a simulator approved for the purpose.

(ii) Where no type-specific simulator is available, a minimum of 3 approaches including at least 1 go-around is required on the aeroplane.

(iii) Appropriate additional training if any special equipment is required such as head-up displays or enhanced vision equipment.

3. Flight crew qualification

The flight crew qualification requirements are specific to the operator and the type of aeroplane operated.

(i) The operator must ensure that each flight crew member completes a check before conducting Category II or III operations.

(ii) The check prescribed in sub-paragraph (i) above may be replaced by successful completion of the simulator and/or flight training prescribed in sub-paragraph (d)(2) above.

4. Line flying under supervision

An operator must ensure that each flight crew member undergoes the following line flying under supervision:

(i) For Category II when a manual landing is required, a minimum of 3 landings from autopilot disconnect;

(ii) For Category III, a minimum of 3 autolands except that only 1 autoland is required when the training required in sub-paragraph (d)(2) above has been carried out in a full flight simulator usable for zero flight time training.

(e) *Type and command experience*

Before commencing Category II/III operations, the following additional requirements are applicable to commanders, or pilots to whom conduct of the flight has been delegated, who are new to the aeroplane type:

1. 50 hours or 20 sectors on the type, including line flying under supervision; and

2. 100 m must be added to the applicable Category II or Category III RVR minima unless previously qualified for Category II or III operations with an operator, until a total of 100 hours or 40 sectors, including line flying under supervision, has been achieved on the type.

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3. The Authority may authorise a reduction in the above command experience requirements for flight crew members who have Category II or Category III command experience.	
(f) *Low visibility take-off with RVR less than 150/200 m*	
1. An operator must ensure that prior to authorisation to conduct take-offs in RVRs below 150 m (below 200 m for Category D aeroplanes) the following training is carried out:	
(i) Normal take-off in minimum authorised RVR conditions;	
(ii) Take-off in minimum authorised RVR conditions with an engine failure between V_1 and V_2, or as soon as safety considerations permit; and	
(iii) Take-off in minimum authorised RVR conditions with an engine failure before V_1 resulting in a rejected take-off.	
2. An operator must ensure that the training required by sub-paragraph (1) above is carried out in an approved simulator. This training must include the use of any special procedures and equipment. Where no approved simulator exists, the Authority may approve such training in an aeroplane without the requirement for minimum RVR conditions. (See Appendix 1 to OPS 1.965.)	
3. An operator must ensure that a flight crew member has completed a check before conducting low visibility take-offs in RVRs of less than 150 m (less than 200 m for Category D aeroplanes) if applicable. The check may only be replaced by successful completion of the simulator and/or flight training prescribed in sub-paragraph (f)(1) on initial conversion to an aeroplane type.	
(g) *Recurrent training and checking — Low visibility operations*	
1. An operator must ensure that, in conjunction with the normal recurrent training and operator proficiency checks, a pilot's knowledge and ability to perform the tasks associated with the particular category of operation, for which he is authorised is checked. The required number of approaches within the validity period of the operators proficiency check (as described in OPS 1.965 (b)) is to be a minimum of three, one of which may be substituted by an approach and landing in the aeroplane using approved Category II and III procedures. One missed approach shall be flown during the conduct of the operators proficiency check. If the operator is authorised to conduct take-off with RVR less than 150/200 m at least one LVTO to the lowest applicable minima shall be flown during the conduct of the operators proficiency check.	
2. For Category III operations an operator must use a flight simulator approved for Category III training.	

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3. An operator must ensure that, for Category III operations on aeroplanes with a fail passive flight control system, a missed approach is completed at least once over the period of three consecutive operator proficiency checks the result of an autopilot failure at or below decision height when the last reported RVR was 300 m or less.

4. The Authority may authorise recurrent training and checking for Category II and LVTO operations in an aeroplane type where no approved simulator is available.

Note: Recency for LTVO and Category II/III based upon automatic approaches and/or auto-lands is maintained by the recurrent training and checking as prescribed in this paragraph.

Appendix 1 to OPS 1.455

Low visibility operations — Operating procedures

(a) *General*

Low visibility operations include:

1. Manual take-off (with or without electronic guidance systems);

2. Auto-coupled approach to below DH, with manual flare, landing and roll-out;

3. Auto-coupled approach followed by auto-flare, auto-landing and manual roll-out; and

4. Auto-coupled approach followed by auto-flare, auto-landing and auto-roll-out,

when the applicable RVR is less than 400 m.

Note 1: A hybrid system may be used with any of these modes of operations.

Note 2: Other forms of guidance systems or displays may be certificated and approved.

(b) *Procedures and operating instructions*

1. The precise nature and scope of procedures and instructions given depend upon the airborne equipment used and the flight deck procedures followed. An operator must clearly define flight crew member duties during take-off, approach, flare, roll-out and missed approach in the Operations Manual. Particular emphasis must be placed on flight crew responsibilities during transition from non-visual conditions to visual conditions, and on the procedures to be used in deteriorating visibility or when failures occur. Special attention must be paid to the distribution of flight deck duties so as to ensure that the workload of the pilot making the decision to land or execute a missed approach enables him to devote himself to supervision and the decision-making process.

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2. An operator must specify the detailed operating procedures and instructions in the Operations Manual. The instructions must be compatible with the limitations and mandatory procedures contained in the Aeroplane Flight Manual and cover the following items in particular:	
(i) Checks for the satisfactory functioning of the aeroplane equipment, both before departure and in flight;	
(ii) Effect on minima caused by changes in the status of the ground installations and airborne equipment;	
(iii) Procedures for the take-off, approach, flare, landing, roll-out and missed approach;	
(iv) Procedures to be followed in the event of failures, warnings and other non-normal situations;	
(v) The minimum visual reference required;	
(vi) The importance of correct seating and eye position;	
(vii) Action which may be necessary arising from a deterioration of the visual reference;	
(viii) Allocation of crew duties in the carrying out of the procedures according to sub-paragraphs (i) to (iv) and (vi) above, to allow the Commander to devote himself mainly to supervision and decision-making;	
(ix) The requirement for all height calls below 200 ft to be based on the radio altimeter and for one pilot to continue to monitor the aeroplane instruments until the landing is completed;	
(x) The requirement for the Localiser Sensitive Area to be protected;	
(xi) The use of information relating to wind velocity, windshear, turbulence, runway contamination and use of multiple RVR assessments;	
(xii) Procedures to be used for practice approaches and landing on runways at which the full Category II or Category III aerodrome procedures are not in force;	
(xiii) Operating limitations resulting from airworthiness certification; and	
(xiv) Information on the maximum deviation allowed from the ILS glide path and/or localiser.	

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Appendix 1 to OPS 1.465

Minimum visibilities for VFR operations

Airspace class	B	C D E	F G	
			Above 900 m (3 000 ft) AMSL or above 300 m (1 000 ft) above terrain, whichever is the higher	At and below 900 m (3 000 ft) AMSL or 300 m (1 000 ft) above terrain, whichever is the higher
Distance from cloud	Clear of cloud	1 500 m horizontally 300 m (1 000 ft) vertically		Clear of cloud and in sight of the surface
Flight visibility	8 km at and above 3 050 m (10 000 ft) AMSL (Note 1) 5 km below 3 050 m (10 000 ft) AMSL			5 km (Note 2)

Note 1: When the height of the transition altitude is lower than 3 050 m (10 000 ft) AMSL, FL 100 should be used in lieu of 10 000 ft.

Note 2: Cat A and B aeroplanes may be operated in flight visibilities down to 3 000 m, provided the appropriate ATS authority permits use of a flight visibility less than 5 km, and the circumstances are such, that the probability of encounters with other traffic is low, and the IAS is 140 kt or less.

SUBPART F

PERFORMANCE GENERAL

OPS 1.470

Applicability

(a) An operator shall ensure that multi-engine aeroplanes powered by turbopropeller engines with a maximum approved passenger seating configuration of more than 9 or a maximum take-off mass exceeding 5 700 kg, and all multi-engine turbojet powered aeroplanes are operated in accordance with Subpart G (Performance Class A).

(b) An operator shall ensure that propeller driven aeroplanes with a maximum approved passenger seating configuration of 9 or less, and a maximum take-off mass of 5 700 kg or less are operated in accordance with Subpart H (Performance Class B).

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(c) An operator shall ensure that aeroplanes powered by reciprocating engines with a maximum approved passenger seating configuration of more than 9 or a maximum take-off mass exceeding 5 700 kg are operated in accordance with Subpart I (Performance Class C).

(d) Where full compliance with the requirements of the appropriate Subpart cannot be shown due to specific design characteristics (e.g. supersonic aeroplanes or seaplanes), the operator shall apply approved performance standards that ensure a level of safety equivalent to that of the appropriate Subpart.

(e) Multi-engine aeroplanes powered by turbopropeller engines with a maximum approved passenger seating configuration of more than 9 and with a maximum take-off mass of 5 700 kg or less may be permitted by the Authority to operate under alternative operating limitations to those of Performance Class A which shall not be less restrictive than those of the relevant requirements of Subpart H;

(f) The provisions of subparagraph (e) above will expire on 1 April 2000.

OPS 1.475

General

(a) An operator shall ensure that the mass of the aeroplane:

1. At the start of the take-off;

or, in the event of in-flight replanning

2. At the point from which the revised operational flight plan applies,

is not greater than the mass at which the requirements of the appropriate Subpart can be complied with for the flight to be undertaken, allowing for expected reductions in mass as the flight proceeds, and for such fuel jettisoning as is provided for in the particular requirement.

(b) An operator shall ensure that the approved performance Data contained in the Aeroplane Flight Manual is used to determine compliance with the requirements of the appropriate Subpart, supplemented as necessary with other data acceptable to the Authority as prescribed in the relevant Subpart. When applying the factors prescribed in the appropriate Subpart, account may be taken of any operational factors already incorporated in the Aeroplane Flight Manual performance data to avoid double application of factors.

(c) When showing compliance with the requirements of the appropriate Subpart, due account shall be taken of aeroplane configuration, environmental conditions and the operation of systems which have an adverse effect on performance.

(d) For performance purposes, a damp runway, other than a grass runway, may be considered to be dry.

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OPS 1.480

Terminology

(a) Terms used in Subparts F, G, H, I and J, and not defined in JAR-1, have the following meaning:

1. Accelerate-stop distance available (ASDA). The length of the take-off run available plus the length of stopway, if such stopway is declared available by the appropriate Authority and is capable of bearing the mass of the aeroplane under the prevailing operating conditions.

2. Contaminated runway. A runway is considered to be contaminated when more than 25 % of the runway surface area (whether in isolated areas or not) within the required length and width being used is covered by the following:

   (i) Surface water more than 3 mm (0,125 in) deep, or by slush, or loose snow, equivalent to more than 3 mm (0,125 in) of water;

   (ii) Snow which has been compressed into a solid mass which resists further compression and will hold together or break into lumps if picked up (compacted snow); or

   (iii) Ice, including wet ice.

3. Damp runway. A runway is considered damp when the surface is not dry, but when the moisture on it does not give it a shiny appearance.

4. Dry runway. A dry runway is one which is neither wet nor contaminated, and includes those paved runways which have been specially prepared with grooves or porous pavement and maintained to retain “effectively dry” braking action even when moisture is present.

5. Landing distance available (LDA). The length of the runway which is declared available by the appropriate Authority and suitable for the ground run of an aeroplane landing.

6. Maximum approved passenger seating configuration. The maximum passenger seating capacity of an individual aeroplane, excluding pilot seats or flight deck seats and cabin crew seats as applicable, used by the operator, approved by the Authority and specified in the Operations Manual.

7. Take-off distance available (TODA). The length of the take-off run available plus the length of the clearway available.

8. Take-off mass. The take-off mass of the aeroplane shall be taken to be its mass, including everything and everyone carried at the commencement of the take-off run.

9. Take-off run available (TORA). The length of runway which is declared available by the appropriate Authority and suitable for the ground run of an aeroplane taking off.

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10. Wet runway. A runway is considered wet when the runway surface is covered with water, or equivalent, less than specified in sub-paragraph (a)(2) above or when there is sufficient moisture on the runway surface to cause it to appear reflective, but without significant areas of standing water.

(b) The terms "accelerate-stop distance", "take-off distance", "take-off run", "net take-off flight path", "one engine inoperative en-route net flight path" and "two engines inoperative en-route net flight path" as relating to the aeroplane have their meanings defined in the airworthiness requirements under which the aeroplane was certificated, or as specified by the Authority if it finds that definition inadequate for showing compliance with the performance operating limitations.

SUBPART G

PERFORMANCE CLASS A

OPS 1.485

General

(a) An operator shall ensure that, for determining compliance with the requirements of this Subpart, the approved performance data in the Aeroplane Flight Manual is supplemented as necessary with other data acceptable to the Authority if the approved performance Data in the Aeroplane Flight Manual is insufficient in respect of items such as:

1. Accounting for reasonably expected adverse operating conditions such as take-off and landing on contaminated runways; and

2. Consideration of engine failure in all flight phases.

(b) An operator shall ensure that, for the wet and contaminated runway case, performance data determined in accordance with JAR 25 × 1591 or equivalent acceptable to the Authority is used.

OPS 1.490

Take-off

(a) An operator shall ensure that the take-off mass does not exceed the maximum take-off mass specified in the Aeroplane Flight Manual for the pressure altitude and the ambient temperature at the aerodrome at which the take-off is to be made.

(b) An operator must meet the following requirements when determining the maximum permitted take-off mass:

1. The accelerate-stop distance must not exceed the accelerate-stop distance available;

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2. The take-off distance must not exceed the take-off distance available, with a clearway distance not exceeding half of the take-off run available;

3. The take-off run must not exceed the take-off run available;

4. Compliance with this paragraph must be shown using a single value of V_1 for the rejected and continued take-off; and

5. On a wet or contaminated runway, the take-off mass must not exceed that permitted for a take-off on a dry runway under the same conditions.

(c) When showing compliance with sub-paragraph (b) above, an operator must take account of the following:

1. The pressure altitude at the aerodrome;

2. The ambient temperature at the aerodrome;

3. The runway surface condition and the type of runway surface;

4. The runway slope in the direction of take-off;

5. Not more than 50 % of the reported head-wind component or not less than 150 % of the reported tailwind component; and

6. The loss, if any, of runway length due to alignment of the aeroplane prior to take-off.

OPS 1.495

Take-off obstacle clearance

(a) An operator shall ensure that the net take-off flight path clears all obstacles by a vertical distance of at least 35 ft or by a horizontal distance of at least 90 m plus 0,125 × D, where D is the horizontal distance the aeroplane has travelled from the end of the take-off distance available or the end of the take-off distance if a turn is scheduled before the end of the take-off distance available. For aeroplanes with a wingspan of less than 60 m a horizontal obstacle clearance of half the aeroplane wingspan plus 60 m, plus 0,125 × D may be used.

(b) When showing compliance with sub-paragraph (a) above, an operator must take account of the following:

1. The mass of the aeroplane at the commencement of the take-off run;

2. The pressure altitude at the aerodrome;

3. The ambient temperature at the aerodrome; and

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4. Not more than 50 % of the reported head-wind component or not less than 150 % of the reported tailwind component.	
(c) When showing compliance with sub-paragraph (a) above:	
1. Track changes shall not be allowed up to the point at which the net take-off flight path has achieved a height equal to one half the wingspan but not less than 50 ft above the elevation of the end of the take-off run available. Thereafter, up to a height of 400 ft it is assumed that the aeroplane is banked by no more than 15°. Above 400 ft height bank angles greater than 15°, but not more than 25° may be scheduled;	
2. Any part of the net take-off flight path in which the aeroplane is banked by more than than 15° must clear all obstacles within the horizontal distances specified in sub-paragraphs (a), (d) and (e) of this paragraph by a vertical distance of at least 50 ft;	
3. An operator must use special procedures, subject to the approval of the Authority, to apply increased bank angles of not more than 20° between 200 ft and 400 ft, or not more than 30° above 400 ft (See Appendix 1 to OPS 1.495 (c) (3)), and	
4. Adequate allowance must be made for the effect of bank angle on operating speeds and flight path including the distance increments resulting from increased operating speeds.	
(d) When showing compliance with sub-paragraph (a) above for those cases where the intended flight path does not require track changes of more than 15°, an operator need not consider those obstacles which have a lateral distance greater than:	
1. 300 m, if the pilot is able to maintain the required navigational accuracy through the obstacle accountability area; or	
2. 600 m, for flights under all other conditions.	
(e) When showing compliance with sub-paragraph (a) above for those cases where the intended flight path does require track changes of more than 15°, an operator need not consider those obstacles which have a lateral distance greater than:	
1. 600 m, if the pilot is able to maintain the required navigational accuracy through the obstacle accountability area; or	
2. 900 m for flights under all other conditions.	
(f) An operator shall establish contingency procedures to satisfy the requirements of OPS 1.495 and to provide a safe route, avoiding obstacles, to enable the aeroplane to either comply with the en-route requirements of OPS 1.500, or land at either the aerodrome of departure or at a take-off alternate aerodrome.	

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OPS 1.500

En-route — One engine inoperative

(a) An operator shall ensure that the one engine inoperative en-route net flight path data shown in the Aeroplane Flight Manual, appropriate to the meteorological conditions expected for the flight, complies with either sub-paragraph (b) or (c) at all points along the route. The net flight path must have a positive gradient at 1 500 ft above the aerodrome where the landing is assumed to be made after engine failure. In meteorological conditions requiring the operation of ice protection systems, the effect of their use on the net flight path must be taken into account.

(b) The gradient of the net flight path must be positive at at least 1 000 ft above all terrain and obstructions along the route within 9,3 km (5 nm) on either side of the intended track.

(c) The net flight path must permit the aeroplane to continue flight from the cruising altitude to an aerodrome where a landing can be made in accordance with OPS 1.515 or 1.520 as appropriate, the net flight path clearing vertically, by at least 2 000 ft, all terrain and obstructions along the route within 9,3 km (5 nm) on either side of the intended track in accordance with sub-paragraphs (1) to (4) below:

1. The engine is assumed to fail at the most critical point along the route;

2. Account is taken of the effects of winds on the flight path;

3. Fuel jettisoning is permitted to an extent consistent with reaching the aerodrome with the required fuel reserves, if a safe procedure is used; and

4. The aerodrome where the aeroplane is assumed to land after engine failure must meet the following criteria:

   (i) The performance requirements at the expected landing mass are met; and

   (ii) Weather reports or forecasts, or any combination thereof, and field condition reports indicate that a safe landing can be accomplished at the estimated time of landing.

(d) When showing compliance with OPS 1.500, an operator must increase the width margins of subparagraphs (b) and (c) above to 18,5 km (10 nm) if the navigational accuracy does not meet the 95 % containment level.

OPS 1.505

En-route — Aeroplanes with three or more engines, two engines inoperative

(a) An operator shall ensure that at no point along the intended track will an aeroplane having three or more engines be more than 90 minutes, at the all-engines long range cruising speed at standard temperature in still air, away from an aerodrome at which the performance requirements applicable at the expected landing mass are met unless it complies with sub-paragraphs (b) to (f) below.

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) The two engines inoperative en-route net flight path data must permit the aeroplane to continue the flight, in the expected meteorological conditions, from the point where two engines are assumed to fail simultaneously, to an aerodrome at which it is possible to land and come to a complete stop when using the prescribed procedure for a landing with two engines inoperative. The net flight path must clear vertically, by at least 2 000 ft all terrain and obstructions along the route within 9,3 km (5 nm) on either side of the intended track. At altitudes and in meteorological conditions requiring ice protection systems to be operable, the effect of their use on the net flight path data must be taken into account. If the navigational accuracy does not meet the 95 % containment level, an operator must increase the width margin given above to 18,5 km (10 nm).	
(c) The two engines are assumed to fail at the most critical point of that portion of the route where the aeroplane is more than 90 minutes, at the all engines long range cruising speed at standard temperature in still air, away from an aerodrome at which the performance requirements applicable at the expected landing mass are met.	
(d) The net flight path must have a positive gradient at 1 500 ft above the aerodrome where the landing is assumed to be made after the failure of two engines.	
(e) Fuel jettisoning is permitted to an extent consistent with reaching the aerodrome with the required fuel reserves, if a safe procedure is used.	
(f) The expected mass of the aeroplane at the point where the two engines are assumed to fail must not be less than that which would include sufficient fuel to proceed to an aerodrome where the landing is assumed to be made, and to arrive there at least 1 500 ft directly over the landing area and thereafter to fly level for 15 minutes.	
OPS 1.510	
Landing — Destination and alternate aerodromes	
(a) An operator shall ensure that the landing mass of the aeroplane determined in accordance with OPS 1.475 (a) does not exceed the maximum landing mass specified for the altitude and the ambient temperature expected for the estimated time of landing at the destination and alternate aerodrome.	
(b) For instrument approaches with decision heights below 200 ft, an operator must verify that the approach mass of the aeroplane, taking into account the take-off mass and the fuel expected to be consumed in flight, allows a missed approach gradient of climb, with the critical engine failed and with the speed and configuration used for go-around of at least 2,5 %, or the published gradient, whichever is the greater. The use of an alternative method must be approved by the Authority.	

INITIAL PROPOSAL

AMENDED PROPOSAL

OPS 1.515

Landing — Dry runways

(a) An operator shall ensure that the landing mass of the aeroplane determined in accordance with OPS 1.475 (a) for the estimated time of landing at the destination aerodrome and at any alternate aerodrome allows a full stop landing from 50 ft above the threshold:

1. For turbo-jet powered aeroplanes, within 60 % of the landing distance available; or

2. For turbo-propeller powered aeroplanes, within 70 % of the landing distance available;

3. For Steep Approach procedures the Authority may approve the use of landing distance Data factored in accordance with sub-paragraphs (a)(1) and (a)(2) above as appropriate, based on a screen height of less than 50 ft, but not less than 35 ft. (See Appendix 1 to OPS 1.515(a)(3));

4. When showing compliance with sub-paragraphs (a)(1) and (a)(2) above, the Authority may exceptionally approve, when satisfied that there is a need (see Appendix 1), the use of Short Landing Operations, in accordance with Appendices 1 and 2 together with any other supplementary conditions that the Authority considers necessary in order to ensure an acceptable level of safety in the particular case.

(b) When showing compliance with sub-paragraph (a) above, an operator must take account of the following:

1. The altitude at the aerodrome;

2. Not more than 50 % of the head-wind component or not less than 150 % of the tailwind component; and

3. The runway slope in the direction of landing if greater than ± 2 %.

(c) When showing compliance with sub-paragraph (a) above, it must be assumed that:

1. The aeroplane will land on the most favourable runway, in still air; and

2. The aeroplane will land on the runway most likely to be assigned considering the probable wind speed and direction and the ground handling characteristics of the aeroplane, and considering other conditions such as landing aids and terrain.

(d) If an operator is unable to comply with sub-paragraph (c)(1) above for a destination aerodrome having a single runway where a landing depends upon a specified wind component, an aeroplane may be despatched if 2 alternate aerodromes are designated which permit full compliance with sub-paragraphs (a), (b) and (c). Before commencing an approach to land at the destination aerodrome the commander must satisfy himself that a landing can be made in full compliance with OPS 1.510 and sub-paragraphs (a) and (b) above.

(e) If an operator is unable to comply with sub-paragraph (c)(2) above for the destination aerodrome, the aeroplane may be despatched if an alternate aerodrome is designated which permits full compliance with sub-paragraphs (a), (b) and (c).

INITIAL PROPOSAL

AMENDED PROPOSAL

OPS 1.520

Landing — Wet and contaminated runways

(a) An operator shall ensure that when the appropriate weather reports or forecasts, or a combination thereof, indicate that the runway at the estimated time of arrival may be wet, the landing distance available is at least 115 % of the required landing distance, determined in accordance with OPS 1.515.

(b) An operator shall ensure that when the appropriate weather reports or forecasts, or a combination thereof, indicate that the runway at the estimated time of arrival may be contaminated, the landing distance available must be at least the landing distance determined in accordance with sub-paragraph (a) above, or at least 115 % of the landing distance determined in accordance with approved contaminated landing distance data or equivalent, accepted by the Authority, whichever is greater.

(c) A landing distance on a wet runway shorter than that required by sub-paragraph (a) above, but not less than that required by OPS 1.515 (a), may be used if the Aeroplane Flight Manual includes specific additional information about landing distances on wet runways.

(d) A landing distance on a specially prepared contaminated runway shorter than that required by sub-paragraph (b) above, but not less than that required by OPS 1.515 (a), may be used if the Aeroplane Flight Manual includes specific additional information about landing distances on contaminated runways.

(e) When showing compliance with sub-paragraphs (b), (c) and (d) above, the criteria of OPS 1.515 shall be applied accordingly except that OPS 1.515 (a)(1) and (2) shall not be applied to sub-paragraph (b) above.

Appendix 1 to OPS 1.495 (c)(3)

Approval of increased bank angles

For the use of the increased bank angles requiring special approval, the following criteria shall be met:

1. The Aeroplane Flight Manual must contain approved data for the required increase of operating speed and data to allow the construction of the flight path considering the increased bank angles and speeds.

2. Visual guidance must be available for navigation accuracy. Weather minima and wind limitations must be specified for each runway and approved by the Authority.

3. Training in accordance with OPS 1.975.

Appendix 1 to OPS 1.515 (a)(3)

Steep approach procedures

The Authority may approve the application of steep approach procedures using glideslope angles of 4,5° or more and with screen heights of less than 50 ft but not less than 35 ft, provided that the following criteria are met:

INITIAL PROPOSAL	AMENDED PROPOSAL

1. The Aeroplane Flight Manual must state the maximum approved glideslope angle, any other limitations, normal, abnormal or emergency procedures for the steep approach as well as amendments to the field length data when using steep approach criteria;

2. A suitable glidepath reference system comprising at least a visual glidepath indicating system must be available at each aerodrome at which steep approach procedures are to be conducted; and

3. Weather minima must be specified and approved for each runway to be used with a steep approach. Consideration must be given to the following:

   (i) The obstacle situation;

   (ii) The type of glidepath reference and runway guidance such as visual aids, MLS, 3D-NAV, ILS, LLZ, VOR, NDB;

   (iii) The minimum visual reference to be required at DH and MDA;

   (iv) Available airborne equipment;

   (v) Pilot qualification and special aerodrome familiarisation;

   (vi) Aeroplane Flight Manual limitations and procedures; and

   (vii) Missed approach criteria.

Appendix 1 to OPS 1.515 (a)(4)

Short landing operations

For the purpose of OPS 1.515 (a)(4), the distance used for the calculation of the permitted landing mass may consist of the usable length of the declared safe area plus the declared landing distance available. The Authority may approve such operations in accordance with the following criteria:

1. Demonstration of the need for short landing operations. There must be a clear public interest and operational necessity for the operation, either due to the remoteness of the airport or to physical limitations relating to extending the runway.

2. Aeroplane and operational criteria.

   (i) Short landing operations will only be approved for aeroplanes where the vertical distance between the path of the pilot's eye and the path of the lowest part of the wheels with the aeroplane, established on the normal glide path does not exceed 3 metres.

   (ii) When establishing aerodrome operating minima the visibility/RVR must not be less than 1,5 km. In addition, wind limitations must be specified in the Operations Manual.

   (iii) Minimum pilot experience, training requirements and special aerodrome familiarisation must be specified for such operations in the Operations Manual.

INITIAL PROPOSAL

3. It is assumed that the crossing height over the beginning of the usable length of the declared safe area is 50 ft.

4. Additional criteria. The Authority may impose such additional conditions as are deemed necessary for a safe operation taking into account the aeroplane type characteristics, orographic characteristics in the approach area, available approach aids and missed approach/baulked landing considerations. Such additional conditions may be, for instance, the requirement for VASI/PAPI -type visual slope indicator system.

AMENDED PROPOSAL

Appendix 2 to OPS 1.515 (a)(4)

Airfield criteria for short landing operations

Airfield criteria

1. The use of the safe area must be approved by the airport authority.

2. The useable length of the declared safe area under the provisions of 1.515 (a)(4), and this Appendix, must not exceed 90 metres.

3. The width of the declared safe area shall not be less than twice the runway width or twice the wing span, whichever is the greater, centred on the extended runway centre line.

4. The declared safe area must be clear of obstructions or depressions which would endanger an aeroplane undershooting the runway and no mobile object shall be permitted on the declared safety area while the runway is being used for short landing operations.

5. The slope of the declared safety area must not exceed 5 % upward nor 2 % downward in the direction of landing.

6. For the purpose of this operation, the bearing strength requirement of OPS 1.480 (a)(5) need not apply to the declared safe area.

SUBPART H

PERFORMANCE CLASS B

OPS 1.525

General

(a) An operator shall not operate a single-engine aeroplane:

1. At night; or

2. In Instrument Meteorological Conditions except under Special Visual Flight Rules.

Note: Limitations on the operation of single-engine aeroplanes are covered by OPS 1.240 (a)(6).

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) An operator shall treat two-engine aeroplanes which do not meet the climb requirements of Appendix 1 to OPS 1.525 (b) as single-engine aeroplanes.	
OPS 1.530	
Take-off	
(a) An operator shall ensure that the take-off mass does not exceed the maximum take-off mass specified in the Aeroplane Flight Manual for the pressure altitude and the ambient temperature at the aerodrome at which the take-off is to be made.	
(b) An operator shall ensure that the unfactored take-off distance, as specified in the Aeroplane Flight Manual does not exceed:	
1. When multiplied by a factor of 1,25, the take-off run available; or	
2. When stopway and/or clearway is available, the following:	
(i) The take-off run available;	
(ii) When multiplied by a factor of 1,15, the take-off distance available; and	
(iii) When multiplied by a factor of 1,3, the accelerate-stop distance available.	
(c) When showing compliance with sub-paragraph (b) above, an operator shall take account of the following:	
1. The mass of the aeroplane at the commencement of the take-off run;	
2. The pressure altitude at the aerodrome;	
3. The ambient temperature at the aerodrome;	
4. The runway surface condition and the type of runway surface	
5. The runway slope in the direction of take-off and	
6. Not more than 50 % of the reported head-wind component or not less than 150 % of the reported tail-wind component.	
OPS 1.535	
Take-off obstacle clearance — Multi-engined aeroplanes	
(a) An operator shall ensure that the take-off flight path of aeroplanes with two or more engines, determined in accordance with this sub-paragraph, clears all obstacles by a vertical margin of at least 50 ft, or by a horizontal distance of at least 90 m plus 0,125 × D, where D is the horizontal distance travelled by the aeroplane from the end of the take-off distance available or the end of the take-off distance if a turn is scheduled before the end of the take-off distance available except as provided in sub-paragraphs (b) and (c) below. When showing compliance with this sub-paragraph it must be assumed that:	(a) An operator shall ensure that the take-off flight path of aeroplanes with two or more engines, determined in accordance with this sub-paragraph, clears all obstacles by a vertical margin of at least 50 ft, or by a horizontal distance of at least 90 m plus 0,125 × D, where D is the horizontal distance travelled by the aeroplane from the end of the take-off distance available or the end of the take-off distance if a turn is scheduled before the end of the take-off distance available except as provided in sub-paragraphs (b) and (c) below. For aeroplanes with a wingspan of less than 60 m a horizontal obstacle clearance of half the aeroplane wingspan plus 60 m, plus 0,125 × D may be used. When showing compliance with this sub-paragraph it must be assumed that:

INITIAL PROPOSAL	AMENDED PROPOSAL
1. The take-off flight path begins at a height of 50 ft above the surface at the end of the take-off distance required by OPS 1.530 (b) and ends at a height of 1 500 ft above the surface;	Unchanged
2. The aeroplane is not banked before the aeroplane has reached a height of 50 ft above the surface, and that thereafter the angle of bank does not exceed 15°;	
3. Failure of the critical engine occurs at the point on the all engine take-off flight path where visual reference for the purpose of avoiding obstacles is expected to be lost;	
4. The gradient of the take-off flight path from 50 ft to the assumed engine failure height is equal to the average all-engine gradient during climb and transition to the en-route configuration, multiplied by a factor of 0,77; and	
5. The gradient of the take-off flight path from the height reached in accordance with sub-paragraph (4) above to the end of the take-off flight path is equal to the one engine inoperative en-route climb gradient shown in the Aeroplane Flight Manual.	
(b) When showing compliance with sub-paragraph (a) above for those cases where the intended flight path does not require track changes of more than 15°, an operator need not consider those obstacles which have a lateral distance greater than:	
1. 300 m, if the flight is conducted under conditions allowing visual course guidance navigation, or if navigational aids are available enabling the pilot to maintain the intended flight path with the same accuracy (see Appendix 1 to OPS 1.535 (b)(1) and (c)(1)); or	
2. 600 m, for flights under all other conditions.	
(c) When showing compliance with sub-paragraph (a) above for those cases where the intended flight path requires track changes of more than 15°, an operator need not consider those obstacles which have a lateral distance greater than:	
1. 600 m for flights under conditions allowing visual course guidance navigation (see Appendix 1 to OPS 1.535 (b)(1) and (c)(1));	
2. 900 m for flights under all other conditions.	
(d) When showing compliance with sub-paragraphs (a), (b) and (c) above, an operator must take account of the following:	
1. The mass of the aeroplane at the commencement of the take-off run;	
2. The pressure altitude at the aerodrome;	
3. The ambient temperature at the aerodrome; and	
4. Not more than 50 % of the reported head-wind component or not less than 150 % of the reported tail-wind component.	

INITIAL PROPOSAL

AMENDED PROPOSAL

OPS 1.540

En-route — Multi-engined aeroplanes

(a) An operator shall ensure that the aeroplane, in the meteorological conditions expected for the flight, and in the event of the failure of one engine, with the remaining engines operating within the maximum continuous power conditions specified, is capable of continuing flight at or above the relevant minimum altitudes for safe flight stated in the Operations Manual to a point 1 000 ft above an aerodrome at which the performance requirements can be met.

(b) When showing compliance with sub-paragraph (a) above:

1. The aeroplane must not be assumed to be flying at an altitude exceeding that at which the rate of climb equals 300 ft per minute with all engines operating within the maximum continuous power conditions specified; and

2. The assumed en-route gradient with one engine inoperative shall be the gross gradient of descent or climb, as appropriate, respectively increased by a gradient of 0,5 %, or decreased by a gradient of 0,5 %.

OPS 1.542

En-route — Single-engine aeroplanes

(a) An operator shall ensure that the aeroplane, in the meteorological conditions expected for the flight, and in the event of engine failure, is capable of reaching a place at which a safe forced landing can be made. For landplanes, a place on land is required, unless otherwise approved by the Authority.

(b) When showing compliance with sub-paragraph (a) above:

1. The aeroplane must not be assumed to be flying, with the engine operating within the maximum continuous power conditions specified, at an altitude exceeding that at which the rate of climb equals 300 ft per minute; and

2. The assumed en-route gradient shall be the gross gradient of descent increased by a gradient of 0,5 %.

OPS 1.545

Landing — Destination and alternate aerodromes

An operator shall ensure that the landing mass of the aeroplane determined in accordance with OPS 1.475 (a) does not exceed the maximum landing mass specified for the altitude and the ambient temperature expected for the estimated time of landing at the destination and alternate aerodrome.

INITIAL PROPOSAL	AMENDED PROPOSAL
OPS 1.550	
Landing — Dry runway	
(a) An operator shall ensure that the landing mass of the aeroplane determined in accordance with OPS 1.475 (a) for the estimated time of landing allows a full stop landing from 50 ft above the threshold within 70 % of the landing distance available at the destination aerodrome and at any alternate aerodrome.	
1. The Authority may approve the use of landing distance data factored in accordance with this paragraph based on steep approach procedures using a screen height of less than 50 ft, but not less than 35 ft (See Appendix 1 to OPS 1.550 (a)); (the dot removed)	1. The Authority may approve the use of landing distance data factored in accordance with this paragraph based on a screen height of less than 50 ft, but not less than 35 ft (See Appendix 1 to OPS 1.550 (a)); (the dot removed)
2. The Authority may approve short landing operations, in accordance with the criteria in Appendix 2 to OPS 1.550 (a).	Unchanged
(b) When showing compliance with sub-paragraph (a) above, an operator shall take account of the following:	
1. The altitude at the aerodrome;	
2. Not more than 50 % of the head-wind component or not less than 150 % of the tail-wind component.	
3. The runway surface condition and the type of runway surface; and	
4. The runway slope in the direction of landing;	
(c) For despatching an aeroplane in accordance with sub-paragraph (a) above, it must be assumed that:	
1. The aeroplane will land on the most favourable runway, in still air; and	
2. The aeroplane will land on the runway most likely to be assigned considering the probable wind speed and direction and the ground handling characteristics of the aeroplane, and considering other conditions such as landing aids and terrain.	
(d) If an operator is unable to comply with sub-paragraph (c)(2) above for the destination aerodrome, the aeroplane may be despatched if an alternate aerodrome is designated which permits full compliance with sub-paragraphs (a), (b) and (c) above.	
OPS 1.555	
Landing — Wet and contaminated runways	
(a) An operator shall ensure that when the appropriate weather reports or forecasts, or a combination thereof, indicate that the runway at the estimated time of arrival may be wet, the landing distance available is equal to or exceeds the required landing distance, determined in accordance with OPS 1.550, multiplied by a factor of 1,15.	
(b) An operator shall ensure that when the appropriate weather reports or forecasts, or a combination thereof, indicate that the runway at the estimated time of arrival may be contaminated, the landing distance, determined by using data acceptable to the Authority for these conditions, does not exceed the landing distance available.	

INITIAL PROPOSAL

AMENDED PROPOSAL

(c) A landing distance on a wet runway shorter than that required by sub-paragraph (a) above, but not less than that required by OPS 1.550 (a), may be used if the Aeroplane Flight Manual includes specific additional information about landing distances on wet runways.

Appendix 1 to OPS 1.525 (b)

General — Take-off and landing climb

The requirements of this Appendix are based on JAR-23.63 (c)(1) and JAR-23.63 (c)(2), effective 11 March 1994.

(a) *Take-off climb*

1. All engines operating

The steady gradient of climb after take-off must be at least 4 % with:

(A) Take-off power on each engine;

(B) The landing gear extended except that if the landing gear can be retracted in not more than 7 seconds, it may be assumed to be retracted;

(C) The wing flaps in the take-off position(s); and

(D) A climb speed not less than the greater of 1,1 V_{MC} and 1,2 V_{S1}.

2. One engine inoperative

(i) The steady gradient of climb at an altitude of 400 ft above the take-off surface must be measurably positive with:

(A) The critical engine inoperative and its propeller in the minimum drag position;

(B) The remaining engine at take-off power;

(C) The landing gear retracted;

(D) The wing flaps in the take-off position(s); and

(E) A climb speed equal to that achieved at 50 ft.

(ii) The steady gradient of climb must be not less than 0,75 % at an altitude of 1 500 ft above the take-off surface with:

(A) The critical engine inoperative and its propeller in the minimum drag position;

(B) The remaining engine at not more than maximum continuous power;

(C) The landing gear retracted;

(D) The wing flaps retracted; and

(E) A climb speed not less than 1,2 V_{S1}.

INITIAL PROPOSAL

AMENDED PROPOSAL

(b) *Landing climb*

1. All engines operating

The steady gradient of climb must be at least 2,5 % with:

(A) Not more than the power or thrust that is available 8 seconds after initiation of movement of the power controls from the minimum flight idle position;

(B) The landing gear extended;

(C) The wing flaps in the landing position; and

(D) A climb speed equal to V_{REF}.

2. One engine inoperative

The steady gradient of climb must be not less than 0,75 % at an altitude of 1 500 ft above the landing surface with:

(A) The critical engine inoperative and its propeller in the minimum drag position;

(B) The remaining engine at not more than maximum continuous power;

(C) The landing gear retracted;

(D) The wing flaps retracted; and

(E) A climb speed not less than 1,2 V_{S1}.

Appendix 1 to OPS 1.535 (b)(1) and (c)(1)

Take-off flight path — Visual course guidance navigation

In order to allow visual course guidance navigation, an operator must ensure that the weather conditions prevailing at the time of operation including ceiling and visibility, are such that the obstacle and/or ground reference points can be seen and identified. The Operations Manual must specify, for the aerodrome(s) concerned, the minimum weather conditions which enable the flight crew to continuously determine and maintain the correct flight path with respect to ground reference points, so as to provide a safe clearance with respect to obstructions and terrain as follows:

(a) The procedure must be well defined with respect to ground reference points so that the track to be flown can be analysed for obstacle clearance requirements;

(b) The procedure must be within the capabilities of the aeroplane with respect to forward speed, bank angle and wind effects;

(c) A written and/or pictorial description of the procedure must be provided for crew use; and

(d) The limiting environmental conditions must be specified (e.g. wind, cloud, visibility, day/night, ambient lighting, obstruction lighting).

INITIAL PROPOSAL

AMENDED PROPOSAL

Appendix 1 to OPS 1.550 (a)

Steep approach procedures

The Authority may approve the application of steep approach procedures using glideslope angles of 4,5° or more, and with screen heights of less than 50 ft but not less than 35 ft, provided that the following criteria are met:

1. The Aeroplane Flight Manual must state the maximum approved glideslope angle, any other limitations, normal, abnormal or emergency procedures for the steep approach as well as amendments to the field length data when using steep approach criteria;

2. A suitable glidepath reference system, comprising at least a visual glidepath indicating system, must be available at each aerodrome at which steep approach procedures are to be conducted; and

3. Weather minima must be specified and approved for each runway to be used with a steep approach. Consideration must be given to the following:

   (i) The obstacle situation;

   (ii) The type of glidepath reference and runway guidance such as visual aids, MLS, 3D-NAV, ILS, LLZ, VOR, NDB;

   (iii) The minimum visual reference to be required at DH and MDA;

   (iv) Available airborne equipment;

   (v) Pilot qualification and special aerodrome familiarisation;

   (vi) Aeroplane Flight Manual limitations and procedures; and

   (vii) Missed approach criteria.

Appendix 2 to OPS 1.550 (a)

Short landing operations

For the purpose of OPS 1.550 (a)(2), the distance used for the calculation of the permitted landing mass may consist of the usable length of the declared safe area plus the declared landing distance available. The Authority may approve such operations in accordance with the following criteria:

1. The use of the declared safe area must be approved by the aerodrome Authority;

2. The declared safe area must be clear of obstructions or depressions which would endanger an aeroplane undershooting the runway, and no mobile object shall be permitted on the declared safe area while the runway is being used for short landing operations;

3. The slope of the declared safe area must not exceed 5 % upward slope nor 2 % downward slope in the direction of landing;

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4. The useable length of the declared safe area under the provisions of this Appendix shall not exceed 90 metres;

5. The width of the declared safe area shall not be less than twice the runway width, centred on the extended runway centreline;

6. It is assumed that the crossing height over the beginning of the usable length of the declared safe area shall not be less than 50 ft.

7. For the purpose of this operation, the bearing strength requirement of OPS 1.480 (a)(5) need not apply to the declared safe area.

8. Weather minima must be specified and approved for each runway to be used and shall not be less than the greater of VFR or non-precision approach minima;

9. Pilot requirements must be specified (OPS 1.975 (a) refers);

10. The Authority may impose such additional conditions as are necessary for safe operation taking into account the aeroplane type characteristics, approach aids and missed approach/baulked landing considerations.

AMENDED PROPOSAL

SUBPART I

PERFORMANCE CLASS C

OPS 1.560

General

An operator shall ensure that, for determining compliance with the requirements of this Subpart, the approved performance Data in the Aeroplane Flight Manual is supplemented, as necessary, with other Data acceptable to the Authority if the approved performance Data in the Aeroplane Flight Manual is insufficient.

OPS 1.565

Take-off

(a) An operator shall ensure that the take-off mass does not exceed the maximum take-off mass specified in the Aeroplane Flight Manual for the pressure altitude and the ambient temperature at the aerodrome at which the take-off is to be made.

(b) An operator shall ensure that, for aeroplanes which have take-off field length data contained in their Aeroplane Flight Manuals that do not include engine failure accountability, the distance from the start of the take-off roll required by the aeroplane to reach a height of 50 ft above the surface with all engines operating within the maximum take-off power conditions specified, when multiplied by a factor of either:

1. 1,33 for aeroplanes having two engines; or

2. 1,25 for aeroplanes having three engines; or

3. 1,18 for aeroplanes having four engines,

does not exceed the take-off run available at the aerodrome at which the take-off is to be made.

INITIAL PROPOSAL	AMENDED PROPOSAL

(c) An operator shall ensure that, for aeroplanes which have take-off field length data contained in their Aeroplane Flight Manuals which accounts for engine failure, the following requirements are met in accordance with the specifications in the Aeroplane Flight Manual:

1. The accelerate-stop distance must not exceed the accelerate-stop distance available;

2. The take-off distance must not exceed the take-off distance available, with a clearway distance not exceeding half of the take-off run available;

3. The take-off run must not exceed the take-off run available;

4. Compliance with this paragraph must be shown using a single value of V_1 for the rejected and continued take-off; and

5. On a wet or contaminated runway the take-off mass must not exceed that permitted for a take-off on a dry runway under the same conditions.

(d) When showing compliance with sub-paragraphs (b) and (c) above, an operator must take account of the following:

1. The pressure altitude at the aerodrome;

2. The ambient temperature at the aerodrome;

3. The runway surface condition and the type of runway surface;

4. The runway slope in the direction of take-off;

5. Not more that 50 % of the reported head-wind component or not less than 150 % of the reported tail-wind component; and

6. The loss, if any, of runway length due to alignment of the aeroplane prior to take-off.

OPS 1.570

Take-off obstacle clearance

(a) An operator shall ensure that the take-off flight path with one engine inoperative clears all obstacles by a vertical distance of at least 50 ft plus 0,01 × D, or by a horizontal distance of at least 90 m plus 0,125 × D, where D is the horizontal distance the aeroplane has travelled from the end of the take-off distance available. For aeroplanes with a wingspan of less than 60 m a horizontal obstacle clearance of half the aeroplane wingspan plus 60 m, plus 0,125 × D may be used.

(b) The take-off flight path must begin at a height of 50 ft above the surface at the end of the take-off distance required by OPS 1.565 (b) or (c) as applicable, and end at a height of 1 500 ft above the surface.

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(c) When showing compliance with sub-paragraph (a), an operator must take account of the following:

1. The mass of the aeroplane at the commencement of the take-off run;

2. The pressure altitude at the aerodrome;

3. The ambient temperature at the aerodrome; and

4. Not more than 50 % of the reported head-wind component or not less than 150 % of the reported tail-wind component.

(d) When showing compliance with sub-paragraph (a) above, track changes shall not be allowed up to that point of the take-off flight path where a height of 50 ft above the surface has been achieved. Thereafter, up to a height of 400 ft it is assumed that the aeroplane is banked by no more than 15°. Above 400 ft height bank angles greater than 15°, but not more than 25° may be scheduled. Adequate allowance must be made for the effect of bank angle on operating speeds and flight path including the distance increments resulting from increased operating speeds.

(e) When showing compliance with sub-paragraph (a) above for those cases which do not require track changes of more than 15°, an operator need not consider those obstacles which have a lateral distance greater than:

1. 300 m, if the pilot is able to maintain the required navigational accuracy through the obstacle accountability area; or

2. 600 m, for flights under all other conditions.

(f) When showing compliance with sub-paragraph (a) above for those cases which do require track changes of more than 15°, an operator need not consider those obstacles which have a lateral distance greater than:

1. 600 m, if the pilot is able to maintain the required navigational accuracy through the obstacle accountability area; or

2. 900 m for flights under all other conditions.

(g) An operator shall establish contingency procedures to satisfy the requirements of OPS 1.570 and to provide a safe route, avoiding obstacles, to enable the aeroplane to either comply with the en-route requirements of OPS 1.580, or land at either the aerodrome of departure or at a take-off alternate aerodrome.

OPS 1.575

En-route — All engines operating

An operator shall ensure that the aeroplane will, in the meteorological conditions expected for the flight, at any point on its route or on any planned diversion therefrom, be capable of a rate of climb of at least 300 ft per minute with all engines operating within the maximum continuous power conditions specified at:

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1. The minimum altitudes for safe flight on each stage of the route to be flown or of any planned diversion therefrom specified in, or calculated from the information contained in, the Operations Manual relating to the aeroplane; and

2. The minimum altitudes necessary for compliance with the conditions prescribed in OPS 1.580 and 1.585, as appropriate.

OPS 1.580

En-route — One engine inoperative

(a) An operator shall ensure that the aeroplane will, in the meteorological conditions expected for the flight, in the event of any one engine becoming inoperative at any point on its route or on any planned diversion therefrom and with the other engine or engines operating within the maximum continuous power conditions specified, be capable of continuing the flight from the cruising altitude to an aerodrome where a landing can be made in accordance with OPS 1.595 or OPS 1.600 as appropriate, clearing obstacles within 9,3 km (5 nm) either side of the intended track by a vertical interval of at least:

1. 1 000 ft when the rate of climb is zero or greater; or

2. 2 000 ft when the rate of climb is less than zero.

(b) The flight path shall have a positive slope at an altitude of 450 m (1 500 ft) above the aerodrome where the landing is assumed to be made after the failure of one engine.

(c) For the purpose of this sub-paragraph the available rate of climb of the aeroplane shall be taken to be 150 ft per minute less than the gross rate of climb specified.

(d) When showing compliance with this paragraph, an operator must increase the width margins of sub-paragraph (a) above to 18,5 km (10 nm) if the navigational accuracy does not meet the 95 % containment level.

(e) Fuel jettisoning is permitted to an extent consistent with reaching the aerodrome with the required fuel reserves, if a safe procedure is used.

OPS 1.585

En-route — Aeroplanes with three or more engines, two engines inoperative

(a) An operator shall ensure that, at no point along the intended track, will an aeroplane having three or more engines be more than 90 minutes at the all-engine long range cruising speed at standard temperature in still air, away from an aerodrome at which the performance requirements applicable at the expected landing mass are met unless it complies with sub-paragraphs (b) to (e) below.

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(b) The two-engines inoperative flight path shown must permit the aeroplane to continue the flight, in the expected meteorological conditions, clearing all obstacles within 9,3 km (5 nm) either side of the intended track by a vertical interval of at least 2 000 ft, to an aerodrome at which the performance requirements applicable at the expected landing mass are met.

(c) The two engines are assumed to fail at the most critical point of that portion of the route where the aeroplane is more than 90 minutes, at the all engines long range cruising speed at standard temperature in still air, away from an aerodrome at which the performance requirements applicable at the expected landing mass are met.

(d) The expected mass of the aeroplane at the point where the two engines are assumed to fail must not be less than that which would include sufficient fuel to proceed to an aerodrome where the landing is assumed to be made, and to arrive there at an altitude of a least 450 m (1 500 ft) directly over the landing area and thereafter to fly level for 15 minutes.

(e) For the purpose of this sub-paragraph the available rate of climb of the aeroplane shall be taken to be 150 ft per minute less than that specified.

(f) When showing compliance with this paragraph, an operator must increase the width margins of sub-paragraph (a) above to 18,5 km (10 nm) if the navigational accuracy does not meet the 95 % containment level.

(g) Fuel jettisoning is permitted to an extent consistent with reaching the aerodrome with the required fuel reserves, if a safe procedure is used.

OPS 1.590

Landing — Destination and alternate aerodromes

An operator shall ensure that the landing mass of the aeroplane determined in accordance with OPS 1.475 (a) does not exceed the maximum landing mass specified in the Aeroplane Flight Manual for the altitude and, if accounted for in the Aeroplane Flight Manual, the ambient temperature expected for the estimated time of landing at the destination and alternate aerodrome.

OPS 1.595

Landing — Dry runways

(a) An operator shall ensure that the landing mass of the aeroplane determined in accordance with OPS 1.475 (a) for the estimated time of landing allows a full stop landing from 50 ft above the threshold within 70 % of the landing distance available at the destination and any alternate aerodrome.

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(b) When showing compliance with sub-paragraph (a) above, an operator must take account of the following: 1. The altitude at the aerodrome; 2. Not more than 50 % of the head-wind component or not less than 150 % of the tail-wind component; 3. The type of runway surface; and 4. The slope of the runway in the direction of landing.	
(c) For despatching an aeroplane in accordance with sub-paragraph (a) above it must be assumed that: 1. The aeroplane will land on the most favourable runway in still air; and 2. The aeroplane will land on the runway most likely to be assigned considering the probable wind speed and direction and the ground handling characteristics of the aeroplane, and considering other conditions such as landing aids and terrain.	
(d) If an operator is unable to comply with sub-paragraph (b)(2) above for the destination aerodrome, the aeroplane may be despatched if an alternate aerodrome is designated which permits full compliance with sub-paragraphs (a), (b) and (c).	(d) If an operator is unable to comply with sub-paragraph (c)(2) above for the destination aerodrome, the aeroplane may be despatched if an alternate aerodrome is designated which permits full compliance with sub-paragraphs (a), (b) and (c).
OPS 1.600 **Landing — Wet and contaminated runways**	Unchanged
(a) An operator shall ensure that when the appropriate weather reports or forecasts, or a combination thereof, indicate that the runway at the estimated time of arrival may be wet, the landing distance available is equal to or exceeds the required landing distance, determined in accordance with OPS 1.595, multiplied by a factor of 1,15.	
(b) An operator shall ensure that when the appropriate weather reports or forecasts, or a combination thereof, indicate that the runway at the estimated time of arrival may be contaminated, the landing distance determined by using data acceptable to the Authority for these conditions, does not exceed the landing distance available.	
SUBPART J **MASS AND BALANCE**	
OPS 1.605 **General** (See Appendix 1 to OPS 1.605)	
(a) An operator shall ensure that during any phase of operation, the loading, mass and centre of gravity of the aeroplane complies with the limitations specified in the approved Aeroplane Flight Manual, or the Operations Manual if more restrictive.	

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(b) An operator must establish the mass and the centre of gravity of any aeroplane by actual weighing prior to initial entry into service and thereafter at intervals of 4 years if individual aeroplane masses are used and 9 years if fleet masses are used. The accumulated effects of modifications and repairs on the mass and balance must be accounted for and properly documented. Furthermore, aeroplanes must be reweighed if the effect of modifications on the mass and balance is not accurately known.

(c) An operator must determine the mass of all operating items and crew members included in the aeroplane dry operating mass by weighing or by using standard masses. The influence of their position on the aeroplane centre of gravity must be determined.

(d) An operator must establish the mass of the traffic load, including any ballast, by actual weighing or determine the mass of the traffic load in accordance with standard passenger and baggage masses as specified in OPS 1.620.

(e) An operator must determine the mass of the fuel load by using the actual density or, if not known, the density calculated in accordance with a method specified in the Operations Manual.

OPS 1.607

Terminology

(a) *Dry operating mass*

The total mass of the aeroplane ready for a specific type of operation excluding all usable fuel and traffic load. This mass includes items such as:

1. Crew and crew baggage;

2. Catering and removable passenger service equipment; and

3. Potable water and lavatory chemicals.

(b) *Maximum zero fuel mass*

The maximum permissible mass of an aeroplane with no usable fuel. The mass of the fuel contained in particular tanks must be included in the zero fuel mass when it is explicitly mentioned in the Aeroplane Flight Manual limitations.

(c) *Maximum structural landing mass*

The maximum permissible total aeroplane mass upon landing under normal circumstances.

(d) *Maximum structural take-off mass*

The maximum permissible total aeroplane mass at the start of the take-off run.

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(e) *Passenger classification*

1. Adults, male and female, are defined as persons of an age of 12 years and above.

2. Children are defined as persons who are of an age of two years and above but who are less than 12 years of age.

3. Infants are defined as persons who are less than 2 years of age.

(f) *Traffic load*

The total mass of passengers, baggage and cargo, including any non-revenue load.

OPS 1.610

Loading, mass and balance

An operator shall specify, in the Operations Manual, the principles and methods involved in the loading and in the mass and balance system that meet the requirements of OPS 1.605. This system must cover all types of intended operations.

OPS 1.615

Mass values for crew

(a) An operator shall use the following mass values to determine the dry operating mass:

1. Actual masses including any crew baggage; or

2. Standard masses, including hand baggage, of 85 kg for flight crew members and 75 kg for cabin crew members; or

3. Other standard masses acceptable to the Authority.

(b) An operator must correct the dry operating mass to account for any additional baggage. The position of this additional baggage must be accounted for when establishing the centre of gravity of the aeroplane.

OPS 1.620

Mass values for passengers and baggage

(a) An operator shall compute the mass of passengers and checked baggage using either the actual weighed mass of each person and the actual weighed mass of baggage or the standard mass values specified in Tables 1 to 3 below except where the number of passenger seats available is less than 10. In such cases passenger mass may be established by use of a verbal statement by, or on behalf of, each passenger and adding to it a predetermined constant to account for hand baggage and clothing. The procedure specifying when to select actual or standard masses and the procedure to be followed when using verbal statements must be included in the Operations Manual.

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(b) If determining the actual mass by weighing, an operator must ensure that passengers' personal belongings and hand baggage are included. Such weighing must be conducted immediately prior to boarding and at an adjacent location.

(c) If determining the mass of passengers using standard mass values, the standard mass values in Tables 1 and 2 below must be used. The standard masses include hand baggage and the mass of any infant below 2 years of age carried by an adult on one passenger seat. Infants occupying separate passenger seats must be considered as children for the purpose of this sub-paragraph.

(d) *Mass values for passengers — 20 seats or more*

1. Where the total number of passenger seats available on an aeroplane is 20 or more, the standard masses of male and female in Table 1 are applicable. As an alternative, in cases where the total number of passenger seats available is 30 or more, the "All Adult" mass values in Table 1 are applicable.

2. For the purpose of Table 1, holiday charter means a charter flight solely intended as an element of a holiday travel package. The holiday charter mass values apply provided that not more than 5 % of passenger seats installed in the aeroplane are used for the non-revenue carriage of certain categories of passengers

Table 1

Passenger seats	20 and more		30 and more
	Male	Female	All adult
All flights except holiday charters	88 kg	70 kg	84 kg
Holiday charters	83 kg	69 kg	76 kg
Children	35 kg	35 kg	35 kg

(e) *Mass values for passengers — 19 seats or less*

1. Where the total number of passenger seats available on an aeroplane is 19 or less, the standard masses in Table 2 are applicable.

2. On flights where no hand baggage is carried in the cabin or where hand baggage is accounted for separately, 6 kg may be deducted from the above male and female masses. Articles such as an overcoat, an umbrella, a small handbag or purse, reading material or a small camera are not considered as hand baggage for the purpose of this sub-paragraph.

Table 2

Passenger seats	1-5	6-9	10-19
Male	104 kg	96 kg	92 kg
Female	86 kg	78 kg	74 kg
Children	35 kg	35 kg	35 kg

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(f) *Mass values for baggage*

1. Where the total number of passenger seats available on the aeroplane is 20 or more the standard mass values given in Table 3 are applicable for each piece of checked baggage. For aeroplanes with 19 passenger seats or less, the actual mass of checked baggage, determined by weighing, must be used.

2. For the purpose of Table 3:

(i) Domestic flight means a flight with origin and destination within the borders of one State;

(ii) Flights within the European region means flights, other than domestic flights, whose origin and destination are within the area specified in Appendix 1 to OPS 1.620 (f); and

(iii) Intercontinental flight, other than flights within the European region, means a flight with origin and destination in different continents.

Table 3

20 or more seats

Type of flight	Baggage standard mass
Domestic	11 kg
Within the European region	13 kg
Intercontinental	15 kg
All other	13 kg

(g) If an operator wishes to use standard mass values other than those contained in Tables 1 to 3 above, he must advise the Authority of his reasons and gain its approval in advance. He must also submit for approval a detailed weighing survey plan and apply the statistical analysis method given in Appendix 1 to OPS 1.620 (g). After verification and approval by the Authority of the results of the weighing survey, the revised standard mass values are only applicable to that operator. The revised standard mass values can only be used in circumstances consistent with those under which the survey was conducted. Where revised standard masses exceed those in Tables 1-3, then such higher values must be used.

(h) On any flight identified as carrying a significant number of passengers whose masses, including hand baggage, are expected to exceed the standard passenger mass, an operator must determine the actual mass of such passengers by weighing or by adding an adequate mass increment.

(i) If standard mass values for checked baggage are used and a significant number of passengers check in baggage that is expected to exceed the standard baggage mass, an operator must determine the actual mass of such baggage by weighing or by adding an adequate mass increment.

(j) An operator shall ensure that a commander is advised when a non-standard method has been used for determining the mass of the load and that this method is stated in the mass and balance documentation.

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OPS 1.625

Mass and balance documentation

(See Appendix 1 to OPS 1.625)

(a) An operator shall establish mass and balance documentation prior to each flight specifying the load and its distribution. The mass and balance documentation must enable the commander to determine that the load and its distribution is such that the mass and balance limits of the aeroplane are not exceeded. The person preparing the mass and balance documentation must be named on the document. The person supervising the loading of the aeroplane must confirm by signature that the load and its distribution are in accordance with the mass and balance documentation. This document must be acceptable to the commander, his acceptance being indicated by countersignature or equivalent. (See also OPS 1.1055 (a)(12).)

(b) An operator must specify procedures for last minute changes to the load.

(c) Subject to the approval of the Authority, an operator may use an alternative to the procedures required by paragraphs (a) and (b) above.

Appendix 1 to OPS 1.605

Mass and balance — General

(See OPS 1.605)

(a) *Determination of the dry operating mass of an aeroplane*

1. Weighing of an aeroplane

(i) New aeroplanes are normally weighed at the factory and are eligible to be placed into operation without reweighing if the mass and balance records have been adjusted for alterations or modifications to the aeroplane. Aeroplanes transferred from one operator with an approved mass control programme to another operator with an approved programme need not be weighed prior to use by the receiving operator unless more than 4 years have elapsed since the last weighing.

(ii) The individual mass and centre of gravity (CG) position of each aeroplane shall be re-established periodically. The maximum interval between two weighings must be defined by the operator and must meet the requirements of OPS 1.605 (b). In addition, the mass and the CG of each aeroplane shall be re-established either by:

(A) Weighing; or

(B) Calculation, if the operator is able to provide the necessary justification to prove the validity of the method of calculation chosen,

whenever the cumulative changes to the dry operating mass exceed ± 0,5 % of the maximum landing mass or the cumulative change in CG position exceeds 0,5 % of the mean aerodynamic chord.

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2. Fleet mass and CG position

(i) For a fleet or group of aeroplanes of the same model and configuration, an average dry operating mass and CG position may be used as the fleet mass and CG position, provided that the dry operating masses and CG positions of the individual aeroplanes meet the tolerances specified in sub-paragraph (ii) below. Furthermore, the criteria specified in sub-paragraphs (iii), (iv) and (a)(3) below are applicable.

(ii) Tolerances

(A) If the dry operating mass of any aeroplane weighed, or the calculated dry operating mass of any aeroplane of a fleet, varies by more than ± 0,5 % of the maximum structural landing mass from the established dry operating fleet mass or the CG position varies by more than ± 0,5 % of the mean aero-dynamic chord from the fleet CG, that aeroplane shall be omitted from that fleet. Separate fleets may be established, each with differing fleet mean masses.

(B) In cases where the aeroplane mass is within the dry operating fleet mass tolerance but its CG position falls outsides the permitted fleet tolerance, the aeroplane may still be operated under the applicable dry operating fleet mass but with an individual CG position.

(C) If an individual aeroplane has, when compared with other aeroplanes of the fleet, a physical, accurately accountable difference (e.g. galley or seat configuration), that causes exceedance of the fleet tolerances, this aeroplane may be maintained in the fleet provided that appropriate corrections are applied to the mass and/or CG position for that aeroplane.

(D) Aeroplanes for which no mean aerodynamic chord has been published must be operated with their individual mass and CG position values or must be subjected to a special study and approval.

(iii) Use of fleet values

(A) After the weighing of an aeroplane, or if any change occurs in the aeroplane equipment or configuration, the operator must verify that this aeroplane falls within the tolerances specified in sub-paragraph (2)(ii) above.

(B) Aeroplanes which have not been weighed since the last fleet mass evaluation can still be kept in a fleet operated with fleet values, provided that the individual values are revised by computation and stay within the tolerances defined in sub-paragraph (2)(ii) above. If these individual values no longer fall within the permitted tolerances, the operator must either determine new fleet values fulfilling the conditions of sub-paragraphs (2)(i) and (2)(ii) above, or operate the aeroplanes not falling within the limits with their individual values.

(C) To add an aeroplane to a fleet operated with fleet values, the operator must verify by weighing or computation that its actual values fall within the tolerances specified in sub-paragraph (2)(ii) above.

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(iv) To comply with sub-paragraph (2)(i) above, the fleet values must be updated at least at the end of each fleet mass evaluation.

3. Number of aeroplanes to be weighed to obtain fleet values

(i) If "n" is the number of aeroplanes in the fleet using fleet values, the operator must at least weigh, in the period between two fleet mass evaluations, a certain number of aeroplanes defined in the Table below:

Number of aeroplanes in the fleet	Minimum number of weighings
2 or 3	n
4 to 9	(n + 3)/2
10 or more	(n + 51)/10

(ii) In choosing the aeroplanes to be weighed, aeroplanes in the fleet which have not been weighed for the longest time should be selected.

(iii) The interval between 2 fleet mass evaluations must not exceed 48 months.

4. Weighing procedure

(i) The weighing must be accomplished either by the manufacturer or by an approved maintenance organisation.

(ii) Normal precautions must be taken consistent with good practices such as:

(A) Checking for completeness of the aeroplane and equipment;

(B) Determining that fluids are properly accounted for;

(C) Ensuring that the aeroplane is clean; and

(D) Ensuring that weighing is accomplished in an enclosed building.

(iii) Any equipment used for weighing must be properly calibrated, zeroed, and used in accordance with the manufacturer's instructions. Each scale must be calibrated either by the manufacturer, by a civil department of weights and measures or by an appropriately authorised organisation within 2 years or within a time period defined by the manufacturer of the weighing equipment, whichever is less. The equipment must enable the mass of the aeroplane to be established accurately (see Appendix 1 to OPS 1.605, paragraph (a)(4)(iii).).

(b) *Special standard masses for the traffic load*

In addition to standard masses for passengers and checked baggage, an operator can submit for approval to the Authority standard masses for other load items.

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(iii) Any equipment used for weighing must be properly calibrated, zeroed, and used in accordance with the manufacturer's instructions. Each scale must be calibrated either by the manufacturer, by a civil department of weights and measures or by an appropriately authorised organisation within 2 years or within a time period defined by the manufacturer of the weighing equipment, whichever is less. The equipment must enable the mass of the aeroplane to be established accurately.

Unchanged

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(c) *Aeroplane loading*

1. An operator must ensure that the loading of its aeroplanes is performed under the supervision of qualified personnel.

2. An operator must ensure that the loading of the freight is consistent with the data used for the calculation of the aeroplane mass and balance.

3. An operator must comply with additional structural limits such as the floor strength limitations, the maximum load per running metre, the maximum mass per cargo compartment, and/or the maximum seating limits.

(d) *Centre of gravity limits*

1. Operational CG envelope

Unless seat allocation is applied and the effects of the number of passengers per seat row, of cargo in individual cargo compartments and of fuel in individual tanks is accounted for accurately in the balance calculation, operational margins must be applied to the certificated centre of gravity envelope. In determining the CG margins, possible deviations from the assumed load distribution must be considered. If free seating is applied, the operator must introduce procedures to ensure corrective action by flight or cabin crew if extreme longitudinal seat selection occurs. The CG margins and associated operational procedures, including assumptions with regard to passenger seating, must be acceptable to the Authority.

2. In-flight centre of gravity

Further to sub-paragraph (d)(1) above, the operator must show that the procedures fully account for the extreme variation in CG travel during flight caused by passenger/crew movement and fuel consumption/transfer.

Appendix 1 to OPS 1.620 (f)

Definition of the area for flights within the European region

For the purposes of OPS 1.620 (f), flights within the European region, other than domestic flights, are flights conducted within the area bounded by rhumb lines between the following points:

— N7200 E04500

— N4000 E04500

— N3500 E03700

— N3000 E03700

— N3000 W00600

— N2700 W00900

— N2700 W03000

— N6700 W03000

— N7200 W01000

— N7200 E04500

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as depicted in Figure 1 below:

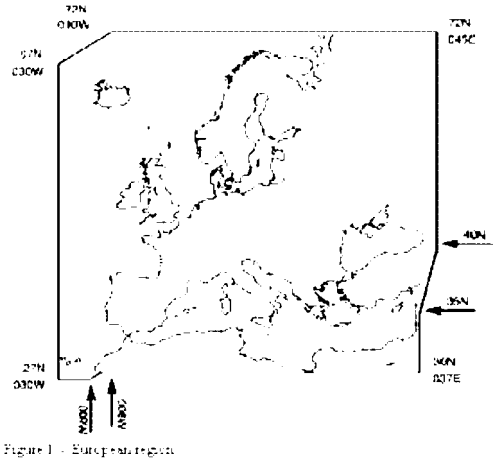

Figure 1

European region

Appendix 1 to OPS 1.620 (g)

Procedure for establishing revised standard mass values for passengers and baggage

(a) *Passengers*

1. Weight sampling method

The average mass of passengers and their hand baggage must be determined by weighing, taking random samples. The selection of random samples must by nature and extent be representative of the passenger volume, considering the type of operation, the frequency of flights on various routes, in/outbound flights, applicable season and seat capacity of the aeroplane.

2. Sample size

The survey plan must cover the weighing of at least the greatest of:

(i) A number of passengers calculated from a pilot sample, using normal statistical procedures and based on a relative confidence range (accuracy) of 1 % for all adult and 2 % for separate male and female average masses; and

(ii) For aeroplanes:

(A) With a passenger seating capacity of 40 or more, a total of 2 000 passengers; or

(B) With a passenger seating capacity of less than 40, a total number of 50 × (the passenger seating capacity).

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3. Passenger masses Passenger masses must include the mass of the passengers' belongings which are carried when entering the aeroplane. When taking random samples of passenger masses, infants shall be weighted together with the accompanying adult (See also OPS 1620 (c) (d) and (e).	
4. Weighing location The location for the weighing of passengers shall be selected as close as possible to the aeroplane, at a point where a change in the passenger mass by disposing of or by acquiring more personal belongings is unlikely to occur before the passengers board the aeroplane.	
5. Weighing machine The weighing machine to be used for passenger weighing shall have a capacity of at least 150 kg. The mass shall be displayed at minimum graduations of 500 g. The weighing machine must be accurate to within 0,5 % or 200 g whichever is the greater.	
6. Recording of mass values For each flight the mass of the passengers, the corresponding passenger category (i.e. male/female/children) and the flight number must be recorded.	For each flight included in the survey the mass of the passengers, the corresponding passenger category (i.e. male/female/children) and the flight number must be recorded.
(b) Checked baggage The statistical procedure for determining revised standard baggage mass values based on average baggage masses of the minimum required sample size is basically the same as for passengers and as specified in sub-paragraph (a)(1). For baggage, the relative confidence range (accuracy) amounts to 1 %. A minimum of 2 000 pieces of checked baggage must be weighed.	Unchanged
(c) Determination of revised standard mass values for passengers and checked baggage 1. To ensure that, in preference to the use of actual masses determined by weighing, the use of revised standard mass values for passengers and checked baggage does not adversely affect operational safety, a statistical analysis must be carried out. Such an analysis will generate average mass values for passengers and baggage as well as other data. 2. On aeroplanes with 20 or more passenger seats, these averages apply as revised standard male and female mass values. 3. On smaller aeroplanes, the following increments must be added to the average passenger mass to obtain the revised standard mass values:	

Number of passenger seats	Required mass increment
1-5 incl.	16 kg
6-9 incl.	8 kg
10-19 incl.	4 kg

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Alternatively, all adult revised standard (average) mass values may be applied on aeroplanes with 30 or more passenger seats. Revised standard (average) checked baggage mass values are applicable to aeroplanes with 20 or more passenger seats.

4. Operators have the option to submit a detailed survey plan to the Authority for approval and subsequently a deviation from the revised standard mass value provided this deviating value is determined by use of the procedure explained in this Appendix. Such deviations must be reviewed at intervals not exceeding 5 years.

5. All adult revised standard mass values must be based on a male/female ratio of 80/20 in respect of all flights except holiday charters which are 50/50. If an operator wishes to obtain approval for use of a different ratio on specific routes or flights then data must be submitted to the Authority showing that the alternative male/female ratio is conservative and covers at least 84 % of the actual male/female ratios on a sample of at least 100 representative flights.

6. The average mass values found are rounded to the nearest whole number in kg. Checked baggage mass values are rounded to the nearest 0,5 kg figure, as appropriate.

Appendix 1 to OPS 1.625

Mass and balance documentation

(a) *Mass and balance documentation*

1. Contents

(i) The mass and balance documentation must contain the following information:

(A) The aeroplane registration and type;

(B) The flight identification number and date;

(C) The identity of the commander;

(D) The identity of the person who prepared the document;

(E) The dry operating mass and the corresponding CG of the aeroplane;

(F) The mass of the fuel at take-off and the mass of trip fuel;

(G) The mass of consumables other than fuel;

(H) The components of the load including passengers, baggage, freight and ballast;

(I) The take-off mass, landing mass and zero fuel mass;

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(J) The load distribution;

(K) The applicable aeroplane CG positions; and

(L) The limiting mass and CG values.

(ii) Subject to the approval of the Authority, an operator may omit some of this data from the mass and balance documentation.

2. Last-Minute change

If any last-minute change occurs after the completion of the mass and balance documentation, this must be brought to the attention of the commander and the last-minute change must be entered on the mass and balance documentation. The maximum allowed change in the number of passengers or hold load acceptable as a last-minute change must be specified in the Operations Manual. If this number is exceeded, new mass and balance documentation must be prepared.

(b) *Computerised systems*

Where mass and balance documentation is generated by a computerised mass and balance system, the operator must verify the integrity of the output data. He must establish a system to check that amendments of his input data are incorporated properly in the system and that the system is operating correctly on a continuous basis by verifying the output data at intervals not exceeding 6 months.

(c) *Onboard mass and balance systems*

An operator must obtain the approval of the Authority if he wishes to use an onboard mass and balance computer system as a primary source for despatch.

(d) *Datalink*

When mass and balance documentation is sent to aeroplanes via datalink, a copy of the final mass and balance documentation as accepted by the commander must be available on the ground.

SUBPART K

INSTRUMENTS AND EQUIPMENT

OPS 1.630

General introduction

(a) An operator shall ensure that a flight does not commence unless the instruments and equipment required under this Subpart are:

1. Approved, except as specified in sub-paragraph (c), and installed in accordance with the requirements applicable to them, including the minimum performance standard and the operational and airworthiness requirements; and

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2. In operable condition for the kind of operation being conducted except as provided in the MEL (OPS 1.030 refers).

(b) Instruments and equipment minimum performance standards are those prescribed in the applicable Joint Technical Standard Orders (JTSO) as listed in JAR-TSO, unless different performance standards are prescribed in the operational or airworthiness codes. Instruments and equipment complying with design and performance specifications other than JTSO on the date of OPS implementation may remain in service, or be installed, unless additional requirements are prescribed in this Subpart. Instruments and equipment that have already been approved do not need to comply with a revised JTSO or a revised specification, other than JTSO, unless a retroactive requirement is prescribed.

(c) The following items shall not be required to have an equipment approval:

1. Fuses referred to in OPS 1.635;

2. Electric torches referred to in OPS 1.640 (a)(4);

3. An accurate time piece referred to in OPS 1.650 (b) and 1.652 (b);

4. Chart holder referred to in OPS 1.652 (n).

5. First-aid kits referred to in OPS 1.745;

6. Emergency medical kit referred to in OPS 1.755;

7. Megaphones referred to in OPS 1.810;

8. Survival and pyrotechnic signalling equipment referred to in OPS 1.835 (a) and (c); and

9. Sea anchors and equipment for mooring, anchoring or manoeuvring seaplanes and amphibians on water referred to in OPS 1.840.

(d) If equipment is to be used by one flight crew member at his station during flight, it must be readily operable from his station. When a single item of equipment is required to be operated by more than one flight crew member it must be installed so that the equipment is readily operable from any station at which the equipment is required to be operated.

(e) Those instruments that are used by any one flight crew member shall be so arranged as to permit the flight crew member to see the indications readily from his station, with the minimum practicable deviation from the position and line of vision which he normally assumes when looking forward along the flight path. Whenever a single instrument is required in an aeroplane operated by more than one flight crew member it must be installed so that the instrument is visible from each applicable flight crew station.

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OPS 1.635

Circuit protection devices

An operator shall not operate an aeroplane in which fuses are used unless there are spare fuses available for use in flight equal to at least 10 % of the number of fuses of each rating or three of each rating whichever is the greater.

OPS 1.640

Aeroplane operating lights

An operator shall not operate an aeroplane unless it is equipped with:

(a) For flight by day:

1. Anti-collision light system;

2. Lighting supplied from the aeroplane's electrical system to provide adequate illumination for all instruments and equipment essential to the safe operation of the aeroplane;

3. Lighting supplied from the aeroplane's electrical system to provide illumination in all passenger compartments; and

4. An electric torch for each required crew member readily accessible to crew members when seated at their designated station.

(b) For flight by night, in addition to equipment specified in paragraph (a) above:

1. Navigation/position lights; and

2. Two landing lights or a single light having two separately energised filaments; and

3. Lights to conform with the international regulations for preventing collisions at sea if the aeroplane is a seaplane or an amphibian.

OPS 1.645

Windshield wipers

An operator shall not operate an aeroplane with a maximum certificated take-off mass of more than 5 700 kg unless it is equipped at each pilot station with a windshield wiper or equivalent means to maintain a clear portion of the windshield during precipitation.

OPS 1.650

Day VFR operations — Flight and navigational instruments and associated equipment

An operator shall not operate an aeroplane by day in accordance with Visual Flight Rules (VFR) unless it is equipped with the flight and navigational instruments and associated equipment and, where applicable, under the conditions stated in the following sub-paragraphs:

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(a) A magnetic compass;	
(b) An accurate timepiece showing the time in hours, minutes, and seconds;	
(c) A sensitive pressure altimeter calibrated in feet with a sub-scale setting, calibrated in hectopascals/millibars, adjustable for any barometric pressure likely to be set during flight;	
(d) An airspeed indicator calibrated in knots;	
(e) A vertical speed indicator;	
(f) A turn and slip indicator, or a turn co-ordinator incorporating a slip indicator;	
(g) An attitude indicator;	
(h) A stabilised direction indicator; and	
(i) A means of indicating in the flight crew compartment the outside air temperature calibrated in degrees Celcius.	
(j) For flights which do not exceed 60 minutes duration, which take off and land at the same aerodrome, and which remain within 50 nm of that aerodrome, the instruments prescribed in sub-paragraphs (f), (g) and (h) above, and sub-paragraphs (k)(4), (k)(5) and (k)(6) below, may all be replaced by either a turn and slip indicator, or a turn co-ordinator incorporating a slip indicator, or both an attitude indicator and a slip indicator.	
(k) Whenever two pilots are required the second pilot's station shall have separate instruments as follows:	
1. A sensitive pressure altimeter calibrated in feet with a sub-scale setting calibrated in hectopascals/millibars, adjustable for any barometric pressure likely to be set during flight;	
2. An airspeed indicator calibrated in knots;	
3. A vertical speed indicator;	
4. A turn and slip indicator, or a turn co-ordinator incorporating a slip indicator;	
5. An attitude indicator; and	
6. A stabilised direction indicator.	
(l) Each airspeed indicating system must be equipped with a heated pitot tube or equivalent means for preventing malfunction due to either condensation or icing for:	
1. aeroplanes with a maximum certificated take-off mass in excess of 5 700 kg or having a maximum approved passenger seating configuration of more than 9 seats;	1. aeroplanes with a maximum certificated take-off mass in excess of 5 700 kg or having a maximum approved passenger seating configuration of more than 9;
2. aeroplanes first issued with an individual certificate of airworthiness on or after 1 April 1999	Unchanged
(m) Whenever duplicate instruments are required, the requirement embraces separate displays for each pilot and separate selectors or other associated equipment where appropriate.	

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(n) All aeroplanes must be equipped with means for indicating when power is not adequately supplied to the required flight instruments; and

(o) All aeroplanes with compressibility limitations not otherwise indicated by the required airspeed indicators shall be equipped with a Mach number indicator at each pilot's station.

OPS 1.652

IFR or night operations — Flight and navigational instruments and associated equipment

An operator shall not operate an aeroplane in accordance with Instrument Flight Rules (IFR) or by night in accordance with Visual Flight Rules (VFR) unless it is equipped with the flight and navigational instruments and associated equipment and, where applicable, under the conditions stated in the following sub-paragraphs:

(a) A magnetic compass;

(b) An accurate time-piece showing the time in hours, minutes and seconds;

(c) Two sensitive pressure altimeters calibrated in feet with sub-scale settings, calibrated in hectopascals/millibars, adjustable for any barometric pressure likely to be set during flight;

(d) An airspeed indicating system with heated pitot tube or equivalent means for preventing malfunctioning due to either condensation or icing including a warning indication of pitot heater failure. The pitot heater failure warning indication requirement does not apply to those aeroplanes with a maximum approved passenger seating configuration of 9 or less or a maximum certificated take-off mass of 5 700 kg or less and issued with an individual Certificate of Airworthiness prior to 1 April 1998;

(e) A vertical speed indicator;

(f) A turn and slip indicator;

(g) An attitude indicator;

(h) A stabilised direction indicator;

(i) A means of indicating in the flight crew compartment the outside air temperature calibrated in degrees celsius; and

(j) Two independent static pressure systems, except that for propeller-driven aeroplanes with maximum certificated take-off mass of 5 700 kg or less, one static pressure system and one alternate source of static pressure is allowed.

(k) Whenever two pilots are required the second pilot's station shall have separate instruments as follows:

1. A sensitive pressure altimeter calibrated in feet with a sub-scale setting, calibrated in hectopascals/millibars, adjustable for any barometric pressure likely to be set during flight and which may be one of the 2 altimeters required by sub-paragraph (c) above;

INITIAL PROPOSAL	AMENDED PROPOSAL
2. An airspeed indicating system with heated pitot tube or equivalent means for preventing malfunctioning due to either condensation or icing including a warning indication of pitot heater failure. The pitot heater failure warning indication requirement does not apply to those aeroplanes with a maximum approved passenger seating configuration of 9 or less or a maximum certificated take-off mass of 5 700 kg or less and issued with an individual Certificate of Airworthiness prior to 1 April 1998;	
3. A vertical speed indicator;	
4. A turn and slip indicator;	
5. An attitude indicator; and	
6. A stabilised direction indicator.	
(l) Those aeroplanes with a maximum certificated take-off mass in excess of 5 700 kg or having a maximum approved passenger seating configuration of more than 9 seats must additionally be equipped with a single standby attitude indicator (artificial horizon), capable of being used from either pilot's station, that:	(l) Those aeroplanes with a maximum certificated take-off mass in excess of 5 700 kg or having a maximum approved passenger seating configuration of more than 9 seats must be equipped with an additional, standby attitude indicator (artificial horizon), capable of being used from either pilot's station, that:
1. Is powered continuously during normal operation and, after a total failure of the normal electrical generating system is powered from a source independent of the normal electrical generating system;	Unchanged
2. Provides reliable operation for a minimum of 30 minutes after total failure of the normal electrical generating system, taking into account other loads on the emergency power supply and operational procedures;	
3. Operates independently of any other attitude indicating system;	
4. Is operative automatically after total failure of the normal electrical generating system; and	
5. Is appropriately illuminated during all phases of operation,	
except for aeroplanes with a maximum certificated take-off mass of 5 700 kg or less, already registered in a Member State on 1 April 1995, equipped with a standby attitude indicator in the pilot-in-command's instrument panel.	except for aeroplanes with a maximum certificated take-off mass of 5 700 kg or less, already registered in a Member State on 1 April 1995, equipped with a standby attitude indicator in the left-hand instrument panel.
(m) In complying with sub-paragraph (l) above, it must be clearly evident to the flight crew when the standby attitude indicator, required by that sub-paragraph, is being operated by emergency power. Where the standby attitude indicator has its own dedicated power supply there shall be an associated indication, either on the instrument or on the instrument panel, when this supply is in use. This requirement must be complied with no later than 1 April 2000.	Unchanged
(n) A chart holder in an easily readable position which can be illuminated for night operations.	

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(o) If the standby attitude instrument system is installed and usable through flight attitudes of 360° of pitch and roll, the turn and slip indicators may be replaced by slip indicators. Usable means that the system will operate through 360° in pitch and roll and will not tumble.	
(p) Whenever duplicate instruments are required, the requirement embraces separate displays for each pilot and separate selectors or other associated equipment where appropriate;	
(q) All aeroplanes must be equipped with means for indicating when power is not adequately supplied to the required flight instruments; and	
(r) All aeroplanes with compressibility limitations not otherwise indicated by the required airspeed indicators shall be equipped with a Mach number indicator at each pilot's station.	
	(s) An operator shall not conduct IFR or night operations unless the aeroplane is equipped with a headset with boom microphone or equivalent and a transmit button on the control wheel for each required pilot.
OPS 1.655	Unchanged
Additional equipment for single pilot operation under IFR or at night	
An operator shall not conduct single pilot IFR operations unless the aeroplane is equipped with an autopilot with at least altitude hold and heading mode.	
OPS 1.660	
Altitude alerting system	
An operator shall not operate a turbine propeller powered aeroplane with a maximum certificated take-off mass in excess of 5 700 kg or having a maximum approved passenger seating configuration of more than 9 seats or a turbojet powered aeroplane unless it is equipped with an altitude alerting system capable of:	
1. Alerting the flight crew upon approaching preselected altitude in their ascent or descent; and	1. Alerting the flight crew upon approaching a preselected altitude; and
2. Alerting the flight crew by at least an aural signal, when deviating above or below a preselected altitude,	Unchanged
except for aeroplanes with a maximum certificated take-off mass of 5 700 kg or less having a maximum approved passenger seating configuration of more than 9 and first issued with an individual certificate of airworthiness before 1 April 1972 and already registered in a Member State on 1 April 1995.	

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OPS 1.665

Ground proximity warning system

(a) An operator shall not operate a turbine powered aeroplane:

1. Having a maximum certificated take-off mass in excess of 15 000 kg or having a maximum approved passenger seating configuration of more than 30; or

2. Having a maximum certificated take-off mass in excess of 5 700 kg or a maximum approved passenger seating configuration of more than 9 after 1 January 1999

unless it is equipped with a ground proximity warning system.

(b) The ground proximity warning system required by this paragraph must automatically provide, by means of aural signals, which may be supplemented by visual signals, timely and distinctive warning to the flight crew of sink rate, ground proximity, altitude loss after take-off or go-around, incorrect landing configuration and downward glideslope deviation.

OPS 1.668

Airborne collision avoidance system

An operator shall not operate a turbine powered aeroplane:

1. Having a maximum certificated take-off mass in excess of 15 000 kg or a maximum approved passenger seating configuration of more than 30 after 1 January 2000; or

2. Having a maximum certificated take-off mass in excess of 5 700 kg, but not more than 15 000 kg, or a maximum approved passenger seating configuration of more than 19, but not more than 30, after 1 January 2005.

unless it is equipped with an airborne collision avoidance system with a minimum performance level of at least ACAS II.

OPS 1.670

Airborne weather radar equipment

(a) An operator shall not operate:

1. A pressurised aeroplane; or

2. An unpressurised aeroplane which has a maximum certificated take-off mass of more than 5 700 kg; or

3. An unpressurised aeroplane having a maximum approved passenger seating configuration of more than 9 seats after 1 April 1999,

unless it is equipped with airborne weather radar equipment whenever such an aeroplane is being operated at night or in instrument meteorological conditions in areas where thunderstorms or other potentially hazardous weather conditions, regarded as detectable with airborne weather radar, may be expected to exist along the route.

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(b) For propeller driven pressurised aeroplanes having a maximum certificated take-off mass not exceeding 5 700 kg with a maximum approved passenger seating configuration not exceeding 9 seats the airborne weather radar equipment may be replaced by other equipment capable of detecting thunderstorms and other potentially hazardous weather conditions, regarded as detectable with airborne weather radar equipment, subject to approval by the Authority.	
OPS 1.675	
Equipment for operations in icing conditions	
(a) An operator shall not operate an aeroplane in expected or actual icing conditions unless it is certificated and equipped to operate in icing conditions.	
(b) An operator shall not operate an aeroplane in expected or actual icing conditions at night unless it is equipped with a means to illuminate or detect the formation of ice. Any illumination that is used must be of a type that will not cause glare or reflection that would handicap crew members in the performance of their duties.	
OPS 1.680	
Cosmic radiation detection equipment	
An operator shall ensure that aeroplanes intended to be operated above 15 000 m (49 000 ft) are equipped with an instrument to measure and indicate continuously the dose rate of total cosmic radiation being received (i.e. the total of ionizing and neutron radiation of galactic and solar origin) and the cumulative dose on each flight.	
OPS 1.685	
Flight crew interphone system	
An operator shall not operate an aeroplane on which a flight crew of more than one is required unless it is equipped with a flight crew interphone system, including headsets and microphones, not of a handheld type, for use by all members of the flight crew, except that for aeroplanes registered in a Member State on 1 April 1995 and first issued with an individual certificate of airworthiness before 1 April 1975 a flight crew interphone system is required by 1 April 2002.	An operator shall not operate an aeroplane on which a flight crew of more than one is required unless it is equipped with a flight crew interphone system, including headsets and microphones, not of a handheld type, for use by all members of the flight crew. For aeroplanes already registered in a Member State on 1 April 1995 and first issued with an individual certificate of airworthiness before 1 April 1975 this requirement will not be applicable until 1 April 2002.
OPS 1.690	Unchanged
Crew member interphone system	
(a) An operator shall not operate an aeroplane with a maximum certificated take-off mass exceeding 15 000 kg or having a maximum approved passenger seating configuration of more than 19 unless it is equipped with a crew member interphone system except for aeroplanes first issued with an individual certificate of airworthiness before 1 April 1965 and already registered in a Member State on 1 April 1995.	

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(b) The crew member interphone system required by this paragraph must:

1. Operate independently of the public address system except for handsets, headsets, microphones, selector switches and signalling devices;

2. Provide a means of two-way communication between the flight crew compartment and:

(i) Each passenger compartment;

(ii) Each galley located other than on a passenger deck level; and

(iii) Each remote crew compartment that is not on the passenger deck and is not easily accessible from a passenger compartment;

3. Be readily accessible for use from each of the required flight crew stations in the flight crew compartment;

4. Be readily accessible for use at required cabin crew member stations close to each separate or pair of floor level emergency exits;

5. Have an alerting system incorporating aural or visual signals for use by flight crew members to alert the cabin crew and for use by cabin crew members to alert the flight crew;

6. Have a means for the recipient of a call to determine whether it is a normal call or an emergency call; and

7. Provide on the ground a means of two-way communication between ground personnel and at least two flight crew members.

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OPS 1.695

Public address system

(a) An operator shall not operate an aeroplane with a maximum approved passenger seating configuration of more than 19 unless a public address system is installed.

(b) The public address system required by this paragraph must:

1. Operate independently of the interphone systems except for handsets, headsets, microphones, selector switches and signalling devices;

2. Be readily accessible for immediate use from each required flight crew member station;

3. For each required floor level passenger emergency exit which has an adjacent cabin crew seat, have a microphone which is readily accessible to the seated cabin crew member, except that one microphone may serve more than one exit, provided the proximity of the exits allows unassisted verbal communication between seated cabin crew members;

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4. Be capable of operation within 10 seconds by a cabin crew member at each of those stations in the compartment from which its use is accessible; and

5. Be audible and intelligible at all passenger seats, toilets and cabin crew seats and work stations.

OPS 1.700

Cockpit voice recorders — 1

(a) An operator shall not operate an aeroplane first issued with an individual Certificate of Airworthiness, on or after 1 April 1998, which:

1. Is multi-engine turbine powered and has a maximum approved passenger seating configuration of more than 9; or

2. Has a maximum certificated take-off mass over 5 700 kg,

unless it is equipped with a cockpit voice recorder which, with reference to a time scale, records:

(i) Voice communications transmitted from or received on the flight deck by radio;

(ii) The aural environment of the flight deck, including without interruption, the audio signals received from each boom and mask microphone in use;

(iii) Voice communications of flight crew members on the flight deck using the aeroplane's interphone system;

(iv) Voice or audio signals identifying navigation or approach aids introduced into a headset or speaker; and

(v) Voice communications of flight crew members on the flight deck using the public address system, if installed.

(b) The cockpit voice recorder shall be capable of retaining information recorded during at least the last 2 hours of its operation except that, for those aeroplanes with a maximum certificated take-off mass of 5 700 kg or less, this period may be reduced to 30 minutes.

(c) The cockpit voice recorder must start automatically to record prior to the aeroplane moving under its own power and continue to record until the termination of the flight when the aeroplane is no longer capable of moving under its own power. In addition, depending on the availability of electrical power, the cockpit voice recorder must start to record as early as possible during the cockpit checks prior to engine start at the beginning of the flight until the cockpit checks immediately following engine shutdown at the end of the flight.

(d) The cockpit voice recorder must have a device to assist in locating that recorder in water.

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(e) In complying with this section, aeroplanes with a maximum certificated take-off mass of 5 700 kg or less may have the cockpit voice recorder combined with the flight data recorder.	
(f) Any aeroplane may be despatched with the cockpit voice recorder required by this section inoperative provided that: 1. It is not reasonably practicable to repair or replace the cockpit voice recorder before the commencement of the flight; 2. The aeroplane does not exceed 8 further consecutive flights with the cockpit voice recorder unserviceable; 3. Not more than 72 hours have elapsed since the cockpit voice recorder was found to be unserviceable; and 4. Any flight data recorder required to be carried is operative, unless it is combined with a cockpit voice recorder.	
OPS 1.705 **Cockpit voice recorders — 2**	
(a) After 1 April 2000 an operator shall not operate any multi-engined turbine aeroplane first issued with an individual certificate of airworthiness, on or after 1 January 1990 up to and including 31 March 1998 which has a maximum certificated take-off mass of 5 700 kg or less and a maximum approved passenger seating configuration of more than 9, unless it is equipped with a cockpit voice recorder which records: 1. Voice communications transmitted from or received on the flight deck by radio; 2. The aural environment of the flight deck, including where practicable, without interruption, the audio signals received from each boom and mask microphone in use; 3. Voice communications of flight crew members on the flight deck using the aeroplane's interphone system; 4. Voice or audio signals identifying navigation or approach aids introduced into a headset or speaker; and 5. Voice communications of flight crew members on the flight deck using the public address system, if installed.	
(b) The cockpit voice recorder shall be capable of retaining information recorded during at least the last 30 minutes of its operation.	

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(c) The cockpit voice recorder must start to record prior to the aeroplane moving under its own power and continue to record until the termination of the flight when the aeroplane is no longer capable of moving under its own power. In addition, depending on the availability of electrical power, the cockpit voice recorder must start to record as early as possible during the cockpit checks, prior to the flight until the cockpit checks immediately following engine shutdown at the end of the flight.	
(d) The cockpit voice recorder must have a device to assist in locating that recorder in water.	
(e) An aeroplane may be despatched with the cockpit voice recorder required by this section inoperative provided that: 1. It is not reasonably practicable to repair or replace the cockpit voice recorder before the commencement of the flight; 2. The aeroplane does not exceed 8 further consecutive flights with the cockpit voice recorder unserviceable; 3. Not more than 72 hours have elapsed since the cockpit voice recorder was found to be unserviceable; and 4. Any flight data recorder required to be carried is operative unless it is combined with a cockpit voice recorder.	
OPS 1.710 **Cockpit voice recorders — 3**	
(a) An operator shall not operate any aeroplane with a maximum certificated take-off mass over 5 700 kg first issued with an individual certificate of airworthiness, before 1 April 1998 unless it is equipped with a cockpit voice recorder which records: 1. Voice communications transmitted from or received on the flight deck by radio; 2. The aural environment of the flight deck; 3. Voice communications of flight crew members on the flight deck using the aeroplane's interphone system; 4. Voice or audio signals identifying navigation or approach aids introduced into a headset or speaker; and 5. Voice communications of flight crew members on the flight deck using the public address system, if installed.	
(b) The cockpit voice recorder shall be capable of retaining information recorded during at least the last 30 minutes of its operation.	

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(c) The cockpit voice recorder must start to record prior to the aeroplane moving under its own power and continue to record until the termination of the flight when the aeroplane is no longer capable of moving under its own power.

(d) The cockpit voice recorder must have a device to assist in locating that recorder in water.

(e) An aeroplane may be despatched with the cockpit voice recorder required by this section inoperative provided that:

1. It is not reasonably practicable to repair or replace the cockpit voice recorder before the commencement of the flight;

2. The aeroplane does not exceed 8 further consecutive flights with the cockpit voice recorder unserviceable;

3. Not more than 72 hours have elapsed since the cockpit voice recorder was found to be unserviceable; and

4. Any flight data recorder required to be carried is operative.

OPS 1.715

Flight data recorders — 1

(a) An operator shall not operate any aeroplane first issued with an individual Certificate of Airworthiness on or after 1 April 1998 which:

1. Is multi-engine turbine powered and has a maximum approved passenger seating configuration of more than nine (9); or

2. Has a maximum certificated take-off mass over 5 700 kg,

unless it is equipped with a flight data recorder that uses a digital method of recording and storing data and a method of readily retrieving that data from the storage medium is available.

(b) The flight data recorder shall be capable of retaining the data recorded during at least the last 25 hours of its operation except that, for those aeroplanes with a maximum certificated take-off mass of 5 700 kg or less, this period may be reduced to 10 hours.

(c) The flight data recorder must, with reference to a timescale, record:

1. The parameters necessary to determine altitude, airspeed, heading, acceleration, pitch and roll attitude, radio transmission keying, thrust or power on each engine, configuration of lift and drag devices, air temperature, use of automatic flight control systems and angle of attack;

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2. For those aeroplanes with a maximum certificated take-off mass over 27 000 kg, the additional parameters necessary to determine positions of primary flight controls and pitch trim, radio altitude and primary navigation information displayed to the flight crew, cockpit warnings and landing gear position; and	
3. For aeroplanes specified in (a) above, the flight data recorder must record any dedicated parameters relating to novel or unique design or operational characteristics of the aeroplane.	
(d) Data must be obtained from aircraft sources which enable accurate correlation with information displayed to the flight crew.	
(e) The flight data recorder must start automatically to record the data prior to the aeroplane being capable of moving under its own power and must stop automatically after the aeroplane is incapable of moving under its own power.	
(f) The flight data recorder must have a device to assist in locating that recorder in water.	
(g) Aeroplanes with a maximum certificated take-off mass of 5 700 kg or less may have the flight data recorder combined with the cockpit voice recorder.	
(h) An aeroplane may be despatched with the flight data recorder required by this section inoperative provided that:	
1. It is not reasonably practicable to repair or replace the flight data recorder before the commencement of the flight;	
2. The aeroplane does not exceed 8 further consecutive flights with the flight data recorder unserviceable;	
3. Not more than 72 hours have elapsed since the flight data recorder was found to be unserviceable; and	
4. Any cockpit voice recorder required to be carried is operative, unless it is combined with the flight data recorder.	
OPS 1.720	
Flight data recorders — 2	
(a) An operator shall not operate any aeroplane first issued with an individual Certificate of Airworthiness, on or after 1 January 1989 up to and including 31 March 1998 which has a maximum certificated take-off mass over 5 700 kg unless it is equipped with a flight data recorder that uses a digital method of recording and storing data and a method of readily retrieving that data from the storage medium is available.	
(b) The flight data recorder shall be capable of retaining the data recorded during at least the last 25 hours of its operation.	

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(c) The flight data recorder must, with reference to a timescale, record:

1. The parameters necessary to determine altitude, airspeed, heading, acceleration, pitch and roll attitude, radio transmission keying unless an alternative means is provided to enable the recordings of the flight data recorder and the cockpit voice recorder to be synchronised, thrust or power on each engine, configuration of lift and drag devices, air temperature, use of automatic flight control systems and angle of attack; and

2. For those aeroplanes with a maximum certificated take-off mass over 27 000 kg, the additional parameters necessary to determine positions of primary flight controls and pitch trim, radio altitude and primary navigation information displayed to the flight crew, cockpit warnings and landing gear position.

(d) Data must be obtained from aeroplane sources which enable accurate correlation with information displayed to the flight crew.

(e) The flight data recorder must start to record the data prior to the aeroplane being capable of moving under its own power and must stop after the aeroplane is incapable of moving under its own power.

(f) The flight data recorder must have a device to assist in locating that recorder in water.

(g) An aeroplane may be despatched with the flight data recorder required by this section inoperative provided that:

1. It is not reasonably practical to repair or replace the flight data recorder before the commencement of the flight;

2. The aeroplane does not exceed 8 further consecutive flights with the flight data recorder unserviceable;

3. Not more than 72 hours have elapsed since the flight data recorder was found to be unserviceable; and

4. Any cockpit voice recorder required to be carried is operative, unless it is combined with the flight data recorder.

OPS 1.725

Flight data recorders — 3

(a) An operator shall not operate any turbine-engined aeroplane to which OPS 1.715 or OPS 1.720 is not applicable and which has a maximum certificated take-off mass over 5 700 kg unless it is equipped with a flight data recorder that uses a digital method of recording and storing data and a method of readily retrieving that data from the storage medium is available, except that for aeroplanes registered in a Member State on 1 April 1995 and first issued with an individual Certificate of Airworthiness before 1 April 1975, the continued use of non-digital recorders is acceptable until 1 April 2000.

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(b) The flight data recorder shall be capable of retaining the data recorded during at least the last 25 hours of its operation.	
(c) The flight data recorder must, with reference to a timescale, record:	
1. For aeroplanes first issued with an individual Certificate of Airworthiness, before 1 January 1987:	
(i) The parameters necessary to determine altitude, airspeed, heading and normal acceleration; and	
(ii) For those aeroplanes with a maximum certificated take-off mass over 27 000 kg that are of a type first type after 30 September 1969, the additional parameters necessary to determine:	(ii) For those aeroplanes with a maximum certificated take-off mass over 27 000 kg that are of a type first type certificated after 30 September 1969, the additional parameters necessary to determine:
(A) Radio transmission keying unless an alternative means is provided to enable the recordings of the flight data recorder and the cockpit voice recorder to be synchronised;	Unchanged
(B) The attitude of the aeroplane in achieving its flight path; and	
(C) The basic forces acting upon the aeroplane resulting in the achieved flight path and the origin of such forces.	
2. For aeroplanes first issued with an individual Certificate of Airworthiness on or after 1 January 1987 but before 1 January 1989:	
(i) The parameters necessary to determine altitude, airspeed, heading and normal acceleration; and	
(ii) For those aeroplanes with a maximum certificated take-off mass over 27 000 kg that are of a type first type certificated after 30 September 1969, the additional parameters necessary to determine:	
(A) Radio transmission keying unless an alternative means is provided to enable the recordings of the flight data recorder and the cockpit voice recorder to be synchronised; and	
(B) Pitch and roll attitude, thrust or power on each engine, configuration of lift and drag devices, air temperature, use of automatic flight control systems, position of primary flight controls and pitch trim, radio altitude and primary navigation information displayed to the flight crew, cockpit warnings and landing gear position.	
(d) Data must be obtained from aircraft sources which enable accurate correlation with information displayed to the flight crew.	

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(e) The flight data recorder must start to record the data prior to the aeroplane being capable of moving under its own power and must stop after the aeroplane is incapable of moving under its own power.	
(f) The flight data recorder must have a device to assist in locating that recorder in water.	
(g) Any aeroplane may be despatched with the flight data recorder required by this section inoperative provided that: 1. It is not reasonably practicable to repair or replace the flight data recorder before the commencement of the flight; 2. The aeroplane does not exceed 8 further consecutive flights with the flight data recorder unserviceable; 3. Not more than 72 hours have elapsed since the flight data recorder was found to be unserviceable; and 4. Any cockpit voice recorder required to be carried is operative, unless it is combined with the flight data recorder.	
OPS 1.730 **Seats, seat safety belts, harnesses and child restraint devices** (a) An operator shall not operate an aeroplane unless it is equipped with: 1. A seat or berth for each person who is aged two years or more; 2. A safety belt, with or without a diagonal shoulder strap, or a safety harness for use in each passenger seat for each passenger aged 2 years or more; 3. A supplementary loop belt or other restraint device for each infant; 4. Except as provided in sub-paragraph (b) below, a safety belt with shoulder harness for each flight crew seat and for any seat alongside a pilot's seat incorporating a device which will automatically restrain the occupant's torso in the event of rapid deceleration; 5. Except as provided in sub-paragraph (b) below, a safety belt with shoulder harness for each cabin crew seat and observer's seats. However, this requirement does not preclude use of passenger seats by cabin crew members carried in excess of the required cabin crew complement; and 6. Seats for cabin crew members located near required floor level emergency exits except that, if the emergency evacuation of passengers would be enhanced by seating cabin crew members elsewhere, other locations are acceptable. Such seats shall be forward or rearward facing within 15° of the longitudinal axis of the aeroplane.	

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(b) All safety belts with shoulder harness must have a single point release.

(c) A safety belt with a diagonal shoulder strap for aeroplanes with a maximum certificated take-off mass not exceeding 5 700 kg or a safety belt for aeroplanes with a maximum certificated take-off mass not exceeding 2 730 kg may be permitted in place of a safety belt with shoulder harness if it is not reasonably practicable to fit the latter.

OPS 1.731

Fasten seat belt and no smoking signs

An operator shall not operate an aeroplane in which all passenger seats are not visible from the flight deck, unless it is equipped with a means of indicating to all passengers and cabin crew when seat belts shall be fastened and when smoking is not allowed.

OPS 1.735

Internal doors and curtains

An operator shall not operate an aeroplane unless the following equipment is installed:

(a) In an aeroplane with a maximum approved passenger seating configuration of more than 19 passengers, a door between the passenger compartment and the flight deck compartment with a placard "crew only" and a locking means to prevent passengers from opening it without the permission of a member of the flight crew;

(b) A means for opening each door that separates a passenger compartment from another compartment that has emergency exit provisions. The means for opening must be readily accessible;

(c) If it is necessary to pass through a doorway or curtain separating the passenger cabin from other areas to reach any required emergency exit from any passenger seat, the door or curtain must have a means to secure it in the open position;

(d) A placard on each internal door or adjacent to a curtain that is the means of access to a passenger emergency exit, to indicate that it must be secured open during take off and landing; and

(e) A means for any member of the crew to unlock any door that is normally accessible to passengers and that can be locked by passengers.

OPS 1.745

First-aid kits

(a) An operator shall not operate an aeroplane unless it is equipped with first-aid kits, readily accessible for use, to the following scale:

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Number of passenger seats installed	Number of first-aid kits required
0 to 99	1
100 to 199	2
200 to 299	3
300 and more	4

(b) An operator shall ensure that first-aid kits are:

1. Inspected periodically to confirm, to the extent possible, that contents are maintained in the condition necessary for their intended use; and

2. Replenished at regular intervals, in accordance with instructions contained on their labels, or as circumstances warrant.

OPS 1.755

Emergency medical kit

(a) An operator shall not operate an aeroplane with a maximum approved passenger seating configuration of more than 30 seats unless it is equipped with an emergency medical kit if any point on the planned route is more than 60 minutes flying time (at normal cruising speed) from an aerodrome at which qualified medical assistance could be expected to be available.

(b) The commander shall ensure that drugs are not administered except by qualified doctors, nurses or similarly qualified personnel.

(c) *Conditions for carriage*

1. The emergency medical kit must be dust and moisture proof and shall be carried under security conditions, where practicable, on the flight deck; and

2. An operator shall ensure that emergency medical kits are:

(i) Inspected periodically to confirm, to the extent possible, that the contents are maintained in the condition necessary for their intended use; and

(ii) Replenished at regular intervals, in accordance with instructions contained on their labels, or as circumstances warrant.

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OPS 1.760	
First-aid oxygen	
(a) An operator shall not operate a pressurised aeroplane at altitudes above 25 000 ft, when a cabin crew member is required to be carried, unless it is equipped with a supply of undiluted oxygen for passengers who, for physiological reasons, might require oxygen following a cabin depressurisation. The amount of oxygen shall be calculated using an average flow rate of at least 3 litres Standard Temperature Pressure Dry (STPD)/minute/person and provided for the entire flight after cabin depressurisation at cabin altitudes of more than 8 000 ft for at least 2 % of the passengers carried, but in no case for less than one person. There shall be a sufficient number of dispensing units, but in no case less than two, with a means for cabin crew to use the supply.	(a) An operator shall not operate a pressurised aeroplane at altitudes above 25 000 ft, when a cabin crew member is required to be carried, unless it is equipped with a supply of undiluted oxygen for passengers who, for physiological reasons, might require oxygen following a cabin depressurisation. The amount of oxygen shall be calculated using an average flow rate of at least 3 litres Standard Temperature Pressure Dry (STPD)/minute/person and provided for the entire flight after cabin depressurisation at cabin pressure altitudes of more than 8 000 ft for at least 2 % of the passengers carried, but in no case for less than one person. There shall be a sufficient number of dispensing units, but in no case less than two, with a means for cabin crew to use the supply.
(b) The amount of first-aid oxygen required for a particular operation shall be determined on the basis of cabin pressure altitudes and flight duration, consistent with the operating procedures established for each operation and route.	Unchanged
(c) The oxygen equipment provided shall be capable of generating a mass flow to each user of at least four litres per minute, STPD. Means may be provided to decrease the flow to not less than two litres per minute, STPD, at any altitude.	
OPS 1.770	
Supplemental oxygen — Pressurised aeroplanes	
(See Appendix 1 to OPS 1.770)	
(a) *General*	
1. An operator shall not operate a pressurised aeroplane at pressure altitudes above 10 000 ft unless supplemental oxygen equipment, capable of storing and dispensing the oxygen supplies required by this paragraph, is provided.	
2. The amount of supplemental oxygen required shall be determined on the basis of cabin pressure altitude, flight duration and the assumption that a cabin pressurisation failure will occur at the altitude or point of flight that is most critical from the standpoint of oxygen need, and that, after the failure, the aeroplane will descend in accordance with emergency procedures specified in the Aeroplane Flight Manual to a safe altitude for the route to be flown that will allow continued safe flight and landing.	
3. Following a cabin pressurisation failure, the cabin pressure altitude shall be considered the same as the aeroplane pressure altitude, unless it is demonstrated to the Authority that no probable failure of the cabin or pressurisation system will result in a cabin pressure altitude equal to the aeroplane altitude. Under these circumstances, the demonstrated maximum cabin pressure altitude may be used as a basis for determination of oxygen supply.	3. Following a cabin pressurisation failure, the cabin pressure altitude shall be considered the same as the aeroplane pressure altitude, unless it is demonstrated to the Authority that no probable failure of the cabin or pressurisation system will result in a cabin pressure altitude equal to the aeroplane pressure altitude. Under these circumstances, the demonstrated maximum cabin pressure altitude may be used as a basis for determination of oxygen supply.

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(b) *Oxygen equipment and supply requirements*	Unchanged
1. Flight crew members	
(i) Each member of the flight crew on flight deck duty shall be supplied with supplemental oxygen in accordance with Appendix 1. If all occupants of flight deck seats are supplied from the flight crew source of oxygen supply then they shall be considered as flight crew members on flight deck duty for the purpose of oxygen supply. Flight deck seat occupants, not supplied by the flight crew source, are to be considered as passengers for the purpose of oxygen supply.	
(ii) Flight crew members, not covered by sub-paragraph (b)(1)(i) above, are to be considered as passengers for the purpose of oxygen supply.	
(iii) Oxygen masks shall be located so as to be within the immediate reach of flight crew members whilst at their assigned duty station.	
(iv) Oxygen masks for use by flight crew members in pressurised aeroplanes operating above 25 000 ft shall be a quick donning type of mask.	
2. Cabin crew members, additional crew members and passengers	
(i) Cabin crew members and passengers shall be supplied with supplemental oxygen in accordance with Appendix 1, except when subparagraph (v) below applies. Cabin crew members carried in addition to the minimum number of cabin crew members required, and additional crew members, shall be considered as passengers for the purpose of oxygen supply.	
(ii) Aeroplanes intended to be operated at pressure altitudes above 25 000 ft shall be provided with sufficient spare outlets and masks and/or sufficient portable oxygen units with masks for use by all required cabin crew members. The spare outlets and/or portable oxygen units are to be distributed evenly throughout the cabin to ensure immediate availability of oxygen to each required cabin crew member regardless of his location at the time of cabin pressurisation failure.	
(iii) Aeroplanes intended to be operated at pressure altitudes above 25 000 ft shall be provided with an oxygen dispensing unit connected to oxygen supply terminals immediately available to each occupant, wherever seated. The total number of dispensing units and outlets shall exceed the number of seats by at least 10 %. The extra units are to be evenly distributed throughout the cabin.	

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(iv) Aeroplanes intended to be operated at pressure altitudes above 25 000 ft or which, if operated at or below 25 000 ft, cannot descend safely within 4 minutes to 13 000 ft, and for which the individual Certificate of Airworthiness was first issued on or after 9 November 1998, shall be provided with automatically deployable oxygen equipment immediately available to each occupant, wherever seated. The total number of dispensing units and outlets shall exceed the number of seats by at least 10 %. The extra units are to be evenly distributed throughout the cabin.

(v) The oxygen supply requirements, as specified in Appendix 1, for aeroplanes not certificated to fly at altitudes above 25 000 ft, may be reduced to the entire flight time between 10 000 ft and 13 000 ft cabin pressure altitudes for all required cabin crew members and for at least 10 % of the passengers if, at all points along the route to be flown, the aeroplane is able to descend safely within 4 minutes to a cabin pressure altitude of 13 000 ft.

OPS 1.775

Supplemental oxygen — Non-pressurised aeroplanes

(See Appendix 1 to OPS 1.775)

(a) *General*

1. An operator shall not operate a non-pressurised aeroplane at altitudes above 10 000 ft unless supplemental oxygen equipment, capable of storing and dispensing the oxygen supplies required, is provided.

2. The amount of supplemental oxygen for sustenance required for a particular operation shall be determined on the basis of flight altitudes and flight duration, consistent with the operating procedures established for each operation in the Operations Manual and with the routes to be flown, and with the emergency procedures specified in the Operations Manual.

3. An aeroplane intended to be operated at pressure altitudes above 10 000 ft shall be provided with equipment capable of storing and dispensing the oxygen supplies required.

(b) *Oxygen supply requirements*

1. Flight crew members

Each member of the flight crew on flight deck duty shall be supplied with supplemental oxygen in accordance with Appendix 1. If all occupants of flight deck seats are supplied from the flight crew source of oxygen supply then they shall be considered as flight crew members on flight deck duty for the purpose of oxygen supply.

2. Cabin crew members, additional crew members and passengers

Cabin crew members and passengers shall be supplied with oxygen in accordance with Appendix 1. Cabin crew members carried in addition to the minimum number of cabin crew members required, and additional crew members, shall be considered as passengers for the purpose of oxygen supply.

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OPS 1.780

Crew protective breathing equipment

(a) An operator shall not operate a pressurised aeroplane or, after 1 April 2000, an unpressurised aeroplane with a maximum certificated take-off mass exceeding 5 700 kg or having a maximum approved seating configuration of more than 19 seats unless:

1. It has equipment to protect the eyes, nose and mouth of each flight crew member while on flight deck duty and to provide oxygen for a period of not less than 15 minutes. The supply for Protective Breathing Equipment (PBE) may be provided by the supplemental oxygen required by OPS 1.770 (b)(1) or OPS 1.775 (b)(1). In addition, when the flight crew is more than one and a cabin crew member is not carried, portable PBE must be carried to protect the eyes, nose and mouth of one member of the flight crew and to provide breathing gas for a period of not less than 15 minutes; and

2. It has sufficient portable PBE to protect the eyes, nose and mouth of all required cabin crew members and to provide breathing gas for a period of not less than 15 minutes.

(b) PBE intended for flight crew use must be conveniently located on the flight deck and be easily accessible for immediate use by each required flight crew member at their assigned duty station.

(c) PBE intended for cabin crew use must be installed adjacent to each required cabin crew member duty station.

(d) An additional, easily accessible portable PBE must be provided and located at or adjacent to the hand fire extinguishers required by OPS 1.790 (c) and (d) except that, where the fire extinguisher is located inside a cargo compartment, the PBE must be stowed outside but adjacent to the entrance to that compartment.

(e) PBE while in use must not prevent communication where required by OPS 1.685, OPS 1.690, OPS 1.810 and OPS 1.850.

OPS 1.790

Hand fire extinguishers

An operator shall not operate an aeroplane unless hand fire extinguishers are provided for use in crew, passenger and, as applicable, cargo compartments and galleys in accordance with the following:

(a) The type and quantity of extinguishing agent must be suitable for the kinds of fires likely to occur in the compartment where the extinguisher is intended to be used and, for personnel compartments, must minimise the hazard of toxic gas concentration;

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(b) At least one hand fire extinguisher, containing Halon 1211 (bromochlorodifluoro-methane, $CBrClF_2$), or equivalent as the extinguishing agent, must be conveniently located on the flight deck for use by the flight crew;

(c) At least one hand fire extinguisher must be located in, or readily accessible for use in, each galley not located on the main passenger deck;

(d) At least one readily accessible hand fire extinguisher must be available for use in each Class A or Class B cargo or baggage compartment and in each Class E cargo compartment that is accessible to crew members in flight; and

(e) At least the following number of hand fire extinguishers must be conveniently located in the passenger compartment(s):

Maximum approved passenger seating configuration	Number of extinguishers
7 to 30	1
31 to 60	2
61 to 200	3
201 to 300	4
301 to 400	5
401 to 500	6
501 to 600	7
601 or more	8

When two or more extinguishers are required, they must be evenly distributed in the passenger compartment.

(f) At least one of the required fire extinguishers located in the passenger compartment of an aeroplane with a maximum approved passenger seating configuration of at least 31, and not more than 60, and at least two of the fire extinguishers located in the passenger compartment of an aeroplane with a maximum approved passenger seating configuration of 61 or more must contain Halon 1211 (bromochlorodifluoromethane, $CBrClF_2$), or equivalent as the extinguishing agent.

OPS 1.795

Crash axes and crowbars

(a) An operator shall not operate an aeroplane with a maximum certificated take-off mass exceeding 5 700 kg or having a maximum approved passenger seating configuration of more than 9 seats unless it is equipped with at least one crash axe or crowbar located on the flight deck. If the maximum approved passenger seating configuration is more than 200 an additional crash axe or crowbar must be carried and located in or near the most rearward galley area.

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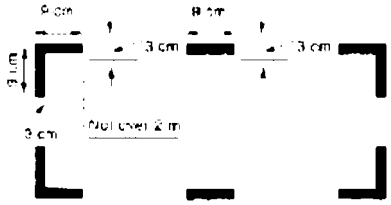
(b) Crash axes and crowbars located in the passenger compartment must not be visible to passengers.

OPS 1.800

Marking of break-in points

An operator shall ensure that, if designated areas of the fuselage suitable for break-in by rescue crews in emergency are available on an aeroplane, such areas shall be marked as shown below. The colour of the markings shall be red or yellow, and if necessary they shall be outlined in white to contrast with the background. If the corner markings are more than 2 metres apart, intermediate lines 9 cm × 3 cm shall be inserted so that there is no more than 2 metres between adjacent marks.



OPS 1.805

Means for emergency evacuation

(a) An operator shall not operate an aeroplane with passenger emergency exit sill heights:

1. Which are more than 1,83 metres (6 feet) above the ground with the aeroplane on the ground and the landing gear extended; or

2. Which would be more than 1,83 metres (6 feet) above the ground after the collapse of, or failure to extend of, one or more legs of the landing gear and for which a Type Certificate was first applied for on or after 1 April 2000,

unless it has equipment or devices available at each exit, where sub-paragraphs (1) or (2) apply, to enable passengers and crew to reach the ground safely in an emergency.

(b) Such equipment or devices need not be provided at overwing exits if the designated place on the aeroplane structure at which the escape route terminates is less than 1,83 metres (6 feet) from the ground with the aeroplane on the ground, the landing gear extended, and the flaps in the take off or landing position, whichever flap position is higher from the ground.

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(c) In aeroplanes required to have a separate emergency exit for the flight crew and:

1. For which the lowest point of the emergency exit is more than 1,83 metres (6 feet) above the ground with the landing gear extended; or,

2. For which a Type Certificate was first applied for on or after 1 April 2000, would be more than 1.83 metres (6 ft) above the ground after the collapse of, or failure to extend of, one or more legs of the landing gear,

there must be a device to assist all members of the flight crew in descending to reach the ground safely in an emergency.

OPS 1.810

Megaphones

An operator shall not operate an aeroplane with a maximum approved passenger seating configuration of more than 60 and carrying one or more passengers unless it is equipped with portable battery-powered megaphones readily accessible for use by crew members during an emergency evacuation, to the following scales:

1. For each passenger deck:

Passenger seating configuration	Number of megaphones required
61 to 99	1
100 or more	2

2. For aeroplanes with more than one passenger deck, in all cases when the total passenger seating configuration is more than 60, at least 1 megaphone is required.

OPS 1.815

Emergency lighting

(a) An operator shall not operate a passenger carrying aeroplane which has a maximum approved passenger seating configuration of more than 9 unless it is provided with an emergency lighting system having an independent power supply to facilitate the evacuation of the aeroplane. The emergency lighting system must include:

1. For aeroplanes which have a maximum approved passenger seating configuration of more than 19:

(i) Sources of general cabin illumination;

(ii) Internal lighting in floor level emergency exit areas; and

(iii) Illuminated emergency exit marking and locating signs.

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(iv) For aeroplanes for which the application for the type certificate or equivalent was filed before 1 May 1972, and when flying by night, exterior emergency lighting at all overwing exits, and at exits where descent assist means are required.	
(v) For aeroplanes for which the application for the type certificate or equivalent was filed on or after 1 May 1972, and when flying by night, exterior emergency lighting at all passenger emergency exits.	
(vi) For aeroplanes for which the type certificate was first issued on or after 1 January 1958, floor proximity emergency escape path marking system in the passenger compartment(s).	
2. For aeroplanes which have a maximum approved passenger seating configuration of 19 or less and are certificated according to JAR-25 or the applicable requirements for normal, utility, aerobatic and commuter category aeroplanes:	
(i) Sources of general cabin illumination;	
(ii) Internal lighting in emergency exit areas; and	
(iii) Illuminated emergency exit marking and locating signs.	
3. For aeroplanes which have a maximum approved passenger seating configuration of 19 or less and are not certificated according to JAR-25 or the applicable requirements for normal, utility, aerobatic and commuter category aeroplanes, sources of general cabin illumination.	
(b) After 1 April 1998 an operator shall not, by night, operate a passenger carrying aeroplane which has a maximum approved passenger seating configuration of 9 or less unless it is provided with a source of general cabin illumination to facilitate the evacuation of the aeroplane. The system may use dome lights or other sources of illumination already fitted on the aeroplane and which are capable of remaining operative after the aeroplane's battery has been switched off.	
OPS 1.820	
Automatic Emergency Locator Transmitter	
(a) An operator shall not operate an aeroplane unless it is equipped with an automatic Emergency Locator Transmitter (ELT) attached to the aeroplane in such a manner that, in the event of a crash, the probability of the ELT transmitting a detectable signal is maximised and the possibility of the ELT transmitting at any other time is minimised.	(a) An operator shall not operate an aeroplane first issued with an individual Certificate of Airworthiness on or after 1 January 2002 unless it is equipped with an automatic Emergency Locator Transmitter (ELT) capable of transmitting on 121.5 MHz and 406 MHz.
(b) An operator must ensure that the ELT is capable of transmitting on the distress frequencies prescribed in ICAO Annex 10.	(b) An operator shall not operate on or after 1 January 2002 an aeroplane first issued with an individual Certificate of Airworthiness before 1 January 2002 unless it is equipped with any type of ELT capable of transmitting on 121.5 MHz and 406 MHz, except that aeroplanes equipped on or before 1 April 2000 with an automatic ELT transmitting on 121.5 MHz but not on 406 MHz may continue in service until 31 December 2004.

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	(c) An operator shall ensure that all ELTs that are capable of transmitting on 406 MHz shall be coded in accordance with ICAO Annex 10 and registered with the national agency responsible for initiating search and rescue or another nominated agency.
OPS 1.825	Unchanged
Life jackets	
(a) *Land aeroplanes* An operator shall not operate a land aeroplane: 1. When flying over water and at a distance of more than 50 nautical miles from the shore; or 2. When taking off or landing at an aerodrome where the take-off or approach path is so disposed over water that in the event of a mishap there would be a likelihood of a ditching, unless it is equipped with life jackets equipped with a survivor locator light, for each person on board. Each life jacket must be stowed in a position easily accessible from the seat or berth of the person for whose use it is provided. Life jackets for infants may be substituted by other approved flotation devices equipped with a survivor locator light.	
(b) *Seaplanes and amphibians* An operator shall not operate a seaplane or an amphibian on water unless it is equipped with life jackets equipped with a survivor locator light, for each person on board. Each life jacket must be stowed in a position easily accessible from the seat or berth of the person for whose use it is provided. Life jackets for infants may be substituted by other approved flotation devices equipped with a survivor locator light.	
OPS 1.830	
Life-rafts and survival ELTs for extended overwater flights	
(a) On overwater flights, an operator shall not operate an aeroplane at a distance away from land, which is suitable for making an emergency landing, greater than that corresponding to: 1. 120 minutes at cruising speed or 400 nautical miles, whichever is the lesser, for aeroplanes capable of continuing the flight to an aerodrome with the critical power unit(s) becoming inoperative at any point along the route or planned diversions; or 2. 30 minutes at cruising speed or 100 nautical miles, whichever is the lesser, for all other aeroplanes, unless the equipment specified in sub-paragraphs (b) and (c) below is carried.	

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(b) Sufficient life-rafts to carry all persons on board. Unless excess rafts of enough capacity are provided, the buoyancy and seating capacity beyond the rated capacity of the rafts must accommodate all occupants of the aeroplane in the event of a loss of one raft of the largest rated capacity. The life-rafts shall be equipped with:

1. A survivor locator light; and

2. Life saving equipment including means of sustaining life as appropriate to the flight to be undertaken; and

(c) At least two survival Emergency Locator Transmitters (ELT (S)) capable of transmitting on the distress frequencies prescribed in ICAO Annex 10, Volume V, Chapter 2.

OPS 1.835

Survival equipment

An operator shall not operate an aeroplane across areas in which search and rescue would be especially difficult unless it is equipped with the following:

(a) Signalling equipment to make the pyrotechnical distress signals described in ICAO Annex 2;

(b) At least one ELT (S) is capable of transmitting on the distress frequencies prescribed in ICAO Annex 10, Volume V, Chapter 2; and

(c) Additional survival equipment for the route to be flown taking account of the number of persons on board

except that the equipment specified in sub-paragraph (c) need not be carried when the aeroplane either:

1. Remains within a distance from an area where search and rescue is not especially difficult corresponding to:

   (i) 120 minutes at the one engine inoperative cruising speed for aeroplanes capable of continuing the flight to an aerodrome with the critical power unit(s) becoming inoperative at any point along the route or planned diversions; or

   (ii) 30 minutes at cruising speed for all other aeroplanes,

   or,

2. For aeroplanes certificated to JAR-25 or equivalent, no greater distance than that corresponding to 90 minutes at cruising speed from an area suitable for making an emergency landing.

OPS 1.840

Seaplanes and amphibians — Miscellaneous equipment

An operator shall not operate a seaplane or an amphibian on water unless it is equipped with:

1. A sea anchor and other equipment necessary to facilitate mooring, anchoring or manoeuvring the aircraft on water, appropriate to its size, weight and handling characteristics; and

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2. Equipment for making the sound signals prescribed in the International Regulations for preventing collisions at sea, where applicable.

Appendix 1 to OPS 1.770

Oxygen — Minimum requirements for supplemental oxygen for pressurised aeroplanes during and following emergency descent (note 1)

Table 1

(a)	(b)
Supply for	Duration and cabin pressure altitude
1. All occupants of flight deck seats on flight deck duty	Entire flight time when the cabin pressure altitude exceeds 13 000 ft and entire flight time when the cabin pressure altitude exceeds 10 000 ft but does not exceed 13 000 ft after the first 30 minutes at those altitudes, but in no case less than: (i) 30 minutes for aeroplanes certificated to fly at altitudes not exceeding 25 000 ft (Note 2) (ii) 2 hours for aeroplanes certificated to fly at altitudes more than 25 000 ft (Note 3).
2. All required cabin crew members	Entire flight time when cabin pressure altitude exceeds 13 000 ft but not less than 30 minutes (Note 2), and entire flight time when cabin pressure altitude is greater than 10 000 ft but does not exceed 13 000 ft after the first 30 minutes at these altitudes
3. 100 % of passengers (Note 5)	Entire flight time when the cabin pressure altitude exceeds 15 000 ft but in no case less then 10 minutes (Note 4).
4. 30 % of passengers (Note 5)	Entire flight time when the cabin pressure altitude exceeds 14 000 ft but does not exceed 15 000 ft
5. 10 % of passengers (Note 5)	Entire flight time when the cabin pressure altitude exceeds 10 000 ft but does not exceed 14 000 ft after the first 30 minutes at these altitudes

Note 1: The supply provided must take account of the cabin pressure altitude and descent profile for the routes concerned.

Note 2: The required minimum supply is that quantity of oxygen necessary for a constant rate of descent from the aeroplane's maximum certificated operating altitude to 10 000 ft in 10 minutes and followed by 20 minutes at 10 000 ft.

Note 3: The required minimum supply is that quantity of oxygen necessary for a constant rate of descent from the aeroplane's maximum certificated operating altitude to 10 000 ft in 10 minutes and followed by 110 minutes at 10 000 ft. The oxygen required in OPS 1.780 (a)(1) may be included in determining the supply required.

Note 4: The required minimum supply is that quantity of oxygen necessary for a constant rate of descent from the aeroplane's maximum certificated operating altitude to 15 000 ft in 10 minutes.

Note 5: For the purpose of this table "passengers" means passengers actually carried and includes infants.

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Appendix 1 to OPS 1.775

Supplemental oxygen for non-pressurised aeroplanes

Table 1

(a)	(b)
Supply for	Duration and pressure altitude
1. All occupants of flight deck seats on flight deck duty	Entire flight time at pressure altitudes above 10 000 ft
2. All required cabin crew members	Entire flight time at pressure altitudes above 13 000 ft and for any period exceeding 30 minutes at pressure altitudes above 10 000 ft but not exceeding 13 000 ft.
3. 100 % of passengers (See Note)	Entire flight time at pressure altitudes above 13 000 ft.
4. 10 % of passengers (See Note)	Entire flight time after 30 minutes at pressure altitudes greater than 10 000 ft but not exceeding 13 000 ft

Note: For the purpose of this table "passengers" means passengers actually carried and includes infants under the age of 2.

SUBPART L

COMMUNICATION AND NAVIGATION EQUIPMENT

OPS 1.845

General introduction

(a) An operator shall ensure that a flight does not commence unless the communication and navigation equipment required under this Subpart is:

1. Approved and installed in accordance with the requirements applicable to them, including the minimum performance standard and the operational and airworthiness requirements;

2. Installed such that the failure of any single unit required for either communication or navigation purposes, or both, will not result in the failure of another unit required for communications or navigation purposes;

3. In operable condition for the kind of operation being conducted except as provided in the MEL (OPS 1.030 refers); and

4. So arranged that if equipment is to be used by one flight crew member at his station during flight it must be readily operable from his station. When a single item of equipment is required to be operated by more than one flight crew member it must be installed so that the equipment is readily operable from any station at which the equipment is required to be operated.

INITIAL PROPOSAL	AMENDED PROPOSAL

(b) Communication and navigation equipment minimum performance standards are those prescribed in the applicable Joint Technical Standard Orders (JTSO) as listed in JAR-TSO, unless different performance standards are prescribed in the operational or airworthiness codes. Communication and navigation equipment complying with design and performance specifications other than JTSO on the date of OPS implementation may remain in service, or be installed, unless additional requirements are prescribed in this Subpart. Communication and navigation equipment which has already been approved does not need to comply with a revised JTSO or a revised specification, other than JTSO, unless a retro-active requirement is prescribed.

OPS 1.850

Radio equipment

(a) An operator shall not operate an aeroplane unless it is equipped with radio required for the kind of operation being conducted.

(b) Where two independent (separate and complete) radio systems are required under this Subpart, each system must have an independent antenna installation except that, where rigidly supported non-wire antennae or other antenna installations of equivalent reliability are used, only one antenna is required.

(c) The radio communication equipment required to comply with paragraph (a) above must also provide for communications on the aeronautical emergency frequency 121,5 MHz.

OPS 1.855

Audio selector panel

An operator shall not operate an aeroplane under IFR unless it is equipped with an audio selector panel accessible to each required flight crew member.

OPS 1.860

Radio equipment for operations under VFR over routes navigated by reference to visual landmarks

An operator shall not operate an aeroplane under VFR over routes that can be navigated by reference to visual landmarks, unless it is equipped with the radio equipment (communication and SSR transponder equipment) necessary under normal operating conditions to fulfil the following:

(a) Communicate with appropriate ground stations;

(b) Communicate with appropriate air traffic control facilities from any point in controlled airspace within which flights are intended;

(c) Receive meteorological information; and

(d) Reply to SSR interrogations as required for the route being flown.

INITIAL PROPOSAL	AMENDED PROPOSAL
OPS 1.865	
Communication and navigation equipment for operations under IFR, or under VFR over routes not navigated by reference to visual landmarks	
(a) An operator shall not operate an aeroplane under IFR, or under VFR over routes that cannot be navigated by reference to visual landmarks, unless the aeroplane is equipped with communication and navigation equipment in accordance with the requirements of air traffic services in the area(s) of operation.	(a) An operator shall not operate an aeroplane under IFR, or under VFR over routes that cannot be navigated by reference to visual landmarks, unless the aeroplane is equipped with radio (communication and SSR transponder) and navigation equipment in accordance with the requirements of air traffic services in the area(s) of operation.
(b) *Radio equipment*	Unchanged
An operator shall esure that radio equipment comprises not less than:	An operator shall ensure that radio equipment comprises not less than:
1. Two independent radio communication systems necessary under normal operating conditions to communicate with an appropriate ground station from any point on the route including diversions;	Unchanged
2. SSR transponder equipment as required for the route being flown.	
(c) *Navigation equipment*	
An operator shall esure that navigation equipment	An operator shall ensure that navigation equipment
1. Comprises not less than:	Unchanged
(i) One VOR receiving system, one ADF system, one DME;	
(ii) One ILS or MLS where ILS or MLS is required for approach navigation purposes;	
(iii) One Marker Beacon receiving system where a Marker Beacon is required for approach navigation purposes	
(iv) An Area Navigation System when area navigation is required for the route being flown;	
(v) An additional DME system on any route, or part thereof, where navigation is based only on DME signals;	
(vi) An additional VOR receiving system on any route, or part thereof, where navigation is based only on VOR signals;	
(vii) ADF system on any route, or part thereof, where navigation is based only on NDB signals; or	
2. Complies with the Required Navigation Performance (RNP) Type for operation in the airspace concerned.	

INITIAL PROPOSAL	AMENDED PROPOSAL
(d) An operator may operate an aeroplane that is not equipped with the navigation equipment specified in sub-paragraph(s) (a)(5) and/or (a)(6) above, provided that it is equipped with alternative equipment authorised, for the route being flown, by the Authority. The reliability and the accuracy of alternative equipment must allow safe navigation for the intended route.	(d) An operator may operate an aeroplane that is not equipped with the navigation equipment specified in sub-paragraph(s) (a)(5) and/or (a)(6) (c)(1)(vi) and/or (c)(1)(vii) above, provided that it is equipped with alternative equipment authorised, for the route being flown, by the Authority. The reliability and the accuracy of alternative equipment must allow safe navigation for the intended route.
OPS 1.870	Unchanged
Additional navigation equipment for operations in MNPS airspace	
(a) An operator shall not operate an aeroplane in MNPS airspace unless it is equipped with navigation equipment that complies with minimum navigation performance specifications prescribed in ICAO Doc 7030 in the form of Regional Supplementary Procedures.	
(b) The navigation equipment required by this paragraph must be visible and usable by either pilot seated at his duty station.	
(c) For unrestricted operation in MNPS airspace an aeroplane must be equipped with two independent Long Range Navigation Systems (LRNS).	
(d) For operation in MNPS airspace along notified special routes an aeroplane must be equipped with one Long Range Navigation System (LRNS), unless otherwise specified.	
OPS 1.872	
Equipment for operation in defined airspace with Reduced Vertical Separation Minima (RVSM)	
(See also OPS 1.241)	
An operator shall ensure that aeroplanes operated in RVSM airspace are equipped with:	
1. Two independent altitude alerting systems	1. Two independent altitude measurement systems
2. An altitude alerting system	Unchanged
3. An automatic altitude control system; and	
4. A secondary surveillance radar (SSR) transponder with altitude reporting system that can be connected to the altitude measurement system in use for altitude keeping.	

INITIAL PROPOSAL

AMENDED PROPOSAL

SUBPART M

AEROPLANE MAINTENANCE

OPS 1.875

General

(a) An operator shall not operate an aeroplane unless it is maintained and released to service by an organisation appropriately approved/accepted in accordance with JAR-145 except that pre-flight inspections need not necessarily be carried out by the JAR-145 organisation.

(b) This Subpart prescribes aeroplane maintenance requirements needed to comply with the operator certification requirements in OPS 1.180.

OPS 1.880

Terminology

The following definitions from JAR-145 shall apply to this Subpart:

(a) Preflight inspection — means the inspection carried out before flight to ensure that the aeroplane is fit for the intended flight. It does not include defect rectification.

(b) Approved standard — means a manufacturing/design/maintenance/quality standard approved by the Authority.

(c) Approved by the Authority — means approved by the Authority directly or in accordance with a procedure approved by the Authority.

OPS 1.885

Application for and approval of the operator's maintenance system

(a) For the approval of the maintenance system, an applicant for the initial issue, variation and renewal of an AOC shall submit the documents specified in OPS 1.185(b).

(b) An applicant for the initial issue, variation and renewal of an AOC who meets the requirements of this Subpart, in conjunction with an appropriate JAR-145 approved/accepted maintenance organisation's exposition, is entitled to approval of the maintenance system by the Authority.

Note: Detailed requirements are given in OPS 1.180(a)(3) and 1.180(b), and OPS 1.185.

INITIAL PROPOSAL

AMENDED PROPOSAL

OPS 1.890

Maintenance responsibility

(a) An operator shall ensure the airworthiness of the aeroplane and the serviceability of both operational and emergency equipment by:

1. The accomplishment of preflight inspections;

2. The rectification to an approved standard of any defect and damage affecting safe operation, taking into account the minimum equipment list and configuration deviation list if available for the aeroplane type;

3. The accomplishment of all maintenance in accordance with the approved operator's aeroplane maintenance programme specified in OPS 1.910;

4. The analysis of the effectiveness of the operator's approved aeroplane maintenance programme;

5. The accomplishment of any operational directive, airworthiness directive and any other continued airworthiness requirement made mandatory by the Authority; and

6. The accomplishment of modifications in accordance with an approved standard and, for non-mandatory modifications, the establishment of an embodiment policy.

(b) An operator shall ensure that the Certificate of Airworthiness for each aeroplane operated remains valid in respect of:

1. The requirements in sub-paragraph (a) above;

2. Any calendar expiry date specified in the Certificate; and

3. Any other maintenance condition specified in the Certificate.

(c) The requirements specified in sub-paragraph (a) above must be performed in accordance with procedures acceptable to the Authority.

OPS 1.895

Maintenance management

(a) An operator must be appropriately approved in accordance with JAR-145 to carry out the requirements specified in OPS 1.890(a)(2), (3), (5) and (6) except when the Authority is satisfied that the maintenance can be contracted to an appropriate JAR-145 approved/accepted organisation.

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) An operator must employ a person or group of persons acceptable to the Authority to ensure that all maintenance is carried out on time to an approved standard such that the maintenance responsibility requirements prescribed in OPS 1.890 are satisfied, and to ensure the functioning of the quality system required by OPS 1.900. The person, or senior person as appropriate, is the nominated postholder referred to in OPS 1.175(i)(2).	(b) An operator must employ a person or group of persons acceptable to the Authority to ensure that all maintenance is carried out on time to an approved standard such that the maintenance responsibility requirements prescribed in OPS 1.890 are satisfied. The person, or senior person as appropriate, is the nominated postholder referred to in OPS 1.175(i)(2). The nominated postholder for maintenance is also responsible for any corrective action resulting from the quality monitoring of OPS 1.900(a).
	(c) The nominated postholder for maintenance should not be employed by a JAR-145 approved/accepted Organisation under contract to the Operator, unless specifically agreed by the Authority.
(c) When an operator is not appropriately approved in accordance with JAR-145, arrangements must be made with such an organisation to carry out the requirements specified in OPS 1.890(a)(2), (3), (5) and (6). A written maintenance contract must be agreed between the operator and the JAR-145 approved/accepted maintenance organisation detailing the functions specified in OPS 1.890(a)(2), (3), (5) and (6) and defining the support of the quality functions of OPS 1.900. This contract, together with all amendments, must be acceptable to the Authority. The Authority does not require the commercial elements of a maintenance contract.	(d) When an operator is not appropriately approved in accordance with JAR-145, arrangements must be made with such an organisation to carry out the requirements specified in OPS 1.890(a)(2), (3), (5) and (6). Except as otherwise specified in paragraphs (e), (f) and (g) below, the arrangement must be in the form of a written maintenance contract between the operator and the JAR-145 approved/accepted maintenance organisation detailing the functions specified in OPS 1.890(a)(2), (3), (5) and (6) and defining the support of the quality functions of OPS 1.900. Aeroplane base and scheduled line maintenance and engine maintenance contracts, together with all amendments, must be acceptable to the Authority. The Authority does not require the commercial elements of a maintenance contract.
	(e) Notwithstanding paragraph (d) above, the operator may have a contract with with an organisation that is not JAR-145 approved/accepted, provided that 1. for aeroplane or engine maintenance contracts, the contracted organisation is an OPS operator of the same type of aeroplane, 2. all maintenance is ultimately performed by JAR-145 approved/accepted organisations, 3. such a contract details the functions specified in OPS 1.890(a)(2), (3), (5) and (6) and defines the support of the quality functions of OPS 1.900, 4. the contract, together with all amendments, is acceptable to the Authority. The Authority does not require the commercial elements of a maintenance contract.

INITIAL PROPOSAL	AMENDED PROPOSAL
	(f) Notwithstanding paragraph (d) above, in the case of an aeroplane needing occasional line maintenance, the contract may be in the form of individual work orders to the maintenance organisation.
	(g) Notwithstanding paragraph (d) above, in the case of aeroplane component maintenance, including engine maintenance, the contract may be in the form of individual work orders to the maintenance organisation.
(d) An operator must provide suitable office accommodation at appropriate locations for the personnel specified in sub-paragraph (b) above.	(h) An operator must provide suitable office accommodation at appropriate locations for the personnel specified in sub-paragraph (b) above.
OPS 1.900	Unchanged
Quality system	
(a) For maintenance purposes, the operator's quality system, as required by OPS 1.035, must additionally include at least the following functions: 1. Monitoring that the activities of OPS 1.890 are being performed in accordance with the accepted procedures; 2. Monitoring that all contracted maintenance is carried out in accordance with the contract; and 3. Monitoring the continued compliance with the requirements of this Subpart.	
(b) Where the operator is approved in accordance with JAR-145, the quality system may be combined with that required by JAR-145.	
OPS 1.905	
Operator's maintenance management exposition	
(a) An operator must provide an operator's maintenance management exposition containing details of the organisation structure including: 1. The nominated postholder responsible for the maintenance system required by OPS 1.175(i)(2) and the person, or group of persons, referred to in OPS 1.895(b); 2. The procedures that must be followed to satisfy the maintenance responsibility of OPS 1.890 and the quality functions of OPS 1.900, except that where the operator is appropriately approved as a maintenance organisation in accordance with JAR-145, such details may be included in the JAR-145 exposition.	

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) An operator's maintenance management exposition and any subsequent amendment must be approved by the Authority.	
OPS 1.910	
Operator's aeroplane maintenance programme	
(a) An operator must ensure that the aeroplane is maintained in accordance with the operator's aeroplane maintenance programme. The programme must contain details, including frequency, of all maintenance required to be carried out. The programme will be required to include a reliability programme when the Authority determines that such a reliability programme is necessary.	
(b) An operator's aeroplane maintenance programme and any subsequent amendment must be approved by the Authority.	
OPS 1.915	
Operator's aeroplane technical log	
(a) An operator must use an aeroplane technical log system containing the following information for each aeroplane: 1. Information about each flight necessary to ensure continued flight safety; 2. The current aeroplane certificate of release to service; 3. The current maintenance statement giving the aeroplane maintenance status of what scheduled and out of phase maintenance is next due except that the Authority may agree to the maintenance statement being kept elsewhere; 4. All outstanding deferred defects that affect the operation of the aeroplane; and 5. Any necessary guidance instructions on maintenance support arrangements.	
(b) The aeroplane technical log and any subsequent amendment must be approved by the Authority.	
OPS 1.920	
Maintenance records	
(a) An operator shall ensure that the aeroplane technical log is retained for 24 months after the date of the last entry.	

INITIAL PROPOSAL

AMENDED PROPOSAL

(b) An operator shall ensure that a system has been established to keep, in a form acceptable to the Authority, the following records for the periods specified:

1. All detailed maintenance records in respect of the aeroplane and any aeroplane component fitted thereto — 24 months after the aeroplane or aeroplane component was released to service;

2. The total time and flight cycles as appropriate, of the aeroplane and all life-limited aeroplane components — 12 months after the aeroplane has been permanently withdrawn from service;

3. The time and flight cycles as appropriate, since last overhaul of the aeroplane or aeroplane component subjected to an overhaul life — until the aeroplane or aeroplane component overhaul has been superseded by another overhaul of equivalent work scope and detail;

4. The current aeroplane inspection status such that compliance with the approved operator's aeroplane maintenance programme can be established — until the aeroplane or aeroplane component inspection has been superseded by another inspection, of equivalent work scope and detail;

5. The current status of airworthiness directives applicable to the aeroplane and aeroplane components — 12 months after the aeroplane has been permanently withdrawn from service; and

6. Details of current modifications and repairs to the aeroplane, engine(s), propeller(s) and any other aeroplane component vital to flight safety — 12 months after the aeroplane has been permanently withdrawn from service.

(c) An operator shall ensure that when an aeroplane is permanently transferred from one operator to another operator the records specified in paragraphs (a) and (b) are also transferred and the time periods prescribed will continue to apply to the new operator.

OPS 1.930

Continued validity of the air operator certificate in respect of the maintenance system

An operator must comply with OPS 1.175 and 1.180 to ensure continued validity of the air operator's certificate in respect of the maintenance system.

OPS 1.935

Equivalent safety case

An operator shall not introduce alternative procedures to those prescribed in this Subpart unless needed and an equivalent safety case has first been approved subject to the applicable common review procedures and has been approved to do so by the Authority.

INITIAL PROPOSAL

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SUBPART N

FLIGHT CREW

OPS 1.940

Composition of flight crew

(See Appendices 1 and 2 to OPS 1.940)

(a) An operator shall ensure that:

1. The composition of the flight crew and the number of flight crew members at designated crew stations are both in compliance with, and no less than the minimum specified in, the Aeroplane Flight Manual (AFM);

2. The flight crew includes additional flight crew members when required by the type of operation, and is not reduced below the number specified in the Operations Manual;

3. All flight crew members hold an applicable and valid licence acceptable to the Authority and are suitably qualified and competent to conduct the duties assigned to them;

4. Procedures are established, acceptable to the Authority, to prevent the crewing together of inexperienced flight crew members;

5. One pilot amongst the flight crew, qualified as a pilot-in-command in accordance with the applicable regulations in the field of flight crew licensing, is designated as the commander who may delegate the conduct of the flight to another suitably qualified pilot; and

6. When a dedicated system panel operator is required by the AFM, the flight crew includes one crew member who holds a flight engineer's licence or is a suitably qualified flight crew member and acceptable to the Authority.

7. An operator shall ensure that when engaging the services of flight crew members who are self-employed and/or working on a freelance or part-time basis, the requirements of Subpart N are complied with. In this respect, particular attention must be paid to the total number of aircraft types or variants that a flight crew member may fly for the purposes of commercial air transportation, which must not exceed the requirements prescribed in OPS 1.980 and OPS 1.981, including when his services are engaged by another operator

(b) *Minimum flight crew for operations under IFR or at night*

For operations under IFR or at night, an operator shall ensure that:

1. For all turbo-propeller aeroplanes with a maximum approved passenger seating configuration of more than 9 and for all turbo-jet aeroplanes, the minimum flight crew is 2 pilots; or

INITIAL PROPOSAL

AMENDED PROPOSAL

2. Aeroplanes other than those covered by sub-paragraph (b)(1) above are operated by a single pilot provided that the requirements of Appendix 2 to OPS 1.940 are satisfied. If the requirements of Appendix 2 are not satisfied, the minimum flight crew is 2 pilots.

OPS 1.945

Conversion training and checking

(See Appendix 1 to OPS 1.945)

(a) An operator shall ensure that:

1. A flight crew member completes a type rating course which satisfies the requirements governing flight crew licences when changing from one type of aeroplane to another type or class for which a new type or class rating is required;

2. A flight crew member completes an operator's conversion course before commencing unsupervised line flying;

(i) When changing to an aeroplane for which a new type or class rating is required; or

(ii) When changing operator;

3. Conversion training is conducted by suitably qualified persons in accordance with a detailed course syllabus included in the Operations Manual acceptable to the Authority;

4. The amount of training required by the operator's conversion course is determined after due note has been taken of the flight crew member's previous training as recorded in his training records prescribed in OPS 1.985;

5. The minimum standards of qualification and experience required of flight crew members before undertaking conversion training are specified in the Operations Manual;

6. Each flight crew member undergoes the checks required by OPS 1.965(b) and the training and checks required by OPS 1.965(d) before commencing line flying under supervision;

7. Upon completion of line flying under supervision, the check required by OPS 1.965(c) is undertaken;

8. Once an operator's conversion course has been commenced, a flight crew member does not undertake flying duties on another type or class until the course is completed or terminated; and

9. Crew resource management training is incorporated in the conversion course.

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) In the case of changing aeroplane type or class, the check required by OPS 1.965(b) may be combined with the type or class rating skill test.	
(c) The operator's conversion course and the type or class rating course may be combined.	
OPS 1.950	
Differences training and familiarisation training	
(a) An operator shall ensure that a flight crew member completes:	
1. Differences training	1. Differences training which requires additional knowledge and training on an appropriate training device for the aeroplane:
(i) When operating another variant of an aeroplane of the same type or another type of the same class currently operated; or	Unchanged
(ii) When a change of equipment and/or procedures on types or variants currently operated, requires additional knowledge and training on an appropriate training device;	(ii) When changing equipment and/or procedures on types or variants currently operated;
2. Familiarisation training	2. Familiarisation training which requires the acquisition of additional knowledge:
(i) When operating another aeroplane of the same type or variant; or	Unchanged
(ii) When a change of equipment and/or procedures on types or variants currently operated, requires the acquisition of additional knowledge.	(ii) When changing equipment and/or procedures on types or variants currently operated.
(b) The operator shall specify in the Operations Manual when such differences training or familiarisation training is required.	Unchanged
OPS 1.955	
Nomination as commander	
(a) An operator shall ensure that for upgrade to commander from co-pilot and for those joining as commanders:	
1. A minimum level of experience, acceptable to the Authority, is specified in the Operations Manual; and	
2. For multi-crew operations, the pilot completes an appropriate command course.	

INITIAL PROPOSAL

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(b) The command course required by sub-paragraph (a)(2) above must be specified in the Operations Manual and include at least the following:

1. Training in a flight simulator (including line orientated flying training) and/or flying training;

2. An operator proficiency check operating as commander;

3. Commander's responsibilities;

4. Line training in command under supervision. A minimum of 10 sectors is required for pilots already qualified on the aeroplane type;

5. Completion of a commander's line check as prescribed in OPS 1.965(c) and route and aerodrome competence qualifications as prescribed in OPS 1.975; and

6. Crew resource management training.

OPS 1.960

Commanders holding a Commercial Pilot Licence

An operator shall ensure that:

1. A Commercial Pilot Licence (CPL) holder does not operate as a commander of an aeroplane certificated in the Aeroplane Flight Manual for single pilot operations unless:

(i) When conducting passenger carrying operations under Visual Flight Rules (VFR) outside a radius of 50 nm from an aerodrome of departure, the pilot has a minimum of 500 hours total flight time on aeroplanes or holds a valid Instrument Rating; or

(ii) When operating on a multi-engine type under Instrument Flight Rules (IFR), the pilot has a minimum of 700 hours total flight time on aeroplanes which includes 400 hours as pilot-in-command of which 100 hours have been under IFR including 40 hours multi-engine operation. The 400 hours as pilot-in-command may be substituted by hours operating as co-pilot on the basis of two hours co-pilot is equivalent to one hour as pilot-in-command provided those hours were gained within an established multi-pilot crew system prescribed in the Operations Manual;

2. In addition to sub-paragraph (a)(1)(ii) above, when operating under IFR as a single pilot, the requirements prescribed in Appendix 2 to OPS 1.940 are satisfied; and

3. In multi-pilot crew operations, in addition to sub-paragraph (a)(1) above, and prior to the pilot operating as commander, the command course prescribed in OPS 1.955(a)(2) is completed.

INITIAL PROPOSAL	AMENDED PROPOSAL
OPS 1.965	
Recurrent training and checking	
(See Appendices 1 and 2 to OPS 1.965)	
(a) *General*	
An operator shall ensure that:	
1. Each flight crew member undergoes recurrent training and checking and that all such training and checking is relevant to the type or variant of aeroplane on which the crew member is certificated to operate;	1. Each flight crew member undergoes recurrent training and checking and that all such training and checking is relevant to the type or variant of aeroplane on which the flight crew member operates;
2. A recurrent training and checking programme is established in the Operations Manual and approved by the Authority;	Unchanged
3. Recurrent training is conducted by the following personnel:	
(i) Ground and refresher training — by a suitably qualified person;	(i) Ground and refresher training — by suitably qualified personnel;
(ii) Aeroplane/flight simulator training — by a Type Rating Instructor/Examiner or by a Type Rating Instructor (synthetic flight instruction);	(ii) Aeroplane/flight simulator training — by a Type Rating Instructor (TRI), or in the case of the flight simulator content, a Synthetic Flight Instructor (SFI), providing that the TRI or SFI satisfies the operator's experience and knowledge requirements sufficient to instruct on the items specified in Appendix 1 to OPS 1.965(a)(1)(i)(A) and (B);
(iii) Emergency and safety equipment training and checking — by suitably qualified personnel; and	(iii) Emergency and safety equipment training — by suitably qualified personnel; and
(iv) Crew Resource Management (CRM) training — by suitably qualified personnel;	Unchanged
4. Recurrent checking is conducted by the following personnel:	
(i) Operator proficiency checks — by a Type Rating Examiner; and	(i) Operator proficiency checks — by a Type Rating Examiner or, if the check is conducted in a flight simulator qualified and approved for the purpose in accordance with the applicable regulations in the field of Synthetic Training Devices, a Synthetic Flight Examiner;
(ii) Line checks — by commanders nominated by the operator and acceptable to the Authority;	Unchanged
	(iii) Emergency and safety equipment checking — by suitably qualified personnel.
5. . . .	

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) *Operator proficiency check*	Unchanged
1. An operator shall ensure that:	
(i) Each flight crew member undergoes operator proficiency checks to demonstrate his competence in carrying out normal, abnormal and emergency procedures; and	
(ii) The check is conducted without external visual reference when the flight crew member will be required to operate under IFR;	(ii) The check is conducted without external visual reference when the flight crew member will be required to operate under IFR;
	(iii) Each flight crew member undergoes operator proficiency checks as part of a normal flight crew complement.
2. The period of validity of an operator proficiency check shall be 6 calendar months in addition to the remainder of the month of issue. If issued within the final 3 calendar months of validity of a previous operator proficiency check, the period of validity shall extend from the date of issue until 6 calendar months from the expiry date of that previous operator proficiency check.	Unchanged
(c) *Line check*	
An operator shall ensure that each flight crew member undergoes a line check on the aeroplane to demonstrate his competence in carrying out normal line operations described in the Operations Manual. The period of validity of a line check shall be 12 calendar months, in addition to the remainder of the month of issue. If issued within the final 3 calendar months of validity of a previous line check the period of validity shall extend from the date of issue until 12 calendar months from the expiry date of that previous line check.	
(d) *Emergency and safety equipment training and checking*	
An operator shall ensure that each flight crew member undergoes training and checking on the location and use of all emergency and safety equipment carried. The period of validity of an emergency and safety equipment check shall be 12 calendar months in addition to the remainder of the month of issue. If issued within the final 3 calendar months of validity of a previous emergency and safety check, the period of validity shall extend from the date of issue until 12 calendar months from the expiry date of that previous emergency and safety equipment check.	
(e) *Crew resource management*	
An operator shall ensure that each flight crew member undergoes crew resource management training as part of recurrent training.	

INITIAL PROPOSAL	AMENDED PROPOSAL
(f) *Ground and refresher training* An operator shall ensure that each flight crew member undergoes ground and refresher training every 12 calendar months. If the training is conducted within 3 calendar months prior to the expiry of the 12 calendar months period, the next ground and refresher training must be completed within 12 calendar months of the original expiry date of the previous ground and refresher training.	An operator shall ensure that each flight crew member undergoes ground and refresher training at least every 12 calendar months. If the training is conducted within 3 calendar months prior to the expiry of the 12 calendar months period, the next ground and refresher training must be completed within 12 calendar months of the original expiry date of the previous ground and refresher training.
(g) *Aeroplane/flight simulator training* An operator shall ensure that each flight crew member undergoes aeroplane/flight simulator training at least every 12 calendar months. If the training is conducted within 3 calendar months prior to the expiry of the 12 calendar months period, the next aeroplane/flight simulator training must be completed within 12 calendar months of the original expiry date of the previous aeroplane/flight simulator training.	Unchanged

OPS 1.968

Pilot qualification to operate in either pilot's seat

(See Appendix 1 to OPS 1.968)

An operator shall ensure that:

1. A pilot who may be assigned to operate in either pilot's seat completes appropriate training and checking; and

2. The training and checking programme is specified in the Operations Manual and is acceptable to the Authority.

OPS 1.970

Recent experience

(a) An operator shall ensure that:

1. Commander. A pilot does not operate an aeroplane as commander unless he has carried out at least three take-offs and three landings as pilot flying in an aeroplane of the same type or a flight simulator, qualified and approved for the purpose in accordance with the applicable regulations in the field of synthetic training devices, of the aeroplane type to be used, in the preceding 90 days; and

2. Co-pilot. A co-pilot does not serve at the flight controls during take-off and landing unless he has served as a pilot at the controls during take-off and landing in an aeroplane of the same type or a flight simulator qualified and approved for the purpose in accordance with the applicable regulations in the field of synthetic training devices of the aeroplane type to be used, in the preceding 90 days.

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) The 90 day period prescribed in sub-paragraphs (a)(1) and (2) above may be extended up to a maximum of 120 days by line flying under the supervision of a type rating instructor or examiner. For periods beyond 120 days, the recency requirement is satisfied by a training flight or use of an approved flight simulator.	
OPS 1.975	OPS 1.975
Pilot-in-command — Route and aerodrome competence qualification	**Route and aerodrome competence qualification**
(a) An operator shall ensure that, prior to being assigned as pilot-in-command, the pilot has obtained adequate knowledge of the route to be flown and of the aerodromes (including alternates), facilities and procedures to be used.	(a) An operator shall ensure that, prior to being assigned as commander or as pilot to whom the conduct of the flight may be delegated by the commander, the pilot has obtained adequate knowledge of the route to be flown and of the aerodromes (including alternates), facilities and procedures to be used.
(b) The period of validity of the route and aerodrome competence qualification shall be 12 calendar months in addition to the remainder of:	Unchanged
1. The month of qualification; or	
2. The month of the latest operation on the route or to the aerodrome.	
(c) Route and aerodrome competence qualification shall be revalidated by operating on the route or to the aerodrome within the period of validity prescribed in sub-paragraph (b) above.	
(d) If revalidated within the final 3 calendar months of the validity of the previous route and aerodrome competence qualification, the period of validity shall extend from the date of revalidation until 12 calendar months from the expiry date of that previous route and aerodrome competence qualification.	
OPS 1.978	
Advanced qualification programme	
(a) The periods of validity of OPS 1.965 and 1.970 may be extended, where the Authority has approved an advanced qualification programme established by the operator.	
(b) The advanced qualification programme must contain training and checking which establishes and maintains a proficiency that is not less than the provisions prescribed in OPS 1.945, 1.965 and 1.970.	

INITIAL PROPOSAL

AMENDED PROPOSAL

OPS 1.980

Operation on more than one type or variant

(See Appendix 1 to OPS 1.980)

(a) An operator shall ensure that a flight crew member does not operate on more than one type or variant unless the flight crew member is competent to do so.

(b) When considering operations of more than one type or variant, an operator shall ensure that the differences and/or similarities of the aeroplanes concerned justify such operations, taking account of the following:

1. The level of technology;

2. Operational procedures;

3. Handling characteristics.

(c) An operator shall ensure that a flight crew member operating more than one type or variant complies with all of the requirements prescribed in Subpart N for each type or variant unless the Authority has approved the use of credit(s) related to the training, checking and recent experience requirements.

(d) An operator shall specify appropriate procedures and/or operational restrictions, approved by the Authority, in the Operations Manual, for any operation on more than one type or variant covering:

1. The flight crew members' minimum experience level;

2. The minimum experience level on one type or variant before beginning training for and operation of another type or variant;

3. The process whereby flight crew qualified on one type or variant will be trained and qualified on another type or variant;

4. All applicable recent experience requirements for each type or variant.

OPS 1.981

Operation of helicopter and aeroplane

When a flight crew member operates both helicopters and aeroplanes:

1. An operator shall ensure that operations of helicopter and aeroplane are limited to one type of each.

2. The operator shall specify appropriate procedures and/or operational restrictions, approved by the Authority, in the Operations Manual.

INITIAL PROPOSAL	AMENDED PROPOSAL
OPS 1.985	
Training records	
An operator shall:	
1. Maintain records of all training, checking and qualification prescribed in OPS 1.945, 1.955, 1.965, 1.968 and 1.975 undertaken by a flight crew member; and	
2. Make the records of all conversion courses and recurrent training and checking available, on request, to the flight crew member concerned.	
Appendix 1 to OPS 1.940	
In-flight relief of flight crew members	
(a) A flight crew member may be relieved in flight of his duties at the controls by another suitably qualified flight crew member.	
(b) Relief of the commander	
The commander may be relieved by:	The commander may delegate conduct of the flight to:
(i) Another pilot qualified as commander; or	(i) Another qualified commander; or
(ii) A pilot-in-command (PIC) qualifired as detailed in sub-paragraph (c) below.	(ii) For operations only above FL 200, a pilot qualified as detailed in sub-paragraph (c) below.
(c) Minimum requirements for PIC relieving the commander:	(c) Minimum requirements for a pilot relieving the commander:
1. Valid Airline Transport Pilot Licence;	Unchanged
2. Conversion training and checking (including type rating training) as prescribed in OPS 1.945;	
3. All recurrent training and checking as prescribed in OPS 1.965;	3. All recurrent training and checking as prescribed in OPS 1.965 and OPS 1.968;
4. Recent experience as prescribed in OPS 1.970;	4. Route competence qualification as prescribed in OPS 1.975.
5. PIC route competence qualification as prescribed in OPS 1.975; and	Deleted
6. To operate in the role of PIC in the cruise only and not below FL 200.	
(d) *Relief of the co-pilot*	Unchanged
The co-pilot may be relieved by:	
(i) Another suitably qualified pilot; or	
(ii) A cruise relief co-pilot qualified as detailed in sub-paragraph (e) below.	

INITIAL PROPOSAL	AMENDED PROPOSAL
(e) *Minimum requirements for cruise relief co-pilot*	
1. Valid Commercial Pilot Licence with Instrument Rating;	
2. Conversion training and checking, including type rating training, as prescribed in OPS 1.945 except the requirement for take-off and landing training;	
3. All recurrent training and checking as prescribed in OPS 1.965 except the requirement for take-off and landing training; and	
4. To operate in the role of co-pilot in the cruise only and not below FL 200.	
5. Recent experience as prescribed in OPS 1.970 is not required. The pilot shall, however, carry out flight simulator recency and refresher flying skill training at intervals not exceeding 90 days. This refresher training may be combined with the training prescribed in OPS 1.965.	
(f) *Relief of the system panel operator*	
A system panel operator may be relieved in flight by a crew member who holds a Flight Engineer's licence or by a suitably qualified flight crew member and acceptable to the Authority.	
Appendix 2 to OPS 1.940	
Single pilot operations under IFR or at night	
Aeroplanes referred to in OPS 1.940(b)(2) may be operated by a single pilot under IFR or at night when the following requirements are satisfied:	
1. The operator shall include in the Operations Manual a pilot's conversion and recurrent training programme which includes the additional requirements for a single pilot operation;	
2. In particular, the cockpit procedures must include:	
(i) Engine management and emergency handling;	
(ii) Use of normal, abnormal and emergency checklist;	
(iii) ATC communication;	
(iv) Departure and approach procedures;	
(v) Autopilot management; and	
(vi) Simplified in-flight documentation;	(vi) Use of simplified in-flight documentation;

INITIAL PROPOSAL	AMENDED PROPOSAL
3. The recurrent checks required by OPS 1.965 shall be performed in the single-pilot role on the type or class of aeroplane in an environment representative of the operation;	Unchanged
4. The pilot shall have a minimum of 50 hours flight time on the specific type or class of aeroplane under IFR of which 10 hours is as pilot-in-command; and	4. The pilot shall have a minimum of 50 hours flight time on the specific type or class of aeroplane under IFR of which 10 hours is as commander; and
5. The minimum required recent experience for a pilot engaged in a single-pilot operation under IFR or at night shall be 5 IFR flights, including 3 instrument approaches, carried out during the preceding 90 days on the type or class of aeroplane in the single-pilot role. This requirement may be replaced by an IFR instrument approach check on the type or class of aeroplane.	Unchanged

Appendix 1 to OPS 1.945

Operator's conversion course

(a) An operator's conversion course shall include:

1. Ground training and checking including aeroplane systems, normal, abnormal and emergency procedures;

2. Emergency and safety equipment training and checking which must be completed before aeroplane training commences;

3. Crew resource management training;

4. Aeroplane/flight simulator training and checking; and

5. Line flying under supervision and line check.

(b) The conversion course shall be conducted in the order set out in sub-paragraph (a) above.

(c) When a flight crew member has not previously completed an operator's conversion course, the operator shall ensure that in addition to sub-paragraph (a) above, the flight crew member undergoes general first aid training and, if applicable, ditching procedures training using the equipment in water.

Appendix 1 to OPS 1.965

Recurrent training and checking — Pilots

(a) *Recurrent training*

Recurrent training shall comprise:

INITIAL PROPOSAL	AMENDED PROPOSAL
1. Ground and refresher training	
(i) The ground and refresher training programme shall include:	
(A) Aeroplane systems;	
(B) Operational procedures and requirements including ground de-/anti-icing and pilot incapacitation; and	
(C) Accident/Incident and occurrence review.	
(ii) Knowledge of the ground and refresher training shall be verified by a questionnaire or other suitable methods.	
2. Aeroplane/Flight simulator training	
(i) The aeroplane/flight simulator training programme shall be established such that all major failures of aeroplane systems and associated procedures will have been covered in the preceding 3 year period.	
(ii) When engine-out manoeuvres are carried out in an aeroplane, the engine failure shall be simulated.	
(iii) Aeroplane/flight simulator training may be combined with the operator proficiency check.	
3. Emergency and safety equipment training	
(i) The emergency and safety equipment training programme may be combined with emergency and safety equipment checking and shall be conducted in an aeroplane or a suitable alternative training device.	
(ii) Every year the emergency and safety equipment training programme must include the following:	
(A) Actual donning of a lifejacket where fitted;	
(B) Actual donning of protective breathing equipment;	(B) Actual donning of protective breathing equipment where fitted;
(C) Actual handling of fire extinguishers;	Unchanged
(D) Instruction on the location and use of all emergency and safety equipment carried on the aeroplane;	
(E) Instruction on the location and use of all types of exits; and	
(F) Security procedures.	

INITIAL PROPOSAL	AMENDED PROPOSAL

(iii) Every 3 years the programme of training must include the following:

(A) Actual operation of all types of exits;

(B) Demonstration of the method used to operate a slide where fitted;

(C) Actual fire-fighting using equipment representative of that carried in the aeroplane on an actual or simulated fire except that, with Halon extinguishers, an alternative method acceptable to the Authority may be used;

(D) The effects of smoke in an enclosed area and actual use of all relevant equipment in a simulated smoke-filled environment;

(E) Actual handling of pyrotechnics, real or simulated, where fitted; and

(F) Demonstration in the use of the life-raft(s) where fitted.

4. Crew resource management training

(b) *Recurrent checking*

Recurrent checking shall comprise:

1. Operator proficiency checks;

(i) Where applicable, operator proficiency checks shall include the following manoeuvres:

(A) Rejected take-off when a flight simulator is available, otherwise touch drills only;

(B) Take-off with engine failure between V_1 and V_2 or as soon as safety considerations permit;

(C) Precision instrument approach to minima with, in the case of multi-engined aeroplanes, one engine inoperative;

(D) Non-precision approach to minima;

(E) Missed approach on instruments from minima with, in the case of multi-engined aeroplanes, one engine inoperative; and

(F) Landing with one engine inoperative. For single-engined aeroplanes a practice forced landing is required.

(ii) When engine out manoeuvres are carried out in an aeroplane, the engine failure must be simulated.

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(iii) In addition to the checks prescribed in sub-paragraphs (i)(A) to (F) above, the requirements governing the issue of flight crew licences must be completed every 12 months and may be combined with the operator proficiency check.

(iv) For a pilot operating VFR only, the checks prescribed in sub-paragraphs (i)(C) to (E) above may be omitted except for an approach and go-around in a multi-engine aeroplane with one engine inoperative.

(v) Operator proficiency checks must be conducted by a Type Rating Examiner.

2. Emergency and safety equipment checks

The items to be checked shall be those for which training has been carried out in accordance with sub-paragraph (a)(3) above.

3. Line checks

(i) Line checks must establish the ability to perform satisfactorily a complete line operation including pre-flight and post-flight procedures and use of the equipment provided, as specified in the Operations Manual.

(ii) The flight crew must be assessed on their crew resource management skills.

(iii) When pilots are assigned duties as pilot flying and pilot non-flying they must be checked in both functions.

(iv) Line checks must be completed in an aeroplane.

(v) Line checks must be conducted by commanders nominated by the operator and acceptable to the Authority.

Appendix 2 to OPS 1.965

Recurrent training and checking — System panel operators

(a) The recurrent training and checking for system panel operators shall meet the requirements for pilots and any additional specific duties, omitting those items that do not apply to system panel operators.

(b) Recurrent training and checking for system panel operators shall, whenever possible, take place concurrently with a pilot undergoing recurrent training and checking.

INITIAL PROPOSAL	AMENDED PROPOSAL
(c) A line check shall be conducted by a commander nominated by the operator and acceptable to the Authority or by a system panel operator type rating instructor or examiner.	
Appendix 1 to OPS 1.968	
Pilot qualification to operate in either pilot's seat	
(a) Commanders whose duties also require them to operate in the right-hand seat and carry out the duties of co-pilot, or commanders required to conduct training or examining duties from the right-hand seat, shall complete additional training and checking as specified in the Operations Manual, concurrent with the operator proficiency checks prescribed in OPS 1.965(b). This additional training must include at least the following: 1. An engine failure during take-off; 2. A one engine inoperative approach and go-around; and 3. A one engine inoperative landing.	
(b) When engine-out manoeuvres are carried out in an aeroplane, the engine failure must be simulated.	
(c) When operating in the right-hand seat, the checks required by OPS for operating in the left-hand seat must, in addition, be valid and current.	
(d) A pilot relieving the commander as pilot-in-command shall demonstrate practice of drills and procedures, concurrent with the operator proficiency checks prescribed in OPS 1.965(b), which would otherwise have been the commander's responsibility as pilot-in-command. Where the differences between left and right seats are not significant (for example because of use of autopilot) then practice may be conducted in either seat.	(d) A pilot relieving the commander shall have demonstrated, concurrent with the operator proficiency checks prescribed in OPS 1.965(b), practice of drills and procedures, which would not, normally, be the relieving pilot's responsibility. Where the differences between left and right seats are not significant (for example because of use of autopilot) then practice may be conducted in either seat.
(e) A pilot other than the commander occupying the left-hand seat shall demonstrate practice of drills and procedures, concurrent with the operator proficiency checks prescribed in OPS 1.965(b), which would otherwise have been the commander's responsibility acting as pilot non-flying. Where the differences between left and right seats are not significant (for example because of use of autopilot) then practice may be conducted in either seat.	Unchanged
Appendix 1 to OPS 1.980	
Operation on more than one type or variant	
(a) When a flight crew member operates more than one aeroplane type or variant within one or more licence endorsement (type — multi-pilot), an operator shall ensure that:	

INITIAL PROPOSAL

1. The minimum flight crew complement specified in the Operations Manual is the same for each type or variant to be operated;

2. A flight crew member does not operate more than two aeroplane types or variants for which a separate licence endorsement is required; and

3. Only aeroplanes within one licence endorsement are flown in any one flight duty period unless the operator has established procedures to ensure adequate time for preparation.

(b) When a flight crew member operates more than one aeroplane class, type or variant (class- and/or type-single pilot), but not within a single licence endorsement, an operator must comply with the following:

1. A flight crew member shall not operate more than:

(i) Three piston-engined aeroplane types or variants; or

(ii) Three turbo-propeller aeroplane types or variants; or

(iii) One turbo-propeller aeroplane type or variant and one piston engined aeroplane type or variant; or.

(iv) One turbo-propeller aeroplane type or variant and any aeroplane within a particular class.

2. OPS 1.965 for each type or variant operated unless the operator has demonstrated specific procedures and/or operational restrictions, which are acceptable to the Authority.

(c) When a flight crew member operates more than one aeroplane type or variant (type — single pilot and type — multi pilot), but not within a single licence endorsement, an operator must comply with the following:

1. Subparagraphs (a)(1), (a)(2) and (a)(3) above;

2. Subparagraph (d) below.

(d) When a flight crew member operates more than one aeroplane type or variant (type — multi pilot), but not within a single licence endorsement, an operator must comply with the following:

1. Subparagraphs (a)(1), (a)(2) and (a)(3) above;

2. Before exercising the privileges of 2 licence endorsements:

(i) Flight crew members must have completed two consecutive operator proficiency checks and must have 500 hours in the relevant crew position in commercial air transport operations with the same operator.

AMENDED PROPOSAL

INITIAL PROPOSAL	AMENDED PROPOSAL

(ii) In the case of a pilot having experience with an operator and exercising the privileges of 2 licence endorsements, and then being promoted to command with the same operator on one of those types, the required minimum experience as commander is 6 months and 300 hours, and the pilot must have completed 2 consecutive operator proficiency checks before again being eligible to exercise 2 licence endorsements.

3. Before commencing training for and operation of another type or variant, flight crew members must have completed 3 months and 150 hours flying on the base aeroplane, and this must include at least one proficiency check.

4. After completion of the initial line check on the new type, 50 hours flying or 20 sectors must be achieved solely on aeroplanes of the new type rating.

5. OPS 1.970 for each type operated unless credits have been allowed by the Authority in accordance with sub-paragraph 7 below.

6. The period within which line flying experience is required on each type must be specified in the Operations Manual.

7. Where credits are sought to reduce the training and checking and recent experience requirements between aeroplane types, the operator must demonstrate to the Authority which items need not be repeated on each type or variant because of similarities

(i) OPS 1.965(b) requires two operator proficiency checks every year. When credit is given in accordance with sub-paragraph 7 above for operator proficiency checks to alternate between the two types, each operator proficiency check revalidates the operator proficiency check for the other type. Provided that the period between licence proficiency checks does not exceed that prescribed in the applicable regulation in the field of flight crew licensing for each type, the relevant requirements on flight crew licensing will be satisfied. In addition relevant and approved recurrent training must be specified in the Operations Manual.

(ii) OPS 1.965(c) requires one line check every year. When credit is given in accordance with sub-paragraph 7 above for line checks to alternate between types or variants, each line check revalidates the line check for the other type or variant.

(iii) Annual emergency and safety equipment training and checking must cover all requirements for each type.

8. OPS 1.965 for each type or variant operated unless credits have been allowed by the Authority in accordance with sub-paragraph 7 above.

(e) When a flight crew member operates combinations of aeroplane types or variants (class — single pilot and type — multi pilot) an operator must demonstrate that specific procedures and/or operational restrictions are approved in accordance with OPS 1.980(d).

INITIAL PROPOSAL	AMENDED PROPOSAL
SUBPART O	
CABIN CREW	
OPS 1.988	
Applicability	
An operator shall ensure that all crew members, other than flight crew members, assigned by the operator to duties in the passenger compartment of an aeroplane comply with the requirements of this Subpart and the applicable safety rules except for additional crew members solely assigned to non-safety related duties.	(a) For the purpose of this Regulation,"cabin crew member" means any crew member, assigned by the operator or the commander to duties in the passenger compartment of an aeroplane, but who shall not act as a flight crew member, with the exception of — medical staff; — security staff; — child minders; — escorts; — technical staff; — entertainers; — interpreters. (b) An operator shall ensure that all cabin crew members comply with the requirements of this subpart and any other safety requirements applicable to cabin crew.
	OPS 1.989
	Identification
	No operator shall make a person identifiable as member of the cabin crew on board of any of his aircraft unless the requirements set out in this subpart and in any other safety requirements applicable to cabin crew, have been fulfilled.
OPS 1.990	
Number and composition of cabin crew	Unchanged
(a) An operator shall not operate an aeroplane with a maximum approved passenger seating configuration of more than 19, when carrying one or more passengers, unless at least one cabin crew member is included in the crew for the purpose of performing duties, specified in the Operations Manual, in the interests of the safety of passengers. (b) When complying with sub-paragraph (a) above, an operator shall ensure that the minimum number of cabin crew is the greater of: 1. One cabin crew member for every 50, or fraction of 50, passenger seats installed on the same deck of the aeroplane; or 2. The number of cabin crew who actively participated in the aeroplane cabin during the relevant emergency evacuation demonstration, or who were assumed to have taken part in the relevant analysis, except that, if the maximum approved passenger seating configuration is less than the number evacuated during the demonstration by at least 50 seats, the number of cabin crew may be reduced by 1 for every whole multiple of 50 seats by which the maximum approved passenger seating configuration falls below the certificated maximum capacity. (c) The Authority may under exceptional circumstances require an operator to include in the crew additional cabin crew members.	

INITIAL PROPOSAL	AMENDED PROPOSAL
(d) In unforeseen circumstances the required minimum number of cabin crew may be reduced provided that: 1. The number of passengers has been reduced in accordance with procedures specified in the Operations Manual; and 2. A report is submitted to the Authority after completion of the flight.	
(e) An operator shall ensure that when engaging the services of cabin crew members who are self-employed and/or working on a freelance or part-time basis, the requirements of subpart O are complied with. In this respect, particular attention must be paid to the total number of aircraft types or variants that a cabin crew member may fly for the purposes of commercial air transportation, which must not exceed the requirements prescribed in OPS 1.1030, including when his services are engaged by another operator.	
OPS 1.995 **Minimum requirements**	
(a) An operator shall ensure that each cabin crew member fulfils the applicable minimum age and medical requirements.	
(b) An operator shall ensure that each cabin crew member is competent to perform his duties in accordance with procedures specified in the Operations Manual.	(b) An operator shall ensure that all cabin crew members are competent to perform their duties in accordance with procedures specified in the Operations Manual.
	OPS 1.998 **Identification of cabin crew** An operator shall ensure that all cabin crew members wear the operator's uniform and are clearly identifiable to the passengers.
OPS 1.1000 **Senior cabin crew members**	Unchanged
(a) An operator shall nominate a senior cabin crew member whenever more than one cabin crew member is assigned.	
(b) The senior cabin crew member shall have responsibility to the commander for the conduct and co-ordination of cabin safety and emergency procedure(s) specified in the Operations Manual.	
(c) Where required by OPS 1.990 to carry more than one cabin crew member, an operator shall not appoint a person to the post of senior cabin crew member unless that person has at least one year's experience as an operating cabin crew member and has completed an appropriate course	(c) Where required by OPS 1.990 to carry more than one cabin crew member, an operator shall not appoint a person to the post of senior cabin crew member unless that person has at least one year's experience as an operating cabin crew member and has completed an appropriate course covering the following as a minimum:

INITIAL PROPOSAL	AMENDED PROPOSAL
	1. Pre-flight briefing: (i) operating as a crew, (ii) allocation of cabin crew stations and responsibilities, (iii) consideration of the particular flight, including aeroplane type, equipment, area and type of operation, and categories of passengers with particular attention to disabled, infants and stretcher cases, and 2. Co-operation within the crew: (i) discipline, responsibilities and chain of command, (ii) importance of co-ordination and communication, (iii) pilot incapacitation, and 3. Review of operator's requirements and legal requirements: (i) passenger safety briefing, safety cards, (ii) securing of galleys, (iii) stowage of cabin baggage, (iv) electronic equipment, (v) procedures when fuelling with passengers on board, (vi) turbulence, (vii) documentation, and 4. Human factors and crew resource management, and 5. Accident and incident reporting, and 6. Flight and duty time limitations and rest requirements.
(d) An operator shall establish procedures to select the next most suitably qualified cabin crew member to operate as senior cabin crew member in the event of the nominated senior cabin crew member becoming unable to operate. Such procedures must be acceptable to the Authority and take account of a cabin crew member's operational experience.	Unchanged
	OPS 1.1002 **Single cabin crew member operations** (a) An operator shall ensure that each new entrant cabin crew member who does not have previous comparable experience completes the following, before operating as a single cabin crew member:

INITIAL PROPOSAL	AMENDED PROPOSAL
	1. Training in addition to that required by appendix 1 to OPS 1.1010, which shall include particular emphasis on the following to reflect single cabin crew member operations: (i) Responsibility to the commander for the conduct of cabin safety and emergency procedures specified in the Operations Manual; (ii) Importance of co-ordination and communication with the flight crew, management of unruly or disruptive passengers; (iii) Review of operator's requirements and legal requirements; (iv) Documentation; (v) Accident and incident reporting; (vi) Flight and duty time limitations, and 2. Familiarisation flying of at least 20 hours and 15 sectors.
	(b) An operator shall ensure, before a cabin crew member is assigned to operate as a single cabin crew member, that this cabin crew member is competent to perform his/her duties in accordance with the procedures specified in the Operations Manual.
OPS 1.1005	Unchanged
Initial training	
An operator shall ensure that each cabin crew member successfully completes initial training, approved by the Authority, in accordance with the applicable requirements and holds an attestation of professional competence describing the training successfully undertaken by a cabin crew member.	An operator shall ensure that each cabin crew member has, before undertaking conversion training, successfully completed initial training, approved by the Authority, in accordance with the applicable requirements and holds an attestation of professional competence describing the content of the training undergone.
OPS 1.1010	Unchanged
Conversion and differences training	
	(See Appendix 1 to OPS 1.1010)
An operator shall ensure that each cabin crew member has completed appropriate training, in accordance with the applicable rules and as specified in the Operations Manual, before undertaking assigned duties as follows:	(a) An operator shall ensure that each cabin crew member has completed appropriate training as specified in the Operations Manual, before undertaking assigned duties as follows:
1. Conversion training A conversion course must be completed before being: (i) First assigned by the operator to operate as a cabin crew member; or (ii) Assigned to operate another aeroplane type; and	Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
2. Differences training Differences training must be completed before operating: (i) On a variant of an aeroplane type currently operated; or (ii) With different safety equipment, safety equipment location, or normal and emergency safety procedures on currently operated aeroplane types or variants.	
	(b) An operator shall determine the content of the conversion and differences training taking account of the cabin crew member's previous training as recorded in the cabin crew member's training records required by OPS 1.1035.
	(c) An operator shall ensure that: 1. Conversion training is conducted in a structured and realistic manner, in accordance with Appendix 1 to OPS 1.1010; 2. Differences training is conducted in a structured manner; and 3. Conversion training, and if necessary differences training, includes the use of all safety equipment and all normal and emergency procedures applicable to the type or variant of aeroplane and involves training and practice on either a representative training device or on the actual aeroplane.
OPS 1.1012 **Familiarisation flights**	Unchanged
An operator shall ensure that, following completion of conversion training, each cabin crew member completes familiarisation prior to operating as one of the minimum number of cabin crew required by OPS 1.990(b).	An operator shall ensure that, following completion of conversion training, each cabin crew member completes familiarisation prior to operating as one of the minimum number of cabin crew required by OPS 1.990.
OPS 1.1015 **Recurrent training**	Unchanged
	(See Appendix 1 to OPS 1.1015)
(a) An operator shall ensure that each cabin crew member undergoes recurrent training, covering the actions assigned to each crew member in normal and emergency procedures and drills relevant to the type(s) and/or variant(s) of aeroplane on which they operate in accordance with Appendix 1 to OPS 1.1015.	Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) An operator shall ensure that the recurrent training and checking programme approved by the Authority includes theoretical and practical instruction, together with individual practice, as prescribed in Appendix 1 to OPS 1.1015.	
(c) The period of validity of recurrent training and the associated checking required by OPS 1.1025 shall be 12 calendar months in addition to the remainder of the month of issue. If issued within the final 3 calendar months of validity of a previous check, the period of validity shall extend from the date of issue until 12 calendar months from the expiry date of that previous check.	
OPS 1.1020 **Refresher training** (See Appendix 1 to OPS 1.1020)	
(a) An operator shall ensure that each cabin crew member who has been absent from all flying duties for more than 6 months and still remains within the period of the previous check required by OPS 1.1025(b)(3) completes refresher training specified in the Operations Manual as prescribed in Appendix 1 to OPS 1.1020.	
(b) An operator shall ensure that when a cabin crew member has not been absent from all flying duties, but has not, during the preceding 6 months, undertaken duties on a type of aeroplane as a cabin crew member required by OPS 1.990 (b), before undertaking such duties on that type, the cabin crew member either: 1. Completes refresher training on the type; or 2. Operates two re-familiarisation sectors during commercial operations on the type.	
OPS 1.1025 **Checking**	
An operator shall ensure that during or following completion of the training required by OPS 1.1010 and 1.1015, each cabin crew member undergoes a check covering the training received in order to verify his proficiency in carrying out normal and emergency safety duties. These checks must be performed by personnel acceptable to the Authority.	(a) An operator shall ensure that during or following completion of the training required by OPS 1.1010 and 1.1015, each cabin crew member undergoes a check covering the training received in order to verify his proficiency in carrying out normal and emergency safety duties. These checks must be performed by personnel acceptable to the Authority.
	(b) An operator shall ensure that each cabin crew member undergoes checks as follows: 1. Conversion and differences training. The items listed in Appendix 1 to OPS 1.1010; and 2. Recurrent training. The items listed in Appendix 1 to OPS 1.1015 as appropriate.

INITIAL PROPOSAL	AMENDED PROPOSAL
OPS 1.1030	Unchanged
Operation on more than one type or variant	
(a) An operator shall ensure that each cabin crew member does not operate on more than three aeroplane types except that, with the approval of the Authority, the cabin crew member may operate on four aeroplane types, provided that safety equipment and emergency procedures for at least two of the types are similar.	
(b) For the purposes of sub-paragraph (a) above, variants of an aeroplane type are considered to be different types if they are not similar in all the following aspects:	
1. Emergency exit operation;	
2. Location and type of safety equipment; and	
3. Emergency procedures.	
OPS 1.1035	
Training records	
An operator shall:	
1. Maintain records of all training and checking required by OPS 1.1005, 1.1010, 1.1015, 1.1020 and 1.1025; and	
2. Make the records of all conversion and recurrent training and checking available, on request, to the cabin crew member concerned	2. Make the records of all conversion and recurrent training and checking available, on request, to the cabin crew member concerned; and
	3. Keep the attestation of professional competence up to date, showing the dates and contents of the conversion and recurrent training received.
	Appendix 1 to OPS 1.1010
	Conversion and differences training
	(a) General
	An operator shall ensure that:
	1. conversion and differences training is conducted by suitably qualified personnel; and
	2. during conversion and differences training, training is given on the location, removal and use of all safety and survival equipment carried on the aeroplane, as well as all normal and emergency procedures related to the aeroplane type, variant and configuration to be operated.

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	(b) Fire and smoke training An operator shall ensure that either: 1. Each cabin crew member is given realistic and practical training in the use of all fire-fighting equipment including protective clothing representative of that carried in the aeroplane. This training must include: (i) extinguishing a fire characteristic of an aeroplane interior fire except that, in the case of Halon extinguishers, an alternative extinguishing agent may be used; and (ii) the donning and use of protective breathing equipment in an enclosed, simulated smoke-filled environment; or 2. Each cabin crew member fulfills the recurrent training requirements of Appendix 1 to OPS 1.1015 sub-paragraph (c)(3).
	(c) Operations of doors and exits An operator shall ensure that: 1. Each cabin crew member operates and actually opens all normal and emergency exits for passenger evacuation in an aeroplane or representative training device; and 2. the operation of all other exits, such as flight deck windows is demonstrated.
	(d) Evacuation slide training An operator shall ensure that: 1. each cabin crew member descends an evacuation slide from a height representative of the aeroplane's main deck sill height; 2. the slide is fitted to an aeroplane or a representative training device; and 3. a further descent is made when the cabin crew member qualifies on an aeroplane type in which the main deck exit sill height differs significantly from any aeroplane type previously operated.
	(e) Evacuation procedures and other emergency situations An operator shall ensure that: 1. emergency evacuation training includes the recognition of planned or unplanned evacuations on land or water. This training must include recognition of when exits are unusable or when evacuation equipment is unserviceable; and

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2. each cabin crew member is trained to deal with the following:

(i) an in-flight fire, with particular emphasis on identifying the actual source of the fire;

(ii) severe air turbulence;

(iii) sudden decompression, including the donning of portable oxygen equipment by each cabin crew member; and

(iv) other in-flight emergencies.

(f) Crowd control

An operator shall ensure that training is provided on the practical aspects of crowd control in various emergency situations, as applicable to the aeroplane type.

(g) Pilot incapacitation

An operator shall ensure that, unless the minimum flight crew is more than two, each cabin crew member is trained to assist if a pilot becomes incapacitated. This training shall include a demonstration of:

1. the pilot's seat mechanism;

2. fastening and unfastening the pilot's seat harness;

3. use of the pilot's oxygen equipment; and

4. use of pilot's checklists.

(h) Safety equipment

An operator shall ensure that each cabin crew member is given realistic training on, and demonstration of, the location and use of safety equipment including the following:

1. slides, and where non-self-supporting slides are carried, the use of any associated ropes;

2. life-rafts and slide-raft, including the equipment attached to, and/or carried in, the raft;

3. lifejackets, infant lifejackets and flotation cots;

4. dropout oxygen system;

5. first-aid oxygen;

6. fire extinguishers;

7. fire axe or crow-bar;

8. emergency lights including torches;

9. communication equipment, including megaphones;

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10. survival packs, including their contents;

11. pyrotechnics (actual or representative devices);

12. first-aid kits, their contents and emergency medical equipment; and

13. other cabin safety equipment or systems where applicable.

(i) Passenger briefing/safety demonstrations

An operator shall ensure that training is given in the preparation of passengers for normal and emergency situations in accordance with OPS 1.285.

Appendix 1 to OPS 1.1015

Recurrent training

(a) An operator shall ensure that recurrent training is conducted by suitably qualified persons.

(b) An operator shall ensure that every 12 calendar months the programme of practical training includes the following:

1. emergency procedures including pilot incapacitation;

2. evacuation procedures including crowd control techniques;

3. touch-drills by each cabin crew member for opening normal and emergency exits for passenger evacuation;

4. the location and handling of emergency equipment, including oxygen systems, and the donning by each cabin crew member of lifejackets, portable oxygen and protective breathing equipment (PBE);

5. first aid and the contents of the first-aid kits;

6. stowage of articles in the cabin;

7. dangerous goods procedures as prescribed in Subpart R;

8. security procedures;

9. incident and accident review; and

10. crew resource management.

(c) An operator shall ensure that, every three years, recurrent training also includes:

1. the operation and actual opening of all normal and emergency exits for passenger evacuation in an aircraft or representative training device;

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	2. demonstration of the operation of all other exits; 3. realistic and practical training in the use of all fire-fighting equipment, including protective clothing, representative of that carried in the aircraft. This training must include: (i) extinguishing a fire characteristic of an aeroplane interior fire except that, in the case of Halon extinguishers, an alternative extinguishing agent may be used; and (ii) the donning and use of protective breathing equipment by each cabin crew member in an enclosed, simulated smoke-filled environment. 4. use of pyrotechnics (actual or representative devices); and 5. demonstration of the use of the life-raft, or slide-raft, where fitted. (d) An operator shall ensure that all appropriate requirements of Annex III, OPS 1 are included in the training of cabin crew members.
Appendix 1 to OPS 1.1020 ***Refresher training*** An operator shall ensure that refresher training is conducted by suitable qualified persons and, for each cabin crew member, includes at least the following: 1. Emergency procedures including pilot incapacitation; 2. Evacuation procedures including crowd control techniques; 3. The operation and actual opening of all normal and emergency exits for passenger evacuation in an aeroplane or representative training device; 4. Demonstration of the operation of all other exits including flight deck windows; and 5. The location and handling of emergency equipment, including oxygen systems, and the donning of lifejackets, portable oxygen and protective breathing equipment.	Unchanged
SUBPART P **MANUALS, LOGS AND RECORDS**	
OPS 1.1040 **General rules for Operations Manuals** (a) An operator shall ensure that the Operations Manual contains all instructions and information necessary for operations personnel to perform their duties.	

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(b) An operator shall ensure that the contents of the Operations Manual, including all amendments or revisions, do not contravene the conditions contained in the Air Operator Certificate (AOC) or any applicable regulations and are acceptable to, or, where applicable, approved by, the Authority.	
(c) Unless otherwise approved by the Authority, or prescribed by national law, an operator must prepare the Operations Manual in the English language. In addition, an operator may translate and use that manual, or parts thereof, into another language.	
(d) Should it become necessary for an operator to produce new Operations Manuals or major parts/volumes thereof, he must comply with sub-paragraph (c) above. In all other cases, an operator must comply with sub-paragraph (c) above as soon as possible and in no case later than 1 December 2000.	
(e) An operator may issue an Operations Manual in separate volumes.	
(f) An operator shall ensure that all operations personnel have easy access to a copy of each part of the Operations Manual which is relevant to their duties. In addition, the operator shall supply crew members with a personal copy of, or sections from, Parts A and B of the Operations Manual as are relevant for personal study.	
(g) An operator shall ensure that the Operations Manual is amended or revised so that the instructions and information contained therein are kept up to date. The operator shall ensure that all operations personnel are made aware of such changes that are relevant to their duties.	
(h) Each holder of an Operations Manual, or appropriate parts of it, shall keep it up to date with the amendments or revisions supplied by the operator.	
(i) An operator shall supply the Authority with intended amendments and revisions in advance of the effective date. When the amendment concerns any part of the Operations Manual which must be approved in accordance with OPS, this approval shall be obtained before the amendment becomes effective. When immediate amendments or revisions are required in the interest of safety, they may be published and applied immediately, provided that any approval required has been applied for.	
(j) An operator shall incorporate all amendments and revisions required by the Authority.	

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(k) An operator must ensure that information taken from approved documents, and any amendment of such approved documentation, is correctly reflected in the Operations Manual and that the Operations Manual contains no information contrary to any approved documentation. However, this requirement does not prevent an operator from using more conservative data and procedures.

(l) An operator must ensure that the contents of the Operations Manual are presented in a form in which they can be used without difficulty.

(m) An operator may be permitted by the Authority to present the Operations Manual or parts thereof in a form other than on printed paper. In such cases, an acceptable level of accessibility, usability and reliability must be assured.

(n) The use of an abridged form of the Operations Manual does not exempt the operator from the requirements of OPS 1.130.

OPS 1.1045

Operations Manual — structure and contents

(See Appendix 1 to OPS 1.1045)

(a) An operator shall ensure that the main structure of the Operations Manual is as follows:

Part A — General/Basic

This part shall comprise all non type-related operational policies, instructions and procedures needed for a safe operation.

Part B — Aeroplane operating matters

This part shall comprise all type-related instructions and procedures needed for a safe operation. It shall take account of any differences between types, variants or individual aeroplanes used by the operator.

Part C — Route and aerodrome instructions and information

This part shall comprise all instructions and information needed for the area of operation.

Part D — Training

This part shall comprise all training instructions for personnel required for a safe operation.

(b) An operator shall ensure that the contents of the Operations Manual are in accordance with Appendix 1 to OPS 1.1045 and relevant to the area and type of operation.

(c) An operator shall ensure that, the detailed structure of the Operations Manual is acceptable to the Authority.

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OPS 1.1050

Aeroplane Flight Manual

An operator shall keep a current approved Aeroplane Flight Manual or equivalent document for each aeroplane that it operates.

OPS 1.1055

Journey log

(a) An operator shall retain the following information for each flight in the form of a journey log:

1. Aeroplane registration;
2. Date;
3. Name(s) of crew member(s);
4. Duty assignment of crew member(s);
5. Place of departure;
6. Place of arrival;
7. Time of departure (off-block time);
8. Time of arrival (on-block time);
9. Hours of flight;
10. Nature of flight;
11. Incidents, observations (if any); and
12. Commander's signature (or equivalent).

(b) An operator may be permitted not to keep an aeroplane journey log, or parts thereof, by the Authority if the relevant information is available in other documentation.

(c) An operator shall ensure that all entries are made concurrently and that they are permanent in nature.

OPS 1.1060

Operational flight plan

(a) An operator must ensure that the operational flight plan used and the entries made during flight contain the following items:

1. Aeroplane registration;
2. Aeroplane type and variant;

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3. Date of flight;	
4. Flight identification;	
5. Names of flight crew members;	
6. Duty assignment of flight crew members;	
7. Place of departure;	
8. Time of departure (actual off-block time, take-off time);	
9. Place of arrival (planned and actual);	
10. Time of arrival (actual landing and on-block time);	
11. Type of operation (ETOPS, VFR, Ferry flight, etc.);	
12. Route and route segments with checkpoints/waypoints, distances, time and tracks;	
13. Planned cruising speed and flying times between check-points/ waypoints. Estimated and actual times overhead;	
14. Safe altitudes and minimum levels;	
15. Planned altitudes and flight levels;	
16. Fuel calculations (records of in-flight fuel checks);	
17. Fuel on board when starting engines;	
18. Alternate(s) for destination and, where applicable, take-off and en-route, including information required in sub-paragraphs 12, 13, 14 and 15 above;	
19. Initial ATS Flight Plan clearance and subsequent re-clearance;	
20. In-flight re-planning calculations; and	
21. Relevant meteorological information.	
(b) Items which are readily available in other documentation or from an acceptable source or are irrelevant to the type of operation may be omitted from the operational flight plan.	
(c) An operator must ensure that the operational flight plan and its use is described in the Operations Manual.	
(d) An operator shall ensure that all entries on the operational flight plan are made concurrently and that they are permanent in nature.	

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OPS 1.1065

Document storage periods

An operator shall ensure that all records and all relevant operational and technical information for each individual flight, are stored for the periods prescribed in Appendix 1 to OPS 1.1065.

OPS 1.1070

Operator's maintenance management exposition

An operator shall keep a current approved maintenance management exposition as prescribed in OPS 1.905.

OPS 1.1071

Aeroplane technical log

An operator shall keep an aeroplane technical log as prescribed in OPS 1.915.

Appendix 1 to OPS 1.1045

Operations Manual contents

An operator shall ensure that the Operations Manual contains the following:

A — GENERAL/BASIC

0. ADMINISTRATION AND CONTROL OF OPERATIONS MANUAL

0.1. *Introduction*

(a) A statement that the manual complies with all applicable regulations and with the terms and conditions of the applicable Air Operator Certificate.

(b) A statement that the manual contains operational instructions that are to be complied with by the relevant personnel.

(c) A list and brief description of the various parts, their contents, applicability and use.

(d) Explanations and definitions of terms and words needed for the use of the manual.

0.2. *System of amendment and revision*

(a) Who is responsible for the issuance and insertion of amendments and revisions.

(a) Details of the person(s) responsible for the issuance and insertion of amendments and revisions.

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(b) A record of amendments and revisions with insertion dates and effective dates.	Unchanged
(c) A statement that hand written amendments and revisions are not permitted except in situations requiring immediate amendment or revision in the interest of safety.	
(d) A description of the system for the annotation of pages and their effective dates.	
(e) A list of effective pages.	
(f) Annotation of changes (on text pages and, as far as practicable, on charts and diagrams).	
(g) Temporary revisions.	
(h) A description of the distribution system for the manuals, amendments and revisions.	
1. ORGANISATION AND RESPONSIBILITIES	
1.1. *Organisational structure*	
A description of the organisational structure including the general company organigram and operations department organigram. The organigram must depict the relationship between the Operations Department and the other Departments of the company. In particular, the subordination and reporting lines of all Divisions, Departments etc., which pertain to the safety of flight operations, must be shown.	
1.2. *Nominated postholders*	
The name of each nominated postholder responsible for flight operations, the maintenance system, crew training and ground operations, as prescribed in OPS 1.175(i). A description of their function and responsibilities must be included.	
1.3. *Responsibilities and duties of operations management personnel*	
A description of the duties, responsibilities and authority of operations management personnel pertaining to the safety of flight operations and the compliance with the applicable regulations.	
1.4. *Authority, duties and responsibilities of the commander*	
A statement defining the authority, duties and responsibilities of the commander.	
1.5. *Duties and responsibilities of crew members other than the commander*	

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2. OPERATIONAL CONTROL AND SUPERVISION

2.1. *Supervision of the operation by the operator*

A description of the system for supervision of the operation by the operator (see OPS 1.175(g)). This must show how the safety of flight operations and the qualifications of personnel are supervised. In particular, the procedures related to the following items must be described:

(a) Licence and qualification validity;

(b) Competence of operations personnel; and

(c) Control, analysis and storage of records, flight documents, additional information and data.

2.2. *System of promulgation of additional operational instructions and information*

A description of any system for promulgating information which may be of an operational nature but is supplementary to that in the Operations Manual. The applicability of this information and the responsibilities for its promulgation must be included.

2.3. *Accident prevention and flight safety programme*

A description of the main aspects of the flight safety programme.

2.4. *Operational control*

A description of the procedures and responsibilities necessary to exercise operational control with respect to flight safety.

2.5. *Powers of the Authority*

A description of the powers of the Authority.

3. QUALITY SYSTEM

A description of the quality system adopted including at least:

(a) Quality policy;

(b) A description of the Organisation of the Quality System; and

(c) Allocation of duties and responsibilities.

4. CREW COMPOSITION

4.1. *Crew composition*

An explanation of the method for determining crew compositions taking account of the following:

(a) The type of aeroplane being used;

(b) The area and type of operation being undertaken;

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(c) The phase of the flight;

(d) The minimum crew requirement and flight duty period planned;

(e) Experience (total and on type), recency and qualification of the crew members; and

(f) The designation of the commander and, if necessitated by the duration of the flight, the procedures for the relief of the commander or other members of the flight crew. (See Appendix 1 to OPS 1.940);

(g) The designation of the senior cabin crew member and, if necessitated by the duration of the flight, the procedures for the relief of the senior cabin crew member and any other member of the cabin crew.

4.2. *Designation of the commander*

The rules applicable to the designation of the commander.

4.3. *Flight crew incapacitation*

Instructions on the succession of command in the event of flight crew incapacitation.

4.4. *Operation of more than one type*

A statement indicating which aeroplanes are considered as one type for the purpose of:

(a) Flight crew scheduling; and

(b) Cabin crew scheduling.

5. QUALIFICATION REQUIREMENTS

5.1. A description of the required licence, rating(s), qualification/competency (e.g. for routes and aerodromes), experience, training, checking and recency for operations personnel to conduct their duties. Consideration must be given to the aeroplane type, kind of operation and composition of the crew.

5.2. *Flight crew*

(a) Commander.

(b) Pilot relieving the commander.

(c) Co-pilot.

(d) Pilot under supervision.

(e) System panel operator.

(f) Operation on more than one type or variant.

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5.3. *Cabin crew*	
(a) Senior cabin crew member.	
(b) Cabin crew member.	
(i) Required cabin crew member.	
(ii) Additional cabin crew member and cabin crew member during familiarisation flights.	
(c) Operation on more than one type or variant.	
5.4. *Training, checking and supervision personnel*	
(a) For flight crew.	
(b) For cabin crew.	
5.5. *Other operations personnel*	
6. CREW HEALTH PRECAUTIONS	
6.1. *Crew health precautions*	
The relevant regulations and guidance to crew members concerning health including:	
(a) Alcohol and other intoxicating liquor;	
(b) Narcotics;	
(c) Drugs;	
(d) Sleeping tablets;	
(e) Pharmaceutical preparations;	
(f) Immunisation;	
(g) Deep diving;	
(h) Blood donation;	
(i) Meal precautions prior to and during flight;	
(j) Sleep and rest; and	
(k) Surgical operations.	
7. FLIGHT TIME LIMITATIONS	
7.1. *Flight and duty time limitations and rest requirements*	
The scheme developed by the operator in accordance with existing national requirements.	The scheme developed by the operator in accordance with applicable requirements.
7.2. *Exceedances of flight and duty time limitations and/or reductions of rest periods*	Unchanged
Conditions under which flight and duty time may be exceeded or rest periods may be reduced and the procedures used to report these modifications.	

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8. OPERATING PROCEDURES

8.1. *Flight preparation instructions*

As applicable to the operation:

8.1.1. *Minimum flight altitudes*

A description of the method of determination and application of minimum altitudes including:

(a) A procedure to establish the minimum altitudes/flight levels for VFR flights; and

(b) A procedure to establish the minimum altitudes/flight levels for IFR flights.

8.1.2. *Criteria for determining the usability of aerodromes*

8.1.3. *Methods for the determination of aerodrome operating minima*

The method for establishing aerodrome operating minima for IFR flights in accordance with OPS 1 Subpart E. Reference must be made to procedures for the determination of the visibility and/or runway visual range and for the applicability of the actual visibility observed by the pilots, the reported visibility and the reported runway visual range.

8.1.4. En-route operating minima for VFR flights or VFR portions of a flight and, where single engined aeroplanes are used, instructions for route selection with respect to the availability of surfaces which permit a safe forced landing.

8.1.5. *Presentation and application of aerodrome and en-route operating minima*

8.1.6. *Interpretation of meteorological information*

Explanatory material on the decoding of MET forecasts and MET reports relevant to the area of operations, including the interpretation of conditional expressions.

8.1.7. *Determination of the quantities of fuel, oil and water methanol carried*

The methods by which the quantities of fuel, oil and water methanol to be carried are determined and monitored in flight. This section must also include instructions on the measurement and distribution of the fluid carried on board. Such instructions must take account of all circumstances likely to be encountered on the flight, including the possibility of in-flight replanning and of failure of one or more of the aeroplane's power plants. The system for maintaining fuel and oil records must also be described.

8.1.8. *Mass and centre of gravity*

The general principles of mass and centre of gravity including:

(a) Definitions;

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(b) Methods, procedures and responsibilities for preparation and acceptance of mass and centre of gravity calculations;

(c) The policy for using either standard and/or actual masses;

(d) The method for determining the applicable passenger, baggage and cargo mass;

(e) The applicable passenger and baggage masses for various types of operations and aeroplane type;

(f) General instruction and information necessary for verification of the various types of mass and balance documentation in use;

(g) Last minute changes procedures;

(h) Specific gravity of fuel, oil and water methanol; and

(i) Seating policy/procedures.

8.1.9. *ATS flight plan*

Procedures and responsibilities for the preparation and submission of the air traffic services flight plan. Factors to be considered include the means of submission for both individual and repetitive flight plans.

8.1.10. *Operational flight plan*

Procedures and responsibilities for the preparation and acceptance of the operational flight plan. The use of the operational flight plan must be described including samples of the operational flight plan formats in use.

8.1.11. *Operator's Aeroplane Technical Log*

The responsibilities and the use of the operator's Aeroplane Technical Log must be described, including samples of the format used.

8.1.12. *List of documents, forms and additional information to be carried.*

8.2. *Ground handling instructions*

8.2.1. *Fuelling procedures*

A description of fuelling procedures, including:

(a) Safety precautions during refuelling and defuelling including when an APU is in operation or when a turbine engine is running and the prop-brakes are on;

(b) Refuelling and defuelling when passengers are embarking, on board or disembarking; and

(c) Precautions to be taken to avoid mixing fuels.

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8.2.2. *Aeroplane, passengers and cargo handling procedures related to safety*

A description of the handling procedures to be used when allocating seats and embarking and disembarking passengers and when loading and unloading the aeroplane. Further procedures, aimed at achieving safety whilst the aeroplane is on the ramp, must also be given. Handling procedures must include:

(a) Children/infants, sick passengers and persons with reduced mobility;

(b) Transportation of inadmissible passengers, deportees or persons in custody;

(c) Permissible size and weight of hand baggage;

(d) Loading and securing of items in the aeroplane;

(e) Special loads and classification of load compartments;

(f) Positioning of ground equipment;

(g) Operation of aeroplane doors;

(h) Safety on the ramp, including fire prevention, blast and suction areas;

(i) Start-up, ramp departure and arrival procedures;

(j) Servicing of aeroplanes; and

(k) Documents and forms for aeroplane handling;

(l) Multiple occupancy of aeroplane seats.

8.2.3. *Procedures for the refusal of embarkation*

Procedures to ensure that persons who appear to be intoxicated or who demonstrate by manner or physical indications that they are under the influence of drugs, except medical patients under proper care, are refused embarkation. This does not apply to medical patients under proper care.

8.2.4. *De-icing and anti-icing on the ground*

A description of the de-icing and anti-icing policy and procedures for aeroplanes on the ground. These shall include descriptions of the types and effects of icing and other contaminants on aeroplanes whilst stationary, during ground movements and during take-off. In addition, a description of the fluid types used must be given including:

(a) Proprietary or commercial names;

(b) Characteristics;

(c) Effects on aeroplane performance;

(d) Hold-over times; and

(e) Precautions during usage.

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8.3. *Flight procedures*

8.3.1. *VFR/IFR policy*

A description of the policy for allowing flights to be made under VFR, or of requiring flights to be made under IFR, or of changing from one to the other.

8.3.2. *Navigation procedures*

A description of all navigation procedures relevant to the type(s) and area(s) of operation. Consideration must be given to:

(a) Standard navigational procedures including policy for carrying out independent cross-checks of keyboard entries where these affect the flight path to be followed by the aeroplane;

(b) MNPS and POLAR navigation and navigation in other designated areas;

(c) RNAV;

(d) In-flight replanning; and

(e) Procedures in the event of system degradation; and

(f) RVSM

8.3.3. *Altimeter setting procedures*

8.3.4. *Altitude alerting system procedures*

8.3.5. *Ground Proximity Warning System procedures*

8.3.6. *Policy and procedures for the use of TCAS/ACAS*

8.3.7. *Policy and procedures for in-flight fuel management*

8.3.8. *Adverse and potentially hazardous atmospheric conditions*

Procedures for operating in, and/or avoiding adverse and potentially hazardous atmospheric conditions including:

(a) Thunderstorms;

(b) Icing conditions;

(c) Turbulence;

(d) Windshear;

(e) Jetstream;

(f) Volcanic ash clouds;

(g) Heavy precipitation;

(h) Sand storms;

(i) Mountain waves; and

(j) Significant temperature inversions.

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8.3.9. *Wake turbulence*

Wake turbulence separation criteria, taking into account aeroplane types, wind conditions and runway location.

8.3.10. *Crew members at their stations*

The requirements for crew members to occupy their assigned stations or seats during the different phases of flight or whenever deemed necessary in the interest of safety.

8.3.11. *Use of safety belts for crew and passengers*

The requirements for crew members and passengers to use safety belts and/or harnesses during the different phases of flight or whenever deemed necessary in the interest of safety.

8.3.12. *Admission to flight deck*

The conditions for the admission to the flight deck of persons other than the flight crew. The policy regarding the admission of inspectors from the Authority must also be included.

8.3.13. *Use of vacant crew seats*

The conditions and procedures for the use of vacant crew seats.

8.3.14. *Incapacitation of crew members*

Procedures to be followed in the event of incapacitation of crew members in flight. Examples of the types of incapacitation and the means for recognising them must be included.

8.3.15. *Cabin safety requirements*

Procedures covering:

(a) Cabin preparation for flight, in-flight requirements and preparation for landing including procedures for securing cabin and galleys;

(b) Procedures to ensure that passengers are seated where, in the event that an emergency evacuation is required, they may best assist and not hinder evacuation from the aeroplane;

(c) Procedures to be followed during passenger embarkation and disembarkation; and

(d) Procedures in the event of fuelling with passengers on board or embarking and disembarking;

(e) Smoking on board.

8.3.16. *Passenger briefing procedures*

The contents, means and timing of passenger briefing in accordance with OPS 1.285.

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8.3.17. *Procedures for aeroplanes operated whenever required cosmic or solar radiation detection equipment is carried*	
Procedures for the use of cosmic or solar radiation detection equipment and for recording its readings including actions to be taken in the event that limit values specified in the Operations Manual are exceeded. In addition, the procedures, including ATS procedures, to be followed in the event that a decision to descend or re-route is taken.	
8.4. *All Weather Operations*	
A description of the operational procedures associated with All Weather operations (See also OPS Subpart D and E).	
8.5. *ETOPS*	
A description of the ETOPS operational procedures.	
8.6. *Use of the Minimum Equipment and Configuration Deviation List(s)*	
8.7. *Non revenue flights*	
Procedures and limitations for:	
(a) Training flights;	
(b) Test flights;	
(c) Delivery flights;	
(d) Ferry flights;	
(e) Demonstration flights; and	
(f) Positioning flights,	
including the kind of persons who may be carried on such flights.	
8.8. *Oxygen requirements*	
8.8.1. An explanation of the conditions under which oxygen must be provided and used.	
8.8.2. *The oxygen requirements specified for:*	
(a) Flight crew;	
(b) Cabin crew; and	
(c) Passengers.	

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9. DANGEROUS GOODS AND WEAPONS	
9.1. Information, instructions and general guidance on the transport of dangerous goods including:	
(a) Operator's policy on the transport of dangerous goods;	
(b) Guidance on the requirements for acceptance, labelling, handling, stowage and segregation of dangerous goods;	
(c) Procedures for responding to emergency situations involving dangerous goods;	
(d) Duties of all personnel involved as per OPS 1.1215; and	
(e) Instructions on the carriage of the operator's employees.	
9.2. The conditions under which weapons, munitions of war and sporting weapons may be carried.	
10. SECURITY	
10.1. Security instructions and guidance of a non-confidential nature which must include the authority and responsibilities of operations personnel. Policies and procedures for handling and reporting crime on board such as unlawful interference, sabotage, bomb threats, and hijacking must also be included.	
10.2. A description of preventative security measures and training.	
Note: Parts of the security instructions and guidance may be kept confidential.	
11. HANDLING OF ACCIDENTS AND OCCURRENCES	
Procedures for the handling, notifying and reporting of accidents and occurrences	
This section must include:	
(a) Definitions of accidents and occurrences and the relevant responsibilities of all persons involved;	
(b) The descriptions of which company departments, Authorities or other institutions have to be notified by which means and in which sequence in case of an accident;	
(c) Special notification requirements in the event of an accident or occurrence when dangerous goods are being carried;	
(d) A description of the requirements to report specific occurrences and accidents;	
(e) The forms used for reporting and the procedure for submitting them to the Authority shall also be included; and	

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(f) If the operator develops additional safety related reporting procedures for its own internal use, a description of the applicability and related forms to be used.

12. RULES OF THE AIR

Rules of the Air including:

(a) Visual and instrument flight rules;

(b) Territorial application of the Rules of the Air;

(c) Communication procedures including COM-failure procedures;

(d) Information and instructions relating to the interception of civil aeroplanes;

(e) The circumstances in which a radio listening watch is to be maintained;

(f) Signals;

(g) Time system used in operation;

(h) ATC clearances, adherence to flight plan and position reports;

(i) Visual signals used to warn an unauthorised aeroplane flying in or about to enter a restricted, prohibited or danger area;

(j) Procedures for pilots observing an accident or receiving a distress transmission;

(k) The ground/air visual codes for use by survivors, description and use of signal aids; and

(l) Distress and urgency signals.

B — AEROPLANE OPERATING MATTERS — TYPE RELATED

Taking account of the differences between types, and variants of types, under the following headings:

0. GENERAL INFORMATION AND UNITS OF MEASUREMENT

0.1. General Information (e.g. aeroplane dimensions), including a description of the units of measurement used for the operation of the aeroplane type concerned and conversion tables.

1. LIMITATIONS

1.1. A description of the certified limitations and the applicable operational limitations including:

(a) Certification status (e.g. JAR-23, JAR-25, ICAO Annex 16 (JAR-36 and JAR-34) etc.);

(b) Passenger seating configuration for each aeroplane type including a pictorial presentation;

(c) Types of operation that are approved (e.g. VFR/IFR, CAT II/III, RNP Type, flight in known icing conditions etc.);

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(d) Crew composition;	
(e) Mass and centre of gravity;	
(f) Speed limitations;	
(g) Flight envelope(s);	
(h) Wind limits including operations on contaminated runways;	
(i) Performance limitations for applicable configurations;	
(j) Runway slope;	
(k) Limitations on wet or contaminated runways;	
(l) Airframe contamination; and	
(m) System limitations.	
2. NORMAL PROCEDURES	
2.1. The normal procedures and duties assigned to the crew, the appropriate check-lists, the system for use of the check-lists and a statement covering the necessary coordination procedures between flight and cabin crew. The following normal procedures and duties must be included:	
(a) Pre-flight;	
(b) Pre-departure;	
(c) Altimeter setting and checking;	
(d) Taxi, take-off and climb;	
(e) Noise abatement;	
(f) Cruise and descent;	
(g) Approach, landing preparation and briefing;	
(h) VFR approach;	
(i) Instrument approach;	
(j) Visual approach and circling;	
(k) Missed approach;	
(l) Normal landing;	
(m) Post landing; and	
(n) Operation on wet and contaminated runways.	

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3. ABNORMAL AND EMERGENCY PROCEDURES

3.1. The abnormal and emergency procedures and duties assigned to the crew, the appropriate check-lists, the system for use of the check-lists and a statement covering the necessary co-ordination procedures between flight and cabin crew. The following abnormal and emergency procedures and duties must be included:

(a) Crew incapacitation;

(b) Fire and smoke drills;

(c) Unpressurised and partially pressurised flight;

(d) Exceeding structural limits such as overweight landing;

(e) Exceeding cosmic radiation limits;

(f) Lightning strikes;

(g) Distress communications and alerting ATC to emergencies;

(h) Engine failure;

(i) System failures;

(j) Guidance for diversion in case of serious technical failure;

(k) Ground proximity warning;

(l) TCAS warning;

(m) Windshear; and

(n) Emergency landing/ditching.

4. PERFORMANCE

4.0. Performance data must be provided in a form in which it can be used without difficulty.

4.1. *Performance data*

Performance material which provides the necessary data for compliance with the performance requirements prescribed in OPS 1 Subparts F, G, H and I must be included to allow the determination of:

(a) Take-off climb limits — mass, altitude, temperature;

(b) Take-off field length (dry, wet, contaminated);

(c) Net flight path data for obstacle clearance calculation or, where applicable, take-off flight path;

(d) The gradient losses for banked climbouts;

(e) En-route climb limits;

(f) Approach climb limits;

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(g) Landing climb limits;	
(h) Landing field length (dry, wet, contaminated) including the effects of an in-flight failure of a system or device, if it affects the landing distance;	
(i) Brake energy limits; and	
(j) Speeds applicable for the various flight stages (also considering wet or contaminated runways).	
4.1.1. *Supplementary data covering flights in icing conditions*	
Any certificated performance related to an allowable configuration, or configuration deviation, such as anti-skid inoperative, must be included.	
4.1.2. If performance data, as required for the appropriate performance class, is not available in the approved AFM, then other data acceptable to the Authority must be included. Alternatively, the Operations Manual may contain cross-reference to the approved data contained in the AFM where such data is not likely to be used often or in an emergency.	
4.2. *Additional performance data*	
Additional performance data where applicable including:	
(a) All engine climb gradients;	
(b) Drift-down data;	
(c) Effect of de-icing/anti-icing fluids;	
(d) Flight with landing gear down;	
(e) For aeroplanes with 3 or more engines, one engine inoperative ferry flights; and	
(f) Flights conducted under the provisions of the CDL.	
5. FLIGHT PLANNING	
5.1. Data and instructions necessary for pre-flight and in-flight planning including factors such as speed schedules and power settings. Where applicable, procedures for engine(s)-out operations, ETOPS (particularly the one-engine-inoperative cruise speed and maximum distance to an adequate aerodrome determined in accordance with OPS 1.245) and flights to isolated aerodromes must be included.	
5.2. The method for calculating fuel needed for the various stages of flight, in accordance with OPS 1.255.	

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6. MASS AND BALANCE

Instructions and data for the calculation of the mass and balance including:

(a) Calculation system (e.g. Index system);

(b) Information and instructions for completion of mass and balance documentation, including manual and computer generated types;

(c) Limiting masses and centre of gravity for the types, variants or individual aeroplanes used by the operator; and

(d) Dry operating mass and corresponding centre of gravity or index.

7. LOADING

Procedures and provisions for loading and securing the load in the aeroplane.

8. CONFIGURATION DEVIATION LIST

The Configuration Deviation List(s) (CDL), if provided by the manufacturer, taking account of the aeroplane types and variants operated including procedures to be followed when an aeroplane is being despatched under the terms of its CDL.

9. MINIMUM EQUIPMENT LIST

The Minimum Equipment List (MEL) taking account of the aeroplane types and variants operated and the type(s)/area(s) of operation. The MEL must include the navigational equipment and take into account the required performance for the route and area of operation.

10. SURVIVAL AND EMERGENCY EQUIPMENT INCLUDING OXYGEN

10.1. A list of the survival equipment to be carried for the routes to be flown and the procedures for checking the serviceability of this equipment prior to take-off. Instructions regarding the location, accessibility and use of survival and emergency equipment and its associated check list(s) must also be included.

10.2. The procedure for determining the amount of oxygen required and the quantity that is available. The flight profile, number of occupants and possible cabin decompression must be considered. The information provided must be in a form in which it can be used without difficulty.

11. EMERGENCY EVACUATION PROCEDURES

11.1. *Instructions for preparation for emergency evacuation including crew co-ordination and emergency station assignment*

11.2. *Emergency evacuation procedures*

A description of the duties of all members of the crew for the rapid evacuation of an aeroplane and the handling of the passengers in the event of a forced landing, ditching or other emergency.

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12. AEROPLANE SYSTEMS	
A description of the aeroplane systems, related controls and indications and operating instructions.	
C — ROUTE AND AERODROME INSTRUCTIONS AND INFORMATION	
1. Instructions and information relating to communications, navigation and aerodromes including minimum flight levels and altitudes for each route to be flown and operating minima for each aerodrome planned to be used, including:	
(a) Minimum flight level/altitude;	
(b) Operating minima for departure, destination and alternate aerodromes;	
(c) Communication facilities and navigation aids;	
(d) Runway data and aerodrome facilities;	
(e) Approach, missed approach and departure procedures including noise abatement procedures;	
(f) COM-failure procedures;	
(g) Search and rescue facilities in the area over which the aeroplane is to be flown;	
(h) A description of the aeronautical charts that must be carried on board in relation to the type of flight and the route to be flown, including the method to check their validity;	
(i) Availability of aeronautical information and MET services;	
(j) En-route COM/NAV procedures;	
(k) Aerodrome categorisation for flight crew competence qualification	
(l) Special aerodrome limitations (performance limitations and operating procedures).	
D — TRAINING	
1. Training syllabi and checking programmes for all operations personnel assigned to operational duties in connection with the preparation and/or conduct of a flight.	
2. Training syllabi and checking programmes must include:	
2.1. For flight crew. All relevant items prescribed in Subpart E and N;	
2.2. For cabin crew. All relevant items prescribed in Subpart O;	

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2.3. For operations personnel concerned, including crew members

(a) All relevant items prescribed in Subpart R (Transport of dangerous goods by air); and

(b) All relevant items prescribed in Subpart S (Security).

2.4. For operations personnel other than crew members (e.g. dispatcher, handling personnel etc.)

All other relevant items prescribed in OPS pertaining to their duties.

3. *Procedures*

3.1. Procedures for training and checking.

3.2. Procedures to be applied in the event that personnel do not achieve or maintain the required standards.

3.3. Procedures to ensure that abnormal or emergency situations requiring the application of part or all of abnormal or emergency procedures and simulation of IMC by artificial means, are not simulated during commercial air transportation flights.

4. Description of documentation to be stored and storage periods. (See Appendix 1 to OPS 1.1065.)

Appendix 1 to OPS 1.1065

Document storage periods

An operator shall ensure that the following information/documentation is stored in an acceptable form, accessible to the Authority, for the periods shown in the Tables below.

Note: Additional information relating to maintenance records is prescribed in Subpart M.

Table 1

Information used for the preparation and execution of a flight

Information used for the preparation and execution of the flight as described in OPS 1.135	
Operational flight plan	3 months
Aeroplane technical log	24 months after the date of the last entry
Route specific NOTAM/AIS briefing documentation if edited by the operator	3 month
Mass and balance documentation	3 month
Notification of special loads including dangerous goods	3 months

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Table 2

Reports

Reports	
Journey log	3 months
Flight report(s) for recording details of any occurrence, as prescribed in OPS 1.420, or any event which the commander deems necessary to report/record	3 months
Reports on exceedances of duty and/or reducing rest periods	3 months

Table 3

Flight crew records

Flight crew records	
Flight, duty and rest time	15 months
Licence	As long as the flight crew member is exercising the priviledges of the licence for the operator
Conversion training and checking	3 years
Command course (including checking)	3 years
Recurrent training and checking	3 years
Training and checking to operate in either pilot's seat	3 years
Recent experience (OPS 1.970 refers)	15 months
Route and aerodrome competence (OPS 1.975 refers)	3 years
Training and qualification for specific operations when required by OPS (e.g. ETOPS CAT II/III operations)	3 years
Dangerous goods training as appropriate	3 years

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Table 4

Cabin crew records

Cabin crew records	
Flight, duty and rest time and Rest time	15 months
Initial training, conversion and differences training (including checking)	As long as the cabin crew member is employed by the operator
Recurrent training and refresher (including checking)	Until 12 months after the cabin crew member has left the employ of the operator
Dangerous goods training as appropriate	3 years

Table 5

Records for other operations personnel

Records for other operations personnel	
Training/qualification records of other personnel for whom an approved training programme is required by OPS	Last 2 training records

Table 6

Other records

Other records	
Records on cosmic and solar radiation dosage	Until 12 months after the crew member has left the employ of the operator
Quality system records	5 years

SUBPART Q

FLIGHT AND DUTY TIME LIMITATIONS AND REST REQUIREMENTS

An operator shall draw up a schedule for crew members laying down, in accordance with applicable requirements, flight and duty time limitations and rest periods.

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SUBPART R

TRANSPORT OF DANGEROUS GOODS BY AIR

OPS 1.1150

Terminology

Terms used in this Subpart have the following meanings:

1. Acceptance Check List: A document used to assist in carrying out a check on the external appearance of packages of dangerous goods and their associated documents to determine that all appropriate requirements have been met.

2. Cargo aircraft: Any aircraft which is carrying goods or property but not passengers. In this context the following are not considered to be passengers:

   (i) A crew member;

   (ii) An operator's employee permitted by, and carried in accordance with, the instructions contained in the Operations Manual;

   (iii) An authorised representative of an Authority; or

   (iv) A person with duties in respect of a particular shipment on board.

3. Dangerous goods accident: An occurrence associated with and related to the transport of dangerous goods which results in fatal or serious injury to a person or major property damage.

4. Dangerous goods incident: An occurrence, other than a dangerous goods accident, associated with and related to the transport of dangerous goods, not necessarily occurring on board an aircraft, which results in injury to a person, property damage, fire, breakage, spillage, leakage of fluid or radiation or other evidence that the integrity of the packaging has not been maintained. Any occurrence relating to the transport of dangerous goods which seriously jeopardises the aircraft or its occupants is also deemed to constitute a dangerous goods incident.

5. Dangerous goods transport document: A document which is specified by the Technical Instructions. It is completed by the person who offers dangerous goods for air transport and contains information about those dangerous goods. The document bears a signed declaration indicating that the dangerous goods are fully and accurately described by their proper shipping names and UN numbers (if assigned) and that they are correctly classified, packed, marked, labelled and in a proper condition for transport.

6. Freight container: A freight container is an article of transport equipment for radioactive materials, designed to facilitate the transport of such materials, either packaged or unpackaged, by one or more modes of transport. (Note: see Unit Load Device where the dangerous goods are not radioactive materials.)

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Unchanged

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7. Handling agent: An agency which performs on behalf of the operator some or all of the latter's functions including receiving, loading, unloading, transferring or other processing of passengers or cargo.	
8. Overpack: An enclosure used by a single shipper to contain one or more packages and to form one handling unit for convenience of handling and stowage. (Note: a unit load device is not included in this definition.)	
9. Package: The complete product of the packing operation consisting of the packaging and its contents prepared for transport.	
10. Packaging: Receptacles and any other components or materials necessary for the receptacle to perform its containment function and to ensure compliance with the packing requirements.	
11. Proper shipping name: The name to be used to describe a particular article or substance in all shipping documents and notifications and, where appropriate, on packagings.	
12. Serious injury: An injury which is sustained by a person in an accident and which: (i) Requires hospitalisation for more than 48 hours, commencing within seven days from the date the injury was received; or (ii) Results in a fracture of any bone (except simple fractures of fingers, toes or nose); or (iii) Involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage; or (iv) Involves injury to any internal organ; or (v) Involves second or third degree burns, or any burns affecting more than 5 % of the body surface; or (vi) Involves verified exposure to infectious substances or injurious radiation.	
13. State of origin: The Authority in whose territory the dangerous goods were first loaded on an aircraft.	
14. Technical instructions: The latest effective edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284-AN/905), including the Supplement and any Addendum, approved and published by decision of the Council of the International Civil Aviation Organization.	
15. UN Number: The four-digit number assigned by the United Nations Committee of Experts on the Transport of Dangerous Goods to identify a substance or a particular group of substances.	

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16. Unit load device: Any type of aircraft container, aircraft pallet with a net, or aircraft pallet with a net over an igloo. (Note: an overpack is not included in this definition; for a container containing radioactive materials see the definition for freight container.)	
OPS 1.1155	
Approval to transport dangerous goods	
An operator shall not transport dangerous goods unless approved to do so by the Authority.	
OPS 1.1160	
Scope	
(a) An operator shall comply with the provisions contained in the Technical Instructions on all occasions when dangerous goods are carried, irrespective of whether the flight is wholly or partly within or wholly outside the territory of a State.	
(b) Articles and substances which would otherwise be classed as dangerous goods are excluded from the provisions of this Subpart, to the extent specified in the Technical Instructions, provided:	
1. They are required to be aboard the aeroplane in accordance with the relevant applicable rules or for operating reasons;	
2. They are carried as catering or cabin service supplies;	
3. They are carried for use in flight as veterinary aid or as a humane killer for an animal;	
4. They are carried for use in flight for medical aid for a patient, provided that:	
(i) Gas cylinders have been manufactured specifically for the purpose of containing and transporting that particular gas;	
(ii) Drugs, medicines and other medical matter are under the control of trained personnel during the time when they are in use in the aeroplane;	
(iii) Equipment containing wet cell batteries is kept and, when necessary secured, in an upright position to prevent spillage of the electrolyte; and	
(iv) Proper provision is made to stow and secure all the equipment during take-off and landing and at all other times when deemed necessary by the commander in the interests of safety; or	
5. They are carried by passengers or crew members.	

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(c) Articles and substances intended as replacements for those in (b)(1) above shall be transported on an aeroplane as specified in the Technical Instructions.

OPS 1.1165

Limitations on the transport of dangerous goods

(a) An operator shall take all reasonable measures to ensure that articles and substances that are specifically identified by name or generic description in the Technical Instructions as being forbidden for transport under any circumstances are not carried on any aeroplane.

(b) An operator shall take all reasonable measures to ensure that articles and substances or other goods that are identified in the Technical Instructions as being forbidden for transport in normal circumstances are only transported when:

1. They are exempted by the States concerned under the provisions of the Technical Instructions; or

2. The Technical Instructions indicate they may be transported under an approval issued by the State of origin.

OPS 1.1170

Classification

An operator shall take all reasonable measures to ensure that articles and substances are classified as dangerous goods as specified in the Technical Instructions.

OPS 1.1175

Packing

An operator shall take all reasonable measures to ensure that dangerous goods are packed as specified in the Technical Instructions.

OPS 1.1180

Labelling and marking

(a) An operator shall take all reasonable measures to ensure that packages, overpacks and freight containers are labelled and marked as specified in the Technical Instructions.

(b) Where dangerous goods are carried on a flight which takes place wholly or partly outside the territory of a State, labelling and marking must be in the English language in addition to any other language requirements.

OPS 1.1185

Dangerous goods transport document

(a) An operator shall ensure that, except when otherwise specified in the Technical Instructions, dangerous goods are accompanied by a dangerous goods transport document.

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(b) Where dangerous goods are carried on a flight which takes place wholly or partly outside the territory of a State, the English language must be used for the dangerous goods transport document in addition to any other language requirements.

OPS 1.1195

Acceptance of dangerous goods

(a) An operator shall not accept dangerous goods for transport until the package, overpack or freight container has been inspected in accordance with the acceptance procedures in the Technical Instructions.

(b) An operator or his handling agent shall use an acceptance check list. The acceptance check list shall allow for all relevant details to be checked and shall be in such form as will allow for the recording of the results of the acceptance check by manual, mechanical or computerised means.

OPS 1.1200

Inspection for damage, leakage or contamination

An operator shall ensure that:

1. Packages, overpacks and freight containers are inspected for evidence of leakage or damage immediately prior to loading on an aeroplane or into a unit load device, as specified in the Technical Instructions;

2. A unit load device is not loaded on an aeroplane unless it has been inspected as required by the Technical Instructions and found free from any evidence of leakage from, or damage to, the dangerous goods contained therein;

3. Leaking or damaged packages, overpacks or freight containers are not loaded on an aeroplane;

4. Any package of dangerous goods found on an aeroplane and which appears to be damaged or leaking is removed or arrangements made for its removal by an appropriate authority or organisation. In this case the remainder of the consignment shall be inspected to ensure it is in a proper condition for transport and that no damage or contamination has occurred to the aeroplane or its load; and

5. Packages, overpacks and freight containers are inspected for signs of damage or leakage upon unloading from an aeroplane or from a unit load device and, if there is evidence of damage or leakage, the area where the dangerous goods were stowed is inspected for damage or contamination.

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OPS 1.1205

Removal of contamination

An operator shall ensure that:

1. Any contamination found as a result of the leakage or damage of dangerous goods is removed without delay; and

2. An aeroplane which has been contaminated by radioactive materials is immediately taken out of service and not returned until the radiation level at any accessible surface and the non-fixed contamination are not more than the values specified in the Technical Instructions.

OPS 1.1210

Loading restrictions

(a) *Passenger cabin and flight deck*

An operator shall ensure that dangerous goods are not carried in an aeroplane cabin occupied by passengers or on the flight deck, unless otherwise specified in the Technical Instructions.

(b) *Cargo compartments*

An operator shall ensure that dangerous goods are loaded, segregated, stowed and secured on an aeroplane as specified in the Technical Instructions.

(c) *Dangerous goods designated for carriage only on cargo aircraft*

An operator shall ensure that packages of dangerous goods bearing the "Cargo Aircraft Only" label are carried on a cargo aircraft and loaded as specified in the Technical Instructions.

OPS 1.1215

Provision of information

(a) *Information to ground staff*

An operator shall ensure that:

1. Information is provided to enable ground staff to carry out their duties with regard to the transport of dangerous goods, including the actions to be taken in the event of incidents and accidents involving dangerous goods; and

2. Where applicable, the information referred to in sub-paragraph (a)(1) above is also provided to his handling agent.

(b) *Information to passengers and other persons*

1. An operator shall ensure that information is promulgated as required by the Technical Instructions so that passengers are warned as to the types of goods which they are forbidden from transporting aboard an aeroplane; and

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2. An operator and, where applicable, his handling agent shall ensure that notices are provided at acceptance points for cargo giving information about the transport of dangerous goods.

(c) *Information to crew members*

An operator shall ensure that information is provided in the Operations Manual to enable crew members to carry out their responsibilities in regard to the transport of dangerous goods, including the actions to be taken in the event of emergencies arising involving dangerous goods.

(d) *Information to the commander*

An operator shall ensure that the commander is provided with written information, as specified in the Technical Instructions.

(e) *Information in the event of an aeroplane incident or accident*

1. The operator of an aeroplane which is involved in an aeroplane incident shall, on request, provide any information required to minimise the hazards created by any dangerous goods carried.

2. The operator of an aeroplane which is involved in an aeroplane accident shall, as soon as possible, inform the appropriate authority of the State in which the aeroplane accident occurred of any dangerous goods carried.

OPS 1.1220

Training programmes

(a) An operator shall establish and maintain staff training programmes, as required by the Technical Instructions, which must be approved by the Authority.

(b) *Operators not holding a permanent approval to carry dangerous goods*

An operator shall ensure that:

1. Staff who are engaged in general cargo handling have received training to carry out their duties in respect of dangerous goods. As a minimum this training must cover the areas identified in Column 1 of Table 1 and be to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods and how to identify such goods; and

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2. The following personnel:

(i) Crew members;

(ii) Passenger handling staff; and

(iii) Security staff employed by the operator who deal with the screening of passengers and their baggage,

have received training which, as a minimum, must cover the areas identified in Column 2 of Table 1 and be to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods, how to identify them and what requirements apply to the carriage of such goods by passengers.

Table 1

Areas of training	1	2
General philosophy	×	×
Limitations on dangerous goods in air transport	×	×
Package marking and labelling	×	×
Dangerous goods in passengers baggage		×
Emergency procedures		×

Note: "×" indicates an area to be covered.

(c) *Operators holding a permanent approval to carry dangerous goods*

An operator shall ensure that:

1. Staff who are engaged in the acceptance of dangerous goods have received training and are qualified to carry out their duties. As a minimum this training must cover the areas identified in Column 1 of Table 2 and be to a depth sufficient to ensure the staff can take decisions on the acceptance or refusal of dangerous goods offered for carriage by air;

2. Staff who are engaged in ground handling, storage and loading of dangerous goods have received training to enable them to carry out their duties in respect of dangerous goods. As a minimum this training must cover the areas identified in Column 2 of Table 2 and be to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods, how to identify such goods and how to handle and load them;

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3. Staff who are engaged in general cargo handling have received training to enable them to carry out their duties in respect of dangerous goods. As a minimum this training must cover the areas identified in Column 3 of Table 2 and be to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods, how to identify such goods and how to handle and load them;	
4. Flight crew members have received training which, as a minimum, must cover the areas identified in Column 4 of Table 2. Training must be to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods and how they should be carried on an aeroplane; and	
5. The following personnel: (i) Passenger handling staff; (ii) Security staff employed by the operator who deal with the screening of passengers and their baggage; and (iii) Crew members other than flight crew members, have received training which, as a minimum, must cover the areas identified in Column 5 of Table 2. Training must be to a depth sufficient to ensure that an awareness is gained of the hazards associated with dangerous goods and what requirements apply to the carriage of such goods by passengers or, more generally, their carriage on an aeroplane.	
(d) An operator shall ensure that all staff who require dangerous goods training receive recurrent training at intervals of not longer than 2 years.	
(e) An operator shall ensure that records of dangerous goods training are maintained for all staff trained in accordance with sub-paragraph (d) above.	
(f) An operator shall ensure that his handling agent's staff are trained in accordance with the applicable column of Table 1 or Table 2.	

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Table 2

Areas of training	1	2	3	4	5
General philosophy	×	×	×	×	×
Limitations on dangerous goods in the air transport	×	×	×	×	×
Classification and list of dangerous goods	×	×		×	
General packing requirements and packing instructions	×				
Packaging specifications markings	×				
Package marking and labelling	×	×	×	×	×
Documentation from the shipper	×				
Acceptance of dangerous goods, including the use of a checklist	×				
Loading, restrictions on loading and segregation	×	×	×	×	
Inspections for damage or leakage and decontamination procedures	×	×			
Provision of information to commander	×	×		×	
Dangerous goods in passengers' baggage	×			×	×
Emergency procedures	×	×	×		×

Note: "×" indicates an area to be covered.

AMENDED PROPOSAL

Table 2

Areas of training	1	2	3	4	5
General philosophy	×	×	×	×	×
Limitations on dangerous goods in the air transport	×	×	×	×	×
Classification and list of dangerous goods	×	×		×	
General packing requirements and packing instructions	×				
Packaging specifications markings	×				
Package marking and labelling	×	×	×	×	×
Documentation from the shipper	×				
Acceptance of dangerous goods, including the use of a checklist	×				
Loading, restrictions on loading and segregation	×	×	×	×	
Inspections for damage or leakage and decontamination procedures	×	×			
Provision of information to commander	×	×		×	
Dangerous goods in passengers' baggage	×			×	×
Emergency procedures	×	×		×	×

Note: "×" indicates an area to be covered.

OPS 1.1225

Dangerous goods incident and accident reports

An operator shall report dangerous goods incidents and accidents to the Authority. An initial report shall be despatched within 72 hours of the event unless exceptional circumstances prevent this.

Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL

SUBPART S

SECURITY

OPS 1.1235

Security requirements

An operator shall ensure that all appropriate personnel are familiar, and comply, with the relevant requirements of the national security programmes of the State of the operator.

OPS 1.1240

Training programmes

An operator shall establish, maintain and conduct approved training programmes which enable the operator's personnel to take appropriate action to prevent acts of unlawful interference such as sabotage or unlawful seizure of aeroplanes and to minimise the consequences of such events should they occur.

OPS 1.1245

Reporting acts of unlawful interference

Following an act of unlawful interference on board an aeroplane the commander or, in his absence the operator, shall submit, without delay, a report of such an act to the designated local authority and the Authority in the State of the operator.

OPS 1.1250

Aeroplane search procedure checklist

An operator shall ensure that all aeroplanes carry a checklist of the procedures to be followed for that type in searching for concealed weapons, explosives, or other dangerous devices.

OPS 1.1255

Flight crew compartment security

If installed, the flight crew compartment door on all aeroplanes operated for the purpose of carrying passengers shall be capable of being locked from within the compartment in order to prevent unauthorised access.'

Proposal for a Council Decision approving a Commission Regulation on the application of Euratom safeguards

(2002/C 227 E/02)

COM(2002) 99 final

(Submitted by the Commission on 22 March 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 77, 78, 79 and 81 thereof,

Having regard to the proposal from the Commission,

Whereas:

It is important to keep the requirements imposed by Commission Regulation (Euratom) No 3227/76 of 19 October 1976 concerning the application of the provisions on Euratom safeguards [1] in line with the present legal framework and developments in the fields of nuclear and information technology,

HAS DECIDED AS FOLLOWS:

Sole Article

The Commission Regulation on the application of Euratom safeguards is hereby approved.

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[1] OJ L 363, 31.12.1976, p. 1. Regulation as last amended by Regulation (Euratom) No 2130/93 (OJ L 191, 31.7.1993, p. 75).

Draft Commission Regulation (Euratom) No .../... of ... on the application of Euratom safeguards

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 77, 78, 79 and 81 thereof,

Having regard to the approval of the Council,

Whereas:

(1) Commission Regulation (Euratom) No 3227/76 of 19 October 1976 concerning the application of the provisions on Euratom safeguards [1], as last amended by Regulation (Euratom) No 2130/93 [2], defined the nature and extent of the requirements referred to in Articles 78 and 79 of the Treaty.

(2) In view not only of the increasing quantities of nuclear materials produced, used, carried and recycled in the Community, but also of the development of trade in these materials and of the further enlargement of the European Union, it is essential, in order to ensure the effectiveness of safeguards, that the nature and the extent of the requirements referred to in Article 79 of the Treaty and set out in Regulation (Euratom) No 3227/76 be brought up to date in the light of developments, particularly in the fields of nuclear and information technology.

(3) The Republic of Austria, the Kingdom of Belgium, the Kingdom of Denmark, the Republic of Finland, the Federal Republic of Germany, the Hellenic Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic, the Kingdom of Spain, the Kingdom of Sweden and the European Atomic Energy Community are parties to an Agreement [3] with the International Atomic Energy Agency in implementation of Article III(1) and (4) of the Treaty on the Non-Proliferation of Nuclear Weapons. This Agreement entered into force on 21 February 1977 and was supplemented by an Additional Protocol [4] signed on 22 September 1998.

(4) The Agreement contains a particular undertaking entered into by the Community concerning the application of safeguards on source and special fissile materials in the territories of the Member States which have no nuclear weapons of their own and which are parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

(5) The procedures stipulated by the Agreement are the result of wide-ranging international negotiations with the International Atomic Energy Agency on the application of Article III(1) and (4) of the Treaty on the Non-Proliferation of Nuclear Weapons. These procedures were approved by the Board of Governors of that Agency.

(6) The Community, the United Kingdom and the International Atomic Energy Agency are parties to an Agreement for the application of safeguards in the United Kingdom in connection with the Treaty on the Non-Proliferation of Nuclear Weapons [5]. That Agreement entered into force on 14 August 1978, and was supplemented by an Additional Protocol signed on 22 September 1998.

(7) The Community, France and the International Atomic Energy Agency are parties to an Agreement for the application of safeguards in France [6]. That Agreement entered into force on 12 September 1981, and was supplemented by an Additional Protocol signed on 22 September 1998.

(8) In the territories of France and the United Kingdom some installations or parts thereof as well as certain materials are liable to be involved in the production cycle for defence needs. Special safeguard procedures should therefore be applied to take account of these circumstances.

(9) The European Council at its meeting in Lisbon on 23 and 24 March 2000 stressed the need to foster the development of state-of-the-art information technology and other telecom networks as well as the content for those networks.

(10) In view of the foregoing, Regulation (Euratom) No 3227/76 should be repealed and replaced,

HAS ADOPTED THIS REGULATION:

PART I

SCOPE AND DEFINITIONS

Article 1

Scope

This Regulation sets out the requirements for the application of Euratom safeguards.

It shall not apply to holders of end products used for non-nuclear purposes which incorporate nuclear materials that are irrecoverable.

[1] OJ L 363, 31.12.1976, p. 1.

[2] OJ L 191, 31.7.1993, p. 75.

[3] OJ L 51, 22.2.1978, p. 1.

[4] OJ L 67, 13.3.1999, p. 1.

[5] IAEA document INFCIRC/263 dated October 1978.

[6] IAEA document INFCIRC/290 dated December 1981.

Article 2

Definitions

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

1. 'Non-nuclear-weapon Member State' means Belgium, Denmark, Germany, Greece, Spain, Ireland, Italy, Luxembourg, Netherlands, Austria, Portugal, Finland, or Sweden.

2. 'Nuclear-weapon Member State' means France or the United Kingdom.

3. 'Third country' means any State which is not a member of the European Atomic Energy Community.

4. 'Nuclear materials' means ores, source materials and special fissile materials as defined in Article 197 of the Treaty.

5. 'Waste' means nuclear material in concentrations or chemical forms which do not permit recovery at present and which may be disposed of.

6. 'Retained waste' means waste, measured or estimated on the basis of measurements, which has been transferred to a specific location within the material balance area from which it could be retrieved. Waste belonging to this category has not yet been conditioned and is regarded as economically irrecoverable by current technology.

7. 'Conditioned waste' means waste, measured or estimated on the basis of measurements, which has been conditioned in such a way (for example, in glass, cement, concrete or bitumen) that it is not suitable for further nuclear use.

8. 'Discards to the environment' means waste, measured or estimated on the basis of measurements, which has been irrevocably discarded to the environment as the result of a licensed discharge.

9. 'Category' (of nuclear material) means natural uranium; depleted uranium; uranium enriched in uranium-235 or uranium-233; thorium; plutonium; and any other material which the Council may determine, acting by a qualified majority on a proposal from the Commission.

10. 'Item' means an identifiable unit such as a fuel assembly or a fuel pin.

11. 'Batch' means a portion of nuclear material handled as a unit for accounting purposes at a key measurement point and for which the composition and quantity are defined by a single set of specifications or measurements. The nuclear material may be in bulk form or contained in a number of identifiable items.

12. 'Batch data' means the total weight of each element of nuclear material and, in the case of plutonium and uranium, the isotopic composition when appropriate. For reporting purposes the weights of individual items in the batch shall be added together before rounding to the nearest unit.

13. 'Book inventory' of a material balance area means the algebraic sum of the most recent physical inventory of that material balance area, and of all inventory changes that have occurred since that physical inventory was taken.

14. 'Effective kilogram' is a special unit used in safeguarding nuclear material, obtained by taking:

    (a) for plutonium, its weight in kilograms;

    (b) for uranium with an enrichment of 0,01 (1 %) and above, its weight in kilograms multiplied by the square of its enrichment;

    (c) for uranium with an enrichment below 0,01 (1 %) and above 0,005 (0,5 %), its weight in kilograms multiplied by 0,0001; and

    (d) for depleted uranium with an enrichment of 0,005 (0,5 %) or below, and for thorium, its weight in kilograms multiplied by 0,00005.

15. 'Key measurement point' means a location where nuclear material appears in such a form that it may be measured to determine material flow or inventory, including but not limited to, the places where nuclear material enters, leaves or is stored in, material balance areas.

16. 'Material balance area' means an area such that, for the purpose of establishing the material balance:

    (a) the quantity of nuclear material in each transfer into or out of each material balance area can be determined; and

    (b) the physical inventory of nuclear material in each material balance area can be determined when necessary in accordance with specified procedures.

17. 'Material unaccounted for' means the difference between physical inventory and book inventory.

18. 'Physical inventory' means the sum of all the measured or derived estimates of batch quantities of nuclear material on hand at a given time within a material balance area, obtained in accordance with specified procedures.

19. 'Shipper/receiver difference' means the difference between the quantity of nuclear material in a batch as measured at the receiving material balance area and as stated by the shipping material balance area.

20. 'Source data' means those data, recorded during measurement or calibration or used to derive empirical relationships, which identify nuclear material and provide batch data, including: weight of compounds; conversion factors to determine weight of element; specific gravity; element concentration; isotopic ratios; relationship between volume and manometer readings; and relationship between plutonium produced and power generated.

21. 'Site' means an area delimited by the Community and the Member State, comprising one or more installations, including closed-down installations, as defined in their relevant basic technical characteristics.

    In the case of a closed-down installation where nuclear material in quantities less than one effective kilogram was customarily used, the term is limited to locations with hot cells or where activities related to conversion, enrichment, fuel fabrication or reprocessing were carried out.

    'Site' also includes all plants co-located with the installations which provide or use essential services including hot cells for processing irradiated materials not containing nuclear material; plants for the treatment, storage and disposal of waste; and buildings associated with activities specified in Annex 1 of the Additional Protocols and identified by the State concerned.

22. 'Site representative' means any person or undertaking designated by the Member State as being responsible for the communications referred to in Article 3(2).

23. 'Installation' means a reactor, a critical installation, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant, a separate storage installation, a waste handling, storing and processing installation; or any other location where nuclear material is customarily used.

24. 'Decommissioned installation' means an installation or location at which residual structures and equipment essential for its use have been removed or rendered inoperable so that it is not used to store and can no longer be used to handle, process or utilise nuclear material.

25. 'Closed-down installation' means an installation or location where operations have been stopped and the nuclear material removed but which has not been decommissioned.

PART II

BASIC TECHNICAL CHARACTERISTICS AND PARTICULAR SAFEGUARD PROVISIONS

Article 3

Declaration of the basic technical characteristics

1. Any person or undertaking setting up or operating an installation for the production, separation, reprocessing, storage or any use of nuclear materials shall declare to the Commission the basic technical characteristics of the installation, on the basis of the relevant questionnaire shown in Annex I.

For the purpose of this Article 'use' of nuclear materials is taken to include *inter alia*: power production in reactors, research in critical or zero energy installations, conversion, fabrication, reprocessing, storage, isotope separation, ore production and ore concentration, as well as conditioning and storage of waste.

2. Each Member State being a party to the Additional Protocol to the Agreement, signed on 22 September 1998, shall designate a site representative for each site on its territory. Any person or undertaking designated as site representative shall forward to the Commission a declaration containing a general description of the site, on the basis of the questionnaire shown in Annex II.

The declaration shall be submitted within 90 days of the entry into force of the Additional Protocol and updates shall be submitted by 31 January of each year.

The declaration shall fulfil the requirements of Article 2(a)(iii) of the Additional Protocol, and shall be separate from the declaration required pursuant to paragraph 1 of this Article.

3. The declarations provided for in paragraphs 1 and 2 shall be submitted in electronic form if they are kept in such form by the person or undertaking.

Article 4

Time limits

The declaration of the basic technical characteristics of new installations shall be communicated to the Commission in accordance with Article 3(1) at least 200 days before the first consignment of nuclear material is due to be received.

For new installations with an inventory or annual throughput of nuclear material, whichever is the greater, of more than one effective kilogram, all relevant information relating to the owner, operator, purpose, location, type, capacity and expected commissioning date shall be communicated to the Commission at least 200 days before construction begins.

Using the questionnaire in Annex I, existing waste handling and processing installations and ore producers shall communicate to the Commission the basic technical characteristics of their installation within 30 days of the date on which this Regulation enters into force.

Any additional information required by the questionnaire in Annex I shall be supplied within 30 days of the date on which this Regulation enters into force.

Article 5

Adoption of particular safeguard provisions and changes to basic technical characteristics

The particular safeguard provisions set out in Article 7 shall be drawn up by means of an individual decision of the Commission after consulting the person or undertaking concerned and the relevant Member State.

The person or undertaking affected by any individual decision of the Commission shall be notified thereof, and a copy of such notification shall be transmitted to the Member State concerned.

The particular safeguard provisions shall specify *inter alia* those changes in the basic technical characteristics set out in Article 3(1) for which advance notification is required. Any other changes in the basic technical characteristics shall be communicated to the Commission within 30 days after the modification is complete.

Article 6

Programme of activities

To enable the Commission to plan its safeguards activities, the persons or undertakings referred to in Article 3(1) shall also communicate to the Commission the following information:

(a) annually, an outline programme of activities on the basis of the guidelines given in Annex XI, indicating, in particular, provisional dates for taking a physical inventory;

(b) at least 40 days before taking a physical inventory, the programme for such work.

Any change affecting the outline programme of activities and, in particular, the taking of physical inventories shall be communicated to the Commission without delay.

Article 7

Particular safeguard provisions

1. The Commission shall adopt particular safeguard provisions relating to the matters set out in paragraph 2.

Acting on the declarations of basic technical characteristics and on the information communicated pursuant to Article 6, the Commission may specify in particular the means by which the persons or undertakings concerned shall meet the safeguards requirements.

2. The particular safeguard provisions shall specify, *inter alia*:

(a) the material balance areas and the selection of those key measurement points for determining the flow and stocks of nuclear materials;

(b) the procedures for keeping records of nuclear materials for each material balance area and for drawing up reports;

(c) the frequency of, and procedures for, taking physical inventories for accounting purposes as part of safeguards measures;

(d) the containment and surveillance measures, in accordance with the arrangements agreed upon with the plant operators;

(e) the arrangements for sample-taking by the plant operator solely for safeguards purposes.

3. The particular safeguard provisions may also specify the content of subsequent communications required under Article 6 of this Regulation as well as the conditions requiring advance notification of shipments and receipts of nuclear material.

4. The Commission shall reimburse the person or undertaking concerned the cost of those special services which are provided for in the particular safeguard provisions or which are provided as the result of a special request by the Commission or its inspectors, on the basis of an agreed estimate. The amount of, and arrangements for, the reimbursement shall be jointly determined by the parties concerned and shall be reviewed periodically.

PART III

NUCLEAR MATERIAL ACCOUNTANCY

Article 8

Accounting system

The persons and undertakings referred to in Article 3(1) shall maintain a system of accountancy and control for nuclear materials. This system shall include accounting and operating records and, in particular, information on the quantities, nature, form and composition of these materials as required under Article 19, their actual location and the particular safeguards obligation as provided for in Article 18, together with details of the recipient or shipper when nuclear materials are transferred.

The system of measurements on which the records are based shall comply with the most recent international standards or shall be equivalent in quality to those standards. On the basis of these records it must be possible to draw up and substantiate the declarations made to the Commission. Records shall be retained for a period of at least five years. Accounting and operating records shall be made available to the inspectors in electronic form if they are kept in this form by the installation. Further details may be specified in the particular safeguard provisions for each installation.

Article 9

Operating records

For each material balance area, the operating records shall include, where appropriate:

(a) the operating data used to determine changes in the quantities and composition of nuclear material;

(b) a list of inventory items present, and their location, at any time;

(c) the data, including derived estimates of random and systematic errors, obtained from the calibration of tanks and instruments as well as from sampling and analysis;

(d) the data resulting from quality control measures, including derived estimates of random and systematic errors, applied to the nuclear material accountancy system;

(e) a description of the sequence of actions taken to prepare for, and take, a physical inventory, and to ensure that the inventory is correct and complete;

(f) a description of the actions taken in order to ascertain the cause and magnitude of any accidental or unmeasured loss that might have occurred;

(g) the isotopic composition of plutonium, including its decay isotope americium-241, and reference dates.

Article 10

Accounting records

The accounting records shall show in respect of each material balance area:

(a) all inventory changes, so that the book inventory can be determined at any time;

(b) all measurement and counting results used to determine the physical inventory;

(c) all corrections made to inventory changes, book inventories and physical inventories.

The accounting records relating to any inventory change and physical inventory shall show the material identification, batch data and source data for each batch. These records shall account separately for uranium, thorium and plutonium, in accordance with the categories listed in Article 19(2)(b). In addition, for each inventory change, the date of the change and, when appropriate, the dispatching material balance area and the receiving material balance area or the recipient shall be indicated.

Article 11

Accounting reports

The persons and undertakings referred to in Article 3(1) shall provide the Commission with accounting reports.

The accounting reports shall contain the information available on the date of reporting and must be corrected at a later date if necessary. Accounting reports shall be transmitted to the Commission in electronic form, except in cases where the Commission has granted a written derogation.

On a reasoned request by the Commission, further details or explanations in connection with these reports shall be supplied within three weeks.

Article 12

Initial inventory

If they have not already done so, the persons and undertakings referred to in Article 3(1) shall transmit to the Commission an initial book inventory of all nuclear materials they are holding, in accordance with Annex V.

Article 13

Inventory change report

For each material balance area, the persons and undertakings referred to in Article 3(1) shall transmit to the Commission inventory change reports in respect of all nuclear materials in accordance with Annex III.

These reports shall be sent as soon as possible and, at the latest, within 15 days of the end of the month in which the inventory changes occur or become known. For months in which no inventory changes occur, the persons or undertakings concerned may simply send in the inventory change report, carrying over the ending book inventory of the previous month. In order that they may be reported as a single inventory change, small inventory changes, such as transfers of samples for purposes of analysis, may be grouped together, as laid down in the particular safeguard provisions referred to in Article 7 for the installation concerned. Inventory change reports may be accompanied by comments explaining the inventory changes.

Article 14

Material balance report and physical inventory listing

For each material balance area, the persons and undertakings referred to in Article 3(1) shall transmit to the Commission:

1. Material balance reports, in accordance with Annex IV, showing:

   (a) beginning physical inventory;

   (b) inventory changes (first increases, then decreases);

   (c) ending book inventory;

   (d) ending physical inventory;

   (e) material unaccounted for.

2. A physical inventory listing, in accordance with Annex V, showing all batches separately.

The reports and the listing shall be transmitted as soon as possible and at the latest within 30 days of the date on which a physical inventory was taken.

Unless otherwise specified in the particular safeguard provisions for an installation, a physical inventory shall be taken every calendar year and the period between two successive physical inventory takings shall not exceed 14 months.

Article 15

Special reports

The persons and undertakings referred to in Article 3(1) shall transmit to the Commission a special report whenever the circumstances referred to in Articles 16 or 23 arise.

The type of information to be supplied in such reports will be specified in the particular safeguard provisions.

The special reports, and further details or explanations which may be requested by the Commission in connection with these reports, shall be supplied without delay.

Article 16

Unusual occurrences

A special report shall be made without delay:

(a) if, as a result of any unusual incident or circumstances, it is believed that there has been or might be a loss of nuclear material in excess of the limits specified for these purposes in the particular safeguard provisions;

(b) if the containment has unexpectedly changed from that specified in the particular safeguard provisions, to a point where an unauthorised removal of nuclear material has become possible.

The persons and undertakings concerned shall submit these reports as soon as they have become aware of any such loss or sudden change in the containment conditions, or of anything which leads them to believe that there has been such an occurrence. The causes shall also be stated as soon as they are known.

Article 17

Reporting of nuclear transformations

In respect of reactors, calculated data on nuclear transformations shall be reported in the inventory change report at the latest when irradiated fuel is transferred from the reactor material balance area. In addition, other procedures for recording and reporting nuclear transformations may be specified in the particular safeguard provisions.

Article 18

Particular safeguard obligations

Nuclear materials subject to particular safeguard obligations entered into by the Community in an agreement concluded with a third country or an international organisation shall, unless otherwise stipulated by such an agreement, be identified separately for each obligation in the following notifications:

(a) initial book inventory provided for in Article 12;

(b) inventory change reports, including book inventories provided for in Article 13;

(c) material balance reports and physical inventory listings provided for in Article 14;

(d) intended imports and exports provided for in Articles 21 and 22.

Unless specifically prohibited in any of the agreements referred to in the first subparagraph, such separate identification shall not preclude the physical mixing of materials.

Article 19

Categories of nuclear materials and weight units

1. In any notification referred to in this Regulation, quantities of materials covered by the Regulation shall be expressed in grams.

The corresponding material accounting records shall be kept in grams or in smaller units. They shall be kept in such a manner as to render them trustworthy and, in particular, to comply with current practices in the Member States.

In the notifications, quantities may be rounded down when the first decimal is 0 to 4 and rounded up when the first decimal is 5 to 9.

2. Unless otherwise provided for in the particular safeguard provisions the notifications shall include the following:

(a) the total weight of the elements uranium, thorium or plutonium, and also, for enriched uranium, the total weight of the fissile isotopes;

(b) separate material balance reports as well as separate line entries in inventory change reports and in physical inventory listings for the following categories of nuclear material:

(i) depleted uranium;

(ii) natural uranium;

(iii) uranium enriched to less than 20 %;

(iv) uranium enriched to 20 % and above;

(v) plutonium;

(vi) thorium.

Article 20

Derogations

1. The Commission may grant producers and users of nuclear materials a written derogation from the rules governing the form and frequency of notification provided for in Articles 11 to 19, in order to take account of any particular circumstances in which safeguarded materials are used or produced.

The derogation shall be granted on submission of a request by the persons or undertakings concerned based on the form set out in Annex IX.

The derogation shall be granted only for a whole material balance area in which nuclear material is not processed or stored together with nuclear material for which no derogation can be granted.

2. The Commission may grant a derogation for a material balance area holding:

(a) only small quantities of nuclear material which are kept in the same state for long periods;

(b) depleted uranium, natural uranium or thorium which is used exclusively in non-nuclear activities;

(c) special fissile materials which are used in quantities of the order of one gram or less as sensing components in instruments;

(d) plutonium with an isotopic concentration of plutonium-238 exceeding 80 %.

3. The persons or undertakings to whom a derogation is granted shall transmit to the Commission an annual report by 31 January of each year, using the form set out in Annex X. This report shall describe the situation at the end of each calendar year.

4. In the case of exports to a third country of nuclear material subject to derogation, the persons or undertakings concerned shall transmit a report to the Commission by the end of the month in which the transfer occurred, using the form set out in Annex X. This report shall indicate the quantity of nuclear material exported and the stock of nuclear material still subject to derogation.

5. In the case of imports from a third country of nuclear material which may qualify for a derogation, the persons or undertakings to whom a derogation is granted shall transmit a new request to the Commission to add this material to the list of materials in respect of which a derogation applies. The request shall be transmitted to the Commission as soon as the persons or undertakings are aware of the transfer date and, at the latest, by the end of the month in which the transfer occurred. The form set out in Annex IX shall be used for this purpose.

6. The Commission may establish other specific requirements in the particular safeguard provisions.

7. If the conditions for derogation are no longer met, the derogation shall be withdrawn by the Commission, acting upon receipt of information from the persons or undertakings to whom a derogation is granted.

PART IV

TRANSFERS BETWEEN STATES

Article 21

Export and shipment of nuclear material

1. The persons and undertakings referred to in Article 3(1) shall give advance notification to the Commission if any source materials or special fissile materials:

(a) are exported to a third country;

(b) are shipped from a non-nuclear-weapon Member State to a nuclear-weapon Member State;

(c) are shipped from a nuclear-weapon Member State to a non-nuclear-weapon Member State.

2. Advance notification is required only:

(a) where the consignment exceeds one effective kilogram; or

(b) where an installation transfers a total quantity of materials to the same State that could exceed one effective kilogram in any consecutive period of twelve months, even though no single consignment exceeds one effective kilogram.

3. The notification shall be given after the conclusion of the contractual arrangements leading to the transfer, using the form set out in Annex VI, and shall reach the Commission at least eight working days before the material is to be packed for transfer.

4. If so required for reasons of physical protection, special arrangements concerning the form and transmission of such notification may be agreed upon with the Commission.

Article 22

Import and reception of nuclear materials

1. The persons and undertakings referred to in Article 3(1) shall give advance notification to the Commission if any source materials or special fissile materials:

(a) are imported from a third country;

(b) are received in a non-nuclear-weapon Member State from a nuclear-weapon Member State;

(c) are received in a nuclear-weapon Member State from a non-nuclear-weapon Member State.

2. Such advance notification is required only:

(a) where the consignment exceeds one effective kilogram; or

(b) where an installation imports or receives a total quantity of materials from the same State that could exceed one effective kilogram in any consecutive period of twelve months, even though no single consignment exceeds one effective kilogram.

3. Such notification shall be given as far in advance as possible of the expected arrival of the nuclear material and, at the latest, on the date of receipt, using the form set out in Annex VII, and shall reach the Commission at least five working days before the material is unpacked.

4. If so required for reasons of physical protection, special arrangements concerning the form and transmission of such notification may be agreed upon with the Commission.

Article 23

Loss or delay during transfer

A special report shall be submitted, as provided for in Article 16, by the persons or undertakings notifying a transfer under Articles 21 and 22 if, following exceptional circumstances or an incident, they have received information that nuclear materials have been lost or appear to be lost, particularly when there has been a considerable delay during transfer.

Article 24

Communication of change of date

Any change of date in the packing for transfer, in the transport or in the unpacking of nuclear materials with respect to the dates given in the notifications provided for in Articles 21 and 22, but not a change that gives rise to special reports, shall be communicated without delay, with an indication of the revised dates if known.

PART V

SPECIFIC PROVISIONS

Article 25

Ore production records

Any person or undertaking extracting ores in the territory of a Member State shall keep accounting records thereof.

By way of derogation from Articles 8 to 19, these records shall indicate, in particular, the quantities of the ore extracted, with the average uranium and thorium content, and the stock of extracted ore at the mine. They shall also contain details of shipments, stating the date, consignee and quantity in each case.

Such records shall be retained for at least five years.

Article 26

Dispatch of ore

By 31 January of each year at the latest, ore producers shall inform the Commission of the amount of material dispatched from each mine during the previous year, using the form in Annex VIII.

Article 27

Exportation of ore

Any person or undertaking exporting ores to third countries shall inform the Commission thereof, on the date of dispatch at the latest, using the form in Annex VIII.

Article 28

Carriers and temporary storage agents

Any person or undertaking engaged, within the territories of the Member States, in transporting, or temporarily storing during transport, nuclear materials may accept or hand over such materials only against a duly signed and dated receipt. This receipt shall state the names of the parties handing over and receiving the materials and indicate the quantities carried as well as the nature, form and composition of the materials.

If so required for reasons of physical protection, the description of the materials transferred may be replaced by a suitable identification of the consignment. Such identification shall be traceable to records held by the persons and undertakings referred to in Article 3(1).

The records referred to above shall be retained by the contracting parties for at least five years.

Article 29

Substitute records for carriers and temporary storage agents

Records already held by persons or undertakings in accordance with existing regulations which apply to them in the territory of the Member States in which they operate may take the place of the records provided for in Article 28, provided that such records contain all the required information.

Article 30

Intermediaries

Any intermediaries taking part in the conclusion of any contract for the supply of nuclear materials, such as authorised agents, brokers or commission agents, shall keep all records relating to the transactions performed by them or on their behalf for at least five years after expiry of the contract. Such records shall contain the names of the contracting parties and indicate the date of the contract as well as the quantity, nature, form, composition, origin and destination of the materials.

Article 31

Transmission of information and data

The Commission may transmit to the International Atomic Energy Agency information and data obtained pursuant to this Regulation.

Article 32

Processing of waste

The persons or undertakings referred to in Article 3(1) shall give advance notification to the Commission of any waste-processing campaign, excluding repackaging or further conditioning without separation of elements. This advance notification, using the form in Annex XII, shall include the amount of material per batch (plutonium, high enriched uranium and uranium-233 only), the form (glass, high active liquid, etc.), the expected duration of the campaign, and the location of the material before and after the campaign. Such notification shall reach the Commission at least 200 days before the campaign starts.

Article 33

Transfers of conditioned waste

1. If any of the persons or undertakings referred to in Article 3(1) ship or export conditioned waste to an installation within or outside the territories of the Member States, they shall, upon transfer of these materials, communicate to the Commission the MBA code or the name and address of the receiver together with the accounting data, using the form in Annex XIII.

2. If any of the persons or undertakings referred to in Article 3(1) receive or import conditioned waste from an installation without a material balance area code or from an installation outside the territories of the Member States, they shall, upon receipt of these materials, communicate the name and address of the shipper together with the accounting data, using the form in Annex XIV.

3. The persons or undertakings referred to in Article 3(1) shall submit, by 31 January of each year at the latest, an annual report of changes in location of conditioned waste containing plutonium, high enriched uranium or uranium-233, using the form in Annex XV.

PART VI

SPECIFIC PROVISIONS APPLICABLE IN THE TERRITORIES OF THE NUCLEAR-WEAPON MEMBER STATES

Article 34

Specific provisions for nuclear-weapon Member States

1. This Regulation shall not apply:

(a) to installations or parts of installations which have been assigned to meet defence requirements and which are situated in the territory of a nuclear-weapon Member State; or

(b) to nuclear materials which have been assigned to meet defence requirements by that nuclear-weapon Member State.

2. For nuclear materials, installations or parts of installations which are liable to be assigned to meet defence requirements and which are situated in the territory of a nuclear-weapon Member State, the extent of the application of this Regulation and the procedures under it shall be defined by the Commission in consultation and in agreement with the Member State concerned, taking into account the provisions of the second paragraph of Article 84 of the Treaty.

3. Notwithstanding paragraphs 1 and 2:

(a) the provisions of Articles 3(1), 4, 5 and 7 shall apply to installations or parts of installations which at certain times are operated exclusively with nuclear materials liable to be assigned to meet defence requirements but which at other times are operated exclusively with civil nuclear materials;

(b) the provisions of Articles 3(1), 4, 5 and 7 shall apply, with exceptions for reasons of national security, to installations or parts of installations to which access could be restricted for such reasons but which produce, treat, separate, reprocess or use in any other way, simultaneously, both civil nuclear materials and nuclear materials assigned or liable to be assigned to meet defence requirements;

(c) the provisions of Articles 2, 6 and 8 to 35 shall apply in relation to all civil nuclear materials situated in the installations or parts of installations referred to in subparagraphs (a) and (b) above;

(d) the provisions of Articles 3(2) and 32 shall not apply in the territories of nuclear-weapon Member States.

PART VII

FINAL PROVISIONS

Article 35

Installations controlled from outside the Community

Where an installation is controlled by a person or undertaking established outside the Community, any obligations imposed by this Regulation shall be fulfilled by the local management of the installation.

Article 36

Repeal

Regulation (Euratom) No 3227/76 is repealed.

Article 37

Transitional period

The Commission may, upon a duly reasoned request by the persons or undertakings referred to in Article 3(1), grant exemption from the obligation to use the reporting formats set out in Annexes III, IV and V.

This exemption shall not extend beyond a period of three years from the date of entry into force of this Regulation.

Article 38

Entry into force

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

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

ANNEX I

QUESTIONNAIRE FOR THE DECLARATION OF THE BASIC TECHNICAL CHARACTERISTICS OF THE INSTALLATIONS

NB:

1. Under Article 79 of the Treaty, those subject to safeguards requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and the first paragraph of Article 79 of the Treaty.

2. The reply 'not applicable' can be given to questions which are not applicable. The Commission is still entitled to request any additional information it considers necessary in connection with the relevant questionnaire.

3. The declaration, duly completed and signed, should be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg.

A. **REACTORS**

Date .....

IDENTIFICATION OF THE INSTALLATION

1. Name.

2. Location, exact address with telephone and fax numbers and e-mail address.

3. Owner (legally responsible body or individual).

4. Operator (legally responsible body or individual).

5. Present status (e.g. under construction, in operation or closed down).

6. Purpose and type.

7. Operating mode influencing its production (shift system adopted, approximate dates of operating periods in year, etc.).

8. Area layout (map showing the installation, boundaries, buildings, roads, rivers, railways, etc.).

9. Layout of installation:

   (a) structural containment, fences and access routes;

   (b) incoming-material storage area;

   (c) reactor area;

   (d) test and experiment area, laboratories;

   (e) outgoing-material storage area;

   (f) nuclear waste disposal area.

10. Additional data per reactor:

    (a) nominal thermal output;

    (b) source material and special fissile material;

    (c) initial core enrichments;

    (d) moderator;

    (e) coolant.

GENERAL ARRANGEMENTS AT THE INSTALLATION, INCLUDING THOSE RELATING TO MATERIAL USE AND ACCOUNTANCY, CONTAINMENT AND SURVEILLANCE

Description of nuclear material (*)

11. Description of the use of nuclear material (Article 3(1)).

12. Outline drawings of fuel assemblies, fuel rods/pins, fuel plates etc., in sufficient detail to indicate general structure with overall dimensions. (Provisions for pin exchange should be described, if applicable, and an indication given if this is a routine operation.)

13. Fuel material (including material in control or shim assemblies, if applicable):

    (a) chemical composition or main alloy constituents;

    (b) average enrichment per assembly;

    (c) nominal weight of nuclear material per assembly, with design tolerances.

14. Cladding material.

15. Method of identifying individual assemblies, rods/pins, plates etc., if applicable.

16. Other nuclear material used in the installation (briefly state material, purpose and method of use, e.g. as booster rods).

Flow of nuclear material

17. Flow sheet showing: points where nuclear material is identified or measured; material balance areas and inventory locations used for material accountancy; and the estimated range of nuclear material inventories at these locations under normal operating conditions.

18. Expected nominal fuel cycle data, including:

    (a) reactor core loading;

    (b) expected burn-up;

    (c) annual refuelling amount;

    (d) refuelling interval (on-load or off-load);

    (e) forecast of throughput and inventory, and of receipts and shipments.

Handling of nuclear material

19. Layout of the fresh fuel storage area, drawings of fresh fuel storage locations, and description of packaging.

20. Drawings of fresh fuel preparation and/or assay room and reactor loading area.

21. Drawings of transfer equipment for fresh and irradiated fuel, including refuelling machines or equipment.

22. Drawings of reactor vessel showing location of core and openings in vessel; description of method of fuel handling in vessel.

23. Drawing of core showing: general layout, lattice, form, pitch and dimensions of core; reflector; location, shapes and dimensions of control devices; experimental and/or irradiation positions.

24. Number and size of channels for fuel assemblies and control devices in the core.

(*) Items 12 to 15 are to be answered for each type of assembly in the installation. Terminology consistent with item 12 should be used.

25. Spent fuel storage area:

    (a) drawing of storage area;

    (b) method of storage;

    (c) design storage capacity;

    (d) drawing of equipment for handling irradiated fuel;

    (e) minimum cooling time before shipment of spent fuel;

    (f) drawing and description of shipping cask for spent fuel (e.g. to determine whether sealing is possible).

26. Nuclear material testing area (if applicable):

    (a) brief description of the activities performed;

    (b) description of main equipment (e.g. hot cell, fuel assembly decladding and dissolving equipment);

    (c) description of shipping containers for nuclear material and of waste and scrap packaging (e.g. to determine whether sealing is possible);

    (d) description of storage area for non-irradiated and irradiated nuclear material;

    (e) drawings of the above, if not covered elsewhere.

Coolant data

27. Coolant flow diagrams as required for heat balance calculations (indicating pressure, temperatures and mass flow rates at main points).

NUCLEAR MATERIAL ACCOUNTANCY AND CONTROL

Accountancy system

28. Description of nuclear material accountancy and control system (describe item and/or mass accountancy system, including assay methods used and assessed accuracies, supplying specimen blank forms used in all accountancy and control procedures). Period during which such records must be retained should be stated.

Physical inventory

29. Description of: procedures, scheduled frequency and methods for operator's physical inventory taking (both for item and/or mass accountancy, including main assay methods and expected accuracy); access to nuclear material in the core and to irradiated nuclear material outside the core; expected radiation levels.

OTHER INFORMATION RELEVANT TO APPLICATION OF SAFEGUARDS

30. Organisational arrangements for material accountancy and control.

31. Information on the health and safety rules which have to be observed at the installation, and with which the inspectors must comply.

B. CRITICAL AND ZERO ENERGY INSTALLATIONS

Date .....

IDENTIFICATION OF THE INSTALLATION

1. Name.
2. Location, exact address with telephone and fax numbers and e-mail addresses.
3. Owner (legally responsible body or individual).
4. Operator (legally responsible body or individual).
5. Present status (e.g. under construction, in operation or closed down).
6. Purpose and type.
7. Operating mode (shift system adopted, approximate dates of operating periods in year, etc.).
8. Area layout (map showing the installation, boundaries, buildings, roads, rivers, railways, etc.).
9. Layout of installation:
   (a) structural containment, fences and access routes;
   (b) nuclear material storage area(s);
   (c) fuel element assembling area, laboratories, etc.;
   (d) critical assembly proper (*).
10. Additional data (*):
    (a) maximum expected operating power and/or neutron flux;
    (b) main type(s) of nuclear material and their enrichment;
    (c) moderator;
    (d) reflector, blanket;
    (e) coolant.

GENERAL ARRANGEMENTS AT THE INSTALLATION, INCLUDING THOSE RELATING TO MATERIAL USE AND ACCOUNTANCY, CONTAINMENT AND SURVEILLANCE

Description of nuclear material

11. Description of the use of nuclear material (Article 3).
12. Outline drawings of fuel assemblies, fuel rods/pins, fuel plates etc., in sufficient detail to indicate general structure with overall dimensions.
13. Fuel material (including material in control or shim assemblies, if applicable):
    (a) chemical composition or main alloy constituents;
    (b) form and dimensions;
    (c) enrichment of fuel rods/pins, fuel plates etc.;
    (d) nominal weight of nuclear material, with design tolerances.

(*) To be provided for each critical assembly if more than one in the installation.

14. Cladding material.

15. Method of identifying individual assemblies, rods/pins, plates etc., if applicable.

16. Other nuclear material used in the installation (briefly state material, purpose and method of use, e.g. as booster rods).

Location and handling of nuclear material

17. Description, including layout drawings, of:

    (a) nuclear material storage and assembly areas and critical assembly/ies proper (inventory locations);

    (b) the estimated range of inventories of nuclear material in these locations;

    (c) the physical arrangement of equipment used for assembling, testing and measuring nuclear material; and

    (d) the routes followed by nuclear material.

18. Sketch of critical assembly core showing core support structure, shielding and heat removal systems, with description (to be provided for each critical assembly if more than one in the installation).

NUCLEAR MATERIAL ACCOUNTANCY AND CONTROL

Accountancy system

19. Description of nuclear material accountancy and control system (describe item and/or mass accountancy system, including assay methods used and assessed accuracies, supplying specimen blank forms used in all accountancy and control procedures). Period during which such records must be retained should be stated.

Physical inventory

20. Description of: procedures, scheduled frequency and methods for operator's physical inventory taking (both for item and/or mass accountancy, including main assay methods and expected accuracy); access to nuclear material in the core and to irradiated nuclear material outside the core; expected radiation levels.

OTHER INFORMATION RELEVANT TO APPLICATION OF SAFEGUARDS

21. Organisational arrangements for material accountancy and control.

22. Information on the health and safety rules which have to be observed at the installation and with which the inspectors must comply.

C. CONVERSION, FABRICATION AND REPROCESSING INSTALLATIONS

Date .....

IDENTIFICATION OF THE INSTALLATION

1. Name.

2. Location, exact address with telephone and fax numbers and e-mail addresses.

3. Owner (legally responsible body or individual).

4. Operator (legally responsible body or individual).

5. Present status (e.g. under construction, in operation or closed down).

6. Purpose and type.

7. Operating mode influencing its production (shift system adopted, approximate dates of operating periods in year, etc.).

8. Area layout (map showing the installation, boundaries, buildings, roads, rivers, railways, etc.).

9. Layout of installation:

   (a) structural containment, fences and access routes;

   (b) routes followed by nuclear material;

   (c) incoming nuclear material storage area;

   (d) each main processing area and process laboratory;

   (e) test or experimental areas;

   (f) outgoing nuclear material storage;

   (g) nuclear waste disposal area;

   (h) analytical laboratory.

GENERAL ARRANGEMENTS AT THE INSTALLATION, INCLUDING THOSE RELATING TO MATERIAL USE AND ACCOUNTANCY, CONTAINMENT AND SURVEILLANCE

Flow, location and handling of nuclear material

10. Flow sheet showing: points where nuclear material is identified or measured; material balance areas and inventory locations used for material accountancy; and the estimated range of nuclear material inventories at these locations under normal operating conditions. The description should include (if applicable):

    (a) batch size or flow rate;

    (b) method of storage or packing;

    (c) storage capacity;

    (d) general forecasts of throughput and inventory and of receipts and shipments.

11. In addition to point 10 above, a description and a layout drawing should be provided of feed storage areas for reprocessing installations, indicating:

    (a) locations for fuel elements and handling equipment;

    (b) type of fuel elements including nuclear material content and enrichment.

12. In addition to point 10 above, the description of the recycling stage of the process should include, if available:

    (a) duration of temporary storage;

    (b) schedules for external recycling (if applicable).

13. In addition to point 10 above, the description of the discard stage of the process should include the discard method (disposal or storage).

14. Under steady-state conditions, for each flow sheet referred to in points 10 and 17 and assuming the modes of operation in point 7, state:

    (a) the nominal throughput per year;

    (b) the in-process inventory based on design capacity.

15. Description of the normal procedures adopted for complete or partial clean-out of the plant. Include description of special sampling and measurement points associated with the clean-out procedure and subsequent physical inventory taking, if not described in point 10 above.

Description of nuclear material

16. Description of the use of nuclear material (Article 3(1)).

17. Description, by means of flow sheets or otherwise, of estimated flow and inventory of all nuclear material for storage and process areas. The description should include:

    (a) physical and chemical form;

    (b) content range or expected upper limits for each category of solid or liquid discard material;

    (c) enrichment range.

NUCLEAR MATERIAL ACCOUNTANCY AND CONTROL

Accountancy system

18. Description of the accountancy system used to record and report accountancy data and establish material balances, supplying specimen blank forms used in all procedures. Period during which such records must be retained should be stated.

19. Indicate when and how often material balances are established, including those established during campaigns. Description of method and procedure for adjusting accounts after a physical inventory taking.

20. Description of procedure for handling shipper/receiver differences and method of adjusting accounts.

21. Description of procedure for correcting accounts following procedural or clerical errors and its effect on shipper/receiver differences.

Physical inventory

22. Refer to point 15. Identify items of equipment on the flow sheets referred to in points 10 and 17 that are to be regarded as containers for nuclear material under physical inventory conditions. State the schedule of physical inventory taking during the campaign.

Methods for measurement, sampling and analysis

23. Description of method for establishing each measurement at the point indicated; equations or tables used and calculations made to determine actual quantities of weights or volumes should be identified. Indicate whether data are recorded automatically or manually. Method and practical procedures for sampling at each point indicated should be described.

24. Description of analytical methods used for accountancy purposes. Refer to a manual or report, if possible.

Control of measurement accuracy

25. Description of: measurement quality control programme needed for material accountancy purposes, including programmes (together with accuracy values) for the continuing appraisal of analytical, weight, volume and sampling precisions and biases, and for the calibration of associated equipment; method of calibrating the measuring equipment referred to in point 24; type and quality of standards used for analytical methods referred to in point 24; type of analytical equipment used, indicating method and frequency of calibration.

Statistical evaluation

26. Description of methods for statistical evaluation of data collected in measurement control programmes for evaluating the precision and the accuracy of measurements and for estimating measurement uncertainties (i.e. determination of the standard deviations of random and systematic error in the measurements). Also description of statistical procedures used to combine individual error estimates to obtain the standard deviations of overall error for shipper/receiver differences, the book inventory, the physical inventory and material unaccounted for.

OTHER INFORMATION RELEVANT TO APPLICATION OF SAFEGUARDS

27. Organisational arrangements for material accountancy and control.

28. Information on the health and safety rules which have to be observed at the installation and with which the inspectors must comply.

D. **STORAGE INSTALLATIONS** (*)

Date .....

IDENTIFICATION OF THE INSTALLATION

1. Name.
2. Location, exact address with telephone and fax numbers and e-mail addresses.
3. Owner (legally responsible body or individual).
4. Operator (legally responsible body or individual).
5. Present status (e.g. under construction, in operation or closed down).
6. Purpose and type.
7. Area layout (map showing the installation, boundaries, buildings, roads, rivers, railways, etc.).
8. Layout of installation, showing structural containment, fences and access routes.

GENERAL ARRANGEMENTS AT THE INSTALLATION, INCLUDING THOSE RELATING TO MATERIAL USE AND ACCOUNTANCY, CONTAINMENT AND SURVEILLANCE

Description of nuclear material

9. Description of the use of nuclear material (Article 3(1)).
10. Description, by means of drawings or otherwise, of all nuclear material in the installation, showing:
    (a) all types of items, including normal handling equipment;
    (b) chemical composition or main alloy constituents;
    (c) form and dimensions;
    (d) enrichment;
    (e) nominal weight of nuclear material, with design tolerances;
    (f) cladding materials;
    (g) methods of identifying items.

Location and handling of nuclear material

11. Description, by means of layout drawings or otherwise, of:
    (a) nuclear material storage areas (inventory locations);
    (b) the estimated range of inventories of nuclear material in these locations;
    (c) nuclear material storage and/or shipping containers;
    (d) the routes and equipment used for movement of nuclear material, if applicable.

(*) Separate installations not normally associated with reactors, with enrichment, conversion and fabrication installations, or with chemical reprocessing and recovery installations.

NUCLEAR MATERIAL ACCOUNTANCY AND CONTROL

Accountancy system

12. Description of nuclear material accountancy and control system (describe item and/or mass accountancy system, including assay methods used and assessed accuracies, supplying specimen blank forms used in all accountancy and control procedures). Period during which such records must be retained should be stated.

Physical inventory

13. Description of procedures, scheduled frequency and methods for operator's physical inventory taking (both for item and/or mass accountancy, including main assay methods), and expected accuracy.

OTHER INFORMATION RELEVANT TO APPLICATION OF SAFEGUARDS

14. Organisational arrangements for material accountancy and control.

15. Information on the health and safety rules which have to be observed at the installation and with which the inspectors must comply.

E. **ISOTOPE SEPARATION INSTALLATIONS**

Date .....

IDENTIFICATION OF THE INSTALLATION

1. Name.
2. Location, exact address with telephone and fax numbers and e-mail address.
3. Owner (legally responsible body or individual).
4. Operator (legally responsible body or individual).
5. Present status (e.g. under construction, in operation or closed down).
6. Building schedule (if installation not in operation):
   (a) date building starts;
   (b) date of installation acceptance;
   (c) commissioning date.
7. Purpose and type (nominal separation capacity, enrichment facilities, etc.).
8. Operating mode influencing its production (shift system adopted, approximate periods of operating times in year, etc.).
9. Area layout (map showing the installation, boundaries, buildings, roads, rivers, railways, etc.).
10. Layout of installation:
    (a) structural containment, fences and access routes;
    (b) containment of certain parts of the installation;
    (c) routes followed by nuclear material;
    (d) incoming nuclear material storage area;
    (e) each main processing area and process laboratory, including weighing and sampling area, decontamination, purification and feed areas, etc.;
    (f) test or experimental areas;
    (g) outgoing nuclear material storage area;
    (h) nuclear waste disposal area;
    (i) analytical laboratory.

GENERAL ARRANGEMENTS AT THE INSTALLATION, INCLUDING THOSE RELATING TO MATERIAL USE AND ACCOUNTANCY, CONTAINMENT AND SURVEILLANCE

Description of nuclear material

11. Description of the use of nuclear material (Article 3(1)).
12. Description, by means of flow sheets or otherwise, of estimated flow and inventory of all nuclear material for storage and process areas. The description should include:
    (a) physical and chemical form;
    (b) enrichment range for feed, product and tails;
    (c) content range or expected upper limits for each category of solid or liquid discard material.

Flow, location and handling of nuclear material

13. Description, by means of diagrams or otherwise, of storage and process areas. The description should include:

    (a) sampling and measuring points;

    (b) batch size and/or flow rate;

    (c) method of storage or packing;

    (d) storage capacities.

14. In addition to point 12 above, the description of the installation should include:

    (a) separation capacity;

    (b) enrichment techniques or methods;

    (c) possible points for feed, product and tails;

    (d) recycling facilities;

    (e) type and size of UF6 cylinders used, filling and emptying methods.

15. Power consumption should be given, where necessary.

16. Each diagram should indicate, under steady-state conditions:

    (a) nominal throughput per year;

    (b) physical inventory of in-process materials;

    (c) material loss rate owing to leakage, decomposition, deposition, etc.;

    (d) arrangements for regular plant maintenance (periodic shutdown or continuous component replacement, etc.).

17. Description of special sampling and measurement points associated with decontamination of off-process equipment that is to be maintained or replaced.

18. Description of process waste disposal point, including disposal method, storage period, type of disposal, etc.

NUCLEAR MATERIAL ACCOUNTANCY AND CONTROL

Accountancy system

19. Description of the accountancy system used to record and report accountancy data and to establish material balances, supplying specimen blank forms used in all procedures. Period during which such records must be retained should be stated.

20. Indicate when and how often material balances are established, including any established during campaigns. Description of method and procedure for adjusting accounts after a physical inventory taking.

21. Description of procedure for handling shipper/receiver differences and method of adjusting accounts.

22. Description of procedure for correcting accounts owing to procedural or clerical errors and the effect on shipper/receiver differences, if applicable.

Physical inventory

23. Identification of items of equipment mentioned in the description referred to in points 12 and 18 that are to be regarded as containers for nuclear material under physical inventory conditions. State the timing of physical inventory taking.

Methods for measurement, sampling and analysis

24. Refer to the information given under points 12 and 17 for location of sampling and measurement points.

25. Description of method for establishing each measurement at the point indicated; equations or tables used and calculations made to determine actual quantities of weights or volumes should be identified. Indicate whether data are recorded automatically or manually. Method and practical procedures for sampling at each point indicated should be described. Indicate number of samples taken and rejection criteria.

26. Description of analytical methods used for accountancy purposes. Refer to a manual or report, if possible.

Control of measurement accuracy

27. Description of programmes for the continuous appraisal of weight, volume and sampling precision and biases, and for the calibration of associated equipment.

28. Descriptions of type and quality of standards used for analytical methods referred to in point 26, type of analytical equipment used, method and frequency of calibration.

Statistical evaluation

29. Description of methods for statistical evaluation of data collected in measurement control programmes for evaluating the precision and the accuracy of measurements and for estimating measurement uncertainties (i.e. determination of the standard deviations of random and systematic error in the measurements). Also description of statistical procedures used to combine individual error estimates to obtain the standard deviations of overall error for shipper/receiver differences, the book inventory, the physical inventory and material unaccounted for.

OTHER INFORMATION RELEVANT TO APPLICATION OF SAFEGUARDS

30. Organisational arrangements for material accountancy and control.

31. Information on the health and safety rules which have to be observed at the installation, and with which the inspectors must comply.

F. INSTALLATIONS USING NUCLEAR MATERIAL IN QUANTITIES EXCEEDING ONE EFFECTIVE KILOGRAM

Date .....

For any installation of a type not referred to in sections A to E which uses more than one effective kilogram per annum, information should be given on the following:

— identification of the installation;

— general arrangements at the installation, including those relating to material use and accountancy, containment and surveillance;

— description of the use of nuclear material (Article 3(1));

— nuclear material accountancy and control system, including techniques for physical inventory taking;

— other information relevant to the application of safeguards.

The information required under these headings is, where applicable, the same as that required for the types of installations coming under sections C, D and E of this Annex.

G. **INSTALLATIONS HOLDING SMALL QUANTITIES OF NUCLEAR MATERIAL**

Date .....

For these holders, the total inventory is calculated as the sum of the stock of each category of nuclear material held, each expressed as a percentage of the following limits:

depleted uranium	350 kg or
thorium	200 kg or
natural uranium	100 kg or
low enriched uranium	1 kg or
high enriched uranium	5 g or
plutonium	5 g

For example:

(a) a holder with 4 g of plutonium has a percentage inventory equal to 80 % (4/5);

(b) a holder with 1 g of high enriched uranium plus 20 kg of natural uranium has a percentage inventory equal to 40 % (1/5 + 20/100).

IDENTIFICATION OF THE INSTALLATION AND OF THE NUCLEAR MATERIAL

1. Name.
2. Location, exact address with telephone and fax numbers and e-mail addresses.
3. Type of nuclear material.
4. Description of containers used for storage and handling.
5. Description of the use of the nuclear material (Article 3(1)).

NUCLEAR MATERIAL ACCOUNTANCY AND CONTROL

The holders' obligations have been simplified as following:

A. **Limits on holdings/movements**

If any individual receipt of nuclear material exceeds the quantities indicated above or if the 'percentage inventory' of the installation exceeds 100 % at any time, the Euratom Safeguards Office must be notified immediately.

B. **Accounting/operating records to be maintained**

Accounting/operating records must be kept in a manner permitting ready verification of reports made to the Euratom Safeguards Office and of any correction thereto.

C. **Inventory change reports (ICR)**

Need be submitted only if an inventory change occurs.

A note explaining unusual inventory changes and corrections or any other piece of information included in the report should be attached. In particular, the identification and address should be given of any entity to which material is shipped (including export) or from whom material is received (including import).

Even if no inventory change occurred during the year, an ending book inventory by category as at 31 December must be declared. This declaration must be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg by 31 January of each year.

D. **Report form**

No special form is required for the report under C above. The report can be made by letter.

H. **WASTE HANDLING, STORING OR PROCESSING INSTALLATIONS** (*)

Date .....

IDENTIFICATION OF THE INSTALLATION

1. Name.
2. Location, exact address with telephone and fax numbers and e-mail addresses.
3. Owner (legally responsible body or individual).
4. Operator (legally responsible body or individual).
5. Present status (e.g. under construction, in operation or closed down).
6. Purpose and type.
7. Area layout (map showing the installation, boundaries, buildings, roads, rivers, railways, etc.).
8. Layout of installation:
   (a) structural containment, fences and access routes;
   (b) routes followed by nuclear material;
   (c) nuclear waste disposal areas;
   (d) each main processing area and process laboratory;
   (e) test or experimental areas;
   (f) analytical laboratory.

GENERAL ARRANGEMENTS AT THE INSTALLATION, INCLUDING THOSE RELATING TO MATERIAL USE AND ACCOUNTANCY, CONTAINMENT AND SURVEILLANCE

Locations and handling of nuclear material

9. Description of the use of nuclear material (Article 3(1)).
10. Description, by means of drawings or otherwise, of:
    (a) nuclear material storage areas (inventory locations);
    (b) the estimated range of inventories of nuclear material in these locations;
    (c) nuclear material storage and/or shipping containers;
    (d) the routes and equipment used for movement of nuclear material, if applicable.

NUCLEAR MATERIAL ACCOUNTANCY AND CONTROL

Accountancy system

11. Description of the nuclear material accountancy and control system, supplying specimen blank forms used in all accountancy and control procedures. Period during which such records must be retained should be stated.

Physical inventory

12. Description of procedures, scheduled frequency and methods for operator's physical inventory taking (both for item and/or mass accountancy including main assay methods), and expected accuracy.

OTHER INFORMATION RELEVANT TO APPLICATION OF SAFEGUARDS

13. Organisational arrangements for material accountancy and control.
14. Information on the health and safety rules which have to be observed at the installation and with which the inspectors must comply.

(*) Separate installations engaged solely in the handling, storing or processing of waste materials (not forming a part of enrichment, conversion, fabrication, chemical reprocessing and recovery installations or of reactors).

J. **OTHER INSTALLATIONS** (*)

Date .....

IDENTIFICATION OF THE INSTALLATION AND OF THE NUCLEAR MATERIAL

1. Name.
2. Location, exact address with telephone and fax numbers and e-mail addresses.
3. Owner (legally responsible body or individual).
4. Operator (legally responsible body or individual).
5. Type of nuclear material.
6. Description of containers used for storage and handling (e.g. to determine whether sealing is possible).
7. Description of the use of the nuclear material (Article 3(1)).
8. In the case of ore producers, the potential annual throughput of the installation.
9. The current status (e.g. under construction, in operation or closed down).

NUCLEAR MATERIAL ACCOUNTANCY AND CONTROL

10. Description of the procedures for nuclear material accountancy and control, including procedures for physical inventory taking.
11. Organisational arrangements for material accountancy and control.

(*) The term 'other' denotes all the installations not covered by sections A to H, and where nuclear material in quantities not exceeding one effective kilogram is habitually used. It also specifically includes ore producers (point 8 above).

ANNEX II

GENERAL DESCRIPTION OF THE SITE (1)

Site identification .....

Declaration No (2) ..... Declaration date .....

Reporting period ..... Comments (3) .....

Entry (4)	Ref. (5)	Installations on site (6)	Building (7)	General description, including use of contents (8)	Comments (9)

.....

(Name and signature of the site representative)

Explanatory notes

1. The initial declaration should include all nuclear installations, and all other buildings on their sites. A separate entry should be made for each building on the site. Subsequent annual update declarations should include only those sites and buildings which have undergone a change since the previous declaration.

2. The 'Declaration No' is a sequential number for each site, starting with '1' for the initial declaration.

3. Comments applicable to the whole of the site.

4. Each 'Entry' in each declaration should be numbered sequentially, beginning with '1'.

5. The 'Ref.' column should be used to refer to another entry. The contents of the 'Ref.' column consist of the relevant declaration and entry numbers (e.g. 10-20 refers to entry 20 of declaration 10). The reference indicates that the current entry adds to or updates information reported earlier. Several references may be inserted, if necessary.

6. The 'Installations on site' column should indicate the installation code(s) of all installations located on the site including closed-down installations or locations where activities related to conversion, enrichment, fuel fabrication or reprocessing were carried out. Every such nuclear installation on a site should be included in the initial declaration.

7. The 'Building' column should include a building number or other designation that provides an unambiguous identification of the building on the schematic map of the site.

8. The 'General description' for each building should include:

   (a) the approximate size of the building in terms of the number of floors and the total square metres of floor space;

   (b) the use of the building, including any prior uses of the building that might be relevant to interpreting other information, such as the results of environmental sampling, available to Euratom; and

   (c) the main contents of the building, where this is not readily apparent from the stated use.

   However, descriptions of activities previously provided in the Basic Technical Characteristics questionnaire need not be repeated.

9. Comments applicable to each entry.

NB:

Under Article 79 of the Treaty, those subject to safeguards requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and the first paragraph of Article 79 of the Treaty.

This form, duly completed and signed, must be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg.

ANNEX III

INVENTORY CHANGE REPORT (ICR)

Label/Tag	Content	Comments	#
MBA	Character (4)	MBA code of reporting MBA	1
Report type	Character (1)	I for Inventory Change Report	2
Report date	DDMMYYYY	Date on which the report was completed	3
Report number	Number (8)	Sequential number, no gaps	4
Line count	Number (8)	Total number of lines reported	5
Start report	DDMMYYYY	Date of first day in reporting period	6
End report	DDMMYYYY	Date of last day in reporting period	7
Reporting person	Character (20)	Name of person responsible for the report	8
Transaction ID	Number (8)	Sequential number	9
IC code	Character (2)	Type of inventory change	10
Batch	Character (20)	Unique identifier for a batch of nuclear material	11
KMP	Character (1)	Key measurement point	12
Measurement	Character (1)	Measurement code	13
Material form	Character (2)	Material form code	14
Material container	Character (1)	Material container code	15
Material state	Character (1)	Material state code	16
MBA from	Character (4)	MBA code of shipping MBA (for IC codes RD and RF only)	17
MBA to	Character (4)	MBA code of receiving MBA (for IC codes SD and SF only)	18
Previous batch	Character (20)	Name of previous batch (for IC code RB only)	19
Original date	DDMMYYYY	Accounting date of the line to be corrected (always of first line in correction chain)	20
PIT date	DDMMYYYY	Date of Physical Inventory Taking (PIT) to which MF adjustment refers (use with IC code MF only)	21
Line number	Number (8)	Sequential number, no gaps	22
Accounting date	DDMMYYYY	Date on which the inventory change occurred or became known	23

Label/Tag	Content	Comments	#
Items	Number (4)	Number of items	24
Element category	Character (1)	Element category	25
Element weight	Number (24.3)	Element weight	26
Isotope	Character (1)	G for U-235, K for U-233, J for a mixture of U-235 and U-233	27
Fissile weight	Number (24.3)	Weight of fissile isotope	28
Obligation	Character (2)	Safeguards obligation	29
Previous category	Character (1)	Previous category (use for IC codes CB, CC and CE only)	30
Previous obligation	Character (2)	Previous obligation (use for IC codes BR, CR, PR and SR only)	31
CAM code	Character (8)	Code to identify small holder	32
Document	Character (20)	Operator-defined reference to supporting documents	33
Container ID	Character (20)	Operator-defined identifier for the container	34
Correction	Character (1)	D for deletions, A for additions forming part of a deletion/addition pair, L for late lines (stand-alone additions)	35
Previous report	Number (8)	Report number of line to be corrected	36
Previous line	Number (8)	Line number of line to be corrected	37
Comment	Character (256)	Operator comment	38
Burn-up	Number (6)	Burn-up in MWdays/tonne (use for IC codes NL and NP in power reactors only)	39
CRC	Number (12)	Hash code of line for quality control purposes	40
Previous CRC	Number (12)	Hash code of line to be corrected	41
Advance notification	Character (8)	Reference to advance notification sent to Euratom (use for IC codes RD, RF, SD and SF only)	42
Campaign	Character (12)	Campaign identifier for reprocessing installations	43
Reactor	Character (12)	Reactor code for reprocessing campaigns	44
Error path	Character (8)	Special code for evaluation purposes	45

Explanatory notes

1. **MBA:**

   Code of the reporting material balance area. This code is notified to the installation concerned by the Commission.

2. **Report type:**

   I for inventory change reports.

3. **Report date:**

   Date on which the report was completed.

4. **Report number:**

   Sequential number, no gaps.

5. **Line count:**

   Total number of lines reported.

6. **Start report:**

   Date of first day of reporting period.

7. **End report:**

   Date of last day of reporting period.

8. **Reporting person:**

   Name of person responsible for the report.

9. **Transaction ID:**

   Sequential number. This is used to identify all inventory change lines relating to the same physical transaction.

10. **IC code:**

    One of the following codes must be used:

Keyword	Code	Explanation
Receipt	RD	Receipt of nuclear material from a material balance area within the European Union
Import	RF	Import of nuclear material from outside the European Union
Receipt from non-safeguarded activity	RN	Receipt of nuclear material from a non-safeguarded activity (Article 34)
Shipment	SD	Transfer of nuclear material to a material balance area within the European Union
Export	SF	Export of nuclear material outside the European Union
Shipment to non-safeguarded activity	SN	Transfer of nuclear material to a non-safeguarded activity (Article 34)

Keyword	Code	Explanation
Transfer to conditioned waste	TC	Nuclear material, contained in waste and measured or estimated on the basis of measurements, which has been conditioned in such a way (e.g. in glass, cement, concrete or bitumen) that it is not suitable for further nuclear use. The quantity of nuclear material involved is to be subtracted from the inventory of the material balance area. Separate records must be kept for this type of material
Discards to the environment	TE	Nuclear material, contained in waste and measured or estimated on the basis of measurements, which has been irrevocably discarded to the environment as the result of a licensed discharge. The quantity of nuclear material involved is to be subtracted from the inventory of the material balance area
Transfer to retained waste	TW	Nuclear material, contained in waste and measured or estimated on the basis of measurements, which has been transferred to a specific location within the material balance area from which it could be retrieved. Waste belonging to this category has not yet been conditioned and is regarded as economically irrecoverable by current technology. The quantity of nuclear material involved is to be subtracted from the inventory of the material balance area. Separate records must be kept for this type of material
Retransfer from conditioned waste	FC	Retransfer of conditioned waste to the inventory of the material balance area. This applies whenever conditioned waste undergoes processing
Retransfer from retained waste	FW	Retransfer of retained waste to the inventory of the material balance area. This applies whenever retained waste is retrieved from the specific location within the material balance area, either for processing in the material balance area or for shipment from the material balance area
Accidental loss	LA	Irretrievable and inadvertent loss of a quantity of nuclear material as the result of an operational accident. Use of this code requires a special report to be sent to the Commission
Accidental gain	GA	Nuclear material unexpectedly found, except when detected in the course of a physical inventory taking. Use of this code requires a special report to be sent to the Commission
Category change	CE	Accountancy transfer of a quantity of nuclear material from one category (Article 19) to another as a result of an enrichment process (only one line to be reported per category change)
Category change	CB	Accountancy transfer of a quantity of nuclear material from one category (Article 19) to another as a result of a blending operation (only one line to be reported per category change)
Category change	CC	Accountancy transfer of a quantity of nuclear material from one category (Article 19) to another for all types of category change not covered by codes CE and CB (only one line to be reported per category change)

Keyword	Code	Explanation
Rebatching	RB	Accountancy transfer of a quantity of nuclear material from one batch to another (only one line to be reported per rebatching)
Change in particular obligation	BR	Accountancy transfer of a quantity of nuclear material from one particular safeguard obligation to another (Article 18), to balance the total uranium stock following a blending operation (only one line to be reported per change of obligation)
Change in particular obligation	PR	Accountancy transfer of a quantity of nuclear material from one particular safeguards obligation to another (Article 18), used when nuclear material enters or leaves an accountancy pool (only one line to be reported per change of obligation)
Change in particular obligation	SR	Accountancy transfer of a quantity of nuclear material from one particular safeguards obligation to another (Article 18), following an obligation exchange or a substitution (only one line to be reported per change of obligation)
Change in particular obligation	CR	Accountancy transfer of a quantity of nuclear material from one particular safeguards obligation to another (Article 18), for all cases not covered by codes BR, PR or SR (only one line to be reported per change of obligation)
Nuclear production	NP	Increase in the quantity of nuclear material due to nuclear transformation
Nuclear loss	NL	Decrease in the quantity of nuclear material due to nuclear transformation
Shipper/receiver difference	DI	Shipper/receiver difference (Article 2) The difference between the quantity of nuclear material in a batch as measured at the receiving material balance area and as stated by the shipping material balance area
New measurement	NM	Quantity of nuclear material, in one particular batch, accounted for in the nuclear material balance area, being the difference between a newly measured quantity and the quantity formerly accounted for, and which is neither a shipper/receiver difference nor a correction
New balance	NB	Quantity of nuclear material accounted for in the material balance area, being the difference between the result of a physical inventory taken by the plant operator for his own purposes (without reporting a physical inventory listing to the Commission) and the book inventory established on the same date
Material unaccounted for	MF	Book adjustment for material unaccounted for. Must be equal to the difference between the ending physical inventory (PE) and the ending book inventory (BA) reported in the material balance report (Annex IV). The original date must be that of the physical inventory taking, while the accounting date must be after the date of the physical inventory taking

Keyword	Code	Explanation
Roundings	RA	Rounding adjustment to make the sum of the quantities reported in a given period coincide with the ending book inventory of the material balance area
Isotope adjustment	R5	Adjustment to make the sum of the isotope quantities reported coincide with the ending book inventory for U-235 of the material balance area
Material production	MP	Quantity of nuclear material, obtained from substances originally not subject to safeguards, which has become subject to safeguards because its concentration now exceeds the minimum levels
Termination of use	TU	Quantity of nuclear material incorporated in products used for non-nuclear purposes from which it is regarded as economically irrecoverable by current technology
Derogation	DE	Derogation of a quantity of nuclear material from declaration (Article 20) To be used only by MBAs at the moment the initial derogation from the rules of reporting is granted, or when nuclear material which qualifies for derogation is received or imported
Derogation withdrawal	DW	Withdrawal of derogation from declaration of a quantity of nuclear material (Article 20) To be used only by MBAs for which derogation from the rules of reporting is withdrawn, or when the nuclear material is shipped or exported
Ending book inventory	BA	Book inventory at the end of a reporting period and at the PIT date, separate for each category of nuclear material and for each particular safeguards obligation

11. **Batch:**

The batch designation may be chosen by the operator, but:

(a) in the case of the inventory change 'Receipt (RD)', the batch designation used by the shipper must be reported;

(b) a batch designation must not be used again for another batch in the same material balance area.

12. **KMP:**

Key measurement point. The codes are notified to the installation concerned in the particular safeguard provisions. If no codes have been specified, '&' should be used.

13. **Measurement:**

The basis on which the quantity of nuclear material reported was established has to be indicated. One of the following codes must be used:

Measured	Estimated	Explanation
M	E	In the reporting material balance area
N	F	In another material balance area
T	G	In the reporting material balance area when the weights have already been given in a previous inventory change report or physical inventory listing
L	H	In another material balance area when the weights have already been given in a previous inventory change report or physical inventory listing for the present material balance area

14. **Material form:**

The following codes must be used:

Main category	Subcategory	Code
Ores		OR
Concentrates		YC
Uranium hexafluoride (UF_6)		U6
Uranium tetrafluoride (UF_4)		U4
Uranium dioxide (UO_2)		U2
Uranium trioxide (UO_3)		U3
Uranium oxide (U_3O_8)		U8
Thorium oxide (ThO_2)		T2
Solutions	Nitrate	LN
	Fluoride	LF
	Other	LO
Powder	Homogeneous	PH
	Heterogeneous	PN
Ceramics	Pellets	CP
	Spheres	CS
	Other	CO
Metal	Pure	MP
	Alloys	MA

Main category	Subcategory	Code
Fuel	Rods, pins	ER
	Plates	EP
	Bundles	EB
	Assemblies	EA
	Other	EO
Sealed sources	—	QS
Small quantities/samples	—	SS
Scrap	Homogeneous	SH
	Heterogeneous (clean-outs, clinkers, sludges, fines, other)	SN
Solid waste	Hulls	AH
	Mixed (plastics, gloves, papers, etc.)	AM
	Contaminated equipment	AC
	Other	AO
Liquid waste	Low active	WL
	Medium active	WM
	High active	WH
Conditioned waste	Vitrified	NV
	Glass	NG
	Bitumen	NB
	Concrete	NC
	Other	NO

15. **Material container:**

The following codes must be used:

Type of container	Code
Cylinder	C
Pack	P
Drum	D
Discrete fuel unit	S
Bird cage	B
Bottle	F
Tank or other container	T
Other	O

16. **Material state:**

The following codes must be used:

State	Code
Fresh nuclear material	F
Irradiated nuclear material	I
Waste	W
Irrecoverable material	N

17. **MBA from:**

Use only for inventory change codes RD and RF. For inventory change code RD, the code of the shipping material balance area is reported. If this code is unknown, the code 'F', 'Q' or 'W' (for the shipping MBA in France, the UK or a non-nuclear-weapon State) is reported and the shipper's full name and address must be entered in the comment field (38). For inventory change code RF, the country code of the exporting State is reported and the shipper's full name and address must be entered in the comment field (38).

18. **MBA to:**

Use only for inventory change codes SD and SF. For inventory change code SD, the code of the receiving material balance area is reported. If this code is unknown, the code 'F', 'Q' or 'W' (for the receiving MBA in France, the UK or a non-nuclear-weapon State) is reported and the receiver's full name and address must be entered in the comment field (38). For inventory change code SF, the country code of the importing State is reported and the receiver's full name and address must be entered in the comment field (38).

19. **Previous batch:**

Batch designation before rebatching. The batch designation after the rebatching must be reported in field 11.

20. **Original date:**

In the case of a correction, the day, month and year when the line to be corrected was originally entered must be reported. For correction chains, the original date is always the accounting date of the first line in the chain. For late lines (stand-alone additions), the original date is the date on which the inventory change occurred.

21. **PIT date:**

Date of the physical inventory taking as reported in the material balance report on which the book adjustment for MUF (material unaccounted for) is based. Use only with inventory change code MF.

22. **Line number:**

Sequential number starting with 1 in each report, no gaps.

23. **Accounting date:**

Day, month and year when the inventory change occurred or became known.

24. **Items:**

The number of items making up the batch must be reported. If an inventory change consists of several lines, the sum of the number of items reported must equal the total number of items belonging to the same transaction ID. If the transaction involves more than one element the number of items should be declared in the line(s) for the element of highest strategic value only (in descending order: P, H, L, N, D, T).

25. **Element category:**

The following code for categories of nuclear material must be used:

Category	Code
Plutonium	P
High enriched uranium (20 % enrichment and above)	H
Low enriched uranium (higher than natural but less than 20 % enrichment)	L
Natural uranium	N
Depleted uranium	D
Thorium	T

26. **Element weight:**

The weight of the element referred to in field 25 must be reported. All weights must be reported in grams. The decimal digits appearing in the accounting lines can be reported up to a maximum of three decimal places.

27. **Isotope:**

This code indicates the fissile isotopes involved and should be used when the weight of fissile isotopes is reported (28). Use the code G for U-235, K for U-233, and J for a mixture of U-235 and U-233.

28. **Fissile weight:**

Unless otherwise stated in the particular safeguard provisions, the weight of fissile isotopes must only be reported for enriched uranium and category changes involving enriched uranium. All weights must be reported in grams. The decimal digits appearing in the accounting lines can be reported up to a maximum of three decimal places.

29. **Obligation:**

Indication of the particular safeguards obligation assumed by the Community under an Agreement concluded with a third country or an international organisation, to which the material is subject (Article 18). The Commission will communicate the appropriate codes to the installations.

30. **Previous category:**

Code of the category of nuclear material before the category change. The corresponding code after the change must be reported in field 25. Use only with the inventory change codes CE, CB and CC.

31. **Previous obligation:**

Code of the particular safeguards obligation to which the nuclear material was subject before the change. The corresponding obligation code after the change must be reported in field 29. Use only with the inventory change codes BR, CR, PR and SR.

32. **CAM code:**

Code for installations holding small quantities of nuclear material. The Commission will communicate to the operator the appropriate code. Simplified reporting procedures apply to these operators.

33. **Document:**

Operator-defined reference to supporting document(s).

34. **Container ID:**

Operator-defined container number. Optional data element which can be used in those cases where the container number does not appear in the batch designation.

35. **Correction:**

Corrections have to be made by deleting the wrong line(s) and adding the correct one(s), where appropriate. The following codes must be used:

Code	Explanation
D	Deletion. The line to be deleted must be identified by indicating in field 36 the report number (4), in field 37 the line number (22) and in field 41 the CRC (40) which were declared for the original line. Other fields need not be reported
A	Addition (forming part of a deletion/addition pair). The correct line must be reported with all data fields, including the 'previous report' field (36) and the 'previous line' field (37). The 'previous line' field (37) must repeat the line number (22) of the line being replaced by the deletion/addition pair
L	Late line (stand-alone addition). The late line to be added must be reported with all data fields, including the 'previous report' field (36). The 'previous report' field (36) must contain the report number (4) of the report in which the late line should have been included

36. **Previous report:**

Indicate the report number (4) of the line to be corrected.

37. **Previous line:**

For deletions, or additions forming part of a deletion/addition pair, indicate the line number (22) of the line to be corrected.

38. **Comment:**

Free-text comment field for short comments by operator (replaces separate concise note).

39. **Burn-up:**

For inventory changes of type NP or NL in power reactors, burn-up in MWdays/tonne.

40. **CRC:**

Hash code of line for quality control purposes. The Commission will inform the operator of the algorithm to be used.

41. **Previous CRC:**

Hash code of the line to be corrected.

42. **Advance notification:**

Reference code for the advance notification (Articles 21 and 22). Use with inventory changes SF and RF and with those inventory changes of type SD and RD when the States where the shipper and receiver are located are not party to the same safeguards agreement with the International Atomic Energy Agency and Euratom.

43. **Campaign:**

Unique identifier for the reprocessing campaign. Use only for inventory changes in the process material balance area(s) of spent fuel reprocessing installations.

44. **Reactor:**

Unique identifier for the reactor from which irradiated fuel is being stored or reprocessed. Use only for inventory changes in spent fuel storage or reprocessing installations.

45. **Error path:**

Special code describing measurement errors and their propagation, for material balance evaluation purposes. The codes are agreed between the installation and the Commission.

GENERAL REMARKS CONCERNING THE COMPLETION OF THE REPORTS

1. In the case of transfer of nuclear material, the shipper must provide the receiver with all the necessary information for the inventory change report.

2. If numerical data contain fractions of units, a point should precede the decimal digits.

3. The following 55 characters may be used: the 26 capital letters A to Z, figures 0 to 9 and the characters 'plus', 'minus', 'slash', 'asterisk', 'space', 'equal', 'greater than', 'less than', 'point', 'comma', 'open bracket', 'close bracket', 'colon', 'dollar', 'percent', 'quotation mark', 'semi-colon', 'question mark' and 'ampersand'.

4. Under Article 79 of the Treaty, those subject to safeguards requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and the first paragraph of Article 79 of the Treaty.

5. Reports must be prepared in the XML version of labelled format.

6. The reports, duly completed and digitally signed, should be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg.

ANNEX IV

MATERIAL BALANCE REPORT (MBR)

Label/Tag	Content	Comments	#
MBA	Character (4)	MBA code of reporting MBA	1
Report type	Character (1)	M for Material Balance Report	2
Report date	DDMMYYYY	Date on which the report was completed	3
Start report	DDMMYYYY	Starting date of MBR (date of last PIT + 1 day)	4
End report	DDMMYYYY	End date of MBR (date of current PIT)	5
Report number	Number (8)	Sequential number, no gaps	6
Element category	Character (1)	Element category	7
Line count	Number (8)	Total number of lines reported	8
Reporting person	Character (20)	Name of person responsible for report	9
IC code	Character (2)	Type of inventory change	10
Line number	Number (8)	Sequential number, no gaps	11
Element weight	Number (24.3)	Element weight	12
Isotope	Character (1)	G for U-235, K for U-233, J for a mixture of U-235 and U-233	13
Fissile weight	Number (24.3)	Weight of fissile isotope	14
Obligation	Character (2)	Two-character code	15
Correction	Character (1)	D for deletions, A for additions forming part of a deletion/addition pair, L for late lines (stand-alone additions)	16
Previous report	Number (8)	Report number of line to be corrected	17
Previous line	Number (8)	Line number of line to be corrected	18
Comment	Character (256)	Operator comment	19
CRC	Number (12)	Hash code of line for quality control purposes	20
Previous CRC	Number (12)	Hash code of line to be corrected	21

Explanatory notes

1. **MBA:**

   Code of the reporting material balance area. This code is notified to the installation concerned by the Commission.

2. **Report type:**

   M for material balance reports.

3. **Report date:**

   Date on which the report was completed.

4. **Start report:**

   Start date of MBR, date of the day immediately following the day of the previous physical inventory taking.

5. **End report:**

   End date of MBR, date of current physical inventory taking.

6. **Report number:**

   Sequential number, no gaps.

7. **Element category:**

   The following code for categories of nuclear material must be used:

Category	Code
Plutonium	P
High enriched uranium (20 % enrichment and above)	H
Low enriched uranium (higher than natural but less than 20 % enrichment)	L
Natural uranium	N
Depleted uranium	D
Thorium	T

8. **Line count:**

   Total number of lines reported.

9. **Reporting person:**

   Name of person responsible for report.

10. **IC code:**

The different types of inventory information and of inventory change should be entered in the sequence indicated below. The following codes must be used:

Keyword	Code	Explanation
Beginning physical inventory	PB	Physical inventory at the beginning of the reporting period (must be equal to the physical inventory at the end of the previous reporting period)
Inventory changes (for codes, see list below)		For each type of inventory change, 'RB' excluded, one consolidated line has to be entered for the entire reporting period (first increases, then decreases). Inventory changes with original date before the current period should be excluded
Ending book inventory	BA	Book inventory at the end of the reporting period. It must be equal to the arithmetic sum of the MBR entries above
Ending physical inventory	PE	Physical inventory at the end of the reporting period
Material unaccounted for	MF	Material unaccounted for. Must be calculated as 'ending physical inventory (PE)' minus 'ending book inventory (BA)'

For inventory changes, one of the following codes must be used:

Keyword	Code	Explanation
Receipt	RD	Receipt of nuclear material from a material balance area within the European Union
Import	RF	Import of nuclear material from outside the European Union
Receipt from non-safeguarded activity	RN	Receipt of nuclear material from a non-safeguarded activity (Article 34)
Shipment	SD	Transfer of nuclear material to a material balance area within the European Union
Export	SF	Export of nuclear material outside the European Union
Shipment to non-safeguarded activity	SN	Transfer of nuclear material to a non-safeguarded activity (Article 34)
Transfer to conditioned waste	TC	Nuclear material, contained in waste and measured or estimated on the basis of measurements, which has been conditioned in such a way (e.g. in glass, cement, concrete or bitumen) that it is not suitable for further nuclear use. The quantity of nuclear material involved is to be subtracted from the inventory of the material balance area. Separate records must be kept for this type of material

Keyword	Code	Explanation
Discards to the environment	TE	Nuclear material, contained in waste and measured or estimated on the basis of measurements, which has been irrevocably discarded to the environment as the result of a licensed discharge. The quantity of nuclear material involved is to be subtracted from the inventory of the material balance area
Transfer to retained waste	TW	Nuclear material, contained in waste and measured or estimated on the basis of measurements, which has been transferred to a specific location within the material balance area from which it could be retrieved. Waste belonging to this category has not yet been conditioned and is regarded as economically irrecoverable by current technology. The quantity of nuclear material involved is to be subtracted from the inventory of the material balance area. Separate records must be kept for this type of material
Retransfer from conditioned waste	FC	Retransfer of conditioned waste to the inventory of the material balance area. This applies whenever conditioned waste undergoes processing
Retransfer from retained waste	FW	Retransfer of retained waste to the inventory of the material balance area. This applies whenever retained waste is retrieved from the specific location within the material balance area, either for processing in the material balance area or for shipment from the material balance area
Accidental loss	LA	Irretrievable and inadvertent loss of a quantity of nuclear material as the result of an operational accident. Use of this code in the MBR is only allowed if a special report was sent to the Commission when the inventory change occurred or became known
Accidental gain	GA	Nuclear material unexpectedly found, except when detected in the course of a physical inventory taking. Use of this code in the MBR is only allowed if a special report was sent to the Commission when the inventory change occurred or became known
Category change	CE	Accountancy transfer of a quantity of nuclear material from one category (Article 19) to another as a result of an enrichment process
Category change	CB	Accountancy transfer of a quantity of nuclear material from one category (Article 19) to another as a result of a blending operation
Category change	CC	Accountancy transfer of a quantity of nuclear material from one category (Article 19) to another for all types of category change not covered by codes CE and CB
Change in particular obligation	BR	Accountancy transfer of a quantity of nuclear material from one particular safeguards obligation to another (Article 18), to balance the total uranium stock following a blending operation

Keyword	Code	Explanation
Change in particular obligation	PR	Accountancy transfer of a quantity of nuclear material from one particular safeguards obligation to another (Article 18), used when nuclear material enters or leaves an accountancy pool
Change in particular obligation	SR	Accountancy transfer of a quantity of nuclear material from one particular safeguards obligation to another (Article 18), following an obligation exchange or a substitution
Change in particular obligation	CR	Accountancy transfer of a quantity of nuclear material from one particular safeguards obligation to another (Article 18), for all cases not covered by codes BR, PR or SR
Nuclear production	NP	Increase in the quantity of nuclear material due to nuclear transformation
Nuclear loss	NL	Decrease in the quantity of nuclear material due to nuclear transformation
Shipper/receiver difference	DI	Shipper/receiver difference (Article 2) The difference between the quantity of nuclear material in a batch as measured at the receiving material balance area and as stated by the shipping material balance area
New measurement	NM	Quantity of nuclear material, in one particular batch, accounted for in the nuclear material balance area, being the difference between a newly measured quantity and the quantity formerly accounted for, and which is neither a shipper/receiver difference nor a correction
New balance	NB	Quantity of nuclear material accounted for in the material balance area, being the difference between the result of a physical inventory taken by the plant operator for his own purposes (without reporting a physical inventory listing to the Commission) and the book inventory established on the same date
Roundings	RA	Rounding adjustment to make the sum of the quantities reported in a given period coincide with the ending book inventory of the material balance area
Isotope adjustment	R5	Adjustment to make the sum of the isotope quantities reported coincide with the ending book inventory for U-235 of the material balance area
Material production	MP	Quantity of nuclear material, obtained from substances originally not subject to safeguards, which has become subject to safeguards because its concentration now exceeds the minimum levels
Termination of use	TU	Quantity of nuclear material incorporated in products for non-nuclear purposes from which it is regarded as economically irrecoverable by current technology

11. **Line number:**

Sequential number starting with 1, no gaps.

12. **Element weight:**

The weight of the element referred to in field 7 must be reported. All weights must be reported in grams. The decimal digits appearing in the accounting lines can be reported up to a maximum of three decimal places.

13. **Isotope:**

This code indicates the kind of fissile isotopes involved and should be used when the weight of fissile isotopes is reported. Use the code G for U-235, K for U-233, and J for a mixture of U-235 and U-233.

14. **Fissile weight:**

Unless otherwise stated in the particular safeguard provisions, the weight of fissile isotopes must only be reported for enriched uranium and category changes involving enriched uranium. All weights must be reported in grams. The decimal digits appearing in the accounting lines can be reported up to a maximum of three decimal places.

15. **Obligation:**

Indication of the particular safeguards obligation assumed by the Community under an Agreement concluded with a third country or an international organisation, to which the material is subject (Article 18). The Commission will communicate the appropriate codes to the installations.

16. **Correction:**

Corrections have to be made by deleting the wrong line(s) and adding the correct one(s), where appropriate. The following codes must be used:

Code	Explanation
D	Deletion. The line to be deleted must be identified by indicating in field 17 the report number (6), in field 18 the line number (11) and in field 21 the CRC (20) which were declared for the original line. Other fields need not be reported
A	Addition (forming part of a deletion/addition pair). The correct line must be reported with all data fields, including the 'previous report' field (17) and the 'previous line' field (18). The 'previous line' field (18) must repeat the line number (11) of the line being replaced by the deletion/addition pair
L	Late line (stand-alone addition). The late line to be added must be reported with all data fields, including the 'previous report' field (17). The 'previous report' field (17) must contain the report number (6) of the report in which the late line should have been included

17. **Previous report:**

Indicate the report number (6) of the line to be corrected.

18. **Previous line:**

For deletions, or additions forming part of a deletion/addition pair, indicate the line number (11) of the line to be corrected.

19. **Comment:**

Free-text comment field for short comments by operator (replaces separate concise note).

20. **CRC:**

Hash code of line for quality control purposes. The Commission will inform the operator of the algorithm to be used.

21. **Previous CRC:**

Hash code of the line to be corrected.

GENERAL REMARKS CONCERNING THE COMPLETION OF THE REPORTS

General remarks 2, 3, 4, 5 and 6 at the end of Annex III apply *mutatis mutandis*.

ANNEX V

PHYSICAL INVENTORY LISTING (PIL)

Label/Tag	Content	Comments	#
MBA	Character (4)	MBA code of reporting MBA	1
Report type	Character (1)	P for physical inventory listings	2
Report date	DDMMYYYY	Date on which the report was completed	3
Report number	Number (8)	Sequential number, no gaps	4
PIT date	DDMMYYYY	Date on which the physical inventory was taken	5
Line count	Number (8)	Total number of lines reported	6
Reporting person	Character (20)	Name of person responsible for report	7
PIL_ID	Number (8)	Sequential number	8
Batch	Character (20)	Unique identifier for a batch of nuclear material	9
KMP	Character (1)	Key measurement point	10
Measurement	Character (1)	Measurement code	11
Element category	Character (1)	Element category	12
Material form	Character (2)	Material form code	13
Material container	Character (1)	Material container code	14
Material state	Character (1)	Material state code	15
Line number	Number (8)	Sequential number, no gaps	16
Items	Number (6)	Number of items	17
Element weight	Number (24.3)	Element weight	18
Isotope	Character (1)	G for U-235, K for U-233, J for a mixture of U-235 and U-233	19
Fissile weight	Number (24.3)	Weight of fissile isotope	20
Obligation	Character (2)	Two-character code	21
Document	Character (20)	Operator-defined reference to supporting documents	22
Container ID	Character (20)	Operator-defined identifier for the container	23
Correction	Character (1)	D for deletions, A for additions forming part of a deletion/addition pair, L for late lines (stand-alone additions)	24

Label/Tag	Content	Comments	#
Previous report	Number (8)	Report number of line to be corrected	25
Previous line	Number (8)	Line number of line to be corrected	26
Comment	Character (256)	Operator comment	27
CRC	Number (12)	Hash code of line for quality control purposes	28
Previous CRC	Number (12)	Hash code of line to be corrected	29

Explanatory notes

1. **MBA:**

   Code of the reporting material balance area. This code is notified to the installation concerned by the Commission.

2. **Report type:**

   P for physical inventory listings.

3. **Report date:**

   Date on which the report was completed.

4. **Report number:**

   Sequential number, no gaps.

5. **PIT date:**

   Day, month and year when the physical inventory was taken, reflecting the situation at 24.00.

6. **Line count:**

   Total number of lines reported.

7. **Reporting person:**

   Name of person responsible for report.

8. **PIL_ID:**

   Sequential number.

9. **Batch:**

   If batch follow-up is required in the particular safeguard provisions, the batch designation previously used for the batch in an inventory change report or in a previous physical inventory listing must be used.

10. **KMP:**

    Key measurement point. The codes are notified to the installation concerned in the particular safeguard provisions. If no code has been specified, '&' should be used.

11. **Measurement:**

The basis on which the quantity of nuclear material reported was established has to be indicated. One of the following codes must be used:

Measured	Estimated	Explanation
M	E	In the reporting material balance area
N	F	In another material balance area
T	G	In the reporting material balance area when the weights have already been given in a previous inventory change report or physical inventory listing
L	H	In another material balance area when the weights have already been given in a previous inventory change report or physical inventory listing for the present material balance area

12. **Element category:**

The following categories of nuclear material must be used:

Category	Code
Plutonium	P
High enriched uranium (20 % enrichment and above)	H
Low enriched uranium (higher than natural and less than 20 % enrichment)	L
Natural uranium	N
Depleted uranium	D
Thorium	T

13. **Material form:**

The following codes must be used:

Main category	Subcategory	Code
Ores		OR
Concentrates		YC
Uranium hexafluoride (UF_6)		U6
Uranium tetrafluoride (UF_4)		U4
Uranium dioxide (UO_2)		U2
Uranium trioxide (UO_3)		U3
Uranium oxide (U_3O_8)		U8
Thorium oxide (ThO_2)		T2
Solutions	Nitrate	LN
	Fluoride	LF
	Other	LO

Main category	Subcategory	Code
Powder	Homogeneous	PH
	Heterogeneous	PN
Ceramics	Pellets	CP
	Spheres	CS
	Other	CO
Metal	Pure	MP
	Alloys	MA
Fuel	Rods, pins	ER
	Plates	EP
	Bundles	EB
	Assemblies	EA
	Other	EO
Sealed sources	—	QS
Small quantities/samples	—	SS
Scrap	Homogeneous	SH
	Heterogeneous (clean-outs, clinkers, sludges, fines, other)	SN
Solid waste	Hulls	AH
	Mixed (plastics, gloves, papers, etc.)	AM
	Contaminated equipment	AC
	Other	AO
Liquid waste	Low active	WL
	Medium active	WM
	High active	WH
Conditioned waste	Vitrified	NV
	Glass	NG
	Bitumen	NB
	Concrete	NC
	Other	NO

14. **Material container:**

The following codes must be used:

Type of container	Code
Cylinder	C
Pack	P
Drum	D
Discrete fuel unit	S
Bird cage	B
Bottle	F
Tank or other container	T
Other	O

15. **Material state:**

The following codes must be used:

State	Code
Fresh nuclear material	F
Irradiated nuclear material	I
Waste	W
Irrecoverable material	N

16. **Line number:**

Sequential number starting with 1 in each report, no gaps.

17. **Items:**

Each physical inventory line must indicate the number of items involved. If a group of items belonging to the same batch are reported as several lines, the sum of the number of items reported must equal the total number of items in the group. If the lines involve more than one element, the number of items should be declared in the line(s) for the element of highest strategic value only (in descending order: P, H, L, N, D, T).

18. **Element weight:**

The weight of the element referred to in field 12 must be reported. All weights must be reported in grams. The decimal digits appearing in the accounting lines can be reported up to a maximum of three decimal places.

19. **Isotope:**

This code indicates the fissile isotopes involved and should be used when the weight of fissile isotopes is reported. Use the code G for U-235, K for U-233, and J for a mixture of U-235 and U-233.

20. **Fissile weight:**

Unless otherwise stated in the particular safeguard provisions, the weight of fissile isotopes must only be reported for enriched uranium and category changes involving enriched uranium. All weights must be reported in grams. The decimal digits appearing in the accounting lines can be reported up to a maximum of three decimal places.

21. **Obligation:**

Indication of the particular safeguards obligation assumed by the Community under an Agreement concluded with a third country or an international organisation, to which the material is subject (Article 18). The Commission will communicate the appropriate codes to the installations.

22. **Document:**

Operator-defined reference to supporting document(s).

23. **Container ID:**

Operator-defined container number. Optional data element which can be used in those cases where the container number does not appear in the batch designation.

24. **Correction:**

Corrections have to be made by deleting the wrong line(s) and adding the correct one(s), where appropriate. The following codes must be used:

Code	Explanation
D	Deletion. The line to be deleted must be identified by indicating in field 25 the report number (4), in field 26 the line number (16) and in field 29 the CRC (28) which were declared for the original line. Other fields need not be reported
A	Addition (forming part of a deletion/addition pair). The correct line must be reported with all data fields including the 'previous report' field (25) and the 'previous line' field (26). The 'previous line' field (26) must contain the line number (16) of the line being replaced by the deletion/addition pair
L	Late line (stand-alone addition). The late line to be added must be reported with all data fields, including the 'previous report' field (25). The 'previous report' field (25) must contain the report number (4) of the report in which the late line should have been included

25. **Previous report:**

Indicate the report number (4) of the line to be corrected.

26. **Previous line:**

For deletions, or additions forming part of a deletion/addition pair, indicate the line number (16) of the line to be corrected.

27. **Comment:**

Free-text comment field for short comments by operator (replaces separate concise note).

28. **CRC:**

Hash code of line for quality control purposes. The Commission will inform the operator of the algorithm to be used.

29. **Previous CRC:**

Hash code of the line to be corrected.

GENERAL REMARKS CONCERNING THE COMPLETION OF THE REPORTS

If, on the date the physical inventory was taken, there was no nuclear material in the material balance area, only fields 1, 5, 7 and 17 above should be completed on the report.

General remarks 2, 3, 4, 5 and 6 at the end of Annex III apply *mutatis mutandis*.

ANNEX VI

COMMISSION OF THE EUROPEAN COMMUNITIES — EURATOM SAFEGUARDS

Advance notification of exports/shipments of nuclear material

1. Reference code: .....

2. Material balance area code: .....

3. Installation (shipper): ..... Installation (receiver): .....

....

4. Quantities split up by category of nuclear material and particular safeguards obligation: .....

5. Chemical composition: .....

6. Enrichment or isotopic composition: .....

7. Physical form: .....

8. Number of items: .....

9. Description of containers and seals: .....

10. Shipment identification data: .....

11. Means of transport: .....

12. Location where material will be stored or prepared: .....

13. Last date when material can be identified: .....

14. Approximate dates of dispatch: .....

Expected dates of arrival: .....

15. Use: .....

16. Supply Agency's contractual reference: .....

Name and position of signatory: .....

Date and place of dispatch of notification: .....

.....
(Signature)

Explanatory notes

1. Reference code for advance notifications to be used in the inventory change report (use up to 8 characters).

2. Code of the reporting material balance area as notified by the Commission to the installation concerned.

3. Name, address and country of the installation shipping, and of the installation receiving, the nuclear material. The receiver of ultimate destination should also be indicated where applicable.

4. The total weight of the elements should be given in grams. The weight of fissile isotopes should be indicated, if applicable. The weights must be split up by category of nuclear material and particular safeguards obligation.

5. Chemical composition should be indicated.

6. If applicable, the degree of enrichment or the isotopic composition should be indicated.

7. Use the description of materials as laid out in Annex III (14) to this Regulation.

8. The number of items included in the shipment should be indicated.

9. Description (type) of containers, including features that would permit sealing.

10. Shipment identification data (e.g. container markings or numbers).

11. Indicate, where appropriate, the means of transport.

12. Indicate the location within the material balance area where the nuclear material is prepared for shipping and can be identified, and where its quantity and composition can if possible be verified.

13. Last date when material can be identified and when its quantity and composition can if possible be verified.

14. Approximate dates of dispatch and of expected arrival at destination.

15. Indicate the use to which the nuclear material has been assigned.

16. Indicate, where appropriate:

    — Supply Agency's contractual reference or, if not available, the date on which the contract was concluded or considered as concluded by the Supply Agency, and any useful references;

    — for jobbing contracts (Article 75 of the Treaty) and for contracts for the supply of small quantities of material (Article 74 of the Treaty, and Commission Regulation No 17/66/Euratom as amended by Regulation (Euratom) No 3137/74), the date of notification to the Supply Agency and any useful references.

NB:

Under Article 79 of the Treaty, those subject to safeguards requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and the first paragraph of Article 79 of the Treaty.

This form, duly completed and signed, must be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg.

ANNEX VII

COMMISSION OF THE EUROPEAN COMMUNITIES — EURATOM SAFEGUARDS

Advance notification of imports/receipts of nuclear material

1. Reference code: .....

2. Material balance area code: .....

3. Installation (receiver): ..... Installation (shipper): .....

....

4. Quantities split up by category of nuclear material and particular safeguard obligation: .....

5. Chemical composition: .....

6. Enrichment or isotopic composition: .....

7. Physical form: .....

8. Number of items: .....

9. Description of containers and seals: .....

10. Means of transport: .....

11. Date of arrival: .....

12. Location where materials will be unpacked: .....

13. Date(s) when materials will be unpacked: .....

14. Supply Agency's contractual reference: .....

Name and position of signatory: .....

Date and place of dispatch of notification: .....

.....

(Signature)

Explanatory notes

1. Reference code for advance notifications to be used in the inventory change report (use up to 8 characters).

2. Code of the reporting material balance area as notified by the Commission to the installation concerned.

3. Name, address and country of the installation receiving, and of the installation shipping, the nuclear material.

4. The total weight of the elements should be given in grams. The weight of fissile isotopes shall be indicated if applicable. The weights must be split up by category of nuclear material and particular safeguards obligation.

5. Chemical composition should be indicated.

6. If applicable, the degree of enrichment or the isotopic composition should be indicated.

7. Use the description of materials as laid out in Annex III (14) to this Regulation.

8. The number of items included in the shipment shall be indicated.

9. Description (type) of containers and, if possible, of the seals affixed.

10. Indicate, where appropriate, the means of transport.

11. Expected or actual date of arrival in the reporting material balance area.

12. Indicate the location within the material balance area where the material will be unpacked and can be identified, and where its quantity and composition can be verified.

13. Date(s) when material will be unpacked.

14. Indicate, where appropriate:

    — Supply Agency's contractual reference or, if not available, the date on which the contract was concluded or considered as concluded by the Supply Agency, and any useful references;

    — for jobbing contracts (Article 75 of the Treaty) and for contracts for the supply of small quantities of material (Article 74 of the Treaty, and Commission Regulation No 17/66/Euratom as amended by Regulation (Euratom) No 3137/74), the date of notification to the Supply Agency and any useful references.

NB:

Under Article 79 of the Treaty, those subject to safeguards requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and the first paragraph of Article 79 of the Treaty.

This form, duly completed and signed, must be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg.

ANNEX VIII

COMMISSION OF THE EUROPEAN COMMUNITIES — EURATOM SAFEGUARDS

Declaration of ore exports/shipments (1)

Undertaking (2): .....

Mine (3): ..... Code (4): .....

Year: .....

Date	Consignee	Quantity contained in g:		Remarks
		of uranium	of thorium	

Date and place of dispatch of declaration: .....

Name and position of signatory: .....

.....

(Signature)

Explanatory notes

1. The shipment declaration is to be made at the latest by the end of January of each year for the previous year, with a separate entry for each consignee. The export declaration is to be made for each export consignment at the date of shipment.

2. Name and address of the reporting undertaking.

3. Name of the mine in respect of which the declaration is made.

4. Code of the mine as notified to the undertaking by the Commission.

NB:

Under Article 79 of the Treaty, those subject to safeguards requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and the first paragraph of Article 79 of the Treaty.

This form, duly completed and signed, must be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg.

ANNEX IX

COMMISSION OF THE EUROPEAN COMMUNITIES — EURATOM SAFEGUARDS

Request for derogation of an installation from the rules governing the form and frequency of reports

1. Date: .....
2. Installation: .....
3. Material balance area code: .....
4. Category of nuclear material: .....
5. Enrichment or isotopic composition: .....
6. Quantities: .....
7. Chemical composition: .....
8. Physical form: .....
9. Number of items: .....
10. Type of derogation (Article 20(2)):
    (a) small quantities kept unchanged for a long period
    (b) non-nuclear activities
    (c) sensing components
    (d) Pu with Pu-238 content greater than 80 %
11. Intended use: .....
12. Particular safeguards obligation: .....
13. Date of transfer: .....

Name and position of signatory: .....

Date and place of dispatch of request: .....

.....
(Signature)

Date: .....

Derogation granted as above

Name and position of signatory granting the derogation: .....

Signature: ..... (for the Commission)

Explanatory notes

This form should be used either when the initial request is made for derogation of an installation from the rules governing the form and frequency of reports, or when nuclear material which may qualify for a derogation is imported from a third country.

Point 13 should be used only in the case of imports.

A separate request should be submitted for each type of derogation (Article 20(2)).

NB:

Under Article 79 of the Treaty, those subject to safeguards requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and the first paragraph of Article 79 of the Treaty.

This form, duly completed and signed, must be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg.

ANNEX X

COMMISSION OF THE EUROPEAN COMMUNITIES — EURATOM SAFEGUARDS

Annual report or Export report for derogated nuclear material (1)

MBA code: ..... Declaration date: ..... Declaration No: .....

Name of the installation: ..... Reporting period: from: ..... to: .....

Type of report (2)	Entry (3)	Ref. (4)	Inventory change information (5)	Code or name and address of corresponding installation	Element	Enrichment or isotopic composition	Weight of element	Use		Type of derogation under Article 20(2)
								Nuclear or non-nuclear (6)	Description (7)	

Date and place of dispatch of report: .....

Name and position of signatory: .....

.....

(Signature)

Explanatory notes

1. This form should be used either as an annual report to declare any changes in the inventory of derogated material as well as the stocks at the beginning and at the end of the reporting period (Article 20(3)), or as an export report in the case of exports to a third country (Article 20(4)).

2. The 'Type of report' column should show 'A' when the form is used for an annual report or 'EXP' when the form is used to report exports of derogated nuclear material.

3. 'Entry' in each declaration should be numbered sequentially, beginning with '1'.

4. The 'Ref.' column should be used to refer to another entry. The contents of the 'Ref.' column consist of the relevant declaration and entry numbers (e.g. 10-20 refers to entry 20 of declaration 10). The reference indicates that the current entry adds to or updates information reported earlier. Several references may be inserted, if necessary.

5. The 'Inventory change information' column should be used to state the type of inventory change that occurred during the reporting period and/or the stock at the beginning and at the end of the reporting period.

   A separate entry should be made for each type of derogation, for each corresponding installation and for each type of inventory change.

6. The 'Nuclear or non-nuclear' column should show 'N' if the derogated nuclear material is used in nuclear activities or 'NN' if it is used in non-nuclear activities.

7. The 'Description' column should indicate the actual or intended use of the derogated nuclear material.

NB:

Under Article 79 of the Treaty, those subject to safeguards requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and the first paragraph of Article 79 of the Treaty.

This form, duly completed and signed, must be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg.

ANNEX XI

COMMISSION OF THE EUROPEAN COMMUNITIES — EURATOM SAFEGUARDS

Guidelines for communicating the outline programme of activities

Communications should, if possible, cover the next two years.

In particular, communications should indicate:

— types of operations, e.g. proposed campaigns with indication of type and quantity of fuel elements to be fabricated or reprocessed, enrichment programmes, reactor operating programmes, with planned shutdowns;

— expected schedule of arrival of materials, stating the amount of material per batch, the form (UF_6, UO_2, fresh or irradiated fuels, etc.), anticipated type of container or packaging;

— anticipated schedule of waste processing campaigns (other than repackaging, or further conditioning without separation of elements), stating the amount of material per batch, the form (glass, high active liquid, etc.), anticipated duration and location;

— dates by which the quantity of material in products is expected to be determined, and dates of dispatch;

— dates and duration of physical inventory taking.

NB:

Under Article 79 of the Treaty, those subject to safeguards requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and the first paragraph of Article 79 of the Treaty.

This communication, duly completed and signed, must be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg.

ANNEX XII

COMMISSION OF THE EUROPEAN COMMUNITIES — EURATOM SAFEGUARDS

Advance notification of further waste processing activities (1)

Name of installation: ..... Declaration date: .....

Declaration No: .....

Entry (2)	Ref. (3)	Waste type prior to conditioning (4)	Conditioned form (5)	Number of items (6)	Quantity (7)			Location (8)	Processing location (9)	Processing dates (10)	Processing purpose (11)
					P	H	U-233				

Date and place of dispatch of report: .....

Name and position of signatory: .....

.....

(Signature)

Explanatory notes

1. This form should be used for advance notification when further processing of waste is planned in accordance with Article 32. Any subsequent change in processing dates or processing location should also be notified. A separate entry should be made for each campaign of further processing other than repackaging of the waste, or its further conditioning not involving the separation of elements, carried out for storage or disposal purposes.
2. 'Entry' in each declaration should be numbered sequentially, beginning with '1'.
3. The 'Ref.' column should be used to refer to another entry. The contents of the 'Ref.' column consist of the relevant declaration and entry numbers (e.g. 10-20 refers to entry 20 of declaration 10). The reference indicates that the current entry adds to or updates information reported earlier. Several references may be inserted, if necessary.
4. The 'Waste type prior to conditioning' column should state the type of waste before any conditioning took place, e.g. hulls, feed clarification sludge, high active liquid, or intermediate active liquid.
5. The 'Conditioned form' column should show the current conditioned form of the waste, e.g. glass, ceramic, cement or bitumen.
6. The 'Number of items' column should show the number of items, e.g. glass canisters or cement blocks, to be involved in a single processing campaign.
7. The 'Quantity' column should include the total amount, in grams, of plutonium, high enriched uranium or uranium-233 contained in the items entered in the 'Number of Items' column. The entry in the 'Quantity' column may be based on the quantity data used in the inventory change reports, and does not require a measurement of each item.
8. The 'Location' column should include the name and address of the installation and should show the location of the waste at the time of the declaration. The address must be sufficiently detailed to indicate the geographical position of the location in relation to other locations specified in this or other declarations, and to indicate how the location may be reached should access be necessary. If a location is on the site of a nuclear installation, the installation code should be included in the location column.
9. The 'Processing location' column should show the location where the planned processing is to take place.
10. The 'Processing dates' column should indicate the dates on which the further processing campaign is expected to begin and to end.
11. The 'Processing purpose' column should indicate the intended result of the processing, e.g. recovery of plutonium or separation of specified fission products.

NB:

Under Article 79 of the Treaty, those subject to safeguards requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and the first paragraph of Article 79 of the Treaty.

This form, duly completed and signed, must be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg.

ANNEX XIII

COMMISSION OF THE EUROPEAN COMMUNITIES — EURATOM SAFEGUARDS

Communication of exports/shipments of conditioned waste (1)

Name of the shipping installation: .....

MBA code of the shipping installation: .....

MBA code of the receiving installation (2): .....

Name and address of the receiving installation (3): .....

.....

.....

.....

Reporting period from ..... to ..... (max. 1 calendar month)

Date	Batch description	Quantities	Remarks
		g of P g of U-235 g of U g of T	
		g of P g of U-235 g of U g of T	
		g of P g of U-235 g of U g of T	
		g of P g of U-235 g of U g of T	

Date and place of dispatch of communication: .....

Name and position of signatory: .....

.....

(Signature)

Explanatory notes

1. Exports/shipments may be grouped by destination in one communication. Communications are to be made no later than 15 days after the end of the month in which the exports/shipments occurred.
2. To be filled in for shipments to installations within the territories of the Member States.
3. To be filled in for exports to installations outside the territories of the Member States, or when the required MBA code under (2) is unknown.

NB:

Under Article 79 of the Treaty, those subject to safeguards requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and the first paragraph of Article 79 of the Treaty.

This form, duly completed and signed, must be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg.

ANNEX XIV

COMMISSION OF THE EUROPEAN COMMUNITIES — EURATOM SAFEGUARDS

Communication of imports/receipts of conditioned waste (1)

Name of the receiving installation: .....

MBA code of the receiving installation: .....

Name and address of the shipping installation: .....

.....

.....

.....

Reporting period from ..... to ..... (max. 1 calendar month)

Date	Batch description	Quantities	Remarks
		g of P g of U-235 g of U g of T	
		g of P g of U-235 g of U g of T	
		g of P g of U-235 g of U g of T	
		g of P g of U-235 g of U g of T	

Date and place of dispatch of communication: .....

Name and position of signatory: .....

.....

(Signature)

Explanatory notes

1. This communication has only to be made for conditioned waste which has been received from installations without an MBA code or from installations outside the territories of the Member States.

2. Imports/receipts may be grouped by origin in one communication. Communications are to be made no later than 15 days after the end of the month in which the imports/receipts occurred.

NB:

Under Article 79 of the Treaty, those subject to safeguards requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and the first paragraph of Article 79 of the Treaty.

This form, duly completed and signed, must be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg.

ANNEX XV

COMMISSION OF THE EUROPEAN COMMUNITIES — EURATOM SAFEGUARDS

Annual report of change in location of conditioned waste (1)

Name of installation: ..... Declaration date: .....

Declaration No: ..... Reporting period: .....

Entry	Ref.	Waste type prior to conditioning	Conditioned form	Number of items	Quantity (7)			Previous location	New location
(2)	(3)	(4)	(5)	(6)	P	H	U-233	(8)	(9)

NB: Entries should be grouped by type of waste (prior to conditioning and after conditioning) and by previous location.

Date and place of dispatch of report: .....

Name and position of signatory: .....

.....

(Signature)

Explanatory notes

1. This annual report should declare any changes in location of wastes covered by Article 33(3) that occurred during the preceding calendar year. A separate entry is required for each change of location during the year.

2. 'Entry' in each declaration should be numbered sequentially, beginning with '1'.

3. The 'Ref.' column should be used to refer to another entry. The contents of the 'Ref.' column consist of the relevant declaration and entry numbers (e.g. 10-20 refers to entry 20 of declaration 10). The reference indicates that the current entry adds to or updates information reported earlier. Several references may be inserted, if necessary.

4. The 'Waste type prior to conditioning' column should show the type of waste before any conditioning took place, e.g. hulls, feed clarification sludge, high active liquid, or intermediate active liquid.

5. The 'Conditioned form' column should show the current conditioned form of the waste, e.g. glass, ceramic, cement or bitumen.

6. The 'Number of items' column should show the number of items, e.g. glass canisters or cement blocks moved during the year from the same originating ('previous') location to the same new location.

7. The 'Quantity' column should include the total amount, in grams, of plutonium, high enriched uranium or uranium-233 contained in the items entered in the 'Number of items' column. The 'Quantity' column may be based on the quantity data used in the inventory change reports, e.g. the average quantity of nuclear material per item, and does not require a measurement of each item.

8. The 'Previous location' column should indicate the location of the waste before the change in location.

9. The 'New location' column should indicate the location after the change.

NB:

Under Article 79 of the Treaty, those subject to safeguards requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and the first paragraph of Article 79 of the Treaty.

This form, duly completed and signed, must be forwarded to the European Commission, Euratom Safeguards Office, L-2920 Luxembourg.

Proposal for a Council Regulation imposing a definitive countervailing duty on imports of certain ring binder mechanisms (RBM) originating in Indonesia and terminating the anti-subsidy proceeding in respect of imports of certain RBM originating in India

(2002/C 227 E/03)

COM(2002) 245 final

(Submitted by the Commission on 21 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1] and in particular Article 15 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Present investigation

(1) On 18 May 2001, the Commission announced by a notice (hereinafter referred to as 'Notice of Initiation') published in the *Official Journal of the European Communities* [2] the initiation of an anti-subsidy proceeding with regard to imports into the Community of certain ring binder mechanisms (hereinafter referred to as 'RBM') originating in India and Indonesia and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged on 3 April 2001 by the following Community producers: Koloman Handler AG ('Koloman'), Austria, and Krause Ringbuchtechnik GmbH & Co. KG ('Krause'), Germany (the 'complainants') representing a major proportion, in this case about 90 %, of the Community production of RBMs. The complaint contained evidence of subsidisation of the said product, and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The initiation of a parallel anti-dumping proceeding concerning imports of the same product originating in the same countries was announced by a notice published in the *Official Journal of the European Communities* [3], on the same date.

(4) Prior to the initiation of the proceeding and in accordance with Article 10(9) of Council Regulation (EC) No 2026/97 (hereinafter referred to as the 'basic Regulation'), the Commission notified the Governments of India and Indonesia that it had received a properly documented complaint alleging that subsidised imports of RBMs originating in India and Indonesia are causing material injury to the Community industry. Both Governments were invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. Consultations with both Governments were held with the Commission in Brussels. Due note was taken of the comments made by these Governments in regard to the allegations contained in the complaint regarding subsidised imports and material injury being suffered by the Community industry, and a certain number of the alleged schemes were subsequently not included in the investigation.

(5) The Commission officially advised the Community producers, exporting producers, importers and users known to be concerned, the representatives of the exporting countries and the complainant of the initiation of the proceeding. The parties concerned had the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation.

(6) The Commission sent questionnaires to all parties known to be concerned and to all other companies which made themselves known within the deadlines set out in the Notice of Initiation. Replies were received from the Government of India, one Community producer, one exporting producer in India, as well as from its related exporter outside the Community and from two importers in the Community as well as from one user related to the importers. The Commission sought and verified all the information it deemed necessary for the purpose of a determination of subsidisation, injury, causation and Community interest. Verification visits were carried out at the premises of the Government of India and the following companies:

(a) Community producers

— Koloman Handler AG, Austria

[1] OJ L 288, 21.10.1997, p. 1.

[2] OJ C 147, 18.5.2001, p. 4.

[3] OJ C 147, 18.5.2001, p. 2.

(b) Exporting producers in India

— ToCheungLee Stationery Mfg Co. Pvt. Ltd., Tiruvallore

(c) Related exporters outside the Community in Hong Kong

— ToCheungLee (BVI) Limited/World Wide Stationery Mfg. Co., Ltd. (ultimate holding company)

(d) Unrelated importers

— Bensons International Systems Ltd, United Kingdom

— Bensons International Systems BV, The Netherlands

(e) User

— Esselte, United Kingdom.

(7) The investigation of subsidisation and injury covered the period from 1 April 2000 to 31 March 2001 ('investigation period' or 'IP'). For the purposes of analysing trends relevant for the assessment of injury, the Commission has examined data relating to the period 1 January 1998 up to the end of the IP ('period considered').

2. **Provisional measures**

(8) Given the need to further examine certain aspects of injury, causation and Community interest, in particular in view of the ongoing restructuring of the complainants, no provisional countervailing measures were imposed on RBMs originating in India and Indonesia.

3. **Subsequent procedure**

(9) All parties were informed of the decision not to impose provisional measures. The Commission continued to seek and verify all information deemed necessary for definitive findings. In particular, further on-the-spot investigations were carried out at the premises of a user of RBMs in the Community and of two unrelated importers in the Community.

(10) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive countervailing duties. They were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the findings have been modified accordingly.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(11) The product concerned is certain ring binder mechanisms ('the product concerned'). These are currently classifiable within CN code ex 8305 10 00. Lever-arch mechanisms, falling within the same CN code, are not included in the scope of this investigation.

(12) RBMs consist of two rectangular steel sheets or wires with at least four half-rings made of steel wire fixed on them and which are kept together by a steel cover. They can be opened either by pulling the half-rings or with a small steel-made trigger mechanism fixed to the RBM. The rings can have different shapes, the most popular ones being round, rectangular or D-shaped.

(13) RBMs are used to file different kinds of documents or papers. They are used, *inter alia*, by producers of ring binders, software and technical manuals, photo and stamp albums, catalogues and brochures.

(14) Several hundred different models of RBMs were sold during the IP in the Community. The models varied by size, shape and number of rings, the size of the base plate and the system to open the rings (pull open or opening trigger). In the absence of a clear dividing line in the range of RBMs and given that all of them have the same basic physical and technical characteristics, and that the models of RBMs can, within certain ranges, replace each other, the Commission established that all RBMs constitute one single product for the purpose of the present proceeding.

2. **Like product**

(15) The Commission found that the RBMs produced and sold on the domestic market in India and those exported to the Community from India had the same basic physical and technical characteristics and uses.

(16) The Commission also found that there was no difference in the basic physical and technical characteristics and uses between the RBMs imported into the Community originating in India and the RBMs produced by the Community industry and sold on the Community market.

(17) In view of the lack of cooperation from any Indonesian producer, the Commission relied on facts available in accordance with Article 28 of the basic Regulation. In this regard and in the absence of any other information available for the country, the Commission considered it appropriate to make use of the information submitted in the complaint, according to which the RBMs produced and sold in Indonesia or exported to the Community and the RBMs produced by the complainant Community producers and sold on the Community market are alike.

(18) It was therefore concluded that the RBMs produced and sold by the Community industry on the Community market, the RBMs originating in India and Indonesia exported to the Community and the RBMs produced and sold on the domestic market in India and Indonesia were all like products within the meaning of Article 1(5) of the basic Regulation.

(19) During the IP the product concerned was subject to a conventional customs duty of 2,7 % in 2000 and 2,7 % in 2001. However under the GSP regime the product concerned imported from India and Indonesia benefited from a reduction amounting to 100 % of the conventional customs duty payable in 2000 and 2001. As a result, the duty applied was 0 % in 2000 and 0 % in 2001.

C. **SUBSIDIES**

1. **India**

(a) *Introduction*

(20) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission investigated the following schemes that allegedly involve the granting of export subsidies:

— Export Processing Zones/Export Oriented Units (EPZ/EOU)

— Duty Entitlement Passbook Scheme (DEPB)

— Export Promotion Capital Goods Scheme (EPCG)

— Income Tax Exemption Scheme (ITE).

(21) The first three schemes are based on the Foreign Trade (Development and Regulation) Act 1992 (effective from 7 August 1992). The Foreign Trade Act authorises the Government of India to issue notifications regarding export and import policy. These are summarised in 'Export and Import Policy' documents which are issued every five years and updated annually. The document relevant to the investigation period of this case covers the policies for the years 1997 to 2002.

(22) The last scheme, the Income Tax scheme, is based on the Income Tax Act of 1961 which is amended yearly by the Finance Act.

(23) One company replied to the questionnaire for exporting producers. A company outside the Community related to this exporting producer also replied to the questionnaire. On the basis of import data reported by Eurostat, the exporting producer in India accounted for all Indian exports to the Community.

b) *Export Processing Zones (EPZ)/Export Oriented Units (EOU)*

(I) Legal basis

(24) An instrument under the Export Import Policy involving export related incentives is the Export Processing Zones (hereinafter 'EPZ')/Export Oriented Units (hereinafter 'EOU') scheme which was introduced in 1965. During the IP the scheme was regulated by Customs Notification No 53/97, 133/94 and 126/94. Details of the schemes are contained in Chapter 9 of the 1997/2002 Export and Import Policies as well as the relevant Handbook of Procedures.

(II) Eligibility

(25) In principle, companies undertaking to export their entire production of goods may be set up under the EPZ/EOU scheme. Once this status is granted, those companies can avail themselves of certain benefits. There are seven identified EPZs in India. EOUs can be located anywhere in India. They are bonded units under the surveillance of Customs officials in accordance with Section 65 of the Customs Act. Although EOU/EPZ are generally obliged to export their entire production, the Government of India allows those units to sell a part of their production on the domestic market under certain conditions. The cooperating exporting producer has been granted the status of EOU.

(III) Practical implementation

(26) Companies requesting EOU status or setting up in an EPZ must apply to the relevant authorities. Such application must include details for a period covering the next five years of, *inter alia*, planned production quantities, projected value of exports, import requirements and indigenous requirements. If the authorities accept the company's application, the terms and conditions attached to the acceptance will be communicated to the company. Companies in EPZs and EOUs can be involved in the production of any product. The agreement is valid for a five-year period, and may be renewed for further periods.

(27) EPZ/EOU units are entitled to the following benefits:

(i) exemption from import duties on all types of goods (including capital goods, raw materials and consumables) required for the manufacture, production, processing, or in connection therewith, provided they are not prohibited items in the Negative List of Imports;

(ii) exemption from excise duty on goods procured from indigenous sources;

(iii) exemption of income, on which income tax is normally due in accordance with Section 10A or 10B of the Income Tax Act, for a 10-year period;

(iv) reimbursement of Central Sales Tax paid on goods procured locally;

(v) 100 % foreign equity ownership;

(vi) facility to sell a part of production in the domestic market.

(28) The importer should maintain in the specified format, a proper account of all imports concerned and of the consumption and utilisation of all imported materials and of the exports made. These should be submitted periodically, as may be required, to the Development Commissioner.

(29) The importer must also ensure minimum net foreign exchange earnings as a percentage of exports and export performance as stipulated in the Policy. The entire operations of an EOU/EPZ are to be done in Customs bonded premises.

(IV) Conclusion on EPZ/EOU

(30) In the present proceeding, the EOU scheme was used for imports of capital goods, raw materials and consumables, as well as for the procurement of goods on the domestic market. Therefore, the Commission only examined the countervailability of these concessions.

(31) In this regard, the EOU/EPZ scheme involves the granting of subsidies as the concessions granted under the scheme constitute financial contributions by the Government of India, since Government revenues otherwise due are forgone and a benefit is conferred on the recipient.

(32) The suspension of the collection of duties on capital goods has the same effect as an exemption since, as long as the export requirements are fulfilled, it is solely within the discretion of the company if and when to de-bond the capital goods.

(33) This subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the Basic Regulation, since it cannot be obtained without the company accepting an export obligation, and is therefore deemed to be specific and countervailable.

(V) Calculation of the subsidy amount

Suspension of import duty on purchases of capital goods:

(34) The Indian exporting producer used the EOU scheme in order to obtain a suspension of the import duties normally payable on capital goods.

(35) The benefit to the company has been calculated on the basis of the amount of unpaid customs duty due on imported capital goods by spreading this amount across a period of 7 years, which reflects the depreciation period for capital goods actually imported by the company and which is considered to reflect the normal depreciation of such assets in the industry concerned. The amount so calculated which is attributable to the investigation period has been adjusted by adding interest during the investigation period in order to establish the full benefit to the recipient under this scheme. Given the nature of this scheme, which is equivalent to a one-time grant, the commercial interest rate during the investigation period in India, i.e. 10 % was considered appropriate. This amount has then been allocated over total exports during the investigation period.

(36) On this basis, the company received benefits under this scheme at a rate of 2,42 %.

Exemption from customs duties due on imports of raw materials and consumables:

(37) The Indian exporting producer used the EOU scheme in order to obtain an exemption from customs duties due on imports of raw materials and consumables.

(38) During the verification visit, the nature and quantities of these imported materials were verified. The company was able, for all raw materials being imported during the IP, to demonstrate a clear link to the quantities of the exported finished products and it could be established that no imports in excess of imported quantities of inputs actually used in the exported products had taken place.

(39) These imports therefore fall within the exception to item (I) of the Illustrative List of Export Subsidies contained in Annex I of the Basic Regulation since all the goods which were imported free of duty were incorporated into the exported product and no excess remissions of import duty have occurred.

Exemption from excise duty on goods procured from indigenous sources:

(40) The Indian exporting producer used the EOU scheme in order to obtain an exemption from excise duty on goods procured from indigenous sources.

(41) However, the excise duty paid on purchases by a non-EOU unit (i.e. any company operating without any special status) is credited as drawback (under CENVAT/MODVAT) and is utilised towards payment of excise duty on domestic sales. Thus by exempting excise duty on purchases by an EOU unit no additional revenue is forgone by the Government of India. Consequently, no additional benefit accrues to the EOU.

Reimbursement of central sales tax paid on goods procured locally:

(42) The Indian exporting producer used the EOU scheme in order to obtain the reimbursement of central sales tax paid on goods procured locally. This reimbursement involves the granting of subsidies, since Government revenues otherwise due are forgone and a benefit is conferred on the recipient.

(43) The benefit was calculated on the basis of the amount of central sales tax refundable for local purchases during the investigation period. In this respect, it could be established that the Indian exporting producer procured practically all of its local purchases in the State within which it is located (Tamil Nadu), and that central sales tax applies only to inter-state transactions. The amount of central sales tax refundable to this company was therefore limited to 0,01 %.

(c) *Income Tax Exemption Scheme (ITE)*

(I) Legal basis

(44) The Income Tax Exemption Scheme is based on the Income Tax Act 1961, which sets out the basis for the collection of taxes as well as various exemptions/deductions which can be claimed. Among the exemptions which can be claimed are those covered by Sections 10A, 10B and 80HHC of the Act, which provide an income tax exemption on profits obtained from export sales.

(II) Eligibility

(45) Exemption under Section 10A can be claimed by firms located in Free Trade Zones, exemption under Section 10B can be claimed by Export Oriented Units and exemption under Section 80HHC can be claimed by any firm which exports goods.

(III) Practical implementation

(46) The claim for deduction of export profits is submitted alongside the usual annual income tax declaration.

(IV) Conclusion on the ITE

(47) Under the ITE scheme, the Government of India confers a financial contribution to the company by forgoing Government revenue in the form of direct taxes which would otherwise be due. This financial contribution confers a benefit upon the recipient by reducing its income tax liability.

(48) This Income Tax Exemption Scheme is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, since only profits earned through export activities can be deducted from the taxable income, and is therefore deemed to be specific and countervailable.

(V) Calculation of the subsidy amount

(49) The Indian exporting producer, being an EOU, was eligible for Income Tax Exemption under Section 10B of the Income Tax Act, and introduced a claim for deduction during the IP. The benefit was calculated by applying the notional tax rate which would have been applied on the profits if no deduction would have been made.

(50) On this basis, the company obtained benefits under this scheme at a rate of 0,15 %.

(d) *Other subsidy schemes*

(51) The investigation has determined that the exporting producer did not use any of the other investigated schemes. It is therefore not necessary to assess their countervailability.

(e) *Amount of countervailable subsidies*

(52) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporter is 2,5 %. This rate is below the *de minimis* level, and under these circumstances, the subsidy margin for India has to be considered negligible.

2. **Indonesia**

(a) *Introduction*

(53) Further to the consultations referred to in recital (4), the Commission services decided to limit the investigation to two schemes (BKPM and Cakung EPZ). Accordingly, a questionnaire was sent to the Government of Indonesia requesting the relevant information. However, the Government of Indonesia subsequently did not provide any reply to the questionnaire. Therefore, no verification visit to the Government of Indonesia was carried out. The sole known exporting producer in Indonesia did not reply to the questionnaire, despite an extension of the deadline for submitting the reply. In view of the above non-cooperation, this company was duly informed that definitive findings for it would be based on the facts available pursuant to Article 28(1) of the basic Regulation, with the consequence, in accordance with Article 28(6) of the basic Regulation, that the result may be less favourable for it than if it had cooperated. In accordance with Article 26(1) of the basic Regulation, no verification visit was carried out at the premises of this exporting producer.

(54) Consequently, in accordance with Article 28 of the basic Regulation, subsidisation and export price have to be determined on the basis of facts available. The Commission considered it appropriate to base its findings on the information submitted in the complaint as well as information available from a previous anti-subsidy proceeding concerning Indonesia [1]. In accordance with Article 28(5), this information was also checked, where possible, against data from independent sources.

(b) *BKPM schemes*

(55) It appears from the complaint that this exporting producer availed itself of benefits available from the Investment Coordinating Board (BKPM), which is a Government agency in charge of planning and promotion of investment.

(56) The previous investigation cited above has shown that the BKPM may approve both foreign (PMA) and domestic (PMDN) investments. Companies that are approved as PMA or PMDN companies will be granted exemption or relief from import duty and levies on the importation of capital goods, namely machinery, equipment, spare parts and auxiliary equipment, as well as on the importation of raw materials.

(57) The BKPM schemes constitute a subsidy as the financial contribution by the Government of Indonesia in the form of unpaid duties confers a direct benefit upon the recipient.

(58) The schemes do not qualify as drawback schemes in accordance with the provisions of Annexes I to III to the basic Regulation, since capital goods are not consumed in the production process, and there is no obligation to export the finished product containing the raw materials.

(59) The BKPM schemes are not contingent in law upon export performance or the use of domestic goods over imported goods.

(60) The criteria for eligibility are set by BKPM and appear to be updated frequently. The BKPM schemes explicitly limit access to the subsidy to certain enterprises which are not operating in certain sectors. Also, the granting authorities can exercise a certain discretion during the approval process, and eligibility is not automatic.

(61) The BKPM schemes are therefore not in line with Article 3(2)(b) of the basic Regulation, which stipulates that the granting authority must establish objective criteria which are neutral, do not favour certain enterprises over others, and which are economic in nature and horizontal in application. Hence, these programmes are considered to be specific under Article 3(2)(a) of the basic Regulation since they explicitly limit access to the subsidy to certain enterprises. The fact that the exporting producer and the Indonesian government did not cooperate made it impossible to determine precisely to what extent this producer has availed itself of the scheme.

(c) *Indonesian Bonded Zones — Cakung EPZ*

(62) The address of the non-cooperating exporting producer indicates that its facilities are located in the Cakung Export Processing Zone, which is an area designated as 'Nusantara Bonded Zone'. The company confirmed this information. Companies located in such a zone are eligible for certain benefits that are normally not available to companies located outside these zones, notably an exemption from import duty on goods to be used in the production of exported finished products.

(63) The exporting producer, in choosing not to cooperate, did not provide any evidence that he did not use the benefits available within such a zone. In order not to reward non-cooperation, and given that it has been established that the exporting producer is indeed located in an EPZ, the Council is entitled to assume that such benefits have been used.

(64) In accordance with findings in previous investigations, a duty drawback scheme operating within such zones constitutes a financial contribution by the Government, since revenues otherwise due are forgone and a benefit is conferred on the recipient.

(65) Such a drawback scheme constitutes a subsidy which is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, since it cannot be obtained without the company accepting an export obligation, and is therefore deemed to be specific and countervailable.

(66) The fact that the exporting producer did not cooperate made it impossible to determine whether imports under this scheme would qualify for any exception as specified in the Annexes to the basic Regulation, since it could not be established that imported goods are indeed incorporated into the exported product and that no excess remissions have occurred.

[1] Council Regulation (EC) No 978/2000 of 8 May 2000 (OJ L 113, 12.5.2000, p. 1).

(d) *Conclusion on subsidies*

(67) On the basis of facts available in accordance with Article 28 of the basic Regulation, there is evidence of the existence of countervailing subsidies which are available to the non-cooperating exporting producer, and a reasonable indication that such subsides have been used. For the purpose of measures, it will be assumed, in accordance with the previous investigation, that one part (50 %) are domestic subsidies and the other part (50 %) constitute export subsidies, since only one of the two schemes, the EPZ, was considered as an export subsidy.

(68) It is considered that the absence of cooperation is the result of the use and benefit by this producer of the countervailable subsidies at a level above the *de minimis* level for Indonesia. Accordingly, and in order to avoid granting a bonus for non-cooperation, in view of the information contained in the complaint as well as the findings of the previous investigation the definitive subsidy margin expressed as a percentage of the CIF import price at the Community frontier duty unpaid applicable for all Indonesian exporting producers is as follows:

All exporters: 10,0 %.

D. **INJURY**

1. **Preliminary remark**

(69) Given that only one Indian exporting producer cooperated in the investigation and that the Community industry comprises only one company, specific data relating to these companies have been indexed or put in the form of a range in order to preserve the confidentiality of the data submitted in accordance with Article (29) of the basic Regulation.

2. **Community production**

(70) It was established that, in addition to the two complainant Community producers' output, production was also taking place in Italy and Spain. Although the Italian company involved did not supply complete data to the Commission, the information received confirmed that, during the IP, it represented a share of around 10 % of total Community production. As regards the Spanish company, which did not supply complete data to the Commission, it was found that in 2001 it produced negligible volumes of the product concerned, while it imported major portion of its sales from one of the countries concerned. It was concluded therefore that it should be considered as an importer rather than a producer.

(71) It was also found that a company located in the UK had formerly been involved in the production of a certain type of RBMs. This company confirmed in writing that its production of the product concerned ceased some years ago. No other producers in the Community are known.

(72) Based on the above, the production of the complainants and the other Community producer located in Italy constitute the total Community production within the meaning of Article 9(1) of the basic Regulation.

3. **Definition of the Community industry**

(a) *Community industry*

(73) Of the two complainant producers one did not reply to the questionnaire (Krause) and was considered to be non-cooperating. This producer, even though supporting the complaint, was therefore not regarded as being part of the Community industry. Regarding the other producer (Koloman), it was found that this company not only produced the like product in the Community during the IP, but also produced parts of it in Hungary. In addition to its Community production, Koloman traded the Hungarian products in the Community and also used parts produced in Hungary for its Community production. Moreover, part of the production of the cooperating Community producer was relocated at the beginning of the year 2000 by means of transfer of certain machinery from Austria to Hungary. However, despite the foregoing, the core activity of this company remained in the Community, i.e. head office, warehousing, sales office, production of a significant amount of the product range, as well as significant technical and marketing know-how. The imported sales completed the product range of the like product and did not therefore affect the Koloman's status as Community producer. As to the production of parts in Hungary and their subsequent incorporation into the finished product, the investigation established that these incorporated parts represented only a minor proportion of the cost of production of the finished products and thus, of the added value. Consequently, the status of the producer as Community producer is not affected by these imports.

(74) The investigation confirmed that the sole cooperating Community producer represented more than 25 % of the Community production of RBMs, thus fulfilling the requirements of Article 10(8) of the basic Regulation. It was therefore deemed to constitute the Community industry within the meaning of Article 9(1) of the same Regulation and will be hereinafter referred to as 'the Community industry'.

(b) *Events occurring after the investigation period*

(75) In November 2001, i.e. after the end of the IP, the cooperating Community producer Koloman went into receivership and as a result of a liquidation procedure, was taken over by an Austrian company, whose parent company, located in the UK, also acquired the Hungarian affiliate of Koloman.

(76) The acquirers confirmed to the Commission their on-going support of the complaint.

(c) *Community consumption*

(77) The apparent Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, the sales of the other Community producers on the Community market as reported in the complaint, duly adjusted as concerns the IP, information provided by the cooperating exporting producer and Eurostat import data. Account was taken of the fact that CN code 8305 10 00 also covers products not included in the scope of this proceeding. However, with regard to Indonesia, given the lack of cooperation of Indonesian exporters, best facts available were used, i.e. Eurostat data. In this respect, based on the complaint as best evidence available, all imports under the above-mentioned CN code were considered to constitute the product concerned. The non-cooperating Indonesian exporter claimed that its exports to the Community market were around 15 % lower than the import volumes used. However, this claim could not be verified and the difference was such that it could be explained by the ratio used to convert Eurostat statistics, which are in tonnes, to units. On this basis, Community consumption increased by 5 % between 1998 and the IP. In more detail, it remained relatively stable between 1998 and 1999 and then steadily increased until the end of the IP when it was found to be around 348 million units.

4. **Imports from the country concerned**

(78) It is recalled that the proceeding against India is terminated. Therefore, only imports from Indonesia are being analysed as imports from the remaining country concerned.

(a) *Volume of subsidised imports*

(79) Even if imports volume originating in Indonesia decreased between 1998 and 2000 and then slightly rose again between 2000 and the IP, it should be noted that while imports from the country concerned only started in 1997, they were already significant in 1998 and were at a level of 32 million pieces in the IP.

(b) *Market share of subsidised imports*

(80) The market shares held by Indonesian imports were found to be between 8 % and 13 % having decreased by around 2 percentage points since 1998.

(c) *Prices of subsidised imports*

(i) Price evolution

(81) The weighted average import prices of imports originating in Indonesia decreased by – 5 % between 1998 and the IP, i.e. from ECU 105 per thousand units to EUR 99 per thousand units. The decrease was particularly marked between 1998 and 1999 when prices fell by 3 % and between 2000 and the IP when they fell by 2 %.

(ii) Undercutting

(82) Given the lack of cooperation from Indonesian exporters, the price comparison was made on the basis of Eurostat data duly adjusted for customs duties and post importation costs and compared, at the same level of trade, to Community producers' ex-works prices.

(83) On that basis, the price undercutting was reviewed and amended when necessary on the basis of information provided during the additional verification visits. Imports from Indonesia were found to undercut Community industry prices between 30 % and 40 %. It should also be noted that there was price suppression since the Community industry was not profitable.

5. **Situation of the Community industry**

(a) *Production*

(84) The Community industry's production followed a downward trend over the period, decreasing by 25 % between 1998 and the IP. A significant decrease took place between 1998 and 1999 (– 15 %). A further significant decrease occurred also between 1999 and 2000 and subsequently production volume remained stable until the end of the IP.

(b) *Capacity and capacity utilisation rates*

(85) The production capacity followed the same trend as the production and decreased by 26 % between 1998 and the IP.

(86) On this basis, the capacity utilisation rate remained stable over the period considered.

(c) *Stocks*

(87) The Community industry's end-of-year stocks decreased by 12 % between 1998 and the IP.

(d) *Sales in the Community*

(88) Despite an increase in Community consumption, the sales volume of the Community industry fell significantly between 1998 and the IP, by 25 %. A decrease occurred between 1998 and 1999 (– 10 %), and an even more pronounced one between 1999 and 2000 (– 15 %).

(e) *Market share*

(89) The market share of the Community industry decreased by more than 4 percentage points between 1998 and the IP, thus following the same trend as the volume sold.

(f) *Prices*

(90) The average net sales price of the Community industry decreased by 4 % between 1998 and the IP. Such a decrease was particularly marked between 1998 and 1999 (– 6 %), i.e. when the import prices of the country concerned significantly decreased, as explained in recital (81).

(g) *Profitability*

(91) The weighted average profitability of the Community industry deteriorated by 10 percentage points between 1998 and the IP and became a loss as from 2000. As a result of this unfavorable development and as mentioned in recital (75), the Community industry had to go into receivership.

(h) *Cash flow and ability to raise capital*

(92) The development of the cash flow generated by the Community industry in relation to sales of RBMs is very similar to that of the profitability, i.e. a significant decrease between 1998 and the IP.

(93) The investigation established that the Community industry's ability to raise capital became more difficult at this time owing to its financial situation and in particular to its deteriorated profitability.

(i) *Employment, wages, and productivity*

(94) Employment of the Community industry related to the production of RBMs decreased by 30 % between 1998 and the IP. The total amount of wages as a whole followed a similar trend, falling by 27 % during the same period, thus leading to an increase of the average wage by 5 % between 1998 and the IP. Productivity of the Community industry's workforce, measured as production volume per person employed increased by 8 % between 1998 and the IP.

(j) *Investment and return on investment*

(95) The level of investments decreased by 39 % between 1998 and the IP. The decrease was particularly marked between 1999 and 2000. The investigation showed that most of this capital expenditure was related to replacing or maintaining existing facilities.

(96) The return on investment, expressed as the relation between the net profits of the Community industry and the net book value of its investments, followed very closely the profitability trend and became negative in 2000.

(k) *Growth*

(97) While Community consumption increased by 5 % between 1998 and the IP, the sales volume of the Community industry decreased by around 25 % and the volume of imports concerned remained significant. The Community industry was therefore unable to benefit from the slight increase of the demand on the Community market.

6. **Relocation of part of the production**

(98) In order to verify that the deterioration of situation of the Community industry was not due to a change in the pattern of the Community production, it was also examined whether the relocation of part of the production mentioned in recital (73) (by means of transfer of machinery from Austria to Hungary), which took place at the beginning of the year 2000, had an effect on the situation of the Community industry. It happened that while the decreasing trend of certain injury indicators was aggravated by this relocation (i.e. production, production capacity and sales volume), the trend of the capacity utilisation and of the average sales prices improved, leading to a limitation of losses. For instance, it was assessed that around 60 % of the decrease in the production is linked to the relocation, and around 80 % of the sales volume decrease, while without this relocation, the price decrease would have been three times higher and the profitability would have lost 7 additional percentage points. Given the above, it was concluded that the deterioration of the situation of the Community industry was not due to a change in the pattern of the Community production.

(99) It has been argued that the core activity of the Community industry is no longer in the Community since the relocation to Hungary allegedly entailed a 60 % decline in its Community production, and a 80 % decline in its Community produced sales.

(100) As already explained in recital (98), the relocation did not entail such a decrease in the Community industry's production, but only a decrease of 15 % of its Community production and 20 % of its Community produced sales. Therefore, the conclusion stated in recitals (73) regarding the core activity of the Community industry is confirmed.

7. **Conclusion on injury**

(101) A deterioration of the situation of the Community industry (after having taken account of the relocation as outlined in recital (98)) has been found by reference to the period considered.

(102) While the anti-dumping measures on imports of RBMs originating in the People's Republic of China ('the PRC') and Malaysia led to a substantial decrease of imports originating in these countries after 1998, the Community industry could not fully benefit from this development. As from the year 1998, most injury indicators, i.e. production, sales volumes, prices, market share, profitability, return on investment, cash flow and employment developed negatively. In particular the decrease in the sales prices of the Community industry had a negative effect on its profitability.

(103) Moreover, while sales of the Community industry decreased between 1998 and the IP, imports originating in Indonesia were substantial. The investigation has shown that during the IP the Indonesian imports were made at prices undercutting those of the Community industry between 30 % and 40 %. In addition, there was price suppression.

(104) The situation of the Community industry is thus found to have deteriorated to such an extent that it is concluded that the Community industry has suffered material injury.

(105) It is recalled that after the IP, the poor financial situation led the Community industry to go into receivership.

E. **CAUSATION**

1. **Introduction**

(106) In accordance with Article 8(6) and (7) of the basic Regulation, it was examined whether the imports originating in Indonesia in view of their volume and their effect on prices in RBM Community market, have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the subsidised imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the subsidised imports from Indonesia.

2. **Effect of the subsidised imports**

(107) The volume of the subsidised imports decreased by 14 % between 1998 and the IP, and its corresponding share of the Community market by 2 percentage points during the same period. However, they remained significant and always held a market share which ranged between 8 % and 13 % between 1998 and the IP. These imports also significantly undercut the prices of the Community industry. The market share of the Community industry decreased by more than 4 percentage points. At the same time, average prices of the Community went down by 4 %. The actual decline in prices was in fact even higher as outlined in recital (98).

(108) During the same period, between 1998 and the IP, the situation of the Community industry deteriorated as illustrated by the decrease of sales volume and market share, the price decrease and the substantial deterioration of its profitability, which turned to losses. Thus, the Community industry could not significantly benefit from the imposition of the abovementioned measures against the PRC and Malaysia.

(109) It has been argued by an Indonesian exporter that Indonesian exports could not have caused injury since they decreased between 1999 and 2000 and held a *de minimis* market share. The same company alleged that imports from Indonesia could not have any real impact on the Community industry since the Community production was five or six times higher than the volume of Indonesian imports.

(110) It is however recalled that although Indonesian imports decreased between 1998 and 2000, they slightly increased between 2000 and the IP without reaching the level of 1998. In addition, as already explained in recital (80), between 1998 and the IP, Indonesian imports held a market share situated between 8 % and 13 % which is substantial and clearly above *de minimis*. Finally, it is also recalled that the Community industry is clearly defined in recital (74) and that its level of production is far below that which has been alleged by the Indonesian company.

(111) It can therefore be concluded that the subsidised imports originating in Indonesia have undermined the effects of the anti-dumping measures adopted in 1997 against the PRC and Malaysia and amended in 2000 as regards the PRC, and that they have been a substantive cause of the negative developments as summarised in the preceding paragraphs.

3. **Effect of other factors**

(a) *Imports from other third countries*

(112) Consideration was given to whether factors, other than the subsidised imports from Indonesia, might have led to or contributed to the injury suffered by the Community industry and especially whether imports from countries other than Indonesia may have contributed to this situation.

(113) The import volume from other third countries increased by 17 % between 1998 and the IP while their market share increased by more than 5 percentage points during the same period. This increase is to a large extent due to the increase in imports originating in India, Hungary and Thailand, whereas in the meantime, imports originating in the PRC and Malaysia significantly decreased owing to the anti-dumping measures imposed in 1997.

(114) The average unit price of imports from third countries decreased by 16 % between 1998 and the IP. Prices from almost all third countries decreased during this period except prices of imports from the PRC, which due to the effect of the anti-dumping measures increased significantly although reaching the same level as the Hungarian prices only in the IP.

(i) India

(115) It was firstly examined whether imports originating in India might have contributed to the injury suffered by the Community industry. However, although imports from India increased significantly between 1998 and the IP, they were found to be undercut by the imports from Indonesia whose prices were found to be in a range of 2 % to 30 % lower than prices of Indian imports between 1998 and the IP. In addition, it should be noted that when Indian imports started in 1998, prices of Indian imports were found to be more than 40 % higher than prices of Indonesian imports for a comparable volume of RBMs. Since then, Indian imports prices decreased steadily but have always been above Indonesian prices and were still found to be more than 5 % higher than Indonesian prices during the IP. It is therefore concluded that, although Indian imports have had a negative impact on the situation of the Community industry, the negative impact of the subsidised imports from Indonesia taken in isolation was nonetheless substantial. Indeed, Indonesia was an influential and important player in the Community. Their volume of exports to the Community was lower than that of Indian exports but still substantial. Indonesian exports undercut the Community industry's prices even more than Indian exports. It is also noted that the aforementioned analysis was seriously impeded by the fact that Indonesia did not cooperate and, therefore, no information was available in terms of product types, market segments represented by exports from Indonesia.

(ii) The People's Republic of China

(116) Consideration was also given to whether the absorption of the anti-dumping measures imposed in 1997 on imports from the PRC might have led to or contributed to the injury suffered by the Community industry. In this respect, it is noteworthy that although the absorption of the duty on imports from the PRC have undermined the effect of the measures imposed in 1997 with regard to the sales prices, those measures still led to a significant reduction of the volumes imported from the PRC as soon as 1998. In addition, it should be noted that while imports from Indonesia only began in 1997, they had already reached around the same level as the imports from the PRC by 1998. Since then, imports from the PRC dramatically decreased while Indonesian imports decreased by a much lesser extent until the IP when these latter imports were still more than three times higher than imports from the PRC. Therefore, given that the import volumes from the PRC were far below the import volumes from Indonesia during the IP, it was concluded that these imports did not have as serious an impact on the Community industry as compared to the effect of the subsidised imports from Indonesia.

(iii) Hungary

(117) In order to determine whether imports from Hungary, in isolation, caused injury to the Community industry, the level of imports and prices on the Community market were examined.

(118) The analysis as regards Hungarian imports between 1998 and the IP was based on data provided in the questionnaire reply of the Community producer, whose plant in Hungary represents the sole Hungarian producer.

(119) During the period considered, imports of RBMs originating in Hungary increased in volume. As to their prices charged by the Community industry on the Community market for its products imported from Hungary, while these decreased during the period considered, they remained the highest amongst the import prices from the other third countries and were undercut by imports from Indonesia.

(120) The Hungarian production of RBMs of the Community industry was analysed and compared to the Austrian production. It was found that there was very little overlap between the models produced in Austria and Hungary.

(121) Given this small percentage of models manufactured both in Austria and in Hungary, it was concluded that the Hungarian products completed the product range of the Community industry enabling it to offer a wider choice of models to customers and that they did not affect negatively the situation of the Community industry.

(122) On the basis of the above, it was concluded that imports from Hungary did not materially contribute to deteriorate the situation of the Community industry.

(iv) Thailand

(123) Given that, as already mentioned in Council Regulation (EC) No 2100/2000, 'some of the goods of Chinese origin were declared to national customs authorities as being of Thai origin and thus avoided payment of the anti-dumping duties normally due', it was also considered appropriate to evaluate the impact of imports consigned from Thailand.

(124) In this respect, imports from Thailand significantly increased during the period considered since they started in 1998 with around 1 million units and rose to more than 23 million units in the IP. In addition, it was established on the basis of Eurostat data, that sales prices of Thai imports were generally below the prices of Indonesian imports.

(125) However, although Thai prices were found to be around 20 % lower than the prices of the Indonesian imports, it is recalled these latter are more than one third higher than import volumes from Thailand. Therefore, given that the volumes imported from Thailand are still substantially below the volumes imported from Indonesia, it was concluded that these imports could not have had a significant impact as compared to the effect of the subsidised imports from Indonesia.

(126) The analysis in respect of Thailand has been questioned by an Indonesian exporter, which did not cooperate. In this respect, it argued that the level of imports from Indonesia is comparably lower and that prices are higher when compared to Thai imports. It is however recalled that although Thai prices were lower than the prices of the imports from Indonesia, the volumes imported from Indonesia were more than 30 % higher than imports from Thailand. Therefore, the conclusion drawn in recital (125) is confirmed.

(b) *Further factors*

(127) It was also examined whether factors other than the abovementioned might have contributed to the injury suffered by the Community industry.

(128) It has been contended by the cooperating importers that RBM business is extremely price sensitive and therefore producers must sell large volumes to be competitive. It was also argued by the same parties that the Community industry relies only on the Community market, instead of the world market, which would allow it to be more cost efficient. On this matter, it is recalled that the ratio of sales of the Community industry inside and outside of the Community did not significantly change between 1998 and the IP. Nevertheless, even though the Community industry was strongly oriented towards the Community market, its export sales permitted the Community industry to be profitable in 1998 at a time when imports from Indonesia were significant.

(129) One user argued that the injury was caused by the strong competition in the office supplies industry. This competition allegedly led the users/distributors of the product concerned to exert a price pressure on the Community industry thus leading to a price decrease. In this respect, it is underlined that the subsidised imports must have significantly worsened the price pressure exerted by the users in the Community, thus causing injury to the Community industry.

(130) Moreover, it was examined whether the price depression could be attributable to the normal course of the RBM business, since prices from almost all sources of supply decreased between 1998 and the IP.

(131) In this respect, it is recalled that the general price decrease should be seen in the light of continued unfair practices, firstly from the PRC and Malaysia, secondly from Indonesia, which have influenced the Community market.

(132) In addition, as mentioned in recital (128), the RBM market is extremely price sensitive. Therefore, given that prices of the Indonesian imports were found to be subsidised and lower than the average unit price of all other imports of RBMs between 1998 and the IP, it is to be concluded that imports from Indonesia, which held between 8 and 13 % of the Community market during the IP, have had a price depressive impact on this market.

(133) Finally, it was analysed if the price behaviour of Krause, the non-cooperating Community producer, could have contributed to the injury suffered by the Community industry. The additional examination of data referring to Krause showed that this Community producer itself suffered a deterioration of its situation during the period considered, particularly as concerns sales price and profitability. It appears therefore that it has not contributed to the injury suffered by the Community industry, and that, it has been equally negatively affected by the imports from Indonesia, being forced to decrease its prices, like the Community industry.

(134) For all the reasons explained above, it was concluded that the price depression on the Community market should not be seen as representing a normal development of trade, but rather as the consequence of unfair commercial practices of Indonesia.

(135) It was contended by the Indonesian authorities that the Indonesian exports were limited to supplying an Italian producer of ring binders to complement its product range.

(136) However, this assertion was found to be in contradiction with the statement made by the non-cooperating Indonesian exporter who argued that the sole market where the Indonesian producer has significant market share is the United Kingdom. This is also confirmed by Eurostat.

(137) This latter producer alleged that these Indonesian exports could not cause injury since its main market is the UK where the Community industry does not have any significant activities. However, in addition to the fact that this assumption is in contradiction with the allegation made by the Indonesian authorities, it is also recalled that the injury analysis is made on a Community basis and not on a regional basis.

4. **Conclusion on causation**

(138) In view of the above, it is concluded that the material injury suffered by the Community industry, which is characterised by a negative development of production, sales volumes, prices, market share, profitability, return on investment, cash flow and employment duly adjusted to take account of the relocation to Hungary, was caused by the subsidised imports concerned. Indeed, the combined effect on the Community industry's situation of imports from India, Thailand and the PRC as well as the partial relocation of Community production was only limited.

(139) It was also contended by an Indonesian exporter which did not cooperate, that there is a contradiction between the conclusion stated in recital (138) and the fact that there is sufficient evidence to open an expiry review on the PRC.

(140) In this respect, it should be recalled that the scope of an expiry review is to analyse the situation of the Community market in the perspective of the likelihood of continuation or recurrence of dumping and injury should the measures in force be removed. Consequently, the fact that the deterioration of the Community industry has been attributed during this investigation period to Indonesia, does not affect the analysis of the future behaviour in the Community market of Chinese exporters and its likely effect on the situation of the Community industry. It is also recalled that the Chinese market share was at a very low level during the last two years of the period considered.

(141) Given the analysis, which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the subsidised imports, it is hereby concluded that these other factors as such do not reverse the fact that the material injury found must be attributed to the subsidised imports.

F. **COMMUNITY INTEREST**

1. **Preliminary remark**

(142) It was examined whether, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and in accordance with Article 31(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

(143) In order to assess the likely impact of the imposition or non-imposition of measures, information was requested from all interested parties. Questionnaires were sent to the two complainant Community producers, two other companies known as producers in the Community, nine unrelated importers, 49 users and one users' association. One complainant Community producer (Koloman), two unrelated importers as well as one user related to those importers replied to the questionnaire. Another user made a submission without replying to the questionnaire.

(144) These replies and submissions formed the basis for the Community interest analysis.

2. **Interest of the Community industry**

(a) *Preliminary remark*

(145) Several producers of RBMs in the Community stopped manufacturing the product concerned within the last few years. As to the companies left, the investigation established that, as mentioned in recital (71), a company located in the UK also stopped its production some years ago. As to the company located in Italy, it was found that it did not represent a significant proportion of the production of RBMs in the Community and imported a significant part of its sales. As to the Spanish company it found that it should be considered as an importer rather than a producer since it produced negligible volumes of the product concerned, while imported more than 90 % of its sales from Indonesia. It is concluded, therefore, that the two complainants are the only Community producers of RBMs with a significant production left.

(146) It should be recalled that the two complainant Community producers were heavily injured already in the past by imports of RBMs originating in the PRC and Malaysia which, as described in Regulation (EC) No 119/97 [1], led, *inter alia*, to a 28 % decrease of their workforce between 1992 and October 1995. As shown under recital (94), a further reduction of the Community industry's workforce of 30 % occurred between 1998 and the IP.

(147) In view of the material injury suffered by the Community industry, it is concluded that, should the Community industry not recover from the unfair subsidisation practices, it is likely that the production in the Community will cease completely and that the users will be significantly dependant on imports.

(b) *Financial situation of the Community industry*

(148) The financial situation of the Community industry developed so negatively during the period considered, that after the IP the Community industry went into receivership, as mentioned in recital (75). It should be noted that the Community industry's loss-making situation resulted from its difficulty to compete with the low-priced subsidised imports. However, the fact that the cooperating Community producer has been taken over, shows that the production of RBMs in the Community is in the process of being restructured and that a strong effort is being made to keep this industry viable and to render it profitable.

(c) *Possible effects of the imposition/non-imposition of measures on the Community industry*

(149) Following the imposition of measures, the restoration of fair market conditions would enable the Community industry to recover lost market share and, by increasing capacity utilisation, to decrease unit production costs and to increase profitability. Furthermore, the measures are expected to have a positive effect on the level of the Community industry's prices. In conclusion, it is expected that the increase in production and sales volume, on the one hand, and the further decrease in unit costs, on the other hand, eventually combined with a moderate price increase, will allow the Community industry to improve its financial situation.

(150) To the contrary, should countervailing measures not be imposed, it is likely that the Community industry would have to further lower its prices and/or continue to lose market share. In both scenarios, the financial situation of the Community industry is likely to worsen. As a further consequence, it is likely that the Community production would, within a short period of time, definitively cease.

(151) Moreover, given that the Community industry does not only produce the product concerned but also other products accounting for about one third of its turnover, it is very likely that the closure of production lines manufacturing RBMs would affect the viability of the whole factory and lead to closure of all production lines with a consequent wider negative effect on employment and investment.

(d) *Possible relocation of the Community industry production*

(152) It was examined whether any measures could be considered as not being in the interest of the Community given the relocation of part of the Community industry production to a third country. The possibility of any further relocation was also examined.

(153) First of all, as explained in recital (98), it is recalled that the relocation, which took place in 2000, permitted the Community industry to limit its losses. In this respect, it was a strategic decision taken to thwart the effect of the subsidised practices. In addition, it is likely that this relocation, by improving the financial situation of the Community industry, had the indirect effect to make it more attractive for the new investor that recently took it over.

(154) As to the risk of any additional relocation, the Commission received satisfactory confirmation that such relocation is not foreseen by the Community industry. In addition, there is no reason to consider that such a move is likely since the restructuring effort combined with the imposition of countervailing duty should enable the Community industry to enjoy a profitable situation once again.

3. **Interest of importers**

(155) Certain importers, which however did not purchase RBMs from Indonesia, submitted that switching sources of supply could involve additional costs or transitional problems. More particularly, the importers underlined that owing to the anti-dumping measures imposed in 1997, they had already been forced to change their source of supply.

[1] OJ L 22, 24.1.1997, p. 1.

(156) However, it is recalled that the purpose of countervailing measures is not to force importers or users to change their source of supply but to restore fair competition on the Community market. In addition, these importers also recognised that a number of other third countries could easily produce RBMs and they foresaw no difficulties in sourcing from a country not covered by countervailing measures. Moreover, they could also trade Community producers' products. Therefore any problems resulting from a possible switching of supply are likely to be temporary and unlikely to offset the positive effect on the Community industry of countervailing measures against injurious subsidies.

4. **Interest of users and consumers**

(a) *Users*

(157) It has been alleged both by the cooperating unrelated importers and user (ring binder producer) that the imposition of countervailing measures would have a serious adverse impact on the financial situation of the users.

(158) In this respect, the likely effect on users' cost of production of the countervailing measures imposed on Indonesia was assessed. In this respect an estimation was undertaken of what would be the impact of the measures proposed against Indonesia on a user having as sole source of supply imports from Indonesia (worst case scenario). On this basis the impact of the measures proposed against Indonesia would be evaluated as an increase in the cost of production of around 1,3 %. As already explained, this is an entirely hypthetical scenario since no user cooperated which only sourced the product concerned from Indonesia.

(159) In view of the above findings, it was concluded that the impact of countervailing duties on users would be negligible. In more general terms, given the lack of cooperation from other users, it is likely that the cost impact on all other users would be similarly negligible.

(160) The cooperating user claimed that, as happened in the past three years, when it had to relocate part of its production outside the Community and to close three plants following the imposition of anti-dumping measures on RBMs originating in the PRC and Malaysia, countervailing measures on imports originating in Indonesia, by increasing the prices of one of the items of its cost of production, could entail a further move of its ring binder production outside of the Community and/or closure of the relevant plants. This would risk to affect its whole activity, i.e. also the manufacturing of other products, whose plants would be delocalised as well, with significant job losses in the Community.

(161) As a general remark, it should be noted that the risk of relocation of the downstream industry owing to the countervailing measures is tempered by the fact that part of the binder market is business-to-business oriented and that it is fundamental that users are close to their customers, have a flexible production ready to meet the demand and a sound knowledge of the market. The investigation showed in fact that the main criteria customers of ring binders producers take into account in their choice are price, quality and service, as well as speedy delivery. In addition, as already explained in recitals (157) to (158), the financial impact of the countervailing measures on the downstream industry was found negligible. Finally, the fact that only one binder producer fully cooperated with the investigation, tends to confirm the conclusion that countervailing measures will not have a decisive impact on users.

(162) In addition, certain interested parties pointed out that the relocation of several users that have occurred in the past years was due to the high cost of production in the Community. This confirms that any relocation should be seen in the wider context of the overall cost structure in which, as already explained, countervailing measures represent a negligible portion.

(163) As regards the specific situation of the cooperating user, the investigation showed that, although this user relocated part of its production outside the Community between 1998 and the IP, i.e. after the imposition of anti-dumping measures against the PRC and Malaysia, this user in fact changed its source of supply after the imposition of anti-dumping measures against the PRC and Malaysia, purchasing RBMs from the cooperating importers which in turn, as from 1998, started to import from India to the detriment of the PRC. It seems therefore difficult to establish a link between the move of the ring binder production of that user out-side the Community and the imposition of anti-dumping duties on imports from the PRC and Malaysia. Moreover, as already shown in recital (159) countervailing duties have a negligible impact on the users' cost of production.

(164) It was found that the relocation described above should rather be seen as the consequence of the external-oriented strategy of this user which acquired a number of companies during the last years. This strategy eventually led to a consolidation and a restructuring of the different entities of the group, certain amongst which have been closed. The relocation of some plants outside the Community should be seen as part of this strategy, which aims to strengthen the position of that user over the Community market and to develop its presence in Eastern Europe.

(165) Before the above background, and in view of the negligible impact the level of the duties imposed is likely to have on the user concerned, it appears unlikely that the countervailing measures against Indonesia would, as such, entail a further move of its ring binder production outside of the Community.

(166) As regards the closure of plants and the risk of further closures linked to the imposition of countervailing measures against Indonesia, it was found that the cooperating user closed three plants in the past three years, when measures on the PRC and Malaysia were in force. In view of the negligible impact the measures would have on the cost of production and on the financial situation of the user in question, as explained under recital (164), it is unlikely that the measures on the PRC and Malaysia led, on their own, to the closure of these plants and that the countervailing measures on imports from Indonesia would cause a closure of other plants.

(b) *Consumers*

(167) It should be mentioned that the product concerned is not sold at retail level and that no consumers' association made themselves known and participated to this investigation.

(168) The cooperating user also argued that countervailing measures would increase the price paid by the final customer of ring binders, i.e. consumers. However, in view of the above explanation regarding the impact on ring binder producers, any increase in the final sales price to consumers of ring binders is likely not to be significant.

(169) In addition, the investigation showed that the cooperating user sells its products mainly to distributors. In the worst scenario, should the cost increase that the users might suffer be passed on in full until the final consumer, this would entail a price increase of a maximum of 4 % for the final consumer. However, this is unlikely to occur since general experience shows that each step in the distribution chain is likely to support part of its costs increase in order to stay competitive on its market.

(170) On the basis of the above, the impact on users of RBMs and consumers of ring binders was considered not to constitute a compelling reason against the imposition of countervailing measures, as the possible negative effect is unlikely to offset the positive effect on the Community industry of countervailing measures against injurious subsidies.

(d) *Impact on competition*

(171) It was also examined whether the imposition of countervailing measures on imports from Indonesia could lead to a situation where the Community industry could benefit from dominant position on the Community market, in particular in view of the anti-dumping measures imposed in 1997 on imports from the PRC and Malaysia and in view of the restructuring of the Community industry.

(172) First of all, it is recalled that the Community industry held, during the IP, a market share which only ranged between 10 % and 15 %. The two complainant Community producers taken together would have held, during the IP, a market share ranging between 32 % and 37 %. Even in the event of including Koloman's imports in the market share held by both complainants together, this market share would have ranged from 47 % to 52 % of the Community market in the IP. In addition, it is recalled that, although the Commission initiated a review of the measures against the PRC, this review does not concern imports from Malaysia. Also RBMs can still be imported from India. Therefore it is considered very unlikely that the imposition of countervailing measures against Indonesia would lead to any negative effect on competition of the Community industry on the Community market. Finally, it is recalled that the imposition of anti-dumping measures on imports from the PRC and Malaysia likewise did not lead to any kind of dominance for the Community industry, even if no other sources of supply but these two countries existed at the time.

(173) On the other hand, as already explained in recital (150), it is likely that without measures to correct the effects of subsidised imports, Community production will, within a short period of time, no longer be viable and therefore cease. It would certainly not be in the interest of the users that the Community industry would cease its production of the product concerned. Indeed, on the one hand, the sole user that cooperated purchased between 20 % and 50 % of its RBMs from the Community industry between 1998 and the IP. On the other hand, should the Community industry definitely cease the production of RBMs, users would be significantly dependent on imports.

(174) Should measures be imposed, several alternative sources of supply still exist. RBMs are being or can be purchased from the Community industry, the other Community producers, India and Hong Kong. In addition, imports from Malaysia are likely to recommence since measures against this country recently expired. Moreover, the investigation has shown that the imposition of anti-dumping measures on imports from the PRC and Malaysia did not entail any shortage of the product concerned. Finally, it is recalled that the impact of the measures on users was found to be negligible, and that the product concerned will therefore quite likely still be imported from Indonesia.

5. **Conclusion on Community interest**

(175) Given the above reasons, it is concluded that there are no compelling reasons against the imposition of countervailing duties.

G. **DEFINITIVE MEASURES**

1. **Injury elimination level**

(176) In view of the conclusions reached with regard to subsidisation, injury, causation and Community interest, definitive countervailing measures should be imposed at a level sufficient to eliminate the injury caused to the Community industry by the subsidised imports.

(177) In accordance with Article 15(1) of the basic Regulation, the Commission examined what level of duty would be adequate to remove the injury to the Community industry caused by subsidisation. For that purpose, it was considered that a price level based on the Community producers' cost of production together with a reasonable profit margin should be calculated.

(178) Here, it was found that a profit margin of 5 % of turnover could be regarded as a reasonable minimum, taking into account the need for long-term investment, and, more particularly, the amount which the Community industry could have been expected to obtain in the absence of injurious subsidisation.

(179) Given the lack of cooperation, it was considered that the injury elimination level should, cover the difference between this calculated price and the cif prices adjusted as explained in recital (82).

(180) The injury elimination levels found was 42,30 % for imports from Indonesia.

2. **Definitive countervailing measures**

(181) In light of the foregoing and in accordance with Article 15(1) of the basic Regulation, the countervailing duty rate should correspond to the subsidy margin, which was lower than the injury margin. The following rate of duty therefore applies:

Indonesia (all companies): 10,0 %.

(182) In order to meet the deadline set out in Article 11(9) of the basic Regulation, the present Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of certain ring binder mechanisms, falling within CN code ex 8305 10 00 (Taric codes 8305 10 00 10 and 8305 10 00 20) and originating in Indonesia. For the purpose of this Regulation, ring binder mechanisms shall consist of two rectangular steel sheets or wires with at least four half rings made of steel wire fixed on it and which are kept together by a steel cover. They can be opened either by pulling the half rings or with a small steel-made trigger mechanism fixed to the ring binder mechanism.

2. The rate of the definitive countervailing duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for products originating in:

Country	Definitive duty (%)
Indonesia	10,0

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

4. The proceeding concerning imports of certain ring binder mechanisms originating in India is hereby be terminated.

Article 2

This Regulation shall enter into force on the day 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.

Proposal for a Council Regulation imposing a definitive anti-dumping duty on imports of certain ring binder mechanisms (RBM) originating in Indonesia and terminating the anti-dumping proceeding in respect of imports of certain RBM originating in India

(2002/C 227 E/04)

COM(2002) 246 final

(Submitted by the Commission on 21 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Previous proceeding concerning imports of ring binder mechanisms originating in the People's Republic of China and Malaysia

(1) In January 1997, by Regulation (EC) No 119/97 [2], the Council imposed definitive anti-dumping duties on imports of ring binder mechanisms ('RBMs') originating in the People's Republic of China ('the PRC') and Malaysia.

(2) In September 2000, following the initiation of a review pursuant to Article 12 of Council Regulation (EC) No 384/96 ('the basic Regulation'), the Council, by Regulation (EC) No 2100/2000 [3], amended the definitive anti-dumping duties on imports of RBMs originating in the PRC.

(3) In January 2002, the Commission initiated a review pursuant to Article 11(2) of the basic Regulation of anti-dumping measures applicable to imports of RBMs originating in the PRC [4]. No request for a review was received concerning the measures applicable to Malaysia, which consequently expired in January 2002.

2. Present proceeding

(4) On 18 May 2001, the Commission announced by a notice ('Notice of Initiation') published in the *Official Journal of the European Communities* [5] the initiation of an anti-dumping proceeding with regard to imports into the Community of certain RBMs originating in India and Indonesia.

(5) The proceeding was initiated as a result of a complaint lodged on 3 April 2001 by the following Community producers: Koloman Handler AG ('Koloman'), Austria, and Krause Ringbuchtechnik GmbH & Co. KG ('Krause'), Germany (the 'complainants') representing a major proportion, in this case about 90 %, of the Community production of RBMs. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(6) The initiation of a parallel anti-subsidy proceeding concerning imports of the same product originating in the same countries was announced by a notice published in the *Official Journal of the European Communities* [6] on the same date.

(7) The Commission officially advised the exporting producers, exporters and importers known to be concerned, the representatives of the exporting countries concerned, the complainants and all known other Community producers and users about the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initiation.

(8) One exporting producer in each of the countries concerned made its views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted a hearing.

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[1] OJ L 56, 6.3.1996, p. 1, as last amended by Council Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

[2] OJ L 22, 24.1.1997, p. 1.

[3] OJ L 250, 5.10.2000, p. 1.

[4] OJ C 21, 24.1.2002, p. 25.

[5] OJ C 147, 18.5.2001, p. 2.

[6] OJ C 147, 18.5.2001, p. 4.

(9) The Commission sent questionnaires to all parties known to be concerned and to all other companies which made themselves known within the deadlines set out in the Notice of Initiation. Replies were received from one of the two complainant Community producers, one exporting producer in India, as well as from its related exporter outside the Community, and from one user and two unrelated importers in the Community. The Commission sought and verified all the information it deemed necessary for the purpose of a determination of dumping, injury, causation and Community interest. Verification visits were carried out at the premises of the following companies:

(a) Community producers

— Koloman Handler AG, Austria

(b) Exporting producers in India

— ToCheungLee Stationery Mfg Co. Pvt. Ltd., Tiruvallore

(c) Related exporters outside the Community in Hong Kong

— ToCheungLee (BVI) Limited/World Wide Stationery Mfg. Co., Ltd. (ultimate holding company)

(d) Unrelated importers

— Bensons International Systems Ltd, United Kingdom

— Bensons International Systems BV, The Netherlands

(e) User

— Esselte, United Kingdom.

(10) The investigation of dumping and injury covered the period from 1 April 2000 to 31 March 2001 ('investigation period' or 'IP'). For the purposes of analysing trends relevant for the assessment of injury, the Commission has examined data relating to the period 1 January 1998 up to the end of the IP ('period considered').

3. **Provisional measures**

(11) Given the need to further examine certain aspects of injury, causation and Community interest, in particular in view of the ongoing restructuring of the complainants, no provisional anti-dumping measures were imposed on RBMs originating in India and Indonesia.

4. **Subsequent procedure**

(12) All parties were informed of the decision not to impose provisional measures. The Commission continued to seek and verify all information deemed necessary for definitive findings. In particular, further on-the-spot investigations were carried out at the premises of a user of RBMs in the Community and of two unrelated importers in the Community.

(13) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the findings have been modified accordingly.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(14) The product concerned is certain ring binder mechanisms ('the product concerned'). These are currently classifiable within CN code ex 8305 10 00. Lever-arch mechanisms, falling within the same CN code, are not included in the scope of this investigation.

(15) RBMs consist of two rectangular steel sheets or wires with at least four half-rings made of steel wire fixed on them and which are kept together by a steel cover. They can be opened either by pulling the half-rings or with a small steel-made trigger mechanism fixed to the RBM. The rings can have different shapes, the most popular ones being round, rectangular or D-shaped.

(16) RBMs are used to file different kinds of documents or papers. They are used, *inter alia*, by producers of ring binders, software and technical manuals, photo and stamp albums, catalogues and brochures.

(17) Several hundred different models of RBMs were sold during the IP in the Community. The models varied by size, shape and number of rings, the size of the base plate and the system to open the rings (pull open or opening trigger). In the absence of a clear dividing line in the range of RBMs and given that all of them have the same basic physical and technical characteristics, and that the models of RBMs can, within certain ranges, replace each other, the Commission established that all RBMs constitute one single product for the purpose of the present proceeding.

2. **Like product**

(18) The Commission found that the RBMs produced and sold on the domestic market in India and those exported to the Community from India had the same basic physical and technical characteristics and uses.

(19) The Commission also found that there was no difference in the basic physical and technical characteristics and uses between the RBMs imported into the Community originating in India and the RBMs produced by the Community industry and sold on the Community market.

(20) In view of the lack of cooperation from any Indonesian producer, the Commission relied on facts available in accordance with Article 18 of the basic Regulation. In this regard and in the absence of any other information available for the country, the Commission considered it appropriate to make use of the information submitted in the complaint, according to which the RBMs produced and sold in Indonesia or exported to the Community and the RBMs produced by the complainant Community producers and sold on the Community market are alike.

(21) It was therefore concluded that the RBMs produced and sold by the Community industry on the Community market, the RBMs originating in India and Indonesia exported to the Community and the RBMs produced and sold on the domestic market in India and Indonesia were all like products within the meaning of Article 1(4) of the basic Regulation.

(22) During the IP the product concerned was subject to a conventional customs duty of 2,7 % in 2000 and 2,7 % in 2001. Under the GSP regime the product concerned imported from India and Indonesia benefited from a reduction amounting to 100 % of the conventional customs duty payable in 2000 and 2001. As a result, the duty applied was 0 % in 2000 and 0 % in 2001.

C. **DUMPING**

1. **India**

(23) One company replied to the questionnaire for exporting producers. A company outside the Community related to this exporting producer also replied to the questionnaire. On the basis of import data reported by Eurostat, this exporting producer accounted for all Indian exports to the Community.

(a) *Normal value*

(24) For the purpose of determining normal value, it was first established whether the total domestic sales of RBMs of the sole cooperating Indian exporting producer were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were not considered representative since the total domestic sales volume of the exporting producer was less than 5 % of its total export sales volume to the Community.

(25) In the absence of representative domestic sales, or sales by any other exporting producer in the domestic market, or other sales in the same general category of products by the exporting producer, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation on the basis of the cost of manufacturing plus a reasonable amount for selling, general and administrative (SG&A) costs and for profits.

(26) The company's own SG&A costs and profit on domestic sales of the product concerned were added to the manufacturing costs of the exported models. In accordance with Article 2(5) of the basic Regulation, SG&A costs declared by the exporting producer were adjusted to reflect its audited financial statements.

(27) Following disclosure of the essential facts and considerations on the basis of which it was intended to impose definitive measures, the cooperating Indian exporting producer argued that, in the absence of representative domestic sales, its own SG&A and profit margin on domestic sales could not be used for the construction of normal value and that the profit margin was not reasonable in comparison to the profit margin, used for the injury elimination level calculation, used in previous investigations and actually attained on export sales.

(28) As regards SG&A, the argument put forward by the Indian exporting producer was not supported by evidence that the company's own SG&A would have been significantly different had the domestic sales been more than 5 % of exports. Accordingly, this claim was rejected.

(29) As regards profit, the situation was reviewed in light of new data obtained for the Indian domestic market. Based on this new data, it was determined that a reasonable profit margin, not exceeding the profit normally realised by other exporters or producers on sales of the same general category of products in the domestic market of the country of origin, India, would not exceed 5 %. The calculation was accordingly revised on this basis.

(b) *Export price*

(30) All export sales to the Community were made to independent importers in the Community and the export price was established pursuant to Article 2(8) of the basic Regulation by reference to the prices actually paid or payable.

(c) *Comparison*

(31) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.

(32) Sales to the Community were made through a related company in Hong Kong. This company carried out the functions of a trader and an adjustment was made to the export price from this company in Hong Kong by deducting a commission from the export price to take account of the functions performed by it.

(33) Allowances for differences in transport, insurance, packing and credit costs have also been made where applicable and justified.

(d) *Dumping margin*

(34) As provided by Article 2(11) of the basic Regulation, the weighted average normal value of each model of the product concerned exported to the Community was compared to the weighted average export price at ex-factory level for the same model and at the same level of trade.

(35) The comparison showed that no dumping existed for exports of RBM made by the cooperating exporting producer during the IP. The definitive dumping margin expressed as a percentage of the cif import price at the Community frontier duty unpaid is as follows:

— ToCheungLee Stationery Mfg. Co. Pvt. Ltd.: 0,0 %

(36) Since the cooperating exporting producer accounted for all Indian exports to the Community of the product concerned, it was decided to set the residual dumping margin at the level of the dumping margin found for this cooperating exporting producer, i.e. 0,0 %.

2. **Indonesia**

(37) The sole known exporting producer in Indonesia and its related importer did not reply to the questionnaire. In accordance with Article 18 of the basic Regulation, this company was duly informed that should it not cooperate findings for it would be based on the facts available. Despite this, the company still did not cooperate with the investigation. In accordance with Article 16(1) of the basic Regulation no verification visit was carried out at the premises of this exporting producer.

(a) *Normal value and export price*

(38) Using facts available and in the absence of any other reliable information available for the country, it was considered appropriate to base the determination on the information submitted in the complaint. In accordance with Article 18(5) of the Basic Regulation; this information was checked, where practicable, by reference to information from other independent sources.

(39) Normal value was constructed for five different types of RBMs in Indonesia on the basis of the cost of manufacturing plus a reasonable amount for SG&A costs and for profit.

(40) The export price was determined on the basis of the price to the first unrelated buyer in the Community for each of the five types. Adjustments for SG&A costs and a reasonable profit were made based on information contained in the complaint.

(41) The sole known exporting producer in Indonesia argued that the normal value established on the basis of the complaint was not representative of their true normal value and furthermore, that under Article 18(5) the Commission is required to check the information in the complaint against independent sources including published price lists, official statistics or other independent official information.

(42) As mentioned above, this exporting producer did not provide any data for the establishment of normal value. It was attempted, as much as possible, to find alternative sources of information and to cross-check the complaint data through internet searches, examination of data from an independent importer and analysis of data from Eurostat. In this respect, the complaint included five specific models with a diverse range of prices for normal value and compared those prices with the equivalent export prices for the same models. A comparison of each individual normal value or a simple average of the normal values from the complaint with the weighted average export price from Eurostat would not have provided a meaningful basis for a finding. Consequently, no alternative data was obtained with regard to normal value or export price which was considered more reliable than that in the complaint.

(b) *Comparison*

(43) Adjustments for transport and distribution costs were made where applicable in order to allow a fair comparison. The adjustments were equally based on information contained in the complaint which was verified.

(c) *Dumping margin*

(44) As provided by Article 2(11) of the basic Regulation, the normal values of each type considered of the product concerned exported to the Community were compared to the export prices at ex-factory level for each comparable type.

(45) The comparison showed the existence of dumping in respect of Indonesia. The dumping margin expressed as a percentage of the cif import price at the Community frontier duty unpaid for all Indonesian exporting producers is as follows:

(46) All exporters: 144,0 %.

D. **INJURY**

1. **Preliminary remark**

(47) Given that only one Indian exporting producer cooperated in the investigation and that the Community industry comprises only one company, specific data relating to these companies have been indexed or put in the form of a range in order to preserve the confidentiality of the data submitted in accordance with Article 19 of the basic Regulation.

2. **Community production**

(48) It was established that, in addition to the two complainant Community producers' output, production was also taking place in Italy and Spain. Although the Italian company involved did not supply complete data to the Commission, the information received confirmed that, during the IP, it represented a share of around 10 % of total Community production. As regards the Spanish company, which did not supply complete data to the Commission, it was found that in 2001 it produced negligible volumes of the product concerned, while it imported a major portion of its sales from one of the countries concerned. It was concluded therefore that it should be considered as an importer rather than a producer.

(49) It was also found that a company located in the UK had formerly been involved in the production of a certain type of RBMs. This company confirmed in writing that its production of the product concerned ceased some years ago. No other producers in the Community are known.

(50) Based on the above, the production of the complainants and the other Community producer located in Italy constitute the total Community production within the meaning of Article 4(1) of the basic Regulation.

3. **Definition of the Community industry**

(a) *Community industry*

(51) Of the two complainant producers one did not reply to the questionnaire (Krause) and was considered to be non cooperating. This producer, even though supporting the complaint, was therefore not regarded as being part of the Community industry. Regarding the other producer (Koloman), it was found that this company not only produced the like product in the Community during the IP, but also produced parts of it in Hungary. In addition to its Community production, Koloman traded the Hungarian products in the Community and also used parts produced in Hungary for its Community production. Moreover, part of the production of the cooperating Community producer was relocated at the beginning of the year 2000 by means of transfer of certain machinery from Austria to Hungary. However, despite the foregoing, the core activity of this company remained in the Community, i.e. head office, warehousing, sales office, production of a significant amount of the product range, as well as significant technical and marketing know-how. The imported sales completed the product range of the like product and did not therefore affect the Koloman's status as Community producer. As to the production of parts in Hungary and their subsequent incorporation into the finished product, the investigation established that these incorporated parts represented only a minor proportion of the cost of production of the finished products and thus, of the added value. Consequently, the status of the producer as Community producer is not affected by these imports.

(52) The investigation confirmed that the sole cooperating Community producer represented more than 25 % of the Community production of RBMs, thus fulfilling the requirements of Article 5(4) of the basic Regulation. It was therefore deemed to constitute the Community industry within the meaning of Article 4(1) of the same Regulation and will be hereinafter referred to as 'the Community industry'.

(b) *Events occurring after the investigation period*

(53) In November 2001, i.e. after the end of the IP, the cooperating Community producer Koloman went into receivership and as a result of a liquidation procedure, was taken over by an Austrian company, whose parent company, located in the UK, also acquired the Hungarian affiliate of Koloman.

(54) The acquirers confirmed to the Commission their on-going support of the complaint.

(c) *Community consumption*

(55) The apparent Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, the sales of the other Community producers on the Community market as reported in the complaint, duly adjusted as concerns the IP, information provided by the cooperating exporting producer and Eurostat import data. Account was taken of the fact that CN code 8305 10 00 also covers products not included in the scope of this proceeding. However, with regard to Indonesia, given the lack of cooperation of Indonesian exporters, best facts available were used, i.e. Eurostat data. In this respect, based on the complaint as best evidence available, all imports under the above-mentioned CN code were considered to constitute the product concerned. The non-cooperating Indonesian exporter claimed that its exports to the Community market were around 15 % lower than the import volumes used. However, this claim could not be verified and the difference was such that it could be explained by the ratio used to convert Eurostat statistics, which are in tonnes, to units. On this basis, Community consumption increased by 5 % between 1998 and the IP. In more detail, it remained relatively stable between 1998 and 1999 and then steadily increased until the end of the IP when it was found to be around 348 million units.

4. **Imports from the country concerned**

(56) It is recalled that the proceeding against India is terminated. Therefore, only imports from Indonesia are being analysed as imports from the remaining country concerned.

(a) *Volume of dumped imports*

(57) Even if imports volume originating in Indonesia decreased between 1998 and 2000 and then slightly rose again between 2000 and the IP, it should be noted that while imports from the country concerned only started in 1997, they were already significant in 1998 and were at a level of 32 million pieces in the IP.

(b) *Market share of dumped imports*

(58) The market shares held by Indonesian imports were found to be between 8 % and 13 % having decreased by around 2 percentage points since 1998.

(c) *Prices of dumped imports*

(i) Price evolution

(59) The weighted average import prices of imports originating in Indonesia decreased by – 5 % between 1998 and the IP, i.e. from ECU 105 per thousand units to EUR 99 per thousand units. The decrease was particularly marked between 1998 and 1999 when prices fell by 3 % and between 2000 and the IP when they fell by 2 %.

(ii) Undercutting

(60) Given the lack of cooperation from Indonesian exporters, the price comparison was made on the basis of Eurostat data duly adjusted for customs duties and post importation costs and compared, at the same level of trade, to Community producers' ex-works prices.

(61) On that basis, the price undercutting was reviewed and amended when necessary on the basis of information provided during the additional verification visits. Imports from Indonesia were found to undercut Community industry prices between 30 % and 40 %. It should also be noted that there was price suppression since the Community industry was not profitable.

5. **Situation of the Community industry**

(a) *Production*

(62) The Community industry's production followed a downward trend over the period, decreasing by 25 % between 1998 and the IP. A significant decrease took place between 1998 and 1999 (– 15 %). A further significant decrease occurred also between 1999 and 2000 and subsequently production volume remained stable until the end of the IP.

(b) *Capacity and capacity utilisation rates*

(63) The production capacity followed the same trend as the production and decreased by 26 % between 1998 and the IP.

(64) On this basis, the capacity utilisation rate remained stable over the period considered.

(c) *Stocks*

(65) The Community industry's end-of-year stocks decreased by 12 % between 1998 and the IP.

(d) *Sales in the Community*

(66) Despite an increase in Community consumption, the sales volume of the Community industry fell significantly between 1998 and the IP, by 25 %. A decrease occurred between 1998 and 1999 (– 10 %), and an even more pronounced one between 1999 and 2000, (– 15 %).

(e) *Market share*

(67) The market share of the Community industry decreased by more than 4 percentage points between 1998 and the IP, thus following the same trend as the volume sold.

(f) *Prices*

(68) The average net sales price of the Community industry decreased by 4 % between 1998 and the IP. Such a decrease was particularly marked between 1998 and 1999 (– 6 %), i.e. when the import prices of the country concerned significantly decreased, as explained in recital (59).

(g) *Profitability*

(69) The weighted average profitability of the Community industry deteriorated by 10 percentage points between 1998 and the IP and became a loss as from 2000. As a result of this unfavourable development and as mentioned in recital (53), the Community industry had to go into receivership.

(h) *Cash flow and ability to raise capital*

(70) The development of the cash flow generated by the Community industry in relation to sales of RBMs is very similar to that of the profitability, i.e. a significant decrease between 1998 and the IP.

(71) The investigation established that the Community industry's ability to raise capital became more difficult at this time owing to its financial situation and in particular to its deteriorated profitability.

(i) *Employment, wages, and productivity*

(72) Employment of the Community industry related to the production of RBMs decreased by 30 % between 1998 and the IP. The total amount of wages as a whole followed a similar trend, falling by 27 % during the same period, thus leading to an increase of the average wage by 5 % between 1998 and the IP. Productivity of the Community industry's workforce, measured as production volume per person employed increased by 8 % between 1998 and the IP.

(j) *Investment and return on investment*

(73) The level of investments decreased by 39 % between 1998 and the IP. The decrease was particularly marked between 1999 and 2000. The investigation showed that most of this capital expenditure was related to replacing or maintaining existing facilities.

(74) The return on investment, expressed as the relation between the net profits of the Community industry and the net book value of its investments, followed very closely the profitability trend and became negative in 2000.

(k) *Growth*

(75) While Community consumption increased by 5 % between 1998 and the IP, the sales volume of the Community industry decreased by around 25 % and the volume of imports concerned remained significant. The Community industry was therefore unable to benefit from the slight increase of the demand on the Community market.

(l) *Magnitude of the dumping margin*

(76) As concerns the impact on the Community industry of the magnitude of the actual dumping margin, given the volume and the prices of the imports from the country concerned, this impact cannot be considered negligible.

(m) *Recovery from the effect of past dumping*

(77) The Community industry is still in the process of recovering from the effect of the past dumped imports of RBMs originating in the PRC and Malaysia. As mentioned, Regulation (EC) No 119/97 [1] imposing definitive measures was amended by Council Regulation (EC) No 2100/2000 [2] to take account of the findings of an anti-absorption procedure against the PRC. Moreover, while measures against Malaysia lapsed in January 2002, a review has been opened with respect to Chinese imports of RBMs.

[1] OJ L 22, 24.1.1997, p. 1.

[2] OJ L 250, 5.10.2000, p. 1.

6. **Relocation of part of the production**

(78) In order to verify that the deterioration of situation of the Community industry was not due to a change in the pattern of the Community production, it was also examined whether the relocation of part of the production mentioned in recital (51) (by means of transfer of machinery from Austria to Hungary), which took place at the beginning of the year 2000, had an effect on the situation of the Community industry. It happened that while the decreasing trend of certain injury indicators was aggravated by this relocation (i.e. production, production capacity and sales volume), the trend of the capacity utilisation and of the average sales prices improved, leading to a limitation of losses. For instance, it was assessed that around 60 % of the decrease in the production is linked to the relocation, and around 80 % of the sales volume decrease, while without this relocation, the price decrease would have been three times higher and the profitability would have lost 7 additional percentage points. Given the above, it was concluded that the deterioration of the situation of the Community industry was not due to a change in the pattern of the Community production.

(79) It has been argued that the core activity of the Community industry is no longer in the Community since the relocation to Hungary allegedly entailed a 60 % decline in its Community production, and a 80 % decline in its Community produced sales.

(80) As already explained in recital (78), the relocation did not entail such a decrease in the Community industry's production, but only a decrease of 15 % of its Community production and 20 % of its Community produced sales. Therefore, the conclusion stated in recitals (51) regarding the core activity of the Community industry is confirmed.

7. **Conclusion on injury**

(81) A deterioration of the situation of the Community industry (after having taken account of the relocation as outlined in recital (78)) has been found by reference to the period considered.

(82) While the anti-dumping measures on imports of RBMs originating in the PRC and Malaysia led to a substantial decrease of imports originating in these countries after 1998, the Community industry could not fully benefit from this development. As from the year 1998, most injury indicators, i.e. production, sales volumes, prices, market share, profitability, return on investment, cash flow and employment developed negatively. In particular the decrease in the sales prices of the Community industry had a negative effect on its profitability.

(83) Moreover, while sales of the Community industry decreased between 1998 and the IP, imports originating in Indonesia were substantial. The investigation has shown that during the IP the Indonesian imports were made at prices undercutting those of the Community industry between 30 % and 40 %. In addition, there was price suppression.

(84) The situation of the Community industry is thus found to have deteriorated to such an extent that it is concluded that the Community industry has suffered material injury.

(85) It is recalled that after the IP, the poor financial situation led the Community industry to go into receivership.

E. **CAUSATION**

1. **Introduction**

(86) In accordance with Article 3(6) and (7) of the basic Regulation, it was examined whether the imports originating in Indonesia in view of their volume and their effect on prices in RBM Community market, have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports from Indonesia.

2. **Effect of the dumped imports**

(87) The volume of the dumped imports decreased by 14 % between 1998 and the IP, and its corresponding share of the Community market by 2 percentage points during the same period. However, they remained significant and always held a market share which ranged between 8 % and 13 % between 1998 and the IP. These imports also significantly undercut the prices of the Community industry. The market share of the Community industry went down by more than 4 percentage points. At the same time, average prices of the Community decreased by 4 %. The actual decline in prices was in fact even higher as outlined in recital (78).

(88) During the same period, between 1998 and the IP, the situation of the Community industry deteriorated as illustrated by the decrease of sales volume and market share, the price decrease and the substantial deterioration of its profitability, which turned to losses. Thus, the Community industry could not significantly benefit from the imposition of the abovementioned measures against the PRC and Malaysia.

(89) It has been argued by an Indonesian exporter that Indonesian exports could not have caused injury since they decreased between 1999 and 2000 and held a *de minimis* market share. The same company alleged that imports from Indonesia could not have any real impact on the Community industry since the Community production was five or six times higher than the volume of Indonesian imports.

(90) It is however recalled that although Indonesian imports decreased between 1998 and 2000, they slightly increased between 2000 and the IP without reaching the level of 1998. In addition, as already explained in recital (58), between 1998 and the IP, Indonesian imports held a market share situated between 8 % and 13 % which is substantial and clearly above *de minimis*. Finally, it is also recalled that the Community industry is clearly defined in recital (52) and that its level of production is far below that which has been alleged by the Indonesian company.

(91) It can therefore be concluded that the dumped imports originating in Indonesia have undermined the effects of the anti-dumping measures adopted in 1997 against the PRC and Malaysia and amended in 2000 as regards the PRC, and that they have been a substantive cause of the negative developments as summarised in the preceding paragraphs.

3. **Effect of other factors**

(a) *Imports from other third countries*

(92) Consideration was given to whether factors, other than the dumped imports from Indonesia, might have led to or contributed to the injury suffered by the Community industry and especially whether imports from countries other than Indonesia may have contributed to this situation.

(93) The import volume from other third countries increased by 17 % between 1998 and the IP while their market share increased by more than 5 percentage points during the same period. This increase is to a large extent due to the increase in imports originating in India, Hungary and Thailand, whereas in the meantime, imports originating in the PRC and Malaysia significantly decreased owing to the anti-dumping measures imposed in 1997.

(94) The average unit price of imports from third countries decreased by 16 % between 1998 and the IP. Prices from almost all third countries decreased during this period except prices of imports from the PRC, which due to the effect of the anti-dumping measures increased significantly although reaching the same level as the Hungarian prices only in the IP.

(i) India

(95) It was firstly examined whether imports originating in India might have contributed to the injury suffered by the Community industry. However, although imports from India increased significantly between 1998 and the IP, they were found to be undercut by the imports from Indonesia whose prices were found to be in a range of 2 % to 30 % lower than prices of Indian imports between 1998 and the IP. In addition, it should be noted that when Indian imports started in 1998, prices of Indian imports were found to be more than 40 % higher than prices of Indonesian imports for a comparable volume of RBMs. Since then, Indian imports prices decreased steadily but have always been above Indonesian prices and were still found to be more than 5 % higher than Indonesian prices during the IP. It is therefore concluded that, although Indian imports have had a negative impact on the situation of the Community industry, the negative impact of the dumped imports from Indonesia taken in isolation was nonetheless substantial. Indeed, Indonesia was an influential and important player in the Community. Their volume of exports to the Community was lower than that of Indian exports but still substantial. Indonesian exports undercut the Community industry's prices even more than Indian exports. It is also noted that the aforementioned analysis was seriously impeded by the fact that Indonesia did not cooperate and, therefore, no information was available in terms of product types, market segments represented by exports from Indonesia.

(ii) The People's Republic of China

(96) Consideration was also given to whether the absorption of the anti-dumping measures imposed in 1997 on imports from the PRC might have led to or contributed to the injury suffered by the Community industry. In this respect, it is noteworthy that although the absorption of the duty on imports from the PRC have undermined the effect of the measures imposed in 1997 with regard to the sales prices, those measures still led to a significant reduction of the volumes imported from the PRC as soon as 1998. In addition, it should be noted that while imports from Indonesia only began in 1997, they had already reached around the same level as the imports from the PRC by 1998. Since then, imports from the PRC dramatically decreased while Indonesian imports decreased by a much lesser extent until the IP

when these latter imports were still more than three times higher than imports from the PRC. Therefore, given that the import volumes from the PRC were far below the import volumes from Indonesia during the IP, it was concluded that these imports did not have as serious an impact on the Community industry as compared to the effect of the dumped imports from Indonesia.

(iii) Hungary

(97) In order to determine whether imports from Hungary, in isolation, caused injury to the Community industry, the level of imports and prices on the Community market were examined.

(98) The analysis as regards Hungarian imports between 1998 and the IP was based on data provided in the questionnaire reply of the Community producer, whose plant in Hungary represents the sole Hungarian producer.

(99) During the period considered, imports of RBMs originating in Hungary increased in volume. As to their prices charged by the Community industry on the Community market for its products imported from Hungary, while these decreased during the period considered, they remained the highest amongst the import prices from the other third countries and were undercut by imports from Indonesia.

(100) The Hungarian production of RBMs of the Community industry was analysed and compared to the Austrian production. It was found that there was very little overlap between the models produced in Austria and Hungary.

(101) Given this small percentage of models manufactured both in Austria and in Hungary, it was concluded that the Hungarian products completed the product range of the Community industry enabling it to offer a wider choice of models to customers and that they did not affect negatively the situation of the Community industry.

(102) On the basis of the above, it was concluded that imports from Hungary did not materially contribute to deteriorate the situation of the Community industry.

(iv) Thailand

(103) Given that, as already mentioned in Council Regulation (EC) No 2100/2000, 'some of the goods of Chinese origin were declared to national customs authorities as being of Thai origin and thus avoided payment of the anti-dumping duties normally due', it was also considered appropriate to evaluate the impact of imports consigned from Thailand.

(104) In this respect, imports from Thailand significantly increased during the period considered since they started in 1998 with around 1 million units and rose to more than 23 million units in the IP. In addition, it was established on the basis of Eurostat data, that sales prices of Thai imports were generally below the prices of Indonesian imports.

(105) However, although Thai prices were found to be around 20 % lower than the prices of the Indonesian imports, it is recalled these latter are more than one third higher than import volumes from Thailand. Therefore, given that the volumes imported from Thailand are still substantially below the volumes imported from Indonesia, it was concluded that these imports could not have had a significant impact as compared to the effect of the dumped imports from Indonesia.

(106) The analysis in respect of Thailand has been questioned by an Indonesian exporter, which did not cooperate. In this respect, it argued that the level of imports from Indonesia is comparably lower and that prices are higher when compared to Thai imports. It is however recalled that although Thai prices were lower than the prices of the imports from Indonesia, the volumes imported from Indonesia were more than 30 % higher than imports from Thailand. Therefore, the conclusion drawn in recital (105) is confirmed.

(b) *Further factors*

(107) It was also examined whether factors other than the abovementioned might have contributed to the injury suffered by the Community industry.

(108) It has been contended by the cooperating importers that RBM business is extremely price sensitive and therefore producers must sell large volumes to be competitive. It was also argued by the same parties that the Community industry relies only on the Community market, instead of the world market, which would allow it to be more cost efficient. On this matter, it is recalled that the ratio of sales of the Community industry inside and outside of the Community did not significantly change between 1998 and the IP. Nevertheless, even though the Community industry was strongly oriented towards the Community market, its export sales permitted the Community industry to be profitable in 1998 at a time when imports from Indonesia were significant.

(109) One user argued that the injury was caused by the strong competition in the office supplies industry. This competition allegedly led the users/distributors of the product concerned to exert a price pressure on the Community industry thus leading to a price decrease. In this respect, it is underlined that the dumped imports must have significantly worsened the price pressure exerted by the users in the Community, thus causing injury to the Community industry.

(110) Moreover, it was examined whether the price depression could be attributable to the normal course of the RBM business, since prices from almost all sources of supply decreased between 1998 and the IP.

(111) In this respect, it is recalled that the general price decrease should be seen in the light of continued unfair practices, firstly from the PRC and Malaysia, secondly from Indonesia, which have influenced the Community market.

(112) In addition, as mentioned in recital (108), the RBM market is extremely price sensitive. Therefore, given that prices of the Indonesian imports were found to be dumped and lower than the average unit price of all other imports of RBMs between 1998 and the IP, it is to be concluded that imports from Indonesia, which held between 8 and 13 % of the Community market during the IP, have had a price depressive impact on this market.

(113) Finally, it was analysed if the price behaviour of Krause, the non-cooperating Community producer, could have contributed to the injury suffered by the Community industry. The additional examination of data referring to Krause showed that this Community producer itself suffered a deterioration of its situation during the period considered, particularly as concerns sales price and profitability. It appears therefore that it has not contributed to the injury suffered by the Community industry, and that, it has been equally negatively affected by the imports from Indonesia, being forced to decrease its prices, like the Community industry.

(114) For all the reasons explained above, it was concluded that the price depression on the Community market should not be seen as representing a normal development of trade, but rather as the consequence of unfair commercial practices of Indonesia.

(115) It was contended by the Indonesian authorities that the Indonesian exports were limited to supplying an Italian producer of ring binders to complement its product range.

(116) However, this assertion was found to be in contradiction with the statement made by the non-cooperating Indonesian exporter who argued that the sole market where the Indonesian producer has significant market share is the United Kingdom. This is also confirmed by Eurostat.

(117) This latter producer alleged that these Indonesian exports could not cause injury since its main market is the UK where the Community industry does not have any significant activities. However, in addition to the fact that this assumption is in contradiction with the allegation made by the Indonesian authorities, it is also recalled that the injury analysis is made on a Community basis and not on a regional basis.

4. **Conclusion on causation**

(118) In view of the above, it is concluded that the material injury suffered by the Community industry, which is characterised by a negative development of production, sales volumes, prices, market share, profitability, return on investment, cash flow and employment duly adjusted to take account of the relocation to Hungary, was caused by the dumped imports concerned. Indeed, the combined effect on the Community industry's situation of imports from India, Thailand and the PRC as well as the partial relocation of Community production was only limited.

(119) It was also contended by an Indonesian exporter which did not cooperate, that there is a contradiction between the conclusion stated in recital (118) and the fact that there is sufficient evidence to open an expiry review on the PRC.

(120) In this respect, it should be recalled that the scope of an expiry review is to analyse the situation of the Community market in the perspective of the likelihood of continuation or recurrence of dumping and injury should the measures in force be removed. Consequently, the fact that the deterioration of the Community industry has been attributed during this investigation period to Indonesia, does not affect the analysis of the future behaviour in the Community market of Chinese exporters and its likely effect on the situation of the Community industry. It is also recalled that the Chinese market share was at a very low level during the last two years of the period considered.

(121) Given the analysis, which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby concluded that these other factors as such do not reverse the fact that the material injury found must be attributed to the dumped imports.

F. COMMUNITY INTEREST

1. Preliminary remark

(122) It was examined whether compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and in accordance with Article 21(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

(123) In order to assess the likely impact of the imposition or non-imposition of measures, information was requested from all interested parties. Questionnaires were sent to the two complainant Community producers, two other companies known as producers in the Community, nine unrelated importers, 49 users and one users' association. One complainant Community producer (Koloman), two unrelated importers as well as one user related to those importers replied to the questionnaire. Another user made a submission without replying to the questionnaire.

(124) These replies and submissions formed the basis for the Community interest analysis.

2. Interest of the Community industry

(a) *Preliminary remark*

(125) Several producers of RBMs in the Community stopped manufacturing the product concerned within the last few years. As to the companies left, the investigation established that, as mentioned in recital (49), a company located in the UK also stopped its production some years ago. As to the company located in Italy, it was found that it did not represent a significant proportion of the production of RBMs in the Community and imported a significant part of its sales. As to the Spanish company it found that it should be considered as an importer rather than a producer since it produced negligible volumes of the product concerned, while it imported more than 90 % of its sales from Indonesia. It is concluded, therefore, that the two complainants are the only Community producers of RBMs with a significant production left.

(126) It should be recalled that the two complainant Community producers were heavily injured already in the past by imports of RBMs originating in the PRC and Malaysia which, as described in Regulation (EC) No 119/97 [1], led, *inter alia*, to a 28 % decrease of their workforce between 1992 and October 1995. As shown under recital (72), a further reduction of the Community industry's workforce of 30 % occurred between 1998 and the IP.

(127) In view of the material injury suffered by the Community industry, it is concluded that, should the Community industry not recover from the unfair dumping practices, it is likely that the production in the Community will cease completely and that the users will be significantly dependant on imports.

(b) *Financial situation of the Community industry*

(128) The financial situation of the Community industry developed so negatively during the period considered, that after the IP the Community industry went into receivership, as mentioned in recital (53). It should be noted that the Community industry's loss-making situation resulted from its difficulty to compete with the low-priced dumped imports. However, the fact that the cooperating Community producer has been taken over, shows that the production of RBMs in the Community is in the process of being restructured and that a strong effort is being made to keep this industry viable and to render it profitable.

(c) *Possible effects of the imposition/non-imposition of measures on the Community industry*

(129) Following the imposition of measures, the restoration of fair market conditions would enable the Community industry to recover lost market share and, by increasing capacity utilisation, to decrease unit production costs and to increase profitability. Furthermore, the measures are expected to have a positive effect on the level of the Community industry's prices. In conclusion, it is expected that the increase in production and sales volume, on the one hand, and the further decrease in unit costs, on the other hand, eventually combined with a moderate price increase, will allow the Community industry to improve its financial situation.

[1] OJ L 22, 24.1.1997, p. 1.

(130) To the contrary, should anti-dumping measures not be imposed, it is likely that the Community industry would have to further lower its prices and/or continue to lose market share. In both scenarios, the financial situation of the Community industry is likely to worsen. As a further consequence, it is likely that the Community production would, within a short period of time, definitively cease.

(131) Moreover, given that the Community industry does not only produce the product concerned but also other products accounting for about one third of its turnover, it is very likely that the closure of production lines manufacturing RBMs would affect the viability of the whole factory and lead to closure of all production lines with a consequent wider negative effect on employment and investment.

(d) *Possible relocation of the Community industry production*

(132) It was examined whether any measures could be considered as not being in the interest of the Community given the relocation of part of the Community industry production to a third country. The possibility of any further relocation was also examined.

(133) First of all, as explained in recital (78), it is recalled that the relocation, which took place in 2000, permitted the Community industry to limit its losses. In this respect, it was a strategic decision taken to thwart the effect of the dumped practices. In addition, it is likely that this relocation, by improving the financial situation of the Community industry, had the indirect effect to make it more attractive for the new investor that recently took it over.

(134) As to the risk of any additional relocation, the Commission received satisfactory confirmation that such relocation is not foreseen by the Community industry. In addition, there is no reason to consider that such a move is likely since the restructuring effort combined with the imposition of anti-dumping duty should enable the Community industry to enjoy a profitable situation once again.

3. **Interest of importers**

(135) Certain importers, which however did not purchase RBMs from Indonesia, submitted that switching sources of supply could involve additional costs or transitional problems. More particularly, the importers underlined that owing to the anti-dumping measures imposed in 1997, they had already been forced to change their source of supply.

(136) However, it is recalled that the purpose of anti-dumping measures is not to force importers or users to change their source of supply but to restore fair competition on the Community market. In addition, these importers also recognised that a number of other third countries could easily produce RBMs and they foresaw no difficulties in sourcing from a country not covered by anti-dumping measures. Moreover, they could also trade Community producers' products. Therefore any problems resulting from a possible switching of supply are likely to be temporary and unlikely to offset the positive effect on the Community industry of anti-dumping measures against injurious dumping.

4. **Interest of users and consumers**

(a) *Users*

(137) It has been alleged both by the cooperating unrelated importers and user (ring binder producer) that the imposition of anti-dumping measures would have a serious adverse impact on the financial situation of the users.

(138) In this respect, the likely effect on users' cost of production of the anti-dumping measures imposed on Indonesia was assessed. In this respect an estimation was undertaken of what would be the impact of the measures proposed against Indonesia on a user having as sole source of supply imports from Indonesia (worst case scenario). On this basis the impact of the measures proposed against Indonesia would be evaluated as an increase in the cost of production of around 4 %. As already explained, this is an entirely hypthetical scenario since no user cooperated which only sourced the product concerned from Indonesia.

(139) In view of the above findings, it was concluded that the impact of anti-dumping duties on users would be negligible. In more general terms, given the lack of cooperation from other users, it is likely that the cost impact on all other users would be similarly negligible.

(140) The cooperating user claimed that, as happened in the past three years, when it had to relocate part of its production outside the Community and to close three plants following the imposition of anti-dumping measures on RBMs originating in the PRC and Malaysia, anti-dumping measures on imports originating in Indonesia, by increasing the prices of one of the items of its cost of production, could entail a further move of its ring binder production outside of the Community and/or closure of the relevant plants. This would risk to affect its whole activity, i.e. also the manufacturing of other products, whose plants would be delocalised as well, with significant job losses in the Community.

(141) As a general remark, it should be noted that the risk of relocation of the downstream industry owing to the anti-dumping measures is tempered by the fact that part of the binder market is business to business oriented and that it is fundamental that users are close to their customers, have a flexible production ready to meet the demand and a sound knowledge of the market. The investigation showed in fact that the main criteria customers of ring binders producers take into account in their choice are price, quality and service, as well as speedy delivery. In addition, as already explained in recitals (137) to (138), the financial impact of the anti-dumping measures on the downstream industry was found negligible. Finally, the fact that only one binder producer fully cooperated with the investigation, tends to confirm the conclusion that anti-dumping measures will not have a decisive impact on users.

(142) In addition, certain interested parties pointed out that the relocation of several users that have occurred in the past years was due to the high cost of production in the Community. This confirms that any relocation should be seen in the wider context of the overall cost structure in which, as already explained, anti-dumping measures represent a negligible portion.

(143) As regards the specific situation of the cooperating user, the investigation showed that, although this user relocated part of its production outside the Community between 1998 and the IP, i.e. after the imposition of anti-dumping measures against the PRC and Malaysia, this user in fact changed its source of supply after the imposition of anti-dumping measures against the PRC and Malaysia, purchasing RBMs from the cooperating importers which in turn, as from 1998, started to import from India to the detriment of the PRC. It seems therefore difficult to establish a link between the move of the ring binder production of that user outside the Community and the imposition of anti-dumping duties on imports from the PRC and Malaysia. Moreover, as already shown in recital (139) anti-dumping duties have a negligible impact on the users' cost of production.

(144) It was found that the relocation described above should rather be seen as the consequence of the external-oriented strategy of this user which acquired a number of companies during the last years. This strategy eventually led to a consolidation and a restructuring of the different entities of the group, certain amongst which have been closed. The relocation of some plants outside the Community should be seen as part of this strategy, which aims to strengthen the position of that user over the Community market and to develop its presence in eastern Europe.

(145) Before the above background, and in view of the negligible impact the level of the duties imposed is likely to have on the user concerned, it appears unlikely that the anti-dumping measures against Indonesia would, as such, entail a further move of its ring binder production outside of the Community.

(146) As regards the closure of plants and the risk of further closures linked to the imposition of anti-dumping measures against Indonesia, it was found that the cooperating user closed three plants in the past three years, when measures on the PRC and Malaysia were in force. In view of the negligible impact the measures would have on the cost of production and on the financial situation of the user in question, as explained under recital (144), it is unlikely that the measures on the PRC and Malaysia led, on their own, to the closure of these plants and that the anti-dumping measures on imports from Indonesia would cause a closure of other plants.

(b) *Consumers*

(147) It should be mentioned that the product concerned is not sold at retail level and that no consumers' association made themselves known and participated to this investigation.

(148) The cooperating user also argued that anti-dumping measures would increase the price paid by the final customer of ring binders, i.e. consumers. However, in view of the above explanation regarding the impact on ring binder producers, any increase in the final sales price to consumers of ring binders is likely not to be significant.

(149) In addition, the investigation showed that the cooperating user sells its products mainly to distributors. In the worst scenario, should the cost increase that the users might suffer be passed on in full until the final consumer, this would entail a price increase of a maximum of 4 % for the final consumer. However, this is unlikely to occur since general experience shows that each step in the distribution chain is likely to support part of its costs increase in order to stay competitive on its market.

(150) On the basis of the above, the impact on users of RBMs and consumers of ring binders was considered not to constitute a compelling reason against the imposition of anti-dumping measures, as the possible negative effect is unlikely to offset the positive effect on the Community industry of anti-dumping measures against injurious dumping.

(c) *Impact on competition*

(151) It was also examined whether the imposition of anti-dumping measures on imports from Indonesia could lead to a situation where the Community industry could benefit from a dominant position on the

Community market, in particular in view of the anti-dumping measures imposed in 1997 on imports from the PRC and Malaysia and in view of the restructuring of the Community industry.

(152) First of all, it is recalled that the Community industry held, during the IP, a market share which only ranged between 10 % and 15 %. The two complainant Community producers taken together would have held, during the IP, a market share ranging between 32 % and 37 %. Even in the event of including Koloman's imports in the market share held by both complainants together, this market share would have ranged from 47 % to 52 % of the Community market in the IP. In addition, it is recalled that, although the Commission initiated a review of the measures against the PRC, this review does not concern imports from Malaysia. Also RBMs can still be imported from India. Therefore it is considered very unlikely that the imposition of anti-dumping measures against Indonesia would lead to any negative effect on competition of the Community industry on the Community market. Finally, it is recalled that the imposition of anti-dumping measures on imports from the PRC and Malaysia likewise did not lead to any kind of dominance for the Community industry, even if no other sources of supply but these two countries existed at the time.

(153) On the other hand, as already explained in recital (130), it is likely that without measures to correct the effects of dumped imports, Community production will, within a short period of time, no longer be viable and therefore cease. It would certainly not be in the interest of the users that the Community industry would cease its production of the product concerned. Indeed, on the one hand, the sole user that cooperated purchased between 20 % and 50 % of its RBMs from the Community industry between 1998 and the IP. On the other hand, should the Community industry definitely cease the production of RBMs, users would be significantly dependent on imports.

(154) Should measures be imposed, several alternative sources of supply still exist. RBMs are being or can be purchased from the Community industry, the other Community producers, India and Hong Kong. In addition, imports from Malaysia are likely to recommence since measures against this country recently expired. Moreover, the investigation has shown that the imposition of anti-dumping measures on imports from the PRC and Malaysia did not entail any shortage of the product concerned. Finally, it is recalled that the impact of the measures on users was found to be negligible, and that the product concerned will therefore quite likely still be imported from Indonesia.

5. **Conclusion on Community interest**

(155) Given the above reasons, it is concluded that there are no compelling reasons against the imposition of anti-dumping duties.

G. **DEFINITIVE MEASURES**

1. **Injury elimination level**

(156) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, definitive anti-dumping measures should be taken in order to prevent further injury being caused to the Community industry by the dumped imports.

(157) In accordance with Article 9(4) of the basic Regulation, the Commission examined what level of duty would be adequate to remove the injury to the Community industry caused by dumping. For that purpose, it was considered that a price level based on the Community producers' cost of production together with a reasonable profit margin should be calculated.

(158) Here, it was found that a profit margin of 5 % of turnover could be regarded as a reasonable minimum, taking into account the need for long-term investment and, more particularly, the profit margin which the Community industry could have been expected to obtain in the absence of injurious dumping.

(159) Given the lack of cooperation, it was considered that the injury elimination level should cover the difference between this calculated price and the cif prices adjusted as explained in recital (60).

(160) The injury elimination levels found was 42,30 % for imports from Indonesia.

2. **Definitive anti-dumping measures**

(161) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, it is considered that definitive anti-dumping duties should normally be imposed at the level of the injury margin for Indonesia.

(162) However, with regard to the parallel anti-subsidy proceeding, in accordance with Article 24(1) of Council Regulation (EC) No 2026/97 [1] ('the basic anti-subsidy Regulation') and Article 14(1) of the basic Regu-

[1] OJ L 288, 21.10.1997, p. 1.

lation, no product shall be subject to both anti-dumping and countervailing duties for the purposes of dealing with one and the same situation arising from dumping and from export subsidisation. In the present investigation, it was found that anti-dumping duties should be imposed on imports of the product concerned originating in Indonesia and therefore, it is necessary to determine whether, and to what extent, the subsidy and the dumping margins arise from the same situation.

(163) In the parallel anti-subsidy proceeding, with regard to Indonesia, countervailing duties corresponding to the amount of subsidies, which were found to be 10 %, were imposed in accordance with Article 15(1) of the basic anti-subsidy Regulation. Some of those investigated in Indonesia constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. As such, these subsidies could only affect the export price of the Indonesian exporting producers, thus leading to increased margin of dumping. In other words, the dumping margin established for the Indonesian producers are partly due to the existence of export subsidies. However, it is noted that the injury margin was considerably lower than the dumping margin even if the latter was adjusted to take account of the export subsidy. In these circumstances it is not considered appropriate that both countervailing and anti-dumping duties could be imposed to the full extent of the relevant subsidy and dumping margins established. Therefore, the combined duty level should not exceed the injury margin. Given that a part of the injury margin amounting to 42,3 %, will be covered by the imposition of the countervailing duty which amounts to 10 %, the anti-dumping duty should not exceed the remaining injury margin of 32,3 %.

Company	Export Subsidy Margin	Total Subsidy Margin	Injury Margin	CV Duty	AD Duty	Total Duty Rate
Indonesia all companies	5 %	10 %	42,3 %	10 %	32,3 %	42,3 %

(164) It has been argued that Article 14(1) of the basic Regulation would have been violated since no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation. It is however recalled that as explained in recitals (162) and (163) the duties have been adjusted in conformity with Article 14(1) of the basic Regularion. The argument was therefore rejected.

(165) In order to meet the deadline set out in Article 6(9) of the basic Regulation, the present Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of certain ring binder mechanisms, falling within CN code ex 8305 10 00 (Taric codes 8305 10 00 10 and 8305 10 00 20) and originating in Indonesia. For the purpose of this Regulation, ring binder mechanisms shall consist of two rectangular steel sheets or wires with at least four half rings made of steel wire fixed on it and which are kept together by a steel cover. They can be opened either by pulling the half rings or with a small steel-made trigger mechanism fixed to the ring binder mechanism.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for products originating in:

Country	Definitive duty (%)
Indonesia	32,3

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

4. The proceeding concerning imports of certain ring binder mechanisms originating in India shall be terminated.

Article 2

This Regulation shall enter into force on the day 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.

Proposal for a Council Regulation imposing a definitive anti-dumping duty on imports of powdered activated carbon (PAC) originating in the People's Republic of China

(2002/C 227 E/05)

COM(2002) 251 final

(Submitted by the Commission on 27 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 11(2) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. **PREVIOUS INVESTIGATION**

(1) By Regulation (EC) No 1006/96 [2], the Council imposed definitive anti-dumping measures on imports of powdered activated carbon originating in the People's Republic of China.

B. **PRESENT INVESTIGATION**

(2) Following the publication of a notice of impending expiry [3] of the anti-dumping measures in force, the Commission received a request for an expiry review lodged by the European Chemical Industry Council (CEFIC) on behalf of two producers, together representing a major proportion (more than 80 %) of the total Community production of powdered activated carbon ('PAC'). The request alleged that injurious dumping of imports originating in the People's Republic of China ('China') would be likely to recur if the measures expired.

(3) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a review, the Commission initiated an investigation [4] pursuant to Article 11(2) of Regulation (EC) No 384/96 (the 'basic Regulation').

(4) The investigation into the likelihood of a continuation or recurrence of dumping and injury covered the period from 1 June 2000 to 31 May 2001 ('IP'). The examination of trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1997 up to the end of the IP ('analysis period').

(5) The Commission officially advised the applicant Community producers, the exporters and exporting producers in China, importers/traders, users and suppliers, which were known to be concerned, of the initiation of the review. The Commission sent questionnaires to all these parties and to those who made themselves known within the time limit set in the Notice of initiation. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(6) The Commission sent out 26 questionnaires to unrelated importers/traders and 49 questionnaires to exporters and exporting producers in China. Furthermore, due to the apparent high number of exporters and exporting producers of the product concerned in China, the Commission sent out a questionnaire asking specific information on average sales volume and prices of PAC ('sample questionnaire') of each exporter and exporting producer concerned, in order to determine whether sampling was necessary. No answer was received from importers/traders, and one exporter in China replied to the sample questionnaire, but subsequently stopped cooperating.

(7) The Commission also sent questionnaires to all other parties known to be concerned and received replies from the two Community producers on whose behalf the request for review was lodged and from two suppliers of raw materials and two users.

(8) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the likelihood of continuation or recurrence of dumping and injury and for the determination of the Community interest. Verification visits were carried out at the premises of the following companies:

Producer in the analogue country United States of America:

— NORIT Americas Inc, Atlanta, Georgia

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

[2] OJ L 134, 5.6.1996, p. 20.

[3] OJ C 349, 6.12.2000, p. 5.

[4] Notice of initiation: OJ C 163, 6.6.2001, p. 7.

Community producers

— Norit NV, Netherlands

— Ceca SA, France

C. **PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**

(9) The product under consideration is the same as in the original investigation, i.e. PAC currently classifiable within CN code ex 3802 10 00. It is a microporous form of carbon, obtained from a variety of raw material such as coal, peat, wood, lignite, olive stones or coconut shells, which are activated by means of steam or chemical process. PAC is a very fine powder. Activated carbons are also sold in granular forms ('granulated activated carbon' or 'GAC') which are not covered by the measures in force.

(10) Subsequently to the imposition of definitive measures in 1996, certain difficulties appeared as to the distinction of activated carbon sold in 'powder' from activated carbon sold in granular form. In this regard, it is important to note that both products are made of ensembles of particles of carbon whose size vary and there is no international standard in respect of PAC. Therefore, for the purpose of implementation of the measures, the Community Customs Code Committee defined PAC in the following way: 'powdered activated carbon consists of at least 90 percent by mass (% m/m) of particles with a size less than 0,5 mm'. The investigation confirmed the accuracy of this definition.

(11) The general applications of PAC are: water treatment (potable process and waste water), gas and air purification, solvent recovery, decolourisation of sugar, vegetables oils and fats, deodorisation and purification of different products in the chemical (i.e. organic acids) or pharmaceutical (i.e. gastro-intestinal capsule) or food industries (i.e. alcoholic and soft drinks).

(12) As shown in the previous investigation, and as confirmed in the present investigation, it has been established that PAC produced and sold by the Community producers and PAC imported from China are in all respects identical and share therefore the same basic physical and chemical characteristics. China being an economy in transition and as mentioned below in recital (18), normal value had to be established on the basis of information obtained in a market economy third country. According to the information available, PAC produced and sold in the market economy third country, the United States of America has the same basic physical and chemical characteristics as PAC produced in China and exported to the Community. Therefore, they are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

D. **LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING**

1. **Preliminary remarks**

(13) In accordance with Article 11(2) of the basic Regulation, the purpose of an expiry review is to determine whether the expiry of the measures is likely to lead to a continuation or recurrence of dumping.

(14) In this respect, the volumes exported to the Community during the IP were examined. It should be noted that since none of the Chinese exporters nor any importer in the Community cooperated during the present investigation, export data were established in accordance with Article 18 of the basic Regulation, i.e. on the basis of information available. Since the imposition of definitive anti-dumping duties in 1996, Community statistics are available for imports of PAC. These statistics have been confirmed by market research information submitted by the complainant Community producers. On this basis, and in the absence of any other more reliable information, these statistics were used. They showed that during the IP 993 tonnes of PAC were imported from China into the Community.

(15) During the original IP, the import volume of Chinese PAC into the Community amounted to 4 008 tonnes, i.e. approximately 10 % of Community consumption. Imports dropped in 1996 after the imposition of the anti-dumping duty to 960 tonnes and remained relatively stable in the following years, reaching 842 tonnes in 1999, and 811 tonnes in 2000.

(16) The market share of Chinese imports of PAC in the Community as recorded in Eurostat is less than 3 % but nonetheless significant, i.e. above the *de minimis* threshold of the basic Regulation ([1]).

2. **Likelihood of continuation of dumping**

(17) In the context of the likelihood of a continuation of dumping, it was investigated whether dumping of exports from China was currently taking place. This was on the grounds that, if dumping was taking place now, this could be an important indication that dumping would be likely to continue in future, should the measures be allowed to expire.

([1]) Articles 5(7) and 9(3).

(a) *Analogue country*

(18) Since China is an economy in transition, normal value was determined on the basis of information obtained in an appropriate market economy third country selected in accordance with Article 2(7) of the basic Regulation.

(19) The USA was selected as an appropriate analogue country in the original proceeding. As indicated in the Notice of Initiation, the Commission envisaged to use the USA as an appropriate analogue country also in the present proceeding. In this respect, the investigation revealed that the USA was the most appropriate analogue country for the following reasons:

The USA is one of the largest producing countries of PAC world-wide. Figures submitted by the cooperating producer in the USA and the Community producers behind the request for review showed that the production volume of both countries is comparable. Furthermore, as mentioned in recital (12) PAC produced and sold in the USA was found to be a like product to PAC produced in China and exported to the Community. Domestic sales made by the cooperating US-producer (in terms of volume) were representative when compared to the imports of PAC from China into the Community. Finally, the level of competition in the USA was found to be very high. In addition to the competition amongst several producers in the USA, there was also competition from imported PAC (mainly from China, Philippines and Sri Lanka), which could be imported without quantitative restrictions or import duties. The main US-producer of PAC was furthermore willing to cooperate.

(20) Given the above, and as no comments were received on the choice of the analogue country by any of the interested parties, the USA was consequently selected as the most appropriate analogue country.

(b) *Normal value*

(21) In accordance with Article 2(1) of the basic Regulation, it was considered whether domestic sales of PAC in the USA could, considering the price charged, be seen to be made in the ordinary course of trade. For so doing the Commission examined whether domestic sales were profitable. For this purpose the full cost of production per unit of each grade during the IP was compared to the average unit price of the sales transactions of each grade made during the same period. It was found that all sales were made at a profit. The investigation also revealed that all sales were made to independent customers. As a result the prices paid or payable for PAC by independent customers on the US domestic market in the ordinary course of trade were used to determine the normal value in accordance with Article 2(1) of the basic Regulation.

(c) *Export price*

(22) As mentioned above, neither the Chinese exporters nor exporting producers, nor any importer of PAC in the Community cooperated in this proceeding. Therefore, the export price was determined on the basis of facts available in accordance with Article 18 of the basic Regulation. As already mentioned in recital (14) of the present Regulation, and in the absence of any other more reliable information, this was done by reference to Eurostat.

(23) Data in Eurostat are recorded on a cif European Community frontier basis. These prices were brought to a fob basis by deducting ocean freight and insurance cost. The necessary information on these costs has been submitted by the Community industry and used in the calculations, in the absence of any other more reliable information.

(d) *Comparison*

(24) For the purpose of ensuring a fair comparison between normal value and export price, account was taken of differences in factors, which were found to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. In this regard, adjustments for differences in the level of trade, commissions, packing and inland transport costs were made.

(25) As far as the normal value is concerned, the weighted average inland transport cost and packing cost per unit were deducted from the domestic sales price. Inland transport cost included insurance, loading and unloading costs. Given the non cooperation of the Chinese exporters or exporting producers, and in the absence of any more reliable information, the same amount for inland transport and packing was deducted from the fob export price.

(26) As far as packing costs are concerned, evidence was submitted to the Commission by the complainant Community industry, which showed that at least some of the product exported to the Community was packed in bags while the normal value was established on an ex packaging costs basis. The export price was therefore adjusted downwards for an appropriate amount of packaging costs.

(27) Domestic sales in the USA were mainly made to end-users, while Chinese exports of PAC are, on the basis of information available, mainly made to traders/distributors. Therefore, the normal value was adjusted by a distributor discount applicable on the US domestic market.

(28) Furthermore and according to evidence submitted by the Community industry, almost all export sales from China were made via export agencies, due to the requirement of export licences. Therefore, a commission fee of 1 % was deducted from the export price.

(e) *Dumping margin*

(29) The weighted average normal value and the weighted average export price of all grades were compared at the same level of trade, i.e. distributors/traders. The comparison showed that exports of PAC to the Community have been dumped at a substantial margin during the IP. The dumping margin was equal to the amount by which the normal value exceeded the prices for exports to the Community. The weighted average dumping margin exceeded 40 %.

3. **Development of imports should measures expire**

(30) It was also examined as to how imports of PAC from China would develop should measures expire. For that purpose the spare production capacity in China, export volume and the domestic market in China as well as the Chinese price behaviour to other third countries were examined. In the absence of cooperation from exporting producers, market research information submitted by the Community industry was used.

(a) *Production capacity, domestic market in China and export volume*

(31) The information available to the Commission showed that China, together with the United States, is the largest producer and exporter of activated carbons (granular and powdered) in the world. Actual production of activated carbons in China amounted to about 100 000 tonnes in 1998 according to a statistical industrial census, provided by the Community industry, of which 40 % or 40 000 tonnes in powder form. Production capacity was estimated at 140 000 tonnes during the same period based on the capacity of the most important Chinese producers representing 31 % of total Chinese capacity, of which at least half can be dedicated to the production of PAC, i.e. 70 000 tonnes. A spare capacity of approximately 30 000 tonnes was thus available in 1998 for producing PAC.

(32) On the basis of data available for prior years included in the abovementioned statistical industrial census, it was estimated that the annual growth rate of consumption, production and production capacity of PAC in China amounted to at least 5 %. On this basis spare capacities of PAC will reach up to 36 000 tonnes in 2003. Due to the specific situation on the domestic market (see recital below) the total spare capacity would be available for export.

(33) Furthermore, according to the abovementioned statistical industrial census, the Chinese domestic market was characterised by a significant oversupply resulting in unstable prices. Therefore, Chinese PAC producers turned increasingly to export markets, often the only possibility to maintain production at all. It is important to note that there were no export restrictions (other than export licences) of PAC in China. Given the situation on the Chinese domestic market, the significant spare capacities and the consequent need to explore export markets, it was considered likely that export prices would be on a low level and dumped.

(34) Main export markets for Chinese PAC were South East Asia, Japan, the Republic of Korea, the USA and Europe. However, according to the evidence submitted by the Community industry, the additional need for imported PAC in the other third countries would be minimal and the capability to absorb further Chinese exports therefore almost negligible. Furthermore it should be noted that a number of potential export markets in the Asian region apply high customs tariffs for PAC, such as India and Indonesia.

(35) In contrast, should the anti-dumping duty be removed, the Community market would be able to absorb large quantities of Chinese PAC due to the significant Community consumption. In this respect, it should also be noted that Chinese exporters are still present on the Community market via related importers, which facilitates increased imports and distribution of PAC.

(36) In conclusion, should the measures be removed, it is likely that Chinese producers will increase their capacity utilisation, as the Community would become an attractive export market.

(b) *Price behaviour*

(37) An analysis of the price behaviour of Chinese exporters to other third countries, such as the United States and Japan revealed that exports of PAC to these countries were made at very low prices and were dumped when compared to the normal value established in this investigation. As regards the United States and according to the evidence provided by the Community industry, as well as the information provided by the cooperating producer in the USA, the level of dumping would exceed 40 %, while the dumping margin for exports to Japan would be over 90 %.

(38) Considering the vast spare capacity available for exports and the export-driven Chinese PAC production, it is reasonable to assume that the dumping margins that could be practised in the Community, are likely to be at least at the same level as those to other major exporting markets of Chinese PAC, should anti-dumping measures lapse.

4. **Conclusion on the likelihood of a continuation of dumping**

(39) Imports of Chinese PAC during the IP were made above de minimis levels and were still dumped. It was established that dumping continued and that there is a strong likelihood that it would continue should measures be allowed to lapse. Moreover, it is likely that exports of Chinese PAC to the Community will significantly increase (and return to at least the levels found in the original IP) and that prices of these additional import quantities will in all likelihood be dumped at significant levels, should the anti-dumping measures lapse.

E. **DEFINITION OF THE COMMUNITY INDUSTRY**

(40) The two Community producers on whose behalf the complaint was lodged cooperated in the investigation. They represented more than 80 % of the Community production of PAC and therefore constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

F. **SITUATION OF THE COMMUNITY MARKET**

1. **Community consumption**

(41) Apparent Community consumption of PAC was established on the basis of the sales volumes of the Community industry on the Community market, the information contained in the request for review concerning the other Community producers and Eurostat in relation to imports of PAC.

(42) On this basis Community consumption was practically stable during the analysis period at slightly below 40 000 tonnes a year.

2. **Imports from China**

(a) *Volume, market share and prices*

(43) Based on information from Eurostat, volumes imported from China during the analysis period slightly increased but remained below 3 % of consumption, whilst their market share was above 10 % in the previous investigation.

(44) In the analysis period, prices of imports from China increased by 28 %, mainly for two reasons. Firstly, because of the evolution of the euro/dollar exchange rate, especially between 1999 and 2000. Secondly, world-wide prices of coal went up as indicated by market research information.

Imports from China	1997	1998	1999	2000	IP
Volume, tonnes	818	647	842	811	993
Indexed	100	79	103	99	121
Price, EUR per tonne	832	834	863	1 089	1 067
Indexed	100	100	104	131	128

(b) *Price behaviour of imports*

(45) Even after the imposition of an anti-dumping duty in 1996, prices of PAC originating in China remained lower than the Community industry's prices. The difference with Community industry's prices was 15 % during the IP. This differential was established on the basis of average sales prices (ex works) of the Community industry, Chinese import prices being derived from Eurostat and adjusted for post importation cost, customs and anti-dumping duties.

3. **Economic situation of the Community industry**

(a) *Preliminary remarks*

(46) As the Community industry is constituted by two companies, in order to protect confidentiality, the information concerning the Community industry had to be indexed, while market shares for all market participants have been rounded.

(b) *Production, capacity and capacity utilisation rates*

(47) The Community industry's production of PAC decreased by 5 % in the analysis period to just over 30 000 tonnes. The total production capacity of the Community industry, from 1998 to the IP, was stable at around 35 000 tonnes, with a high utilisation rate.

(c) *Sales in the Community and market share*

(48) The sales volumes of the Community industry decreased by 11 % between 1997 and 1999. It increased slightly in 2000 and in the IP but remained 6 % below its 1997 level. As consumption was practically stable, market share showed the same trend as sales. Overall, it fell in the analysis period by 7 percentage points to reach approximately 60 % in the IP.

Sales in tonnes	1997	1998	1999	2000	IP
Indexed	100	91	89	92	94

(d) *Stocks*

(49) In the analysis period, the Community industry's year end stocks of PAC increased by 15 % as sales decreased and the equipment was continuously run in order to avoid furnace re-ignition costs that are very high.

(e) *Sales prices in the Community*

(50) The Community industry's average net sales prices increased by 7 % in the analysis period. In 1999 and 2000 prices were higher than in the IP.

Prices of PAC	1997	1998	1999	2000	IP
Indexed	100	103	111	110	107

(f) *Profitability and return on investment*

(51) After having registered losses of 10 % in 1993, the IP of the previous investigation, the Community industry returned to profits in 1997. With the exception of 2000 for which profits were satisfactory thanks to the combination of a high level of price and fairly low unit costs, however the profit level achieved by the Community industry never exceeded 6 %. Return on investments was stable and positive during the analysis period.

Profitability	1997	1998	1999	2000	IP
Indexed	100	94	85	198	131

(g) *Cash flow*

(52) The Community industry proved to be cash generative throughout the period, with a similar trend to the one of profitability.

(h) *Ability to raise capital*

(53) No specific problem to raise capital or obtain loans was experienced by the Community industry during the analysis period.

(i) *Employment and wages*

(54) Employment in the Community industry decreased by 9 % in the analysis period to less than 350 persons while total labour costs increased by 11 % (an increase of around 20 % per employee).

(j) *Investment*

(55) During the analysis period, the Community industry made sustained investment to increase its productivity and rationalise its production process. The sums invested each year were fairly stable.

(k) *Productivity*

(56) The Community industry's productivity based upon tonnes produced per person employed for the production and sales of PAC increased by 7 % in the analysis period.

(l) *Magnitude of dumping and recovery from past dumping*

(57) As concerns the impact on the situation of the Community industry of the magnitude of the actual margin of dumping found during the IP, it should be noted that the margin found for China is significant. Due to the existence of anti-dumping measures however, the Community industry could recover from past dumping.

4. **Export activity of the Community industry**

(58) The Community industry's exports of PAC slightly increased over the analysis period, and represent somewhat more than $^1/_3$ of total production.

5. **Import volumes and prices from other third countries**

(59) The total import volumes of PAC from third countries other than China decreased during the analysis period from about 7 600 tonnes in 1997 to 5 400 tonnes in the IP, corresponding to market shares of around 20 % and 15 % respectively. The major exporters to the Community have been the USA, Malaysia and Indonesia. While imports from the USA have halved, imports from these latter countries increased from about 1 100 tonnes in 1997 to 1 900 tonnes in the IP. Average import prices from Malaysia and Indonesia were lower than those of the Community industry and in the same range as prices of imports originating in China.

6. **Sales of other Community producers**

(60) Other Community producers of PAC are mainly processors of GAC not subject to anti-dumping measures. In the analysis period, they started to import more GAC from China to grind it into PAC. They, thus, were able to gain market share from 10 % in 1997 to more than 20 % in the IP. This competition, however, did not prevent the Community industry to sell its PAC at a price allowing a reasonable profitability.

7. **Conclusion**

(61) The measures have enabled the Community industry to return to profitability and have alleviated the price pressure exerted by the dumped imports originating in China. However, the Community industry continued to lose market share especially as other Community producers started to sell PAC made from GAC originating in China. Thus, while its financial situation is satisfactory, its market position remains fragile.

G. **LIKELIHOOD OF RECURRENCE OF INJURY**

(62) It is recalled that at recital (39) it was concluded that the expiry of the measures would be likely to lead to a significant increase of dumped imports from China into the Community.

(63) Indeed, should the measures lapse, it is likely that considerable volumes will be shipped to the Community market at very low prices which significantly undercut the Community industry's prices. The current price differential of 15 % between the imported product and the Community industry's product (see recital (45)) could increase to exceed 30 % (the amount of duty in relation to current import prices), if the measure were allowed to expire. It should be noted that the current Chinese export price to the Community (on a cif basis) is in line with Chinese export prices to other third countries.

(64) It is estimated that at least 10 000 tonnes of PAC originating in China could be exported to the Community as soon as the duty has lapsed. This would represent more than a fourth of the Community market. As in this type of industry there are high fixed costs and very high re-ignition costs in case of production stoppage, the arrival of such a quantity of dumped imports would immediately cause a severe price depression on the market as the Community industry would first try to maintain its market share rather than reduce its production. This would in turn completely erode the Community industry's profitability and the industry would return to losses similar to those experienced in 1993. In the medium term the Community industry could be forced out of the market as there is no more room for significant gains in productivity which would allow it to operate at lower unit costs.

(65) The above should be seen in the following context. The situation of the Community Industry has undoubtedly improved (although this industry is still fragile). For instance, the Community industry recorded losses of 10,8 % in the original IP which have been turned into a profit of about 6 %. The likely impact of increased imports made at dumped prices set out in the preceding paragraph is also confirmed when looking at the main changes which occurred in the market between the original IP and the current IP.

— During the current IP, the market share of imports from China was significantly lower than during the original IP.

— The price differential between the Community prices and prices of the Chinese imports has been significantly reduced due to the existence of the duty.

— During the current IP there were low-priced imports from Indonesia and Malaysia but the quantities still remained considerably below the levels found for China in the original IP. It is also recalled that imports from Malaysia were already present on the Community market during the original IP.

— The market share of producers in the Community, which are not part of the Community industry, has increased.

On this basis, it is concluded that the main change which led to an improvement of the situation of the Community industry, was the restoration of a level playing field vis-à-vis imports of PAC from China. Therefore, the positive situation of the Community industry would quickly deteriorate should Chinese exporting producers again have the possibility to dump on the Community market at significantly increased quantities.

(66) On the basis of the above, it is concluded that, should the measures be allowed to expire, there is a likelihood of recurrence of injury.

H. **COMMUNITY INTEREST**

1. **Preliminary remark**

(67) In accordance with Article 21 of the basic Regulation it was examined whether a prolongation of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, other Community producers, the importers/traders as well as the users and suppliers of the product under consideration.

(68) It should be recalled that, in the previous investigation, the adoption of measures was considered not to be against the interest of the Community. Furthermore, the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, which would allow the assessment of any undue negative impact of the current anti-dumping measures on the parties concerned.

(69) On this basis it was examined whether, despite the conclusion on the benefit of the measures for the Community industry and on the likelihood of a recurrence of injurious dumping should measures expire, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. **Interests of the Community industry**

(70) The Community industry has proven to be a structurally viable industry, able to adapt to the changing conditions on the market. This was confirmed in particular by the positive development of its situation at a time when effective competition had been restored after the imposition of anti-dumping measures on imports originating in China and by the industry's investment in state-of-the-art production capacity. However, it can be concluded that, without the continuation of anti-dumping measures, its situation will in all likelihood severely deteriorate.

3. **Interests of other producers**

(71) Taking into account the likely quantities and prices of Chinese PAC likely to be exported to the Community if measures were allowed to lapse, other producers of PAC, including from granular activated carbon originating in China, would also see their market share and economic situation deteriorate.

4. **Interests of unrelated importers/traders**

(72) The Commission sent out questionnaires to 26 unrelated importers/traders. No answer was received.

(73) In these circumstances it was concluded that the continuation of measures would not affect the unrelated importers/traders.

5. **Interests of users**

(74) The Commission sent out questionnaires to 42 users. Two incomplete answers were received from which it was evident that PAC had a very small impact on costs (less than 0,1 %).

6. **Interests of suppliers**

(75) The Commission sent out questionnaires to 11 suppliers of raw materials to PAC producers to which only two answers were received. The replies were positive to keeping the measures in place as that would mean continued secured sales in the Community.

7. **Conclusion**

(76) Given the above, it is concluded that there are no compelling reasons, on the grounds of Community interest, against the prolongation of the anti-dumping measures.

I. **ANTI-DUMPING MEASURES**

(77) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend the maintenance of existing measures. They were also granted a period to make representations subsequent to this disclosure. No comments were received.

(78) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of PAC originating in China, imposed by Regulation (EC) No 1006/96, should be maintained,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of powdered activated carbon falling within CN code ex 3802 10 00 (Taric code 3802 10 00 20) originating in the People's Republic of China.

2. The amount of the definitive anti-dumping duty shall be EUR 323 per tonne (net weight).

Article 2

Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 3

This Regulation shall enter into force on the 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.

Proposal for a Council Regulation establishing an emergency Community measure for scrapping fishing vessels

(2002/C 227 E/06)

COM(2002) 190 final — 2002/0115(CNS)

(Submitted by the Commission on 28 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles [36 and] 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector [1] has afforded decommissioning incentives as a way of bringing about a balanced ratio of fleet capacity to available resources in the long term.

(2) Several stocks of major importance to Community fisheries are now seriously depleted. The owners of fishing vessels whose fishing opportunities have been severely reduced as a result of a multiannual management plan adopted by the Council under Council Regulation (EC) No ... [on the conservation and exploitation of fishery resources under the common fisheries policy] should therefore be offered additional decommissioning incentives on top of those already provided for in Council Regulation (EC) No 2792/1999. Sufficient additional funds should be made available to Member States for this purpose.

(3) Only those vessel owners who are severely affected by a multiannual management plan in Member States that have complied with appropriate fleet capacity reductions under MAGP IV provisions, should be afforded access to additional decommissioning incentives for the scrapping of fishing vessels defined by this Regulation. A reduction of 25 % or more in the fishing opportunities of the vessel concerned should be regarded as an objective indicator of severe impact.

(4) The maximum amounts for the scrapping premiums laid down in Article 7 of Regulation (EC) No 2792/1999 are insufficient to enable the higher premiums to be paid.

(5) For conservation reasons the Community measure should be established as soon as possible and should be limited in time to ensure that suitable restructuring of the fleet can proceed without delay.

(6) It is necessary to ensure adequate flexibility of the distribution of the additional scrapping money to allow it to be directed to those Member States most in need, provided that they have fulfilled their obligation resulting from MAGP IV.

(7) The roles of all parties involved in the implementation of the financial measure should be clearly defined and steps taken to guarantee the transparency and equity of the procedures for the management and monitoring of the measure.

(8) Rules on the financial contributions made under this Regulation should be defined by reference to those laid down in Regulation (EC) No 2792/1999.

(9) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [2].

(10) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of this Regulation namely, the conservation and sustainable exploitation of fisheries resources to lay down rules on the scrapping of fishing vessels. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty,

[1] OJ L 337, 30.12.1999, p. 10. Regulation as last amended by Regulation (EC) No 179/2002 (OJ L 31, 1.2.2002, p. 25).

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

HAS ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER AND ELIGIBILITY

Article 1

Subject matter

An emergency Community measure to assist Member States to achieve additional reductions in fishing effort resulting from Multiannual Management plans adopted by the Council under Regulation (EC) No . . . is hereby instituted for the period from 2003 to 2006. The measure shall consist of a special incentive to provide Member States with money to co-finance their additional needs to scrap fishing vessels affected by the Multiannual Management plans. The measure shall be available solely for Member States that have achieved both overall and segment MAGP IV targets for their fleet under provisions of Council Decision 97/413/EC [1] and for their vessels referred to in Article 2.

Article 2

Eligibility

Any vessel covered by a multiannual management plan adopted by the Council in accordance with Article 5 of Regulation (EC) No . . . [on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy] shall be eligible for an increased scrapping premium in accordance with Article 3 of this Regulation provided that:

(a) the vessel is also eligible for scrapping premiums under Regulation (EC) No 2792/1999,

(b) its fishing effort has had to be reduced by 25 % or more as a consequence of a multiannual management plan.

Article 3

Maximum amount of increased scrapping premium

Owners of vessels may be granted public aid in respect of eligible vessels on the basis of the scales referred to in Article 7(5)(a) of Regulation (EC) No 2792/1999, increased by 20 %.

[1] OJ L 175, 3.7.1997, p. 27 as revised by Council Decision 2002/70/EC (OJ L 31, 1.2.2002, p. 77).

TITLE II

YEAR 2003

Article 4

Financial contribution from the Community

The Community may grant, for the year 2003, a financial contribution (hereinafter 'financial contribution') for the expenditure incurred by Member States under Article 3. The financial contribution shall be calculated in accordance with the rates set out in Table 3, Group 1 of Annex IV to Regulation (EC) No 2792/1999 [2].

Article 5

Forecast programmes of annual expenditure

Member States wishing to receive a financial contribution will present to the Commission by 30 June 2003 a plan of their proposed decommissioning expenditure for the year 2003, under both the 'adjustment of fishing effort' programme under Regulation (EC) No 2792/1999 and this measure. The Commission will make a provisional and indicative allocation by Member State and then proceed with the commitment of the global annual amount available in the budget for this measure, taking into account the impact of multiannual management plans on the fleet and the proposed use of 'adjustment of fishing effort' money under Regulation (EC) No 2792/1999.

Article 6

Procedure

1. Member States shall submit their applications for the payment of the expenditure by 30 June 2004. On the basis of the applications, and the situation of each Member State in respect of the impact of multiannual management plans and the availability of 'adjustment of fishing capacity' money under Regulation (EC) No 2792/1999, the Commission shall decide on the Community contribution to be paid to each Member State. The Commission shall pay up to 50 % of the assistance on receipt of the application and the balance after certification by the authorities referred to in paragraph 2.

2. The authorities responsible for the implementation of the emergency Community measure for scrapping fishing vessels shall be the managing and paying authorities involved in structural fund measures concerning fisheries in the ðrelevant Member State. They shall perform the functions assigned to them by Regulation (EC) No 1260/1999.

[2] OJ L 337, 30.12.1999, p. 10, amended by Regulation (EC) 1451/2001 (OJ L 198, 21.7.2001, p. 9).

3. Except in the case of contrary provisions arising form this regulation, the provisions of Articles 33 to 39 of Regulation (EC) No 1260/1999, as well as derived legislation, are in force.

TITLE III

PERIOD 2004–2006

Article 7

For the period 2004-2006 the necessary funds for financing this measure shall be made available by reprogramming of the Structural Funds provided for in Articles 41 and 44 of Council Regulation (EC) No 1260/1999 and be programmed within the existing FIFG programmes.

TITLE IV

IMPLEMENTATION AND ENTRY INTO FORCE

Article 8

Implementation

The detailed rules for the implementation of this Regulation shall be adopted by the Commission in accordance with the procedure laid down in Article 10(2) of Regulation (EC) No . . . [on the conservation and sustainable use of fisheries resources under the common fisheries policy].

Article 9

Entry into force

This Regulation shall enter into force on 1 January 2003.

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 amending Council Directives 78/660/EEC, 83/349/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies and insurance undertakings

(2002/C 227 E/07)

(Text with EEA relevance)

COM(2002) 259/2 final — 2002/0112(COD)

(Submitted by the Commission on 28 May 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44(1) 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) The Lisbon European Council of 23-24 March 2000 emphasised the need to accelerate completion of the internal market for financial services, set the deadline of 2005 to implement the Commission's Financial Services Action Plan and urged that steps be taken to enhance the comparability of financial statements prepared by Community companies whose securities are listed on a regulated market (hereinafter: 'listed companies').

(2) On 13 June 2000, the Commission published its Communication on 'EU Financial Reporting Strategy: The Way Forward' [1] in which it was proposed that all listed companies prepare their consolidated accounts in accordance with one single set of accounting standards, namely International Accounting Standards (IAS), at the latest by 2005.

(3) Regulation (EC) No . . . of the European Parliament and of the Council on the application of international accounting standards (hereinafter: 'the IAS Regulation') introduced the requirement that, from 2005 onwards, all listed companies prepare their consolidated accounts in accordance with IAS adopted for application within the Community. It also provided an option for Member States to permit or require the application of adopted IAS in the preparation of annual accounts and to permit or require the application of adopted IAS by unlisted companies.

(4) The IAS Regulation provides that to adopt an international accounting standard for its application in the Community, it is necessary that it meets the basic requirement of Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies [2] and of Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts [3], that is to say that its application results in a true and fair view of the financial position and performance of an enterprise; this principle being considered in the light of the said Council Directives without implying a strict conformity with each and every provision of those Directives.

(5) As the annual and consolidated accounts of undertakings covered by Directive 78/660/EEC and Directive 83/349/EEC which are not prepared in accordance with the IAS Regulation will continue to have those Directives as the primary source of their Community accounting requirements, it is important that a level playing field exist between Community companies which apply IAS and those which do not.

(6) For the purposes both of the adoption of IAS and the application of Directive 78/660/EEC and Directive 83/349/EEC, it is desirable that those Directives reflect developments in international accounting. In this respect, the Communication of the Commission on 'Accounting Harmonisation: A New Strategy vis-à-vis International Harmonisation' [4] called for the European Union to work to maintain consistency between Community Accounting Directives and developments in international accounting standard setting, in particular within the International Accounting Standards Committee (IASC).

[1] COM(2000) 359, 13.6.2000.

[2] OJ L 222, 14.8.1978, p. 11, Directive as last amended by Directive 2001/65/EEC (OJ L 283, 27.10.2001, p. 28).

[3] OJ L 193, 18.7.1983, p. 1, Directive as last amended by Directive 2001/65/EEC (OJ L 283, 27.10. 2001, p. 28).

[4] COM(1995) 508, 14.11.1995.

(7) The annual report and the consolidated annual report are important elements of financial reporting. Enhancement, in line with current best practice, of the existing requirement for these to present a fair review of the development of the business and of its position is necessary to promote greater consistency and give additional guidance on the information content expected of a 'fair review'. The information should not be restricted to the financial aspects of the company's business. It is expected that this will lead to an analysis of environmental, social and other aspects relevant to an understanding of the company's development and position. This is consistent also with the Commission Recommendation 2001/453/EC of 30 May 2001 on the recognition, measurement and disclosure of environmental issues in the annual accounts and annual reports of companies [1].

(8) Differences in the preparation and presentation of the 'audit report' reduce comparability and detract from the user's understanding of this vital aspect of financial reporting. Increased consistency is achieved by amendments, consistent with current international best practice, to the specific requirements concerning the format and content of an audit report.

(9) Directive 78/660/EEC and Directive 83/349/EEC should accordingly be amended. Consequently, it is also necessary to amend Council Directive 91/674/EEC of 19 December 1991 on the annual and consolidated accounts of insurance undertakings [2]. These amendments will remove all inconsistencies between Directive 78/660/EEC, Directive 83/349/EEC and Directive 91/674/EEC and IAS in existence at 1 May 2002,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 78/660/EEC is amended as follows:

1. In Article 2(1) the following subparagraph is added:

'Member States may allow or require the inclusion of other statements in the annual accounts in addition to the documents referred to in the first paragraph.'

2. In Article 4 the following paragraph 6 is added:

'6. Member States may allow or require that the presentation of amounts within items in the profit and loss account and balance sheet shall have regard to the substance of the reported transaction or arrangement. Such permission or requirement may be restricted to certain classes of company or to consolidated accounts as defined in Council Directive 83/349/EEC (*).

(*) OJ L 193, 18.7.1983, p. 1.'

3. In Article 8 the following paragraph is added:

'Member States may allow or require companies to adopt the presentation of the balance sheet set out in Article 10a as an alternative to those otherwise prescribed or permitted.'

4. In Article 9, under 'Liabilities', in point B the title 'Provisions for liabilities and charges' is replaced by 'Provisions'.

5. In Article 10, point J, the title 'Provisions for liabilities and charges' is replaced by 'Provisions'.

6. The following Article 10a is inserted:

'*Article 10a*

Instead of the presentation of balance sheet items in accordance with Articles 9 and 10, Member States may allow or require companies, or certain classes of companies, to present those items based upon a distinction between current and non-current items provided that the information content given is at least equivalent to that otherwise required by Articles 9 and 10.'

7. Article 20 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'Provisions are intended to cover liabilities the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.'

(b) Paragraph 3 is replaced by the following:

'Provisions may not be used to adjust the values of assets.'

8. In Article 22, the following paragraph is added:

'By way of derogation from Article 2(1), Member States may allow or require all companies, or any classes of companies, to present a statement of their performance instead of the presentation of profit and loss items in accordance with Articles 23 to 26, provided that the information content given is at least equivalent to that otherwise required by those Articles.'

[1] OJ L 156, 13.6.2001, p. 33.

[2] OJ L 374, 31.12.1991, p. 7.

9. Article 31 is amended as follows:

(a) In paragraph 1(c), the point (bb) is replaced by the following:

'account must be taken of all liabilities arising in the course of the financial year concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up,'

(b) The following paragraph 1(a) is inserted:

'1(a) In addition to those amounts recorded further to Article 31(1)(c)(bb), Member States may permit or require account to be taken of all forseeable liabilities and potential losses arising in the course of the financial year concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up.'

10. In Article 33(1), the point (c) is replaced by the following:

'revaluation of fixed assets'

11. In Article 42, the first paragraph is replaced by the following:

'Provisions may not exceed in amount the sums which are necessary.'

12. The following Articles 42e and 42f are inserted:

'*Article 42e*

By way of derogation from Article 32, Member States may permit or require in respect of all companies or any classes of companies the valuation of specified categories of assets other than financial instruments at amounts determined by reference to fair value.

Such permission or requirement may be restricted to consolidated accounts as defined in Directive 83/349/EEC.

Article 42f

Notwithstanding Article 31(1)(c), Member States may permit or require in respect of all companies or any classes of companies that, where an asset is valued in accordance with Article 42e, a change in the value shall be included in the profit and loss account.'

13. In Article 43(1)(6) the reference to 'Articles 9 and 10' is replaced by a reference to 'Articles 9, 10 and 10a'.

14. Article 46 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'The annual report must include at least a fair review of the development of the company's business and of its position.

The review shall include a balanced and comprehensive analysis of the development of the company's business and of its position. The information included shall not be restricted to the financial aspects of the company's business.

In providing its analysis, the annual report shall, where appropriate, include references to and additional explanations of amounts reported in the annual accounts.'

(b) In paragraph 2, point (b) is replaced by the following:

'the company's likely future development including any significant uncertainties and risks which may affect that development;'

15. In Article 48, the third sentence is deleted.

16. In Article 49, the third sentence is replaced by the following:

'The report of the person or persons responsible for auditing the annual accounts (hereinafter: "the statutory auditors"), may not accompany this publication, but it must be disclosed whether the audit opinion was issued with or without qualification, or whether the statutory auditors were unable to express an audit opinion. It shall also be disclosed whether the report of the statutory auditors included a reference to any matters by way of emphasis to which the statutory auditors drew attention without qualifying the audit opinion.'

17. Article 51(1) is replaced by the following:

'The annual accounts of companies shall be audited by one or more persons approved by Member States to carry out statutory audits on the basis of Directive 84/253/EEC (*).

The statutory auditors must also verify that the annual report is consistent with the annual accounts for the same financial year.

_____

(*) OJ L 126, 12.5.1984, p. 20.'

18. The following Article 51a is inserted:

'*Article 51a*

1. The report of the statutory auditors shall include:

(a) an introduction which shall at least identify the annual accounts which are the subject of the statutory audit;

(b) a description of the scope of the statutory audit which shall at least identify the auditing standards in accordance with which the statutory audit was conducted;

(c) an audit opinion which shall state clearly the opinion of the statutory auditors as to whether the annual accounts give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the annual accounts comply with statutory requirements; the audit opinion shall be either unqualified, qualified, an adverse opinion or, if the statutory auditors are unable to express an audit opinion, a disclaimer of opinion;

(d) a reference to any matters to which the statutory auditors draw attention by way of emphasis without qualifying the audit opinion;

(e) an opinion concerning the consistency or otherwise of the annual report with the annual accounts for the same financial year.

2. The report shall be signed and dated by the statutory auditors.'

19. Article 53(1) is deleted.

20. The following Article 53a is inserted:

'*Article 53a*

Member States shall not make available the exemptions set out in Articles 11, 27, 46, 47 and 51 in the case of companies whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Council Directive 93/22/EEC (*).

(*) OJ L 141, 11.6.1993, p. 27.'

21. In Article 56(1) the reference to 'Articles 9, 10' is replaced by a reference to 'Articles 9, 10, 10a'.

22. In Article 60, first paragraph, the words 'on the basis of their market value' are replaced by 'on the basis of their fair value'.

23. In Article 61a, the reference to 'Articles 42a to 42d' is replaced by a reference to 'Articles 42a to 42f'.

Article 2

Directive 83/349/EEC is amended as follows:

1. In Article 1, paragraph 2 is replaced by the following:

'Apart from the cases mentioned in paragraph 1, the Member States may require any undertaking governed by their national law to draw up consolidated accounts and a consolidated annual report if:

(a) that undertaking (a parent undertaking) actually exercises dominant influence over another undertaking (the subsidiary undertaking); or

(b) that undertaking (a parent undertaking) and another undertaking (the subsidiary undertaking) are managed on a unified basis by the parent undertaking.'

2. In Article 3(1), the reference to 'Articles 13, 14 and 15' is replaced by a reference to 'Articles 13 and 15'.

3. Article 6 is amended as follows:

(a) Paragraph 4 is replaced by the following:

'This Article shall not apply where one of the undertakings to be consolidated is a company whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Council Directive 93/22/EEC (*).

(*) OJ L 141, 11.6.1993, p. 27.'

(b) Paragraph 5 is deleted.

4. Article 7 is amended as follows:

(a) In paragraph 1(b), the second subparagraph is deleted.

(b) In paragraph 2(a), the reference to 'Articles 13, 14 and 15' is replaced by a reference to 'Articles 13 and 15'.

(c) Paragraph 3 is replaced by the following:

'A Member State may not apply paragraphs 1 and 2 to companies whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Directive 93/22/EEC.'

5. In Article 11(1)(a) the reference to 'Articles 13, 14 and 15' is replaced by a reference to 'Articles 13 and 15'.

6. Article 14 is deleted.

7. In Article 16(1) the following subparagraph is added:

'Member States may allow or require the inclusion of other statements in the consolidated accounts in addition to the documents referred to in the first paragraph.'

8. In Article 17(1) the reference to 'Articles 3 to 10' is replaced by a reference to 'Articles 3 to 10a'.

9. In Article 34(2)(b) the terms 'Articles 13 and 14 and, without prejudice to Article 14(3),' are replaced by a reference to 'Article 13 and'.

10. In Article 34(5) the words 'and those excluded pursuant to Article 14' are deleted.

11. Article 36 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. The consolidated annual report must include at least a fair review of the development of the business and the position of the undertakings included in the consolidation taken as a whole.

The review shall include a balanced and comprehensive analysis of the development of the business and of its position. The information included shall not be restricted to the financial aspects of the business.

In providing its analysis, the consolidated annual report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts.'

(b) In paragraph 2, point (b) is replaced by the following:

'(b) the likely future development of those undertakings taken as a whole including any significant uncertainties and risks which may affect that development;'

(c) The following paragraph 3 is added:

'3. Where a consolidated annual report is required in addition to an annual report, the two reports may be presented as a single report. In preparing such a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the consolidation taken as a whole.'

12. Article 37 is replaced by the following:

'1. The consolidated accounts of companies shall be audited by one or more persons approved by the Member State whose laws govern the parent undertaking to carry out statutory audits on the basis of Council Directive 84/253/EEC (*).

The person or persons responsible for auditing the consolidated accounts (hereinafter: "the statutory auditors") must also verify that the consolidated annual report is consistent with the consolidated accounts for the same financial year.

2. The report of the statutory auditors shall include:

(a) an introduction which shall at least identify the consolidated accounts which are the subject of the statutory audit;

(b) a description of the scope of the statutory audit which shall at least identify the auditing standards in accordance with which the statutory audit was conducted;

(c) an audit opinion which shall state clearly the opinion of the statutory auditors as to whether the consolidated accounts give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the consolidated accounts comply with statutory requirements; that audit opinion shall be either unqualified, qualified, an adverse opinion or, if the statutory auditors are unable to express an audit opinion, a disclaimer of opinion;

(d) a reference to any matters to which the statutory auditors draw attention by way of emphasis without qualifying the audit opinion;

(e) an opinion concerning the consistency or otherwise of the consolidated annual report with the consolidated accounts for the same financial year.

3. The report shall be signed and dated by the statutory auditors.

4. In the case where the annual accounts of the parent undertaking are attached to the consolidated accounts, the report of the statutory auditors required by this Article may be combined with any report of the statutory auditors on the annual accounts of the parent undertaking required by Article 51 of Directive 78/660/EEC.

(*) OJ L 126, 12.5.1984, p. 20.'

13. In Article 38, the following paragraph 7 is added:

'7. Paragraphs 2 and 3 of this Article shall not be applied in respect of companies whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Directive 93/22/EEC.'

Article 3

Directive 91/674/EEC is amended as follows:

1. In Article 1, paragraphs 1 and 2 are replaced by the following:

   '1. Articles 2, 3, 4(1), (3) to (5), 6, 7, 13, 14, 15(3) and (4), 16 to 21, 29 to 35, 37 to 41, 42, 42a to 42f, 43(1), points 1 to 7 and 9 to 14, 45(1), 46(1) and (2), 48 to 50, 50a, 51(1), 51a, 56 to 59, 61 and 61a of Directive 78/660/EEC shall apply to the undertakings mentioned in Article 2 of this Directive, except where this Directive provides otherwise. Articles 46, 47, 48, 51 and 53 of this Directive shall not apply in respect to assets and liabilities that are valued in accordance with Section 7a of Directive 78/660/EEC.

   2. Where reference is made in Directives 78/660/EEC and 83/349/EEC to Articles 9, 10 and 10a (balance sheet) or to Articles 22 to 26 (profit and loss account) of Directive 78/660/EEC, such references shall be deemed to be references to Article 6 (balance sheet) or to Article 34 (profit and loss account) of this Directive as appropriate.'

2. In Article 6, under 'Liabilities', in point E, the title 'Provisions for other risks and charges' is replaced by 'Other provisions'.

3. Article 46 is amended as follows:

   (a) In paragraph 5, the following subparagraph is added:

   'Member States may permit derogations from the first subparagraph.'

   (b) Paragraph 6 is replaced by the following:

   'The method(s) applied to each investment item shall be stated in the notes to the accounts, together with the amounts so determined.'

Article 4

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [. . .] 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 5

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

Article 6

This Directive is addressed to the Member States.

Proposal for a Council Regulation correcting Regulation (EC) No 2200/96 relative to the starting date of the transitional period for the recognition of producer organisations

(2002/C 227 E/08)

COM(2002) 252 final — 2002/0111(CNS)

(Submitted by the Commission on 29 May 2002)

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,

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

Whereas:

(1) Pursuant to Article 13(1) of Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables [1], a transitional period of two years, starting from its date of entry into force, in which the provisions of Title IV of the aforementioned Regulation would apply, was granted to producer organisations recognised under Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organisation of the market in fruit and vegetables [2], who did not meet the requirements for recognition of Regulation (EC) No 2200/96. This two-year transitional period could be extended to five years upon acceptance by the relevant Member State of an action plan presented by the producer organisation in order to comply with all requirements provided for by Regulation (EC) No 2200/96 for being granted recognition by the Member State

(2) Regulation (EC) No 2200/96 defines in Article 13(1) the beginning date of the two- and five-year transitional periods as the period of entry into force of the Regulation (21.11.1996). This date is the result of an error; as a matter of fact, eligibility for transitional measures as from the date of entry into force of Regulation (EC) No 2200/96 would have been meaningless since Regulation (EEC) No 1035/72 was still in force until 31 December 1996 and, in lieu, the beginning date for said periods should have been the date of application of Regulation (EC) No 2200/96.

(3) It is therefore appropriate to correct said error in Article 13(1) of Regulation (EC) No 2200/96. Since the effects of the error in Article 13(1) could have negatively affected producer organisations having benefited from said transitional periods, it is appropriate to apply the corresponding provisions as from the date of entry into force of Regulation (EC) No 2200/96,

HAS ADOPTED THIS REGULATION:

Article 1

Article 13(1) of Regulation (EC) No 2200/96 is replaced by:

'1. Producer organisations recognised under Regulation (EEC) No 1035/72 before the entry into force of this Regulation and which are unable to qualify for recognition under Article 11 of this Regulation without a transitional period may continue to operate under the provisions of Title IV for two years as from 1 January 1997, provided that they remain in compliance with the requirements of the said articles of Regulation (EEC) No 1035/72.'

Article 2

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

It shall apply as from the date of entry into force of Regulation (EC) No 2200/96.

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

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[1] OJ L 297, 21.11.1996, p. 1. Regulation last amended by Regulation (EC) No 545/2002 (OJ L 84, 28.3.2002, p. 1).

[2] OJ L 118, 20.5.1972, p. 1. Regulation last amended by Commission Regulation (EC) No 1363/95 (OJ L 132, 16.6.1995, p. 1).

Proposal for a Council Regulation concerning certain restrictive measures in respect of Liberia

(2002/C 227 E/09)

COM(2002) 269 final

(Submitted by the Commission on 29 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 301 thereof,

Having regard to Council Common Position 2001/357/CFSP of 7 May 2001 [1] as amended and extended by Council Common Position 2002/. . ./CFSP,

Having regard to the proposal from the Commission,

Whereas:

(1) In its Resolution 1408(2002) of 6 May 2002, the United Nations Security Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the restrictive measures imposed on Liberia for its support for the RUF in Sierra Leone and other armed rebel groups in the region, laid down in UNSC Resolution 1343(2001) of 7 March 2001.

(2) Certain of these measures fall under the scope of the Treaty and, therefore, notably with a view to avoiding distortion of competition, Community legislation is necessary to implement the relevant decisions of the Security Council as far as the territory of the Community is concerned. For the purpose of this Regulation, the territory of the Community is deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

1. Without prejudice to the powers of the Member States in the exercise of their public authority, it shall be prohibited to provide Liberia with technical training or assistance related to the provision, manufacture, maintenance or use of arms and related material of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned.

2. The prohibition referred to in paragraph 1 shall not apply in cases where the Committee established by paragraph 14 of UNSCR 1343(2001) has granted an exemption in advance. Such exemptions shall be obtained through the competent authorities of the Member States listed in Annex I to this Regulation.

Article 2

1. The direct or indirect import into the Community of all rough diamonds from Liberia, as defined in Annex II of this Regulation, whether originating there or not, shall be prohibited.

2. The Commission is hereby authorised to amend Annex II in order to bring it into line with changes that may be made to the Combined Nomenclature.

Article 3

Without prejudice to the rights and obligations of the Member States under the Charter of the United Nations, the Commission shall maintain all necessary contacts with the Committee established by paragraph 14 of UNSCR 1343(2001) for the purpose of the effective implementation of this Regulation.

Article 4

The Commission and the Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgments handed down by national courts.

Article 5

This Regulation shall apply notwithstanding any rights conferred, or obligations imposed, by any international agreement signed or any contract entered into or any licence or permit granted before the entry into force of this Regulation.

Article 6

1. Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed. Such sanctions shall be effective, proportionate and dissuasive. Pending the adoption, where necessary, of any legislation to this end, the sanctions to be imposed where the provisions of this Regulation are infringed, shall be those determined by the Member States in order to give effect to Article 6 of Regulation (EC) 1146/2001 [2].

[1] OJ L 126, 8.5.2001, p. 1.

[2] OJ L 156, 13.6.2001, p. 1.

2. Each Member State shall be responsible for bringing proceedings against any natural or legal person, entity or body under its jurisdiction, in cases of violation of any of the prohibitions laid down in this Regulation by such person, entity or body.

Article 7

This Regulation shall apply

— within the territory of the Community, including its airspace,

— on board any aircraft or any vessel under the jurisdiction of a Member State,

— to any person elsewhere who is a national of a Member State, and

— to any legal person, entity or body which is incorporated or constituted under the law of a Member State.

Article 8

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

This Regulation shall cease to apply on 8 May 2003.

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

ANNEX I

List of competent authorities referred to in Article 1.2

(to be revised where necessary)

BELGIUM

Ministère des affaires étrangères, du commerce extérieur et de la coopération au développement
Egmont 1
Rue des Petits Carmes 19
B-1000 Bruxelles

Direction des relations économiques et bilatérales extérieures

a) Service Afrique du Sud du Sahara (B.22),
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United Nations Department
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Export Control Organisation
Department of Trade and Industry
Kingsgate House
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ANNEX II

Rough diamonds referred to in Article 2

CN code	Product description
ex 7102 10 00	Unsorted diamonds, unworked and not mounted or set
7102 21 00	Industrial diamonds, unworked or simply sawn, cleaved or bruted
7102 31 00	Non-industrial diamonds, unworked or simply sawn, cleaved or bruted
7105 10 00	Dust and powder of diamonds

Proposal for a Council Regulation establishing additional customs duties on imports of certain products originating in the United States of America

(2002/C 227 E/10)

COM(2002) 285 final — 2002/0121(ACC)

(Submitted by the Commission on 31 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The United States of America has imposed a safeguard measure in the form of tariff increases or tariff quotas on imports of steel products from, inter alia, the European Community as from 20 March 2002.

(2) This measure is causing considerable injury to the Community producers concerned and disturbs the balance of concessions and obligations resulting from the WTO Agreement; the measure will significantly limit Community exports of the steel products concerned to the United States of America affecting Community exports worth at least 2 407 million euro per year.

(3) The consultations which were held between the United States of America and the Community as envisaged in the WTO Agreement did not reach any satisfactory solution.

(4) The WTO Agreement gives any affected exporting Member the right to suspend the application of substantially equivalent concessions or other obligations, provided the WTO Council for Trade in Goods does not disapprove.

(5) The imposition of additional customs duties of 100 %, 30 %, 15 %, 13 % and 8 % on selected products originating in the United States of America imported each year into the Community represents the suspension of a substantially equivalent trade concessions, in that the duties collected will not exceed the amount of duties to be collected on Community exports of the products covered by the US safeguard measure, i.e. 626 million euro per year.

(6) The suspension of substantially equivalent concessions should be applied by priority with respect to the steel sector, and to other sectors where appropriate; in particular, the manufactured products originating in the United States of America which have been selected are those on which the Community is not substantially dependent for its supply, but on which the imposition of additional customs duties will have an impact substantially equivalent to the impact on Community exports of the safeguard measure imposed by the United States of America.

(7) For some products designated as 'certain flat steel products' the safeguard measure adopted by the United States of America has not been taken as a result of an absolute increase in imports.

(8) As allowed by the WTO Agreement, a part of the Community's concessions corresponding to that part of the safeguard measure that was not taken as a result of an absolute increase of imports and representing an amount of applicable duties of 379 million euro should therefore be suspended on products of particular relevance to the United States of America from 18 June 2002 until the safeguard measure imposed by the United States of America is lifted.

(9) Products for which an import licence with an exemption from or a reduction of duty has been issued prior to the date entry into force of this regulation should not be subject to these additional customs duties.

(10) Products for which it can be proved that they have been exported from the United States of America to the Community prior to the date of application of the additional customs duties should not be subject to these additional customs duties.

(11) Products affected by the suspension of concessions should be placed under the customs procedure 'processing under customs control' only pursuant to an examination in the Committee of the Customs Code.

(12) This Regulation is without prejudice to the question of the compatibility of the safeguard measure applied by the United States of America with the WTO Agreement; in any event, the additional duty should apply in full from 20 March 2005 until the safeguard measure imposed by the United States of America is lifted; it should however apply immediately after a decision by the WTO Dispute Settlement Body that the safeguard measure imposed by the United States of America is incompatible with the WTO Agreement;

(13) The Community provided written notice of the suspension to the Council for Trade in Goods on 14 May 2002; the Council for Trade in Goods has not disagreed with such suspension,

HAS ADOPTED THIS REGULATION:

Article 1

The tariff concessions granted by the Community to the United States of America in respect of the products listed in Annex I and II to this Regulation are hereby suspended from 18 June 2002.

Article 2

1. The customs duties applicable to the products originating in the United States of America listed in Annex I and II shall be increased by an additional ad valorem duty of 100 %, 30 %, 15 %, 13 % or 8 %, as indicated in the Annexes.

2. The additional duties in Annex I shall apply from 18 June 2002 until the additional duties in Annex II apply.

3. The additional duties in Annex II shall apply

(i) from 20 March 2005, or

(ii) from the fifth day following the date of a decision by the WTO Dispute Settlement Body that the safeguard measure imposed by the United States of America is incompatible with the WTO Agreement, if that is earlier. In this event, the Commission shall publish in the *Official Journal of the European Communities* a notice indicating the date of the decision of the WTO Dispute Settlement Body.

4. This Regulation shall apply until the safeguard measure of the United States of America is lifted. The Commission shall publish in the *Official Journal of the European Communities* a notice indicating the date on which the safeguard measure imposed by the United States of America is lifted.

Article 3

1. Products listed in Annex I for which an import licence with an exemption from or a reduction of duty has been issued prior to the date of entry into force of this Regulation shall not be subject to the additional duty laid down in Annex I.

2. Products listed in Annex I for which it can be proved that they are already on their way to the Community on the date of application of this Annex, whose destination cannot be changed, shall not be subject to the additional duty laid down therein.

Products listed in Annex II and not covered by Annex I for which it can be proved that they are already on their way to the Community on the date of application of Annex II, whose destination cannot be changed, shall not be subject to the additional duty laid down in Annex II.

3. Products listed in Annex I and II may be placed under the customs procedure 'processing under customs control' in accordance with Article 551(1) first subparagraph of the Commission Regulation (EEC) No 2454/93 [1] only where the examination of the economic conditions has taken place in the Committee of the Customs Code unless the products and operations are mentioned in Annex 76, Part A to that Regulation.

Article 4

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

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

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[1] OJ L 253, 11.10.1993, p. 1.

ANNEX I

LIST OF PRODUCTS ON THE IMPORT OF WHICH ADDITIONAL CUSTOMS DUTIES WILL APPLY AS FROM 18 JUNE 2002

The products covered by this Annex are determined by the product description of the Combined Nomenclature [1] for the CN codes listed below. The product description in this Annex are only for information.

Description and CN codes	Additional duty
Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared falling under CN code:	
0712 20 00	100 %
Apples, pears and quinces, fresh falling under CN code:	
0808 10 90	100 %
Rice falling under CN codes:	
1006 30 98	100 %
1006 40 00	100 %
Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter falling under CN codes:	
2009 11 99	100 %
2009 12 00	100 %
2009 19 98	100 %
T-shirts, singlets and other vests, knitted or crocheted falling under CN codes:	
6109 10 00	100 %
6109 90 10	100 %
6109 90 30	100 %
6109 90 90	100 %
Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear) falling under CN codes:	
6203 42 90	100 %
6203 43 11	100 %
6203 43 19	100 %
Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear) falling under CN code:	
6204 62 90	100 %
Men's or boys' shirts falling under CN code:	
6205 30 00	100 %
Blankets and travelling rugs falling under CN code:	
6301 30 10	100 %
Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated falling under CN code:	
7210 12 11	100 %
Flat-rolled products of stainless steel, of a width of less than 600 mm falling under CN codes:	
7220 20 31	100 %
7220 90 11	100 %
7220 90 39	100 %
7220 90 90	100 %

[1] Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 279, 23.10.2001, p. 1).

Description and CN codes	Additional duty
Other bars and rods of stainless steel; angles, shapes and sections of stainless steel falling under CN codes:	
7222 20 81	100 %
7222 20 89	100 %
Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel falling under CN code:	
7308 30 00	100 %
Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment falling under CN code:	
7310 29 90	100 %
Other cast articles of iron or steel falling under CN code:	
7325 99 90	100 %
Other articles of iron or steel falling under CN code:	
7326 20 90	100 %
Printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing falling under CN codes:	
8443 11 00	100 %
8443 19 90	100 %
Spectacles, goggles and the like, corrective, protective or other falling under CN codes:	
9004 10 91	100 %
9004 10 99	100 %
Articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment falling under CN code:	
9504 10 00	100 %

ANNEX II

The products covered by this Annex are determined by the product description of the Combined Nomenclature [1] for the CN codes listed below. The product description in this Annex are only for information.

Description and CN codes	Additional duty
Vegetables (uncooked or cooked by steaming or boiling in water), frozen falling under CN code:	
0710 40 00	13 %
Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared falling under CN codes:	
0712 20 00	15 %
0712 90 90	13 %
Dried leguminous vegetables, shelled, whether or not skinned or split falling under CN codes:	
0713 33 90	13 %
0713 40 00	13 %
Other nuts, fresh or dried, whether or not shelled or peeled falling under CN codes:	
0802 32 00	15 %
Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried falling under CN code:	
0804 50 00	15 %
Citrus fruit, fresh or dried falling under CN code:	
0805 40 00	15 %
Grapes, fresh or dried falling under CN code:	
0806 10 10	15 %
Apples, pears and quinces, fresh falling under CN codes:	
0808 10 90	15 %
0808 20 50	15 %
Apricots, cherries, peaches (including nectarines), plums and sloes, fresh falling under CN code:	
0809 20 95	15 %
Rice falling under CN codes:	
1006 20 98	8 %
1006 30 98	8 %
1006 40 00	8 %
Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006 falling under CN code:	
2005 80 00	15 %
Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter falling under CN codes:	
2009 11 99	15 %
2009 12 00	15 %
2009 19 98	15 %
2009 21 00	15 %
2009 29 99	15 %
Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes falling under CN code:	
2402 20 90	30 %

[1] Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 279, 23.10.2001, p. 1).

Description and CN codes	Additional duty
Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non-perforated punch cards and punch tape paper, in rolls or rectangular (including square) sheets, of any size, other than paper of heading 4801 or 4803; hand-made paper and paperboard falling under CN code:	
4802 56 10	15 %
Toilet or facial tissue stock, towel or napkin stock and similar paper of a kind used for household or sanitary purposes, cellulose wadding and webs of cellulose fibres, whether or not creped, crinkled, embossed, perforated, surface-coloured, surface-decorated or printed, in rolls or sheets falling under CN code:	
4803 00 31	15 %
Toilet paper and similar paper, cellulose wadding or webs of cellulose fibres, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, serviettes, napkins for babies, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibres falling under CN codes:	
4818 20 10	15 %
4818 30 00	15 %
4818 50 00	15 %
Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like falling under CN codes:	
4819 10 00	15 %
4819 20 10	15 %
4819 20 90	15 %
4819 30 00	15 %
4819 40 00	15 %
4819 50 00	15 %
4819 60 00	15 %
Registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise-books, blotting-pads, binders (loose-leaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers, of paper or paperboard falling under CN codes:	
4820 10 30	15 %
4820 10 50	15 %
4820 10 90	15 %
4820 30 00	15 %
4820 50 00	15 %
4820 90 00	15 %
Men's or boys' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, other than those of heading 6103 falling under CN codes:	
6101 30 10	30 %
6101 30 90	30 %
Women's or girls' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, other than those of heading 6104 falling under CN codes:	
6102 30 10	30 %
6102 30 90	30 %

Description and CN codes	Additional duty
Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted falling under CN codes:	
6103 42 10	30 %
6103 42 90	30 %
6103 43 10	30 %
6103 43 90	30 %
Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted falling under CN codes:	
6104 43 00	30 %
6104 62 10	30 %
6104 62 90	30 %
6104 63 10	30 %
6104 63 90	30 %
Men's or boys' shirts, knitted or crocheted falling under CN codes:	
6105 10 00	30 %
6105 20 10	30 %
6105 20 90	30 %
Women's or girls' blouses, shirts and shirt-blouses, knitted or crocheted falling under CN code:	
6106 10 00	30 %
Men's or boys' underpants, briefs, nightshirts, pyjamas, bathrobes, dressing gowns and similar articles, knitted or crocheted falling under CN code:	
6107 11 00	30 %
Women's or girls' slips, petticoats, briefs, panties, nightdresses, pyjamas, négligés, bathrobes, dressing gowns and similar articles, knitted or crocheted falling under CN code:	
6108 22 00	30 %
T-shirts, singlets and other vests, knitted or crocheted falling under CN codes:	
6109 10 00	30 %
6109 90 10	30 %
6109 90 30	30 %
6109 90 90	30 %
Jerseys, pullovers, cardigans, waistcoats and similar articles, knitted or crocheted falling under CN codes:	
6110 11 10	30 %
6110 11 30	30 %
6110 11 90	30 %
6110 12 10	30 %
6110 12 90	30 %
6110 19 10	30 %
6110 19 90	30 %
6110 20 10	30 %
6110 20 91	30 %
6110 20 99	30 %
6110 30 10	30 %
6110 30 91	30 %
6110 30 99	30 %
6110 90 10	30 %
6110 90 90	30 %

Description and CN codes	Additional duty
Track suits, ski suits and swimwear, knitted or crocheted falling under CN codes:	
6112 41 10	30 %
6112 41 90	30 %
Garments, made up of knitted or crocheted fabrics of headings 5903, 5906, or 5907 falling under CN codes:	
6113 00 10	30 %
6113 00 90	30 %
Other garments, knitted or crocheted falling under CN codes:	
6114 20 00	30 %
6114 30 00	30 %
6114 90 00	30 %
Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins and footwear without applied soles, knitted or crocheted falling under CN codes:	
6115 11 00	30 %
6115 12 00	30 %
6115 19 00	30 %
6115 92 00	30 %
6115 93 10	30 %
6115 93 30	30 %
6115 93 91	30 %
6115 93 99	30 %
6115 99 00	30 %
Gloves, mittens and mitts, knitted or crocheted falling under CN codes:	
6116 10 20	30 %
6116 93 00	30 %
Men's or boys' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, other than those of heading 6203 falling under CN codes:	
6201 12 10	30 %
6201 12 90	30 %
6201 13 10	30 %
6201 13 90	30 %
6201 92 00	30 %
6201 93 00	30 %
Women's or girls' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, other than those of heading 6204 falling under CN codes:	
6202 11 00	30 %
6202 93 00	30 %
Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear) falling under CN codes:	
6203 11 00	30 %
6203 39 19	30 %
6203 39 90	30 %
6203 42 11	30 %
6203 42 31	30 %
6203 42 35	30 %
6203 42 90	30 %
6203 43 11	30 %
6203 43 19	30 %
6203 43 90	30 %

Description and CN codes	Additional duty
Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear) falling under CN codes:	
6204 29 18	30 %
6204 29 90	30 %
6204 31 00	30 %
6204 33 90	30 %
6204 42 00	30 %
6204 43 00	30 %
6204 44 00	30 %
6204 49 10	30 %
6204 62 11	30 %
6204 62 31	30 %
6204 62 39	30 %
6204 62 90	30 %
6204 63 11	30 %
6204 63 18	30 %
6204 63 90	30 %
6204 69 18	30 %
6204 69 90	30 %
Men's or boys' shirts falling under CN codes:	
6205 20 00	30 %
6205 30 00	30 %
Women's or girls' blouses, shirts and shirt-blouses falling under CN codes:	
6206 30 00	30 %
6206 40 00	30 %
Garments, made up of fabrics of headings 5602, 5603, 5903, 5906 or 5907 falling under CN codes:	
6210 40 00	30 %
6210 50 00	30 %
Track suits, ski suits and swimwear; other garments falling under CN codes:	
6211 32 10	30 %
6211 32 90	30 %
6211 33 10	30 %
6211 33 41	30 %
6211 33 90	30 %
6211 42 10	30 %
6211 42 90	30 %
6211 43 10	30 %
6211 43 41	30 %
6211 43 90	30 %
6211 49 00	30 %
Brassières, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted falling under CN codes:	
6212 10 10	30 %
6212 10 90	30 %
6212 20 00	30 %
6212 90 00	30 %
Ties, bow ties and cravats falling under CN code:	
6215 10 00	30 %
Gloves, mittens and mitts falling under CN code:	
6216 00 00	30 %

Description and CN codes	Additional duty
Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212 falling under CN code:	
6217 10 00	30 %
Blankets and travelling rugs falling under CN codes:	
6301 30 10	30 %
6301 30 90	30 %
6301 40 10	30 %
6301 40 90	30 %
Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods falling under CN code:	
6306 29 00	30 %
Other made up articles, including dress patterns falling under CN codes:	
6307 10 10	30 %
6307 10 90	30 %
6307 90 99	30 %
Other footwear with outer soles and uppers of rubber or plastics falling under CN codes:	
6402 19 00	30 %
6402 99 10	30 %
6402 99 39	30 %
6402 99 93	30 %
6402 99 96	30 %
6402 99 98	30 %
Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather falling under CN codes:	
6403 19 00	30 %
6403 51 11	30 %
6403 51 15	30 %
6403 51 19	30 %
6403 51 95	30 %
6403 51 99	30 %
6403 59 35	30 %
6403 59 39	30 %
6403 59 95	30 %
6403 59 99	30 %
6403 91 11	30 %
6403 91 13	30 %
6403 91 16	30 %
6403 91 18	30 %
6403 91 93	30 %
6403 91 98	30 %
6403 99 11	30 %
6403 99 33	30 %
6403 99 36	30 %
6403 99 38	30 %
6403 99 50	30 %
6403 99 91	30 %
6403 99 93	30 %
6403 99 98	30 %

Description and CN codes	Additional duty
Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials falling under CN codes:	
6404 11 00	30 %
6404 19 10	30 %
6404 19 90	30 %
Other footwear falling under CN codes:	
6405 90 10	30 %
6405 90 90	30 %
Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable in-soles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof falling under CN code:	
6406 99 80	30 %
Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated falling under CN codes:	
7210 12 11	30 %
7210 12 19	30 %
7210 12 90	30 %
7210 30 10	30 %
7210 30 90	30 %
Flat-rolled products of stainless steel, of a width of 600 mm or more falling under CN codes:	
7219 12 10	30 %
7219 12 90	30 %
7219 13 10	30 %
7219 13 90	30 %
7219 32 10	30 %
7219 33 10	30 %
7219 33 90	30 %
7219 34 10	30 %
7219 34 90	30 %
7219 35 90	30 %
7219 90 10	30 %
7219 90 90	30 %
Flat-rolled products of stainless steel, of a width of less than 600 mm falling under CN codes:	
7220 20 31	30 %
7220 90 11	30 %
7220 90 39	30 %
7220 90 90	30 %
Other bars and rods of stainless steel; angles, shapes and sections of stainless steel falling under CN codes:	
7222 20 11	30 %
7222 20 19	30 %
7222 20 21	30 %
7222 20 31	30 %
7222 20 39	30 %
7222 20 81	30 %
7222 20 89	30 %
7222 30 98	30 %
7222 40 99	30 %
Wire of stainless steel falling under CN codes:	
7223 00 11	30 %
7223 00 99	30 %

Description and CN codes	Additional duty
Flat-rolled products of other alloy steel, of a width of less than 600 mm falling under CN codes:	
7226 92 10	30 %
7226 92 90	30 %
7226 99 80	30 %
Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel falling under CN codes:	
7228 30 61	30 %
7228 30 69	30 %
7228 50 61	30 %
7228 50 69	30 %
7228 50 89	30 %
7228 60 89	30 %
Wire of other alloy steel falling under CN code:	
7229 90 90	30 %
Sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements; welded angles, shapes and sections, of iron or steel falling under CN code:	
7301 20 00	30 %
Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel falling under CN codes:	
7304 29 11	30 %
7304 29 19	30 %
7304 31 91	30 %
7304 31 99	30 %
7304 41 90	30 %
7304 49 91	30 %
7304 59 91	30 %
7304 90 90	30 %
Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel falling under CN codes:	
7306 20 00	30 %
7306 30 29	30 %
7306 40 91	30 %
7306 40 99	30 %
Tube or pipe fittings (for example couplings, elbows, sleeves), of iron or steel falling under CN codes:	
7307 11 10	30 %
7307 11 90	30 %
7307 19 10	30 %
7307 19 90	30 %
Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel falling under CN codes:	
7308 10 00	30 %
7308 20 00	30 %
7308 30 00	30 %
7308 40 90	30 %
7308 90 51	30 %
7308 90 59	30 %
7308 90 99	30 %

Description and CN codes	Additional duty
Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel, of a capacity exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment falling under CN codes:	
7309 00 10	30 %
7309 00 30	30 %
7309 00 51	30 %
7309 00 59	30 %
7309 00 90	30 %
Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment falling under CN codes:	
7310 10 00	30 %
7310 29 10	30 %
7310 29 90	30 %
Containers for compressed or liquefied gas, of iron or steel falling under CN codes:	
7311 00 10	30 %
7311 00 99	30 %
Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated falling under CN codes:	
7312 10 51	30 %
7312 10 59	30 %
7312 10 71	30 %
7312 10 99	30 %
7312 90 90	30 %
Cloth (including endless bands), grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel falling under CN codes:	
7314 14 00	30 %
7314 19 00	30 %
7314 42 90	30 %
7314 49 00	30 %
Chain and parts thereof, of iron or steel falling under CN codes:	
7315 11 90	30 %
7315 12 00	30 %
7315 19 00	30 %
7315 89 00	30 %
7315 90 00	30 %
Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel falling under CN codes:	
7318 14 99	30 %
7318 16 99	30 %
Springs and leaves for springs, of iron or steel falling under CN code:	
7320 90 90	30 %
Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel falling under CN codes:	
7321 11 90	30 %
7321 13 00	30 %

Description and CN codes	Additional duty
Radiators for central heating, not electrically heated, and parts thereof, of iron or steel; air heaters and hot air distributors (including distributors which can also distribute fresh or conditioned air), not electrically heated, incorporating a motor-driven fan or blower, and parts thereof, of iron or steel falling under CN code:	
7322 90 90	30 %
Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel falling under CN codes:	
7323 93 10	30 %
7323 93 90	30 %
7323 99 99	30 %
Sanitary ware and parts thereof, of iron or steel falling under CN codes:	
7324 10 90	30 %
7324 90 90	30 %
Other cast articles of iron or steel falling under CN codes:	
7325 10 99	30 %
7325 99 10	30 %
7325 99 90	30 %
Other articles of iron or steel falling under CN codes:	
7326 20 90	30 %
7326 90 10	30 %
7326 90 30	30 %
7326 90 40	30 %
7326 90 50	30 %
7326 90 60	30 %
7326 90 91	30 %
7326 90 93	30 %
7326 90 95	30 %
7326 90 97	30 %
Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437 falling under CN codes:	
8433 11 10	30 %
8433 11 59	30 %
8433 11 90	30 %
8433 19 90	30 %
Printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing falling under CN codes:	
8443 11 00	30 %
8443 19 90	30 %
Tools for working in the hand, pneumatic, hydraulic or with self-contained electric or non-electric motor falling under CN code:	
8467 21 99	30 %
Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units) falling under CN codes:	
8705 10 00	30 %
8705 90 90	30 %

Description and CN codes	Additional duty
Yachts and other vessels for pleasure or sports; rowing boats and canoes falling under CN codes:	
8903 10 10	30 %
8903 10 90	30 %
8903 91 10	30 %
8903 91 91	30 %
8903 91 93	30 %
8903 91 99	30 %
8903 92 10	30 %
8903 92 99	30 %
8903 99 10	30 %
8903 99 91	30 %
8903 99 99	30 %
Frames and mountings for spectacles, goggles or the like, and parts thereof falling under CN code:	
9003 19 30	30 %
Spectacles, goggles and the like, corrective, protective or other falling under CN codes:	
9004 10 91	30 %
9004 10 99	30 %
Photocopying apparatus incorporating an optical system or of the contact type and thermo-copying apparatus falling under CN codes:	
9009 11 00	30 %
9009 12 00	30 %
Wrist-watches, pocket-watches and other watches, including stop-watches, other than those of heading 9101 falling under CN code:	
9102 11 00	30 %
Percussion musical instruments (for example, drums, xylophones, cymbals, castanets, maraccas) falling under CN code:	
9206 00 00	30 %
Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof falling under CN codes:	
9401 61 00	30 %
9401 71 00	30 %
Other furniture and parts thereof falling under CN codes:	
9403 60 10	30 %
9403 70 90	30 %
Prefabricated buildings falling under CN code:	
9406 00 39	30 %
Articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment falling under CN code:	
9504 10 00	30 %
Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorised, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees) falling under CN code:	
9603 21 00	30 %
Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating stylos; propelling or sliding pencils; pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609 falling under CN code:	
9608 10 10	30 %

Proposal for a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of recordable compact disks originating in Taiwan

(2002/C 227 E/11)

COM(2002) 282 final

(Submitted by the Commission on 3 June 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], (the 'basic Regulation'), and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 2479/2001 [2], (the 'provisional Regulation'), imposed a provisional anti-dumping duty on imports of recordable compact disks ('CD-Rs') falling within CN code ex 8523 90 00 (TARIC code 8523 90 00 10) and originating in Taiwan.

(2) It is recalled that the investigation of dumping and injury covered the period from 1 January 2000 to 31 December 2000 ('investigation period' or 'IP'). The examination of trends relevant for the injury analysis covered the period from 1 January 1997 to the end of the IP ('period considered').

B. SUBSEQUENT PROCEDURE

(3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures, several interested parties submitted comments in writing. In accordance with the provisions of Article 6(5) of the basic Regulation, the parties who so requested were granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for the establishment of definitive findings.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties.

(6) They were also granted a period within which they could make representations subsequent to this disclosure.

(7) The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings have been modified accordingly.

(8) Following the adoption of provisional measures, two companies, Nan Ya Plastics Corporation, Taipei and Rimma International Inc., Taipei in Taiwan, applied for new exporting producer status and requested not to be treated differently from the companies that cooperated in the investigation. However, since sampling has been used in the investigation of dumping, a new exporters' review pursuant to Article 11(4) of the basic Regulation with the objective of determining individual dumping margins cannot be initiated in this proceeding. The examination of these requests together with the additional evidence provided by these companies showed that only one of them, Nan Ya Plastics Corporation, fulfilled all the requirements of Article 11(4) of the basic Regulation, which would otherwise apply, i.e.

— that it did not export the product concerned to the Community during the IP;

— that it is not related to any of the exporters or producers in Taiwan which are subject to the provisional anti-dumping measures and

— that it has actually exported the product concerned to the Community after the IP on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community.

[1] OJ L 56, 6.3.1996, p. 1 ('basic Regulation'), as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

[2] OJ L 334, 18.12.2001, p. 8.

In these circumstances, in order to ensure equal treatment for this new exporting producer and the cooperating companies not included in the sample, Nan Ya Plastics Corporation was added to the list of companies subject to the weighted average duty rate listed in Article 1(2) of the provisional Regulation.

C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(9) Given the similar appearance of recordable compact disks ('CD-Rs') and re-writable compact disks ('CD-RWs') which are not covered by the investigation, the complainant, the Committee of European CD-R Manufacturers ('CECMA'), requested that the product under consideration (CD-Rs) should be distinguished from CD-RWs in order to ensure the proper application of the duties imposed.

(10) The nature of the disk is normally mentioned on the disk itself or on the packaging. Therefore, no particular additional specification appears to be necessary. In the unlikely event that such identification would be absent, the colour of the non-printed side of the disc gives an indication of the nature of the product. CD-Rs show on their non-printed sides either bright colours (such as cyanine light blue, phtalocyanine green, yellow, or green/yellow combined, silver and gold) or azo dark blue. CD-RWs show a dark grey colour with a low reflectivity compared to CD-Rs.

(11) CD-Rs, which have a size that is smaller than the standard diameter of 12 cm, fall under the description of the product concerned. The 8 cm CD-R holds a lower capacity or play duration than the standard 12 cm CD-R. Some 8 cm CD-Rs have been further adapted to match the size of a business card, but the characteristics of such a CD-R remain the same as of a 12 cm CD-R, despite the difference in the form of the disc. All mentioned types of smaller CD-R can be used by any personal computer in the same way as a 12 cm CD-R. Therefore, the 8 cm CD-R and the business card type CD-R are both covered by the investigation and by the measures adopted.

(12) The so-called minidisc, however, should be distinguished from CD-Rs. Although the minidisc is a recordable optical product, using the same laser technology as the CD-R, it is at the same time erasable and always encased in a fixed housing, comparable to that of 3,5 inch diskettes. To write/read on the minidisc requires specific equipment (minidisc recorder or player), which does not form part of a personal computer. In view of the differences in physical characteristics and as the targeted market is entirely different, the minidisc is not covered by the measures adopted.

(13) Some parties claimed that the definition of the product concerned in the provisional Regulation did not take account of the fact that various types of packaging for CD-Rs are encountered on the market. The issue of packaging, the related costs of production and the comparison of the Community industry's production with Taiwanese imports are dealt with under point (b) of the section on 'Imports concerned' and under point (a) of the section concerning the 'Situation of the Community industry'. It should be noted that packaging is only relevant in the context of the analysis of price comparison and not for the definition of the product concerned.

(14) In view of the above, the provisional findings as described in recitals (9) and (10) of the provisional Regulation are confirmed.

2. Like product

(15) In the absence of any further comments, the definition of the like product as described in recital (11) of the provisional Regulation is confirmed.

D. SAMPLING

(16) No comments concerning the sampling of Taiwanese exporting producers were received and, therefore, the conclusions set out in recitals (12) to (18) of the provisional Regulation are hereby confirmed.

E. DUMPING

1. Normal value

(17) Following the adoption of provisional measures, one exporting producer requested the exclusion of the selling, general and administrative expenses ('SG & A') of its related company in the domestic market from the total SG & A expenses used in the ordinary course of trade test and in constructing normal value. The exporting producer argued that its related company was set up to conduct internet business, which incurs high SG & A costs and merely became involved, temporarily, with sales of the product concerned to help it improve its financial situation. The exporting producer claimed that almost all SG & A expenses of its related company were unrelated to the sales of the product concerned. It also requested the Commission to disregard completely for the dumping calculations the domestic sales of the related company for the same reasons.

(18) In this respect, the claim to disregard completely the domestic sales and the SG & A expenses of the related company was rejected as it could not be supported by any verified information. However, in determining normal value the Commission accepted to exclude certain amounts of SG & A expenses which were shown not to relate to domestic sales of the product concerned.

(19) Two exporting producers claimed that the Commission should not have allocated all interest expenses to the product concerned but only those related to the operational activities. They argued that long-term and short-term investments form part of total assets and require financing and hence, incur interest expenses that are not related to the production and sales of the product concerned.

(20) This claim was accepted because it was shown that certain financing expenses did not concern operational activities related to the production and sales of the product concerned. The SG & A expenses were therefore revised before being used in the ordinary course of trade test and in constructing normal value.

2. **Export price**

(21) No claims were made concerning the determination of the export price. The conclusions set out in recital (26) of the provisional duty Regulation are hereby confirmed.

3. **Comparison**

(22) Three exporting producers claimed that the Commission proceeded to a comparison between normal value and export price without treating packing costs consistently between constructed normal value and normal value based on actual prices. They argued that it was inappropriate for the Commission to consider packing costs to be an allowance in case of normal value based on prices but not to consider it as an allowance in case of constructed normal value.

(23) The three exporting producers also argued that packing cost was a mandatory allowance under Article 2(10)(f) of the basic Regulation, when differences exist between the directly related packing costs of the normal value and export price. They argued that in case of a comparison of the weighted average normal value with the prices of individual export transactions, the Commission compared individual export prices including individual packing costs per transaction with a constructed normal value including a weighted average export packing cost for the same product type. The three exporting producers therefore requested the deduction of packing costs from all export prices and constructed normal value on the same basis.

(24) With regard to the alleged mandatory nature of the allowance for packing costs, it is considered that an allowance under Article 2(10) of the basic Regulation is granted only when there are differences in factors, such as packing, which do not allow a fair comparison between normal value and export price. In fact in this case, the constructed normal value was based on the cost of production of the exported type including its packing cost and, therefore, no difference in packing costs existed between export price and normal value.

(25) However, the claim concerning the comparison of individual export prices including individual packing costs with a constructed normal value including a weighted average export packing cost per product type was accepted. Therefore, for the four exporting producers that had exported product types for which normal value had to be constructed, the construction of normal value was revised in order to take account of an export packing cost per product type and packing type.

(26) One exporting producer claimed that the Commission had not taken into account in the dumping calculations certain changes in packing types of its export sales which were made during the verification visit.

(27) This claim was accepted and the packing types concerned were modified.

4. **Dumping margin**

(28) Two exporting producers claimed that the Commission should not have established the dumping margins on the basis of a comparison by product type of the weighted average normal value with the prices of all individual export transactions as they considered the Commission's reasoning for having recourse to this method insufficient. Although the two companies admitted that the export prices differed significantly among time periods during the investigation period, they argued that there was a parallel declining trend for world prices, including the normal values, and for export prices and that therefore the differences in export prices should not be taken into account. They also suggested that a transaction to transaction comparison of normal value and export price should have been used instead.

(29) These arguments were not accepted. Concerning the transaction to transaction comparison, it is noted that the Community does not use this methodology because the process of selecting individual transactions in order to make such a comparison is considered too impracticable and arbitrary, at least in cases such as this one, where thousands of export and domestic transactions existed. It was therefore concluded that a transaction to transaction comparison could not be an appropriate alternative comparison method.

(30) In order to use a comparison of a weighted average normal value to prices of all individual export transactions as opposed to a comparison of a weighted average normal value with a weighted average of export prices there must be a finding that export prices differ significantly among different purchasers, regions or time periods and that the use of the other two comparison methods, specified in Article 2(11) of the basic Regulation, would not reflect the full degree of dumping. As to the first requirement, it has been found that export prices were significantly lower during the second half of the investigation period as compared to the first half and this finding was not disputed by the exporting producers concerned. They have contested however, whether the difference in prices constituted a pattern, which they alleged was the result of a world-wide fall in prices including normal values. It was considered that the decline in export prices constituted a pattern for two reasons: firstly, because the decline prevailed throughout the second half of the investigation period; and secondly, because of its extent, which was found to be very substantial and in some cases reached 50 %. As to the claim that the differences in export prices were because of world-wide trends in prices including normal values, this was considered irrelevant as the appropriate analysis has to be made on export prices to the Community. It is also noted that Article 2(11) of the basic Regulation requires a demonstration of a pattern of export prices and not an explanation of why such a pattern existed.

(31) In relation to the requirement to demonstrate that only a comparison of a weighted average normal value to prices of all individual export transactions will reflect the full degree of dumping, it is appropriate to note that the application of this methodology gave a significantly higher dumping margin than a comparison of a weighted average normal value with a weighted average of export prices, which would not take into account the effect of the significant decline of export prices into the Community during the second half of the IP. Hence, unless a comparison of a weighted average normal value to prices of all individual export transactions had been used, the significantly higher or targeted dumping which took place during the second half of the investigation period would have been inappropriately disguised by the use of a comparison of a weighted average normal value with a weighted average of export prices. It was also appropriate to reflect in the calculation of dumping via a comparison of a weighted average normal value to prices of all individual export transactions the fact that export prices in the second half of the investigation period were below cost of production and thus constituted a very predatory form of dumping.

(32) The same two exporting producers referred to the Panel and the Appellate Body reports in the Indian bed linen case before the WTO's Dispute Settlement Body ('DSB') and claimed that the so called 'zeroing of negative dumping margins' is not allowed when calculating dumping margins based on a comparison of a weighted average normal value to all individual export transactions.

(33) In respect to the DSB case quoted, it is noted that the methodology considered by the Panel and the Appellate Body was different from the methodology used in the present investigation. The DSB has not adopted any recommendation concerning a comparison of a weighted average normal value to all individual export transactions. In any event, as far as 'zeroing' is concerned, it is noted that if this practice was not used, a comparison of a weighted average normal value to all individual export transactions by product type and a comparison of a weighted average normal value with a weighted average of export prices by product type would give the same dumping margin. In such a case, the methodology set out in the last sentence of Article 2(11) of the basic Regulation to compare a weighted average normal value to all individual export transactions would become redundant. Furthermore, in a case of targeted dumping, zeroing allows to avoid that positive dumping margins on dumped sales are disguised by negative dumping margins. Therefore, the claim that 'zeroing' is not allowed when comparing a weighted average normal value to all individual export transactions cannot be accepted.

(34) Dumping margins were established as set out in recitals (28) to (33) of the provisional Regulation. The comparison of the weighted average normal value per product type, revised as appropriate, with the weighted average export price per product type on an ex factory basis for two companies in the sample, and with the ex factory export prices of all individual export transactions for the three other companies in the sample, showed the existence of dumping for all investigated exporting producers included in the sample.

(35) Following changes to the calculations in accordance with the findings noted above, the dumping margins of the investigated companies were revised slightly. This revision has not affected the choice of methodology set out in recitals (28) and (29) of the provisional Regulation which is hereby confirmed. Consequently, the weighted average dumping margin calculated for the cooperating companies not included in the sample pursuant to Article 9(6) of the basic Regulation was also revised. The revised calculations have also affected the dumping margin established for the non-cooperating companies. The definitive dumping margins as a percentage of the cif import price duty unpaid are as follows:

— Auvistar Industry Co.	17,7 %
— Princo Corporation	29,9 %
— Prodisc Technology Inc.	17,7 %
— Ritek Corporation	17,7 %
— Unidisc Technology Co.	17,7 %
— Cooperating exporting producers not in the sample	19,2 %
— Non-cooperating exporting producers	38,5 %

F. COMMUNITY INDUSTRY

(36) In the absence of any new information on the Community industry, the provisional findings as described in recitals (35) to (38) of the provisional Regulation are confirmed.

G. INJURY

1. Community consumption

(37) In the absence of any new information, the provisional findings concerning the Community consumption as described in recital (40) of the provisional Regulation are confirmed.

2. Imports concerned

(a) *Volume, price and market share of imports originating in Taiwan*

(38) In the absence of any new information on the volume, price and market share of imports of CD-Rs originating in Taiwan, the findings as described in recitals (41) to (43) of the provisional Regulation are confirmed.

(b) *Price undercutting*

(39) A number of parties questioned whether packaging had been properly taken into account for the price undercutting calculations. One specific claim that the Taiwanese exporting producers offer a wider choice of packaging than the Community industry is addressed under item (a) of point 3 'Situation of the Community industry'.

(40) In terms of price undercutting, it should be noted that the comparison between sales prices on the Community market of CD-Rs produced by the Community industry and those produced and imported from Taiwan was only made for CD-Rs having both the same basic characteristics (in terms of type of data stored, storage capacity, reflective layer and whether the CD-R was printed or not) as well as having identical packaging.

(41) It was claimed that CD-Rs imported into the Community originating in Taiwan and the CD-Rs produced by the Community industry could not be compared because of differences in branding. Under that claim a product of the Community industry, which was said to be typically branded, would attract a price premium compared to an unbranded Taiwanese product.

(42) The investigation showed that branding only influences consumers when the sales price is similar, so that whilst consumers are not willing to pay a premium for a branded product they may be inclined to choose it when prices are the same.

(43) Community producers sell both branded and 'unbranded' products, although even the latter are usually branded according to the specifications and with the name of the client retailer. The investigation did not reveal any price differential between branded and 'unbranded' sales to retailers. Moreover, the Taiwanese exporting producers acted in exactly the same way, selling under their own brand or to the client's specification. Products marketed under a brand-name, which the consumer would consider as Community-based, were frequently found to be manufactured in Taiwan.

(44) In view of the above, the provisional findings on price undercutting and the average undercutting margin of 29 %, as described in recitals (44) to (47) of the provisional Regulation, are confirmed.

3. Situation of the Community industry

(a) *Cost of production and profitability*

(45) It was claimed that the Taiwanese exporting producers offer a wider choice of packaging than the Community industry and that the provisonal Regulation did not provide sufficient explanation on the effect of packaging on the cost of production.

(46) Although the investigation has shown that there was a wide variety of packaging types which were updated regularly following marketing efforts, the following main categories could be distinguished. They are ranked according to increasing average cost of production during the IP with the figure between brackets indicating the cost differences in an indexed form. Contrary to the claim that the Taiwanese exporting producers offer a wider choice of packaging than the Community industry, it is confirmed that the same types of packaging are offered by both above categories of suppliers on the Community market, the choice being determined by the same category of unrelated customers, i.e. client retailers.

(47) CD-Rs sold in bulk (100) ([1]) are typically shipped on spindles, which are plastic devices on which a number of CD-Rs are stacked. The complete spindle with CD-Rs is in most cases cellophane wrapped. The bulk product can however also merely be a cellophane wrapped stack of CD-Rs, without the spindle.

(48) CD-Rs may also be sold in so-called cake-boxes (144), which can be described as spindles onto which a plastic lid is screwed so that a closed container-like product is obtained.

(49) The jewelbox, accompanied by a booklet (200), was the most widely spread means of packaging during the IP. This form was also most frequently encountered in case of sales of registered music-CDs. A more recent phenomenon is the slim case (174) which differs from the jewelbox in that the black inlay, where the CD-R is fixed, at the same time serves as the back of the case. The result is a box which is approximately half as thick as the original jewelbox.

(b) *Employment, productivity and wages*

(50) The average employment cost per employee and the productivity were recalculated in order to take account of the correction of the employment figures for 1997 for one producer of the Community industry. That producer had submitted year-end figures including trainees for upcoming production capacity instead of a yearly average full-time equivalent.

	1997	1998	1999	2000 (= IP)
Employment	427	623	877	1 037
Index	100	146	205	243
Average employment cost per employee (in 1 000 ECU/EUR)	25,0	27,7	31,5	30,7
Index	100	111	126	123
Productivity CDs per employee	45 300	137 500	240 000	311 200
Index	100	304	530	687

(51) The average wage cost per employee increased by 23 % over the period considered, in line with normal indexation of wages to the cost of living as well as the cost of training and employing specialised new personnel to operate additional machinery. The decrease between 1999 and 2000 can be attributed to the fact that new personnel were mainly employed in the packaging departments, where lower average wages and temporary labour prevail, since this activity requires less technically qualified personnel.

([1]) Basic index = 100

(52) The definitive determination of the increase of average employment cost per employee at 23 % replaces the figure of 39 % mentioned in recital (64) of the provisional Regulation.

4. **Conclusion on injury**

(53) Referring to the provisional Regulation, it is recalled that the volume of low-priced imports from Taiwan increased significantly during the period considered. Their market share increased from 6,3 % to 60,1 % and their import price was reduced by 73 % on average. The Community market was dominated by Taiwanese imports, which benefited considerably more from the favourable evolution of Community demand for CD-Rs than the Community industry in terms of volume of sales and market share.

(54) The increase of import volumes and the decline of the sales price were particularly pronounced between 1999 and the IP. These imports undercut the Community industry's sales prices by 29 % on average during the IP and exercised a downward pressure on the sales prices on the Community market. The magnitude of dumping by the Taiwanese exporting producers was found to be significant. No other factors were found to affect domestic prices.

(55) Some economic indicators pertaining to the situation of the Community industry, such as production of CD-Rs, production capacity installed, sales volume, cash flow, employment and productivity, showed positive developments over the period considered. However, these developments in relative terms, i.e. with reference to the rapidly expanding market, were less pronounced than could be expected. The rate of capacity utilisation increased until 1999, but decreased during the IP to 86 %. Over the period considered, the average sales prices of the Community industry dropped considerably.

(56) The Community industry originally built up a market share of 16,8 % in 1998, but subsequently lost part of that market share to the Taiwanese importers, achieving 12,6 % during the IP. Difficulties encountered by the Community industry to obtain projected sales in an expanding market led to considerable stock building during the IP. Negative return on investments during the IP led the Community industry to postpone or cancel new investment decisions to a large extent.

(57) Notwithstanding the increase of the average wage cost per employee, the Community industry achieved profitability in 1999 as a consequence of the reduction of the full cost of production. However, further cost reductions were insufficient to compensate for the significant decrease of the sales prices, leading to financial losses during the IP.

(58) The investigation revealed that the Community industry was prevented from participating in the growth of the Community market, that its investment programmes for CD-Rs were significantly reduced due to declining sales prices, that its sales prices were undercut by Taiwanese exporting producers by 29 % on average, that it suffered financial losses during the IP and encountered difficulties in raising additional funding.

(59) In view of the above, the conclusions as stated in recitals (66) to (71) of the provisional Regulation are confirmed.

H. CAUSATION

1. Effect of the dumped imports

(60) It was alleged that the absence of sufficient growth in terms of production, sales and market share of the Community industry should not be attributed to Taiwanese imports, but to its high capacity utilisation during 1999 and the IP, which did not allow the Community industry to make extra sales or to obtain additional market share.

(61) It should be recalled that the Community industry's capacity utilisation declined from 91,8 % in 1999 to 86,3 % in the IP. Furthermore, as mentioned in recital (55) of the provisional Regulation, stocks increased significantly towards the end of 1999 and to an even greater extent towards the end of the IP. During the IP production of CD-Rs exceeded sales by approximately 40 million units, leading to stocks at the end of the year which represented more than 20 % of yearly production of CD-Rs. This clearly indicates that the capacity utilisation rate cannot have caused the lack of growth of the Community industry.

(62) It was further claimed that any injury suffered by the Community industry was a consequence of its failure to adapt to world market prices. It was also argued that the downward pressure on prices was the result of the existing world-wide production over-capacity. In this context it was claimed that virtually no recent additional investments in CD-R production capacity were made, given the extremely low price levels

(63) Interested parties did not provide any evidence supporting the allegation that there were one or more reference world-wide sales prices for CD-Rs. In assessing this allegation, it should also be noted that the investigation showed that depending on the export market CD-Rs could be sold under one form of packaging rather than another. As stated under recitals (39) to (44) above, such packaging has a serious impact on the cost of production and may thus explain why overall price levels can vary significantly depending on the type of packaging and on the destination market. It follows that without details concerning the mix of product types of CD-Rs per destination market, no meaningful price analysis can be made world-wide. Moreover, the import price setting by Taiwanese exporting producers on the Community market at a level below their own cost of production caused a downward pressure on the Community price level which the Community industry could only follow by selling at a loss during the IP.

(64) As mentioned in recital (58) above, the Community industry significantly reduced its investments due to the deterioration of sales prices on the Community market. In contrast, Taiwanese exporting producers which operated on a world-wide basis continued to expand their production facilities notwithstanding the unfavourable market price outlook. Based on information available, Taiwanese owned production capacity in the IP more than covered estimated total world market demand, that increased by 84 % compared to 1999. This increase in capacity by Taiwanese producers suggests, that, if anything they have themselves contributed to any over-capacity. Furthermore, the increase in Taiwanese capacity implies that the claim concerning the absence of investments in CD-Rs production capacity is not founded.

(65) Based on these facts and considerations, the above claims are rejected.

2. Imports of CD-Rs from other countries

(66) The market share of imports from other countries decreased from 78,8 % to 21,3 % over the period considered. Japan and Singapore are the largest exporters to the Community with market shares of 9,5 % and 2,7 % respectively during the IP.

(67) It was observed that the Japanese import price into the Community decreased more sharply over the period considered than the Taiwanese price. The Japanese import price, which was up to 53 % above the Taiwanese import price in the period 1997-1999, was only 26 % higher during the IP. It was thus alleged that the sharper decrease of Japanese import prices into the Community over the period considered had contributed to the downward pressure on prices in the Community market.

(68) It is recalled that Japanese prices have always been significantly higher than those of Taiwanese exporting producers over the period considered. Although the quantities imported from Japan increased from 53 million CD-Rs to 192 million CD-Rs over the period considered, the Japanese market share on the Community market dropped from 33 % to 9,5 %. Their impact on the market was therefore much more limited than that of low-proceed dumped Taiwanese CD-Rs.

(69) Exports from Taiwan to Japan reached 87 million CD-Rs during the IP and were made at an average price of 0,42 euro per CD-R, which is 26 % above the average Taiwanese export price to the Community. This price corresponds exactly to the average import price of CD-Rs of Japanese origin into the Community. It seems therefore that the level of the Taiwanese price on the Community market is particularly low.

(70) CD-Rs imported from Singapore entered the Community at prices lower than the Taiwanese imports, however their market share dropped from 14,2 % to 2,7 % over the period considered. The information available also indicates that one CD-R producer dominates the Singaporean market in terms of domestic output and exports to the Community and that this company is related to another CD-R producer located in the Community. During the period considered, they both sold CD-Rs to a third sister sales company in the Community, which marketed the CD-Rs under a brand name. On this basis, it cannot be considered that the sales transactions made by the main Singaporean exporting producer to the Community were made at arm's length conditions.

(71) It is recalled that low-priced dumped Taiwanese imports held 60 % of the Community market during the IP. In the light of both the reduction of Japanese market share and the price level of Japanese imports on the Community market, it is considered that that Japanese imports cannot have contributed more than insignificantly to the downward pressure on the Community market.

3. **Economies of scale**

(72) Further clarification was asked concerning the economies of scale, mentioned in recital (56) of the provisional Regulation, and more specifically it was alleged that the Taiwanese exporting producers could obtain a lower cost of production per CD-R than the Community industry because of the larger average size of their companies. The economies of scale realised by Taiwanese exporting producers were thus relevant to explain the price differential between Taiwanese and Community produced CD-Rs.

(73) It was indeed established that the average factory size of the sampled Taiwanese exporting producers during the IP was 530 million CD-Rs per year, compared to an average of 40 million CD-Rs per year for the Community industry. However, the production lines installed in all companies are manufactured by the same companies in either Germany, Switzerland or Japan and are of a comparable size. Taiwanese exporting producers on average have simply installed more production lines than Community producers. It is therefore considered that no economy of scale could have been achieved on these fixed costs.

(74) It is, however, worth mentioning that the determining factor for the cost of production is the number of CD-Rs that can be produced by a given production line within a certain time period. The acquisition cost of the machinery remained fairly stable over the period considered, but the performance increased on average from 10 CD-Rs per minute in 1997 to 25 CD-Rs per minute in 2000. This gain in efficiency allowed the Community industry to reduce costs of production.

(75) Within a given company it was typical to encounter different generations of machinery with the new investments representing the best performance whereas older investments had already been partially or completely scrapped. The theoretical maximum economic lifetime of the machinery is five years, although this is probably even shorter in practice. This pattern is not different for the Taiwanese exporting producers than for the Community industry. A production line purchased in the year 2000 would on average allow an output of approximately 1 million CD-Rs per month, compared to 400 000 CD-Rs per month for a production line installed in 1997.

(76) No evidence was provided by the Taiwanese exporting producers which would demonstrate and quantify any alleged economies of scale, i.e. that a larger factory size with more lines installed would deliver a lower manufacturing cost per CD-R. The Taiwanese exporting producers were not found for instance to benefit from any specific advantages regarding the purchase costs of raw materials, nor did they claim the existence of such advantages.

(77) In any case, it should be underlined that even if such a lower manufacturing cost per CD-R would exist, this could not justify the dumping behaviour of the Taiwanese exporters The alleged economies of scales therefore do not alter the causal link between dumped imported Taiwanese CD-Rs and the injury suffered by the Community industry.

4. **Conclusion on causation**

(78) In conclusion, it is confirmed that the material injury of the Community industry was caused by the dumped imports concerned. The material injury is characterised

by the fact that the Community industry was prevented from participating in the market growth, that the investment programmes for CD-Rs had to be significantly reduced due to the declining trend of sales prices, that the Community industry's sales prices were undercut on average by 29 % by Taiwanese low-priced dumped imports, that it suffered financial losses during the IP and had difficulties in raising additional funding.

(79) No further claims were made with respect to the impact of the factors discussed in recitals (77) to (94) of the provisional Regulation. Therefore, it is concluded that the effect of the development of Community consumption, the imports from other third countries, the export activity of the Community industry, the purchases of CD-Rs from third countries by the Community industry and the adaptation of high speed technology, on the Community industry's negative developments in terms of capacity utilisation, stock building, sales prices, market share, profitability, investments, return on investment and the ability to raise capital was practically non-existent.

Given the analysis, which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that the injury assessed must be attributed to the dumped imports. It is also considered that imports of CD-Rs originating in Taiwan had a significant negative impact on the situation of the Community industry and that the effect of other factors, notably imports from third countries including Japan was not such as to alter the finding of a genuine and substantial relationship of cause of and effect between the dumped imports from Taiwan and the material injury suffered by the Community industry.

I. COMMUNITY INTEREST

1. Interest of the Community industry

(80) In the absence of any new information on the interest of the Community industry, the provisional findings as described in recitals (98) to (100) of the provisional Regulation are confirmed.

2. Interest of importers

(81) It has been claimed that the fact that the cooperating importers of Taiwanese CD-Rs were unable to cover their overhead costs on the basis of a normal trading contribution margin applied to the low market prices during the IP is an indication that Taiwanese imports are not responsible for the downward pressure on prices. This also indicates that the imposition of anti-dumping duties will not be in the interest of importers.

(82) However, no evidence substantiating this claim was provided and the re-examination of the data available confirmed that the increasing volumes and decreasing prices of imports of CD-Rs originating in Taiwan caused a downward effect on the Community market prices. The investigation showed that the normal trading margin made by the cooperating importers based on lower prices of CD-Rs did not yield sufficient coverage of overhead costs, leading to losses during the IP. Moreover, the decrease of market prices occurred at such a pace that importers were faced with rapid value deterioration of goods in transit, creating a situation in which the purchase price occasionally exceeded the eventual sales price.

(83) It should also be noted that no importers came forward to contradict the Commission's provisional findings. It is considered that effective trade conditions on the Community market will serve the interest of importers by restoring an adequate sales price level on the Community market.

(84) In view of the above, the provisional findings as described in recitals (101) and (102) of the provisional Regulation are confirmed.

3. Interest of users and consumers

(85) In the absence of any new information on the interest of users and consumers, the provisional findings as described in recitals (103) to (105) of the provisional Regulation are confirmed.

4. Conclusion on Community interest

(86) In view of the above, the provisional conclusion as described in recital (107) of the provisional Regulation is confirmed, i.e. that there are no compelling reasons on the grounds of Community interest not to impose definitive anti-dumping measures.

J. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level

(87) It was claimed that the pre-tax profit margin of 8 % mentioned in recital (110) of the provisional Regulation and used in the determination of the non-injurious price was unreasonably high.

(88) This margin that could reasonably be achieved under normal conditions of competition was based on an assessment of the impact on the Community industry's sales prices of the degree to which the Taiwanese exporters dumped CD-Rs on the Community market, the import price levels of the non-dumped imports from third countries and the profitability required to cover the financial costs of the investments made by the Community industry. The analysis allowed to conclude that 8 % was a reasonable level of pre-tax profit margin.

(89) In any event, it should be noted that the definitive anti-dumping measures are based on the dumping margins in application of the lesser duty rule.

2. **Definitive anti-dumping measures**

Country	Company	Rate of duty
Taiwan	Acer Media Technology Inc.	19,2 %
	Auvistar Industry Co., Ltd.	17,7 %
	Digital Storage Technology Co.	19,2 %
	Gigastore Corporation	19,2 %
	Lead Data Inc.	19,2 %
	Megamedia Corporation	19,2 %
	Nan Ya Plastics Corporation	19,2 %
	Postech Corporation	19,2 %
	Princo Corporation	29,9 %
	Prodisc Technology Inc.	17,7 %
	Ritek Corporation	17,7 %
	Unidisc Technology Inc.	17,7 %
	All other companies	38,5 %

(90) The individual company anti-dumping rates specified in this Regulation were established on the basis of findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to all other companies) are thus exclusively applicable to imports of product originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported product produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(91) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

(92) Since sampling has been used in the investigation of dumping, a new exporters' review pursuant to Article 11(4) of the basic Regulation with the objective of determining individual dumping margins cannot be initiated in this proceeding. However, in order to ensure equal treatment for any genuine new Taiwanese exporting producer and the cooperating companies not included in the sample, it is considered that provision should be made for the weighted average duty imposed on the latter companies to be applied to any new Taiwanese exporting producer to whom Article 11(4) of the basic Regulation would otherwise apply.

3. **Collection of provisional duties**

(93) In view of the magnitude of the dumping margins found for the exporting producers, and in the light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty under the provisional Regulation be definitively collected to the extent of the amount of definitive duties imposed if this amount is equal or lower than the amount of the provisional duty. Otherwise, only the amount of the provisional duty should be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of recordable compact disks (CD-Rs), currently classifiable within CN code ex 8523 90 00 (TARIC code 8523 90 00 10), originating in Taiwan

2. The rate of the definitive duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the following companies shall be as follows:

[1] European Commission
Directorate-General Trade
Directorate B
NEW OFFICIAL ADDRESS
B-1049 Brussels/Belgium.

Country	Company	Rate of duty	TARIC additional code
Taiwan	Acer Media Technology Inc., 29 Jianguo E. Road, Gueishan, Taoyuan 333, Taiwan, R.O.C.	19,2 %	A298
	Auvistar Industry Co., Ltd., 21, Tung-Yuan Road, Chung-Li Industrial Park, Taiwan R.O.C.	17,7 %	A299
	Digital Storage Technology Co., Ltd., No 42, Kung 4 Rd., Linkou 2nd Industrial Park, Taipei Hsien, Taiwan R.O.C.	19,2 %	A300
	Gigastorage Corporation, 2, Kuang Fu South Rd., Hsinchu Industrial Park, Hsinchu, Taiwan R.O.C.	19,2 %	A301
	Lead Data Inc., No 23, Kon Yeh 5th Rd., Hsinchu Industrial Park Fu Kou Hsiang, Hsinchu Hsien, Taiwan R.O.C.	19,2 %	A302
	Megamedia Corporation, No 13, Kung Chien Rd., Chi-Tu District, Keelung, Taiwan R.O.C.	19,2 %	A303
	Nan Ya Plastics Corporation, 201, Tung Hwa N. Road, Taipei, Taiwan R.O.C.	19,2 %	A361
	Postech Corporation, No 42, Kuang Fu South Rd., Hsinchu Industrial Park, Hsinchu Hsien, Taiwan R.O.C.	19,2 %	A304
	Princo Corporation, No 6, Creation 4th Rd., Science-based Industrial Park, Hsinchu, Taiwan R.O.C.	29,9 %	A305
	Prodisc Technology Inc., No 13, Wu-Chuan 7th Rd., Wu-Ku Industrial District, Wu-Ku County, Taipei, Taiwan R.O.C.	17,7 %	A306
	Ritek Corporation, No 42, Kuanfu N. Road, Hsinchu Industrial Park, Taiwan 30316 R.O.C.	17,7 %	A307
	Unidisc Technology Co., Ltd., 4F, No 543, Chung-Cheng Rd., Hsin-Tien, Taipei, Taiwan, R.O.C.	17,7 %	A308
	All other companies	38,5 %	A999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Where any new exporting producer in Taiwan provides sufficient evidence to the Commission that:

— it did not export to the Community the products described in Article 1(1) during the investigation period (1 January 2000 to 31 December 2000),

— it is not related to any of the exporters or producers in Taiwan which are subject to the anti-dumping measures imposed by this Regulation,

— it has actually exported to the Community the products concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1(2) by adding the new exporting producer to the companies subject to the weighted average duty rate listed in that Article.

Article 3

The amounts secured by way of the provisional anti-dumping duty on imports originating in Taiwan under the provisional Regulation shall be collected at the rate of the duty definitively imposed by this Regulation. Amounts secured in excess of the rate of definitive anti-dumping duty shall be released.

Article 4

This Regulation shall enter into force on the day 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.

Proposal for a Council Decision amending Council Decision 98/566/EC of 20 July 1998 on the conclusion of an Agreement on mutual recognition between the European Community and Canada

(2002/C 227 E/12)

COM(2002) 270 final — 2002/0120(ACC)

(Submitted by the Commission on 3 June 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with Article 300 paragraph 2, first subparagraph, first sentence, and paragraph 3, first subparagraph, first sentence, and paragraph 4 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) In order to ensure the efficient operation of the Agreement on mutual recognition between the European Community and Canada [1] (the Agreement) it is necessary to amend Council Decision 98/566/EC of 20 July 1998 [2] in order to empower the Commission to take all necessary measures for the operation of the Agreement.

(2) The Council should retain the power to decide on the termination of Sectoral Annexes,

HAS DECIDED AS FOLLOWS:

Sole Article

Article 3 of Council Decision 98/566/EC of 20 July 1998 on the conclusion of an Agreement on mutual recognition between the European Community and Canada is deleted and substituted with the following:

'*Article 3*

1. The Commission shall represent the Community in the Joint Committee and in the joint sectoral groups established by the Sectoral Annexes, provided for in Articles XI and XII to the Agreement, assisted by the special Committee designated by the Council. The Commission shall proceed, after consultation with this special Committee, to the appointments, notifications, exchanges of information and requests for information specified in the Agreement.

2. The position of the Community with regard to decisions to be taken by the Joint Committee shall be determined, with regard to the termination of Sectoral Annexes in accordance with Article XIX(2), by the Council, acting by qualified majority on a proposal by the Commission.

3. The position of the Community in the Joint Committee or, if appropriate, in the joint sectoral groups shall in all other cases be determined by the Commission, following consultation of the special Committee referred to in paragraph 1 of this Article.'

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[1] OJ L 280, 16.10.1998, p. 3.

[2] OJ L 280, 16.10.1998, p. 1.

Proposal for a Council Decision amending Council Decision 98/508/EC of 18 June 1998 on the conclusion of an Agreement on mutual recognition in relation to conformity assessment, certificates and markings between the European Community and Australia

(2002/C 227 E/13)

COM(2002) 271 final — 2002/0117(ACC)

(Submitted by the Commission on 3 June 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with Article 300 paragraph 2, first subparagraph, first sentence, and paragraph 3, first subparagraph, first sentence, and paragraph 4 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) In order to ensure the efficient operation of the Agreement on mutual recognition in relation to conformity assessment, certificates and markings between the European Community and Australia [1] (the Agreement) it is necessary to amend Council Decision 98/508/EC of 18 June 1998 [2] in order to empower the Commission to take all necessary measures for the operation of the Agreement,

HAS DECIDED AS FOLLOWS:

Sole Article

Article 3 of Council Decision 98/508/EC of 18 June 1998 on the conclusion of an Agreement on mutual recognition in relation to conformity assessment, certificates and markings between the European Community and Australia is deleted and substituted with the following:

'*Article 3*

1. The Commission shall represent the Community in the Joint Committee provided for in Article 12 of the Agreement, assisted by the special Committee designated by the Council. The Commission shall proceed, after consultation with this special Committee, to the appointments, notifications, exchanges of information and requests for information specified in the Agreement.

2. The position of the Community in the Joint Committee shall be determined by the Commission, following consultation of the special Committee referred to in paragraph 1 of this Article.'

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[1] OJ L 229, 17.8.1998, p. 3.

[2] OJ L 229, 17.8.1998, p. 1.

Proposal for a Council Decision amending Council Decision 98/509/EC of 18 June 1998 on the conclusion of an Agreement on mutual recognition in relation to conformity assessment between the European Community and New Zealand

(2002/C 227 E/14)

COM(2002) 272 final — 2002/0087(ACC)

(Submitted by the Commission on 3 June 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with Article 300 paragraph 2, first subparagraph, first sentence, and paragraph 3, first subparagraph, first sentence, and paragraph 4 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) In order to ensure the efficient operation of the Agreement on mutual recognition in relation to conformity assessment between the European Community and New Zealand [1] (the Agreement) it is necessary to amend Council Decision 98/509/EC of 18 June 1998 [2] in order to empower the Commission to take all necessary measures for the operation of the Agreement,

HAS DECIDED AS FOLLOWS:

Sole Article

Article 3 of Council Decision 98/509/EC of 18 June 1998 on the conclusion of an Agreement on mutual recognition in relation to conformity assessment between the European Community and New Zealand is deleted and substituted with the following:

'*Article 3*

1. The Commission shall represent the Community in the Joint Committee provided for in Article 12 of the Agreement, assisted by the special Committee designated by the Council. The Commission shall proceed, after consultation with this special Committee, to the appointments, notifications, exchanges of information and requests for information specified in the Agreement.

2. The position of the Community in the Joint Committee shall be determined by the Commission, following consultation of the special Committee referred to in paragraph 1 of this Article.'

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[1] OJ L 229, 17.8.1998, p. 62.

[2] OJ L 229, 17.8.1998, p. 61.

Proposal for a Directive of the European Parliament and of the Council amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies

(2002/C 227 E/15)

COM(2002) 279 final — 2002/0122(COD)

(Submitted by the Commission on 3 June 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 44(2)(g) thereof,

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) The First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community [1] sets out the requirements in respect of compulsory disclosure of a series of documents and particulars by limited liability companies.

(2) In the context of the fourth phase of the Simplification of the Legislation on the Internal Market process (SLIM), launched by the Commission in October 1998, a Company Law Working Group issued in September 1999 a Report on the simplification of the First and Second Company Law Directives which contained certain recommendations [2].

(3) The modernisation of Directive 68/151/EEC along the lines set out in those recommendations should not only help to meet the important objective of making company information more easily and rapidly accessible by interested parties, but should also simplify significantly the disclosure formalities imposed upon companies.

(4) The list of companies covered by Directive 68/151/EEC should be extended to take account of the new types of companies created at national level since the Directive's adoption.

(5) Several Directives have been adopted since 1968 with the aim of harmonising the requirements applicable to the accounting documents which must be prepared by companies, namely the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies [3], the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts [4], Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions [5] and Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings [6]. The references in Directive 68/151/EEC to the accounting documents which are required to be published in accordance with those Directives should be updated accordingly.

(6) In the context of the pursued modernisation, companies should be able to choose to file their compulsory documents and particulars by paper means or by electronic means. Interested parties should be able to obtain from the register a copy of such documents and particulars by paper means as well as by electronic means.

(7) Member States should be able to decide to keep the national gazette, appointed for publication of compulsory documents and particulars, in paper form or electronic form, or to provide for disclosure by equally effective means.

(8) Cross-border access to company information should be improved by allowing, in addition to the mandatory disclosure made in one of the languages permitted in the company's Member State, voluntary registration of documents and particulars in additional languages. Third parties acting in good faith should be able to rely on these translations.

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[1] OJ L 65, 14.3.1968, p. 8, as last amended by the Act of Accession of Austria, Finland and Sweden.

[2] See the Report from the Commission to the European Parliament and the Council — Results of the fourth phase of SLIM, 4 February 2000 (COM(2000) 56 final).

[3] OJ L 222, 14.8.1978, p. 11; as last amended by European Parliament and Council Directive 2001/65/EC (OJ L 283, 27.10.2001, p. 28).

[4] OJ L 193, 18.7.1983, p. 1; as last amended by Directive 2001/65/EC.

[5] OJ L 372, 31.12.1986, p. 1; as amended by Directive 2001/65/EC.

[6] OJ L 374, 31.12.1991, p. 7.

(9) It is appropriate to clarify that the statement of the compulsory particulars in accordance with Article 4 of Directive 68/151/EEC should be made in all letters and order forms, whether they are in paper form or use any other medium. In the light of technological developments, it is also appropriate to provide that these statements be made on any company website.

(10) Directive 68/151/EEC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 68/151/EEC is hereby amended as follows:

1. Article 1 is amended as follows:

(a) the third indent is replaced by the following:

'— In France:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée, la société par actions simplifiée;'

(b) the sixth indent is replaced by the following:

'— In the Netherlands:

de naamloze vennootschap, de commanditaire vennootschap op aandelen, de besloten vennootschap met beperkte aansprakelijkheid;'

(c) the ninth indent is replaced by the following:

'— In Denmark:

aktieselskab, kommanditaktieselskab, anpartsselskab;'.

2. Article 2 is amended as follows:

(a) Point (f) of paragraph 1 is replaced by the following:

'(f) The accounting documents for each financial year, which are required to be published in accordance with Council Directives 78/660/EEC (*), 83/349/EEC (**), 86/635/EEC (***) and 91/674/EEC (****).

(*) OJ L 222, 14.8.1978, p. 11.
(**) OJ L 193, 18.7.1983, p. 1.
(***) OJ L 372, 31.12.1986, p. 1.
(****) OJ L 374, 31.12.1991, p. 7.'

(b) Paragraph 2 is deleted.

3. Article 3 is replaced by the following:

'*Article 3*

1. In each Member State, a file shall be opened in a central register, commercial register or companies register, for each of the companies registered therein.

2. All documents and particulars which must be disclosed in pursuance of Article 2 shall be kept in the file, or entered in the register; the subject matter of the entries in the register must in every case appear in the file.

Member States shall ensure that the filing by companies of all documents and particulars which must be disclosed in pursuance of Article 2 shall be possible by electronic means as from 1 January 2005. In addition, Member States may impose upon all — or certain categories of — companies the filing by electronic means of all — or certain types of — such documents and particulars as from 1 January 2005.

All documents and particulars referred to in Article 2 which are filed as from 1 January 2005, whether by paper means or by electronic means, must be kept in the file, or entered in the register, in electronic form. To this end, Member States shall ensure that all such documents and particulars which are filed by paper means as from 1 January 2005 are converted by the register to electronic form.

The documents and particulars referred to in Article 2 that have been filed by paper means up to 31 December 2004 do not have to be converted automatically to electronic form by the register. Member States shall nevertheless ensure that they are converted to electronic form by the register on application submitted in accordance with the rules adopted pursuant to paragraph 3.

3. A copy of the whole or any part of the documents or particulars referred to in Article 2 must be obtainable on application. As from 1 January 2005, applications may be submitted to the register by paper means or by electronic means as the applicant chooses.

As from 1 January 2005, copies as referred to in the first subparagraph must be obtainable from the register by paper means or by electronic means as the applicant chooses, whether the documents or particulars have been filed before or after 1 January 2005. However, Member States may decide that all — or certain types of — the documents and particulars that have been filed by paper means up to 31 December 2004 shall not be obtainable from the register by electronic means, if they have been filed before a stated period preceding the date of the application submitted to the register. Such stated period may not be less than 10 years.

The price of obtaining a copy of the whole or any part of the documents or particulars referred to in Article 2, whether by paper means or by electronic means, shall not exceed the administrative cost thereof.

Paper copies supplied shall be certified as "true copies", unless the applicant dispenses with such certification. Electronic copies supplied shall not be certified as "true copies", unless the applicant explicitly requests such a certification.

Member States shall take the necessary measures to ensure that certification of electronic copies guarantees both the authenticity of their origin and the integrity of their contents, by means of an advanced electronic signature within the meaning of Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (*).

4. Disclosure of the documents and particulars referred to in paragraph 2 shall be effected by publication in the national gazette appointed for that purpose by the Member State, either of the full or partial text, or by means of a reference to the document which has been deposited in the file or entered in the register. The national gazette appointed for that purpose may be kept in electronic form.

Member States may decide to replace publication in the national gazette with equally effective means, which shall at least entail the use of a system whereby the information disclosed can be accessed in chronological order through a central electronic platform.

5. The documents and particulars may be relied on by the company as against third parties only after they have been disclosed in accordance with paragraph 4, unless the company proves that the third parties had knowledge thereof.

However, with regard to transactions taking place before the sixteenth day following the disclosure, the documents and particulars shall not be relied on as against third parties who prove that it was impossible for them to have had knowledge thereof.

6. Member States shall take the necessary measures to avoid any discrepancy between what is disclosed in accordance with paragraph 4 and what appears in the register or file.

However, in cases of discrepancy, the text disclosed in accordance with paragraph 4 may not be relied on as against third parties; the latter may nevertheless rely thereon, unless the company proves that they had knowledge of the texts deposited in the file or entered in the register.

7. Third parties may, moreover, always rely on any documents and particulars in respect of which the disclosure formalities have not yet been completed, save where non-disclosure causes them not to have effect.

8. For the purposes of this article, "by electronic means" shall mean that the information is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

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(*) OJ L 13, 19.1.2000, p. 12.'

4. The following Article 3a is inserted:

'*Article 3a*

1. Documents and particulars which must be disclosed pursuant to Article 2 shall be drawn up in one of the languages permitted by the language rules applicable in the Member State in which the company has its registered office.

2. In addition to the mandatory disclosure referred to in paragraph 1, Member States shall allow documents and particulars referred to in Article 2 to be disclosed in accordance with Article 3 in any official language(s) of the Community.

Member States may prescribe that the translation of such documents and particulars be certified.

Member States shall take the necessary measures to ensure that electronic access is provided in each of the official languages of the Community in which such documents and particulars have been disclosed.

3. In addition to the mandatory disclosure as required under paragraph 1, and to the disclosure allowed under paragraph 2, Member States may allow documents and particulars referred to in Article 2 to be disclosed in accordance with Article 3 in any other language(s).

Member States may prescribe that the translation of such documents and particulars be certified.

4. Member States shall take the necessary measures to avoid any discrepancy between the documents and particulars disclosed pursuant to paragraph 1 and any translation disclosed pursuant to paragraph 2 or paragraph 3.

However, in cases of discrepancy, the translation disclosed pursuant to paragraph 2 or paragraph 3 may not be relied on as against third parties; the latter may nevertheless rely thereon, unless the company proves that they had knowledge of the version disclosed pursuant to paragraph 1.'

5. Article 4 is replaced by the following:

'*Article 4*

Member States shall prescribe that letters and order forms, whether they are in paper form or use any other medium, shall state the following particulars:

(a) the information necessary to identify the register in which the file mentioned in Article 3 is kept, together with the number of the company in that register;

(b) the legal form of the company, the location of its registered office and, where appropriate, the fact that the company is being wound up.

Where, in these documents, mention is made of the capital of the company, the reference shall be to the capital subscribed and paid up.

Member States shall prescribe that company websites shall contain at least the particulars mentioned in the first paragraph and, if applicable, the reference to the capital subscribed and paid up.'

6. Article 6 is replaced by the following:

'*Article 6*

Member States shall provide for appropriate penalties in case of:

(a) failure to disclose the accounting documents required by Article 2(1)(f);

(b) omission from commercial documents or from any company website of the compulsory particulars provided for in Article 4.'.

Article 2

1. Member States shall bring into force by 31 December 2004 at the latest the laws, regulations and administrative provisions necessary for them to comply with this Directive. They shall forthwith inform the Commission thereof.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Proposal for a Council Decision amending Council Decision 2001/747/EC of 27 September 2001 on the conclusion of an Agreement on Mutual Recognition between the European Community and Japan

(2002/C 227 E/16)

COM(2002) 273 final — 2002/0118(ACC)

(Submitted by the Commission on 3 June 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with Article 300 paragraph 2, first subparagraph, first sentence, and paragraph 3, first subparagraph, first sentence, and paragraph 4 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) In order to ensure the efficient operation of the Agreement on mutual recognition between the European Community and Japan [1] (the Agreement) it is necessary to amend Council Decision 2001/747/EC of 27 September 2001 [2] in order to empower the Commission to take all necessary measures for the operation of the Agreement,

HAS DECIDED AS FOLLOWS:

Sole Article

Article 3 of Council Decision 2001/747/EC of 27 September 2001 on the conclusion of an Agreement on Mutual Recognition between the European Community and Japan is deleted and substituted with the following:

'*Article 3*

1. The Commission shall represent the Community in the Joint Committee or any subcommittee provided for in Article 8 of the Agreement, assisted by the special Committee designated by the Council. The Commission shall proceed, after consultation with this special Committee, to the actions required for the implementation of the Agreement.

2. The position of the Community in the Joint Committee shall be determined by the Commission, following consultation of the special Committee referred to in paragraph 1 of this Article.'

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[1] OJ L 284, 29.10.2001, p. 3.

[2] OJ L 284, 29.10.2001, p. 1.

Proposal for a Directive of the European Parliament and of the Council on the reuse and commercial exploitation of public sector documents

(2002/C 227 E/17)

COM(2002) 207 final — 2002/0123(COD)

(Submitted by the Commission on 5 June 2002)

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,

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

Acting in accordance with the procedure set out in Article 251 of the Treaty,

Whereas:

(1) The Treaty provides for the establishment of an internal market and of a system ensuring that competition in the internal market is not distorted. Harmonisation of the rules and practices in the Member States relating to the exploitation of public sector information contributes to the achievement of these objectives.

(2) The evolution towards an information and knowledge society should influence the life of every citizen in the Community, *inter alia*, by affording new ways of gaining access to and acquiring knowledge.

(3) Digital content plays a predominant role in this evolution. Content production has given rise to rapid job creation in recent years and continues to do so. Most of these jobs are created in small emerging companies.

(4) The public sector collects, collates and disseminates information in many areas of activity, such as geographical, tourist, business, patent and educational information.

(5) One of the principal aims of the establishment of an internal market is the creation of conditions to promote the development of Community-wide services. Public sector information is an important primary material for digital content products and services and will become an even more important content resource with the development of wireless content services. A broad cross-border geographical coverage will also be essential in this context.

(6) There are considerable differences in the rules and practices in the Member States relating to the exploitation of public sector information resources, which constitute barriers to bringing out the full economic potential of this key information resource. A minimum harmonisation of national rules and practices on the reuse and commercial exploitation of public sector information should therefore be undertaken, in cases where the differences in national regulations and practices or the absence of clarity hinder the smooth functioning of the internal market and the proper development of the information society in the Community.

(7) Moreover, without a minimum harmonisation at Community level, legislative activities at national level, which have already been initiated in a number of Member States in order to respond to the technological challenges, might result in even more significant differences. The impact of such legislative differences and uncertainties will become more significant with the further development of the information society, which has already greatly increased cross-border exploitation of information.

(8) A general framework for the conditions of reuse of public sector information is needed in order to ensure fair, proportionate and non-discriminatory conditions for the re-use of such information.

(9) This Directive should apply to documents held by public sector bodies that are generally accessible. Where public sector bodies allow the reuse of such documents they should be reusable for commercial and non-commercial purposes under certain conditions. Public sector bodies should be encouraged to make available for reuse any documents held by them that are generally accessible.

(10) The different formats used by public sector bodies can represent a considerable burden for private organisations that want to reuse information taken from several sources. The need to digitise paper-based documents or to manipulate digital files to make them mutually compatible should be reduced by requiring public bodies to make the documents available in all pre-existing formats.

(11) The time limit for replying to requests for reusing information resources should be reasonable and in line with the equivalent time for requests to access the document, in order not to prevent the creation of new aggregated information products and services. Excessive time-lags between the request to reuse documents and the decision on these requests can hamper the establishment of data collections covering the whole of the Community, since the slowest country will set the pace.

(12) Where charges are made, the total income from allowing access to or reuse of these documents should not exceed the total costs of producing, reproducing and disseminating them, together with a reasonable profit margin. Production includes collection and collation, and dissemination may also include user support. Recovery of costs, together with a reasonable profit margin, constitutes an upper limit to the charges, as any excessive prices should be precluded. The public sector bodies should have the possibility of applying lower charges or of not charging at all, and Member States should encourage public sector bodies to make documents available at charges that do not exceed the marginal costs for reproducing and disseminating the documents.

(13) Charges and other conditions for the reuse of public sector information should be non-discriminatory. This also applies to the commercial activities of public sector bodies that fall outside their public task. This means that the same input conditions should apply to the commercial activities of public sector bodies as to the activities of other actors in the market. In particular the charges and other conditions associated with the provision of public information as inputs for those commercial activities should be the same as those applied to third parties requesting such information.

(14) Ensuring that the conditions for reuse of public sector information are clear and publicly available is a pre-condition for the development of a Community-wide information market. Therefore all applicable conditions for the reuse of the information should be made clear to the potential reusers.

(15) Standard licence agreements that are available online can also play an important role in this respect. In all cases where the public sector bodies exercise their intellectual property rights and/or charge for the reuse of the documents standard licence agreements should be available to facilitate transactions and to increase their transparency.

(16) Public sector bodies should not run the risk of conflict with the basic competition policy principles and should not adopt conduct that could constitute an abuse of a dominant position. Exclusive arrangements between public sector bodies and private partners for the exploitation of the documents can lead to considerable market distortions. In many cases these arrangements will have a national basis, thereby preventing other Community players from entering the market and reusing the same information. However, for the purposes of providing a service of general economic interest, an exclusive right to reuse specific public sector information resources may sometimes be necessary. This may be the case if no commercial publisher would publish the information without such an exclusive right.

(17) The reuse of public sector information resources should fully respect the particular obligations of the authorities under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1]. In particular, personal data collected by public sector bodies should not be used for purposes that are incompatible with the original, explicit and legitimate purpose(s) for which they were collected. Reuse of personal data or documents containing personal data for commercial purposes may generally not be compatible with such original purposes, especially not in cases where the collection of personal data by the public authority is obligatory and where the data subjects cannot refuse the processing of their personal data.

(18) The intellectual property rights of third parties are not affected by this Directive. The Directive does not affect the existence or ownership of intellectual property rights of public sector bodies, nor does it limit the exercise of these rights in any way beyond the boundaries set by this Directive. The obligations of this Directive should apply only in so far as the obligations imposed are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights [2]. Public sector bodies should, however, exercise their copyright in a way that facilitates reuse.

(19) The objectives of the proposed action are to facilitate the creation of Community-wide information products and services based on public sector information, to enhance an effective cross-border use of public sector information by private companies for added-value information products and services, to limit distortions of competition on the Community market and to avoid a situation whereby a different pace in the Member States in dealing with the reuse of public sector information leads to further disparities. In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, such objectives cannot be sufficiently achieved by the Member States and can therefore, in view of the intrinsic Community scope and impact of the said 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,

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

[2] OJ L 336, 23.12.1994, p. 214.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Directive establishes a minimum set of rules governing the commercial and non-commercial exploitation by any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State of existing documents held by public sector bodies of the Member States which are generally accessible.

2. This Directive shall not apply to:

(a) documents the supply of which is an activity falling outside the scope of the public task of the public sector bodies concerned as defined by law or by other binding rules in the Member State, or in the absence of such rules as defined in line with common administrative practice in the Member State in question;

(b) documents or parts of documents for which third parties hold intellectual property rights;

(c) documents containing personal data, unless the reuse of such personal data is admissible under the provisions of Community law and national measures on the processing of personal data and the protection of privacy;

(d) documents held by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;

(e) documents held by educational and research establishments, such as schools, universities, research facilities, archives and libraries;

(f) documents held by cultural establishments, such as museums, libraries, archives, orchestras, operas, ballets and theatres.

3. The provisions of this Directive shall only apply in so far as the obligations imposed are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Article 2

Definitions

For the purpose of this Directive the following definitions shall apply:

1. 'public sector body' means the State regional or local authorities, bodies governed by public law, associations formed by one or several such authorities or one or several such bodies governed by public law;

2. 'body governed by public law' means any body:

(a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) having legal personality; and

(c) financed, for the most part by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law;

3. 'document' means:

(a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording);

(b) any part of such a content;

4. 'generally accessible document' means any document to which a right of access is granted under the rules established in the Member State for access to documents as well as any document used by public sector bodies as an input for information products or services which they commercialise;

5. 'reuse' means the use by persons or legal entities of documents held by public sector bodies for commercial or non-commercial purposes;

6. 'personal data' means data as defined in Article 2(a) of Directive 95/46/EC.

Article 3

General principle

Where public sector bodies allow the reuse of documents that are generally accessible, these documents shall be reusable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters II and III.

CHAPTER II

CONDITIONS FOR REUSE

Article 4

Availability

1. Public sector bodies shall make their documents available in any pre-existing format or language, through electronic means where possible and appropriate. This does not imply an obligation for public sector bodies to create documents or to adapt documents in order to comply with the request.

2. Public sector bodies cannot be required to continue the production of a certain type of documents with a view to the reuse of these documents by a private sector organisation.

Article 5

Time and requirements in case of a negative decision

1. Public sector bodies shall process the requests for reuse and shall make the document available to the applicant within a reasonable time that is not longer than the timeframes foreseen for treating requests to accessing the documents, through electronic means where possible and appropriate.

2. Where no time-limits have been established, public sector bodies shall process the request and shall deliver the documents to the applicant within a timeframe of not more than three weeks after its receipt.

3. In the event of a negative decision, the public sector bodies shall communicate the grounds for refusal to the applicant on the basis of the relevant provisions of the access regime in that Member State, one of the exceptions in Article 1(2) or Article 3. Where a negative decision is based on Article 1(2)(b), the public sector body shall include a reference to the natural or legal person who is the rightholder or alternatively to the licensor from which the public sector body has obtained the relevant material. The public sector body concerned shall not be held liable in the event of such reference being incorrect.

4. Any negative decision shall contain a reference to the means of redress in case the applicant wishes to appeal the decision.

Article 6

Charging principles

Where charges are made, the total income from allowing access to or the reuse of these documents shall not exceed the cost of producing, reproducing and disseminating them, together with a reasonable return on investment. The burden of proving that charges are cost-oriented shall lie with the public sector body charging for the reuse of the document.

Article 7

Non-discrimination

1. Any applicable conditions for the commercial reuse or exploitation of documents shall be non-discriminatory.

2. Any applicable conditions for the non-commercial reuse of documents shall be non-discriminatory for comparable categories of reusers.

3. If documents are used by a public sector body as input for its commercial activities which fall outside the scope of its public tasks, the same charges and other conditions shall apply to the supply of the documents for those activities as apply to other users, where reuse is allowed.

Article 8

Transparency

1. Any applicable charges for the reuse of documents held by public sector bodies shall be pre-established and published, through electronic means where possible and appropriate.

2. Any other applicable conditions for the reuse of documents shall be clearly expressed and published, through electronic means where possible and appropriate.

Article 9

Facilitating reuse

Member States shall ensure that standard licence agreements for the commercial exploitation of public sector information are available in digital format, and can be processed electronically.

CHAPTER III

FAIR TRADING

Article 10

Prohibition of exclusive arrangements

1. The reuse of documents shall be open to all potential actors in the market, even if one or more market players already exploit added-value products based on these documents. Contracts or other arrangements between the public sector bodies holding the documents and third parties shall not grant exclusive rights that constitute an unjustified restriction of competition or the reuse of the information.

2. If, for reasons such as the provision of a service in the public interest, an exclusive right is deemed necessary, the validity of the reason to grant such an exclusive right shall be subject to regular review, and shall, in any event, be reviewed every three years. The exclusive arrangements established after the entry into force of this Directive shall be open to public inspection.

CHAPTER IV

FINAL PROVISIONS

Article 11

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [31 December 2004] 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 12

Review

This Directive shall be subject to a review within three years of its entry into force.

The review shall in particular address the scope of this Directive regarding the public sector bodies covered. It shall also address the overall impact of the Directive in increasing the availability of public sector information for reuse and its impact on government revenue.

Article 13

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 14

Addressees

This Directive is addressed to the Member States.

Proposal for a Directive of the European Parliament and of the Council amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and Directive 2000/26/EC on insurance against civil liability in respect of the use of motor vehicles

(2002/C 227 E/18)

(Text with EEA relevance)

COM(2002) 244 final — 2002/0124(COD)

(Submitted by the Commission on 7 June 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentences of Article 47(2), Article 55 and Article 95(1) 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) Insurance against civil liability in respect of the use of motor vehicles (motor insurance) is of special importance for European citizens, whether they are policyholders or victims of an accident. It is also a major concern for insurance undertakings as it constitutes the bulk of non-life insurance business in the Community. Motor insurance also has an impact on the free movement of persons and vehicles. It should therefore be a key objective of Community action in the field of financial services to reinforce and consolidate the single insurance market in motor insurance.

(2) Very significant advances in this direction have already been achieved by Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability ([1]), by Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles ([2]), by Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles ([3]) and by Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive) ([4]).

(3) The Community system of motor insurance needs to be updated and improved. This need has been confirmed by the consultation conducted with the industry, consumers and victims' associations.

(4) In order to exclude any possible misinterpretation of the current provisions of Directive 72/166/EEC and to make it easier to obtain insurance cover for vehicles bearing temporary plates, the definition of the territory in which the vehicle is normally based should refer to the territory of the State of which the vehicle bears a registration plate, irrespective of whether such a plate is permanent or temporary.

(5) In accordance with Directive 72/166/EEC, vehicles bearing false or illegal plates are considered to be normally based in the territory of the Member State that issued the plates in question. This rule often means that national bureaux are obliged to deal with the economic consequences of accidents which do not have any connection with the Member State where they are established. Without altering the general criterion of the registration plate to determine the territory in which the vehicle is normally based, a special rule should be provided in the case of an accident caused by a vehicle without a registration plate or bearing a registration plate which does not correspond or no longer corresponds to the vehicle. In this case and for the sole purpose of settling the claim, the territory in which the vehicle is normally based should be the territory in which the accident took place.

(6) In order to facilitate the interpretation and application of the term 'random checks' in Directive 72/166/EEC, the relevant provision should be clarified. The prohibition of systematic checks on motor insurance should apply to vehicles normally based in the territory of another Member State as well as to vehicles normally based in the territory of a third country but entering from the territory of another Member State. Only non-systematic checks which are not discriminatory and are carried out as part of a police control not aimed exclusively at insurance verification may be permitted.

([1]) OJ L 103, 2.5.1972, p. 1, as last amended by Directive 84/5/EEC (OJ L 8, 11.1.1984, p. 17).

([2]) OJ L 8, 11.1.1984, p. 17, as last amended by Directive 90/232/EEC (OJ L 129, 19.5.1990, p. 33).

([3]) OJ L 129, 19.5.1990, p. 33.

([4]) OJ L 181, 20.7.2000, p. 65.

(7) Directive 72/166/EEC permits Member States to derogate in certain cases from the general obligation to take out compulsory motor vehicle insurance. In some of these cases, Member States must ensure that compensation is paid in respect of any loss or injury caused in the territory of another Member State. Such a derogation, which does not jeopardise protection of the victims, should be maintained. In other cases the Member State applying the derogation is not obliged to pay compensation to the victim of an accident occurring abroad so long as other Member States are allowed to require, at the entry into their territory, a valid green card or a frontier insurance contract. However, since the elimination of border controls within the Community, compensation for victims of accidents caused abroad by such non-insured vehicles has ceased to be guaranteed. Derogation in those cases, as provided for in Directive 72/166/EEC, should therefore no longer be permitted. The corresponding provisions in Directive 2000/26/EC should also be deleted.

(8) Member States' obligations to guarantee insurance cover beyond certain minimum amounts constitutes an important element in ensuring the protection of the victims. The minimum amounts provided for by Directive 84/5/EEC should not only be updated to take account of inflation but should be increased in real terms to improve the protection of victims. Moreover, the current overall minimum amount per claim for personal injuries in the case of more than one victim, as well as the combined amount for personal injuries and damage to property, which reduce the effective insurance cover of victims in certain accidents, should be abolished.

(9) In order to ensure that the minimum amount of cover is not eroded over time, a periodic review clause should be introduced using as a benchmark the European Index of Consumer Prices (EICP) published by Eurostat, as provided for in Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonized indices of consumer prices [1]. The procedural rules governing such a review need to be established.

(10) The provision in Directive 84/5/EEC allowing Member States, in the interest of preventing fraud, to limit or exclude payments by the compensation body in the case of damage to property by an unidentified vehicle is liable to impede legitimate compensation of victims in some cases. The option to limit or exclude compensation should not apply where, in addition to damage to property, significant personal injuries have been caused by the same accident and therefore the risk of fraud is negligible. The meaning of significant personal injuries should be determined by each Member State's national legislation.

(11) At present, an option contained in Directive 84/5/EEC allows Member States to authorise, up to a specified ceiling, excesses for which the victim would be responsible in the event of damage to property caused by uninsured vehicles. That option unjustly reduces the protection of victims and creates discrimination with respect to victims of other accidents. It should therefore no longer be permitted.

(12) Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC [2], should be amended in order to permit branches of insurance undertakings to become representatives with respect to motor insurance activities, as already happens with respect to insurance services other than motor insurance.

(13) The inclusion within the insurance cover of any passenger in the vehicle is a major achievement of the existing legislation. This objective would be placed in jeopardy if national legislation excluded passengers from insurance cover because they knew or should have known that the driver of the vehicle was under the influence of alcohol or of any other intoxicating agent at the time of the accident. The passenger is not usually in a position to assess the intoxication level of the driver properly. The objective of discouraging persons from driving whilst under the influence of intoxicating agents is not achieved by reducing the insurance cover for passengers who are victims of motor vehicle accidents. Cover of these passengers under the vehicle's compulsory motor insurance does not prejudge any hypothetical liability they might have incurred pursuant to the applicable national legislation, nor the level of any award of damages in a specific accident.

(14) Insurance cover for pedestrians and cyclists in the case of accidents involving a motor vehicle varies a great deal within the Community. In some Member States pedestrians and cyclists are not covered by the vehicle's insurance unless some form of driver liability can be established. In other Member States pedestrians and cyclists are covered by such insurance because they are usually the weakest party in any accident. In order to reduce such disparity, it should be ensured that pedestrians and cyclists are covered by the compulsory insurance of the vehicle involved in the accident, irrespective of whether the driver is at fault. This cover under the vehicle's compulsory motor insurance does not prejudge the civil liability of the pedestrian or cyclist or the level of awards for damages in a specific accident, under national legislation.

[1] OJ L 257, 27.10.1995, p. 1.

[2] OJ L 172, 4.7.1988, p. 1, as last amended by Directive 2000/26/EC.

(15) Some insurance undertakings insert into insurance policies clauses to the effect that the contract will be cancelled if the vehicle remains outside the Member State of registration for longer than a specified period. This practice is in conflict with the principle set out in Directive 90/232/EEC, according to which the compulsory motor insurance should cover on the basis of a single premium the entire territory of the Community. It should therefore be specified that the insurance cover should remain valid during the whole term of the contract, irrespective of whether the vehicle remains in another Member State for a particular period, without prejudice to the obligations under Member States' national legislation with respect to the registration of vehicles.

(16) Steps should be taken to make it easier for consumers to obtain insurance cover for vehicles despatched from one Member State into another, for the period between acceptance of delivery by the purchaser and registration of the vehicle in the Member State of destination. A temporary derogation from the general rule determining the Member State where the risk is situated should be introduced. For a period of thirty days after acceptance of delivery by the purchaser, the Member State of destination, and not the Member State of registration, should be regarded as the Member State where the risk is situated.

(17) The person wishing to take out a new motor insurance contract with another insurer should be able to justify his accident and claims record under the old contract. Upon termination of the contract, the insurance undertaking should provide the policyholder with a statement relating to claims or the absence of claims during the term of the contract within the preceding five years, without prejudice to the right of the parties to an insurance contract to establish the contract premium.

(18) In order to ensure due protection for the victims of motor vehicle accidents, Member States should not permit excesses to be relied on against an injured party.

(19) The right to invoke the insurance contract and to claim against the insurance undertaking directly is of great importance for the protection of the victim of any motor-vehicle accident. Directive 2000/26/EC already provides victims of accidents occurring in a Member State other than the Member State of residence of the injured party, which are caused by the use of vehicles insured and normally based in a Member State, with a right of direct action against the insurance undertaking covering the responsible person against civil liability. In order to facilitate an efficient and speedy settlement of claims and to avoid as far as possible costly legal proceedings, this right should be extended to victims of any motor vehicle accident.

(20) To enhance the protection of any victim of a motor vehicle accident, the 'reasoned offer' procedure provided for in Directive 2000/26/EC should be extended to any kind of motor vehicle accident. With a view to ensuring the proper functioning of this mechanism without duplicating the structure required by that Directive, the representative appointed by the insurance undertaking for the specific purposes of that Directive should also be allowed to take responsibility for handling any motor vehicle accident. That procedure is compatible with the system of Green Card Bureaux laid down in Directive 72/166/EEC for the settlement of claims in respect of accidents caused by vehicles normally based in the territory of another Member State.

(21) In order to make it easier for the injured party to seek compensation, the information centres set up in accordance with Directive 2000/26/EC should not be confined to providing information concerning the accidents covered by that Directive but should be able to provide the same kind of information for any motor vehicle accident.

(22) Directives 72/166/EEC, 84/5/EEC, 88/357/EEC, 90/232/EEC and 2000/26/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 72/166/EEC

Directive 72/166/EEC is amended as follows:

1. In Article 1, paragraph 4 is amended as follows:

   (a) The first indent is replaced by the following:

   '— the territory of the State of which the vehicle bears a registration plate, irrespective of whether the plate is permanent or temporary; or';

   (b) The following indent is added:

   '— in cases where vehicles do not bear any registration plate or bear a registration plate which does not correspond or no longer corresponds to the vehicle and have been involved in an accident, the territory of the State in which the accident took place, for the purpose of settling the claim as provided for in the first indent of Article 2(2);'.

2. In Article 2, paragraph 1 is replaced by the following:

'1. Member States shall refrain from making checks on insurance against civil liability in respect of vehicles normally based in the territory of another Member State and in respect of vehicles normally based in the territory of a third country entering their territory from the territory of another Member State.

However, they may carry out non-systematic checks on insurance provided that they are not discriminatory and are carried out as part of a police control which is not aimed exclusively at insurance verification.'

3. In Article 4, point (b) is deleted.

Article 2

Amendments to Directive 84/5/EEC

Article 1 of Directive 84/5/EEC is replaced by the following:

'*Article 1*

1. The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover compulsorily both damage to property and personal injuries.

2. Without prejudice to any higher guarantees which Member States may lay down, each Member State shall require insurance to be compulsory at least in respect of the following amounts:

(a) in the case of personal injury, EUR 1 000 000 per victim;

(b) in the case of damage to property, EUR 500 000 per claim, whatever the number of victims.

3. The amounts referred to in paragraph 2 shall be reviewed every five years in order to take account of changes in the European Index of Consumer Prices (EICP), as set out in Council Regulation (EC) No 2494/95 (*). The first review shall take place five years from the entry into force of Directive 2003/. . ./EC.

The amounts shall be adjusted automatically. Such amounts shall be increased by the percentage change indicated by the EICP for the relevant period, that is to say, the five years immediately preceding the review, and rounded up to a multiple of EUR 10 000.

The Commission shall communicate the adjusted amounts to the European Parliament and the Council and shall ensure their publication in the *Official Journal of the European Communities*.

4. Each Member State shall set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied.

The first subparagraph shall be without prejudice to the right of the Member States to regard compensation by that body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between that body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident. However, Member States may not allow the body to make the payment of the compensation conditional on the victim establishing in any way that the person liable is unable or refuses to pay.

5. The victim may in any case apply directly to the body which, on the basis of information provided at its request by the victim, shall be obliged to give him a reasoned reply regarding the payment of any compensation.

Member States may, however, exclude the payment of compensation by that body in respect of persons who voluntarily entered the vehicle which caused the damage or injury when the body can prove that they knew it was uninsured.

6. Member States may limit or exclude the payment of compensation by the body in the event of damage to property by an unidentified vehicle.

That option shall not apply where, as a result of the same accident, the victim has suffered significant personal injuries.

The conditions for the personal injuries to be considered significant shall be determined by each Member State's legislation.

7. Each Member State shall apply its laws, regulations and administrative provisions to the payment of compensation by this body, without prejudice to any other practice which is more favourable to the victim.

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(*) OJ L 257, 27.10.1995, p. 1.'

Article 3

Amendments to Directive 88/357/EEC

The second sentence in the fourth subparagraph of Article 12a(4) of Directive 88/357/EEC is deleted.

Article 4

Amendments to Directive 90/232/EEC

Directive 90/232/EEC is amended as follows:

1. In Article 1, the following paragraph is inserted between the first and second paragraphs:

'A passenger shall not be excluded from insurance cover on the basis that he knew or should have known that the driver of the vehicle was under the influence of alcohol or of any other intoxicating agent at the time of an accident.'

2. The following Article 1a is inserted:

'*Article 1a*

The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover personal injuries suffered by pedestrians and cyclists as a consequence of an accident in which a motor vehicle is involved, irrespective whether the driver is at fault.'

3. In Article 2, the first indent is replaced by the following:

'— cover, on the basis of a single premium and during the whole term of the contract, the entire territory of the Community, including for any period when the vehicle remains in other Member States during the term of the contract; and'.

4. The following Articles 4a to 4f are inserted:

'*Article 4a*

1. By way of derogation from the second indent of Article 2(d) of Directive 88/357/EEC, where a vehicle is despatched from one Member State to another, the Member State where the risk is situated shall be considered to be the Member State of destination immediately upon acceptance of delivery by the purchaser for a period of thirty days, even though the vehicle has not formally been registered in the Member State of destination.

2. In the event that the vehicle is involved in an accident during the period mentioned in paragraph 1 while being uninsured, the body referred to in Article 1(4) of Directive 84/5/EEC in the Member State of destination shall be liable for the compensation provided for in that Article.

Article 4b

Member States shall ensure that, within fifteen days of the termination of an insurance contract concerning a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC, the policyholder shall be provided with a statement relating to the claims or the absence of claims involving the vehicle during the preceding five years of the contractual relationship.

Article 4c

Excesses shall not be relied on against the injured party to an accident as far as the insurance referred to in Article 3(1) of Directive 72/166/EEC is concerned.

Article 4d

Member States shall ensure that injured parties to accidents caused by a vehicle covered by insurance as referred in Article 3(1) of Directive 72/166/EEC enjoy a direct right of action against the insurance undertaking covering the responsible person against civil liability.

Article 4e

1. Member States shall ensure that the representative appointed by an insurance undertaking in accordance with Article 4(1) to (5) of Directive 2000/26/EC of the European Parliament and of the Council (*), without prejudice to his obligations under that Directive, may also be responsible for handling and settling the claims arising from any accident caused in the Member State where he is appointed by a vehicle covered by compulsory insurance as referred in Article 3(1) of Directive 72/166/EEC and underwritten by the insurance undertaking he represents.

2. Member States shall establish the procedure provided for in Article 4(6) of Directive 2000/26/EC for the settlement of claims arising from any accident caused by a vehicle covered by insurance as referred in Article 3(1) of Directive 72/166/EEC.

3. Paragraphs 1 and 2 are without prejudice to the system of bureaux provided for in Article 2(2) of Directive 72/166/EEC for the settlement of claims in respect of accidents caused by vehicles normally based in the territory of another Member State, whether or not such vehicles are insured.

Article 4f

Member States shall ensure that, without prejudice to their obligations under that Directive, the information centres established or approved in accordance with Article 5 of Directive 2000/26/EC, provide the information specified in that Article to any party to an accident who has suffered damage to property or personal injuries caused by a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC.

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(*) OJ L 181, 20.7.2000, p. 65.'

Article 5

Amendments to Directive 2000/26/EC

In Article 5(1) of Directive 2000/26/EC, point (a) is amended as follows:

1. point 2(ii) is deleted;

2. point 5(ii) is deleted.

Article 6

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2004 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.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 7

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 8

Addressees

This Directive is addressed to the Member States.

Amended proposal for a directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC concerning rules for the internal markets in electricity and natural gas [1]

(2002/C 227 E/19)

(Text with EEA relevance)

COM(2002) 304 final — 2001/0077(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 7 June 2002)

[1] OJ C 240 E, 28.8.2001, p. 60.

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 47(2), Article 55 and 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,	
Acting in accordance with the procedure laid down in Article 251 of the Treaty,	
Whereas:	
(1) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity [1] and Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas [2] have made very important contributions towards the creation of internal markets for electricity and gas.	
(2) Experience in implementing those Directives demonstrates the benefits that have begun to result from the internal markets in electricity and gas, in terms of efficiency gains, price reductions, higher standards of service and increased competitiveness. However, important shortcomings and possibilities for improving the functioning of the markets remain,	(2) Experience in implementing those Directives demonstrates the benefits that have begun to result from the internal markets in electricity and gas, in terms of efficiency gains, price reductions, higher standards of service and increased competitiveness. However, important shortcomings and possibilities for improving the functioning of the markets remain, notably in ensuring a level playing field in generation and addressing the risks of predatory behaviour, ensuring non-discriminatory transmission and distribution tariffs, through access to the network on the basis of tariffs published prior to their entry into force, and ensuring that the rights of small and vulnerable customers are protected and that information on fuel sources for electricity generation is disclosed.

[1] OJ L 27, 30.1.1997, p. 20.

[2] OJ L 204, 21.7.1998, p. 1.

INITIAL PROPOSAL	AMENDED PROPOSAL
(3) At its meeting in Lisbon on 23 and 24 March 2000, the European Council called for rapid work to be undertaken to complete the internal market in both electricity and gas sectors and to speed up liberalisation in these sectors with a view to achieving a fully operational internal market. The European Parliament, in its Resolution of 6 July 2000 on the Commission's second report on the state of liberalisation of energy markets, requested the Commission to adopt a detailed timetable for the achievement of accurately defined objectives with a view to gradually but completely liberalising the energy market.	Unchanged
	(4) The freedoms which the Treaty guarantees European citizens — free movement of goods, freedom to provide services and freedom of establishment — are only possible in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.
	(5) In view of the anticipated increase in dependency as regards natural gas consumption, consideration should be given to initiatives and measures to encourage reciprocal arrangements for access to third-country networks and market integration.
(4) The main obstacles in arriving at a fully operational internal market are related to issues of access to the network different degrees of market opening between Member States.	(6) The main obstacles in arriving at a fully operational internal market are related to issues of access to the network, network tarification, different degrees of market opening between Member States and different approaches to internalisation of external costs.
	(7) For competition to function, network access must be non-discriminatory, transparent and fairly priced. Favourable investment conditions should exist.
(5) In order to achieve non-discriminatory access to the network, the independence of the transmission system operator is of paramount importance. The provisions on unbundling should therefore be strengthened. In order to ensure non-discriminatory access to the distribution network, unbundling requirements for the distribution system operator should be introduced for both electricity and gas distribution system operators.	(8) In order to achieve non-discriminatory access to the network, the independence of the transmission system operator is of paramount importance. The provisions on unbundling should therefore be strengthened. In order to ensure non-discriminatory access to the distribution network, unbundling requirements for the distribution system operator should be introduced for both electricity and gas distribution system operators.
(6) To avoid imposing a disproportionate financial and administrative burden on small distribution companies, Member States should be able, where necessary, to exempt such companies from the unbundling requirements.	(9) To avoid imposing a disproportionate financial and administrative burden on small distribution companies, Member States should be able, where necessary, to exempt such companies from the unbundling requirements.

INITIAL PROPOSAL	AMENDED PROPOSAL
(7) Further measures should be taken in order to ensure transparent, predictable and non-discriminatory tariffs for access to essential transportation and related infrastructure, including storage and other ancillary facilities. Those tariffs should be applicable to all system users on a non-discriminatory basis.	(10) Further measures should be taken in order to ensure transparent, predictable and non-discriminatory tariffs for access to essential transportation and related infrastructure, including storage and other ancillary facilities. Those tariffs should be applicable to all system users on a non-discriminatory basis.
(8) In the light of the experience gained with the operation of Council Directive 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids [1] and Council Directive 91/296/EEC of 31 May 1991 on the transit of natural gas through grids [2], measures should be taken to ensure homogeneous and non-discriminatory access regimes for transmission, including cross-border flows between Member States.	(11) In the light of the experience gained with the operation of Council Directive 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids [1] and Council Directive 91/296/EEC of 31 May 1991 on the transit of natural gas through grids [2], measures should be taken to ensure homogeneous and non-discriminatory access regimes for transmission, including cross-border flows of gas and electricity between Member States.
(9) The of national regulatory authorities, is an important feature in guaranteeing non-discriminatory access to the network. Those authorities should at least have the competence to fix or approve transmission and distribution tariffs and tariffs for access to liquefied natural gas (LNG) facilities. prior to their entry into force.	(12) The existence of effective regulation, carried out by national regulatory authorities, is an important feature in guaranteeing non-discriminatory access to the network. Those authorities should at least have the competence to fix or approve the tariffs, or at least, the methodologies underlying the calculation of transmission and distribution tariffs and tariffs for access to liquefied natural gas (LNG) facilities. These tariffs should be published prior to their entry into force.
	(13) In order to ensure effective market access for new entrants, non-discriminatory and cost-reflective balancing mechanisms are necessary. As soon as the electricity and gas markets are sufficiently liquid, this should be achieved through the setting up of transparent market-based mechanisms for the supply and purchase of electricity and gas needed in the framework of balancing requirements. In the absence of such liquid markets, national regulatory authorities should play an active role to ensure that balancing tariffs are non-discriminatory and cost-reflective.
(10) National regulatory authorities should be able to approve tariffs on the basis of a proposal by the transmission system operator or distribution system operator(s) or LNG system operator, or on the basis of a proposal agreed between these operator(s) and the users of the network.	(14) National regulatory authorities should be able to fix or approve tariffs, or the methodologies underlying the calculation ot the tariffs, on the basis of a proposal by the transmission system operator or distribution system operator(s) or LNG system operator, or on the basis of a proposal agreed between these operator(s) and the users of the network. In carrying out these tasks, national regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the long-term, marginal, avoided network costs from distributed generation and demand-side management measures.
[1] OJ L 313, 13.11.1990, p. 30. Directive as last amended by Commission Directive 98/75/EC (OJ L 276, 13.10.1998, p. 9).	[1] OJ L 313, 13.11.1990, p. 30. Directive as last amended by Commission Directive 98/75/EC (OJ L 276, 13.10.1998, p. 9).
[2] OJ L 147, 12.6.1991, p. 37. Directive as last amended by Commission Directive 95/49/EC (OJ L 233, 30.9.1995, p. 86).	[2] OJ L 147, 12.6.1991, p. 37. Directive as last amended by Commission Directive 95/49/EC (OJ L 233, 30.9.1995, p. 86).

INITIAL PROPOSAL	AMENDED PROPOSAL
(11) The benefits resulting from the internal market should be available to all Community industry and commerce, including small and medium-sized enterprises, and to all Community citizens as quickly as possible, for reasons of competitiveness employment	(15) The benefits resulting from the internal market should be available to all Community industry and commerce, including small and medium-sized enterprises, and to all Community citizens as quickly as possible, for reasons of fairness, competitiveness, and indirectly, to create employment as a result of the efficiency gains that will be enjoyed by enterprises.
(12) Gas and electricity customers should be able to choose their supplier freely. Nonetheless a phased approach should be taken to completing the internal market for electricity and gas, coupled, to enable industry to adjust and ensure that adequate measures and systems are in place to protect the interests of customers and ensure they have a real and effective right to choose supplier.	(16) Gas and electricity customers should be able to choose their supplier freely. Nonetheless, a phased approach should be taken to completing the internal market for electricity and gas, coupled with a specific deadline, to enable industry to adjust and ensure that adequate measures and systems are in place to protect the interests of customers and ensure they have a real and effective right to choose supplier.
(13) Progressive market opening towards full competition should gradually remove differences between Member States. Transparency and certainty in the implementation of this Directive should be ensured.	(17) Progressive market opening towards full competition should gradually remove differences between Member States. Transparency and certainty in the implementation of this Directive should be ensured.
(14) Directive 98/30/EC provides for access to storage as part of the gas system. In the light of the experience gained in implementing the internal market, additional measures should be taken to clarify the provisions for access to storage and other ancillary services and to reinforce the separation of the operation of transmission and distribution systems, and gas storage and LNG facilities.	(18) Directive 98/30/EC provides for access to storage as part of the gas system. In the light of the experience gained in implementing the internal market, additional measures should be taken to clarify the provisions for access to storage and other ancillary services and to reinforce the separation of the operation of transmission and distribution systems, and gas storage and LNG facilities.
(15) Nearly all Member States have chosen to ensure competition in the electricity generation market through a transparent authorisation procedure. However, Member States should have the possibility to ensure security of supply through the launching of a tendering procedure in the event that sufficient electricity generation capacity is not built on the basis of the authorisation procedure.	(19) Nearly all Member States have chosen to ensure competition in the electricity generation market through a transparent authorisation procedure. However, Member States should have the possibility to ensure security of supply through the launching of a tendering procedure in the event that sufficient electricity generation capacity is not built on the basis of the authorisation procedure.
(16) In the interest of security of supply, the supply/demand balance in individual Member States should be monitored, if security of supply is compromised.	(20) In the interest of security of supply, the supply/demand balance in individual Member States should be monitored, followed by a report on the situation at Community level, taking account of interconnection capacity between areas. Such monitoring should be carried out sufficiently early to enable appropriate measures to be taken if security of supply is compromised. The construction and maintenance of the necessary network infrastructure, including interconnection capacity, should contribute to ensuring a stable electricity and gas supply.

INITIAL PROPOSAL	AMENDED PROPOSAL
	(21) Member States should ensure that biogas and gas from biomass is granted non-discriminatory access to the gas system, provided such access is compatible with the relevant technical rules and safety standards.
	(22) Long-term contracts will continue to be an important part of the gas supply of Member States and should be maintained as an option for gas supply undertakings in so far as they do not undermine the objectives of this Directive and are compatible with the Treaty, including competition rules.
(17) Member States should ensure that all customers enjoy the right to be supplied with electricity of a specified quality at affordable and reasonable prices. In order to ensure the maintenance of the highest possible standards of public service in the Community, all measures taken by Member States to achieve the objectives of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high public service standards.	(23) Member States should ensure that all customers enjoy the right to be supplied with electricity of a specified quality at affordable, clearly comparable, transparent and reasonable prices. Member States should also ensure that all final customers connected to the gas system are informed about their rights to be supplied with natural gas of a specified quality at reasonable prices. In order to ensure the maintenance of the highest possible standards of public service in the Community, all measures taken by Member States to achieve the objectives of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high public service standards.
(18) The requirement to notify the Commission of any refusal to grant authorisation to construct new generation capacity has proven to be an unnecessary administrative burden and should therefore be dispensed with.	(24) The requirement to notify the Commission of any refusal to grant authorisation to construct new generation capacity has proven to be an unnecessary administrative burden and should therefore be dispensed with.
(19) 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 creation of fully operational internal electricity and gas markets, in which fair competition prevails, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the 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.	(25) 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 creation of fully operational internal electricity and gas markets, in which fair competition prevails, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the 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.

INITIAL PROPOSAL	AMENDED PROPOSAL
(20) To ensure homogeneity in the treatment of access to the electricity and gas networks, also in the case of transit, Directives 90/547/EEC and 91/296/EEC should be repealed.	(26) To ensure homogeneity in the treatment of access to the electricity and gas networks, also in the case of transit, Directives 90/547/EEC and 91/296/EEC should be repealed.
(21) Directives 96/92/EC and 98/30/EC should therefore be amended accordingly.	(27) Directives 96/92/EC and 98/30/EC should therefore be amended accordingly.
	(28) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,
HAVE ADOPTED THIS DIRECTIVE:	Unchanged

Article 1

Amendments to Directive 96/92/EC

Directive 96/92/EC is amended as follows:

1. Articles 1, 2 and 3 are replaced by the following:

'*Article 1*

This Directive establishes common rules for the generation, transmission, distribution and supply of electricity. It lays down the rules relating to the organisation and functioning of the electricity sector, access to the market, the criteria and procedures applicable to calls for tender and the granting of authorisations and the operation of systems.

Article 2

For the purposes of this Directive:

1. "generation" shall mean the production of electricity;

2. "producer" shall mean a natural or legal person generating electricity;

3. "autoproducer" shall mean a natural or legal person generating electricity essentially for its own use;

4. "independent producer" shall mean:

   (a) a producer who does not carry out electricity transmission or distribution functions in the territory covered by the system where it is established;

   (b) in Member States in which vertically integrated undertakings do not exist and where a tendering procedure is used, a producer corresponding to the definition of point (a), who may not be exclusively subject to the economic precedence of the interconnected system;

INITIAL PROPOSAL	AMENDED PROPOSAL
5. "transmission" shall mean the transport of electricity on the high-voltage interconnected system with a view to its delivery to final customers or to distributors,	5. "transmission" shall mean the transport of electricity on the high-voltage interconnected system with a view to its delivery to final customers or to distributors, but not including supply;
	6. "transmission system operator" shall mean a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity;
6. "distribution" shall mean the transport of electricity on medium-voltage and low-voltage distribution systems with a view to its delivery to customers;	7. "distribution" shall mean the transport of electricity on medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but not including supply;
	8. "distribution system operator" shall mean a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity;
7. "customers" shall mean wholesale and final customers of electricity	9. "customers" shall mean wholesale and final customers of electricity;
8. "wholesale customers" shall mean any natural or legal persons	10. "wholesale customers" shall mean any natural or legal persons who purchase electricity for the purpose of resale inside or outside the system where they are established;
9. "final customer" shall mean a customer purchasing electricity for own use;	11. "final customer" shall mean a customer purchasing electricity for his/her own use;
	12. "household customer" shall mean a customer purchasing electricity for his/her own household consumption, excluding commercial or professional activities;
10. "non-customer" shall mean	13. "non-household customer" shall mean any natural or legal person purchasing electricity which is not for its own household use and shall include producers and wholesale customers;
	14. "eligible customers" shall mean customers who have access to competitive suppliers of electricity in accordance with this Directive;
11. "interconnectors" shall mean equipment used to link electricity systems;	15. "interconnectors" shall mean equipment used to link electricity systems;

INITIAL PROPOSAL	AMENDED PROPOSAL
12. "interconnected system" shall mean a number of transmission and distribution systems linked together by means of one or more interconnectors;	16. "interconnected system" shall mean a number of transmission and distribution systems linked together by means of one or more interconnectors;
13. "direct line" shall mean	17. "direct line" shall mean either an electricity line linking an isolated production site with an isolated customer or an electricity line linking an electricity producer and an electricity supply undertaking to supply directly their own premises, subsidiaries and eligible customers;
14. "economic precedence" shall mean the ranking of sources of electricity supply in accordance with economic criteria;	18. "economic precedence" shall mean the ranking of sources of electricity supply in accordance with economic criteria;
15. "ancillary services" shall mean all services necessary for the operation of a transmission or distribution system;	19. "ancillary services" shall mean all services necessary for the operation of a transmission or distribution system;
16. "system user" shall mean any natural or legal person supplying to, or being supplied by, a transmission or distribution system;	20. "system user" shall mean any natural or legal person supplying to, or being supplied by, a transmission or distribution system;
17. "supply" shall mean the sale of electricity to customers;	21. "supply" shall mean the sale of electricity to customers;
18. "integrated electricity undertaking" shall mean a vertically or horizontally integrated undertaking;	22. "integrated electricity undertaking" shall mean a vertically or horizontally integrated undertaking;
19. "vertically integrated undertaking" shall mean an undertaking	23. "vertically integrated undertaking" shall mean an undertaking or a group of undertakings whose mutual relationships are defined in Article 3(3) of Council Regulation (EEC) No 4064/89 (*) and where the undertaking/group concerned is performing at least two or more of the functions of transmission, distribution, generation and supply of electricity;
20. "horizontally integrated undertaking" shall mean an undertaking performing at least one of the functions of generation for sale, or transmission, or distribution, or supply of electricity, and another non-electricity activity;	24. "horizontally integrated undertaking" shall mean an undertaking performing at least one of the functions of generation for sale, or transmission, or distribution, or supply of electricity, and another non-electricity activity;
21. "tendering procedure" shall mean the procedure through which planned additional requirements and replacement capacity are covered by supplies from new or existing generating capacity;	25. "tendering procedure" shall mean the procedure through which planned additional requirements and replacement capacity are covered by supplies from new or existing generating capacity;

INITIAL PROPOSAL	AMENDED PROPOSAL
22. "long-term planning" shall mean the planning of the need for investment in generation and transmission capacity on a long-term basis, with a view to meeting the demand for electricity of the system and securing supplies to customers;	26. "long-term planning" shall mean the planning of the need for investment in generation and transmission and distribution capacity on a long-term basis, with a view to meeting the demand for electricity of the system and securing supplies to customers;
23. "small isolated system" shall mean any system with consumption of less than 2 500 GWh in the year 1996, where less than 5 % of annual consumption is obtained through interconnection with other systems;	27. "small isolated system" shall mean any system with consumption of less than 2 500 GWh in the year 1996, where less than 5 % of annual consumption is obtained through interconnection with other systems;
	28. "energy imbalance" shall mean the difference between the quantity of electricity notified to the transmission or distribution system operator for injection or withdrawal at one or more given locations over a given time period and the metered quantity of electricity withdrawn or injected at one or more given locations over the same time period;
	29. "security" shall mean both security of supply and provision of electricity, and technical safety;
	30. "energy efficiency/demand-side management" shall mean a global or integrated approach aimed at influencing the amount and timing of electricity consumption in order to reduce primary energy consumption and peak loads by giving precedence to investments in energy efficiency measures, or other measures, such as interruptible supply contracts, over investments to increase generation capacity, if the former are the most effective and economical option, taking into account the positive environmental impact of reduced energy consumption and the security of supply and distribution cost aspects related to it;
	31. "renewable energy sources" shall mean renewable non-fossil energy sources (wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases);
	32. "distributed generation" shall mean generation plants connected to the low-voltage distribution system;
	33. "disclosure" shall mean making available in aggregate form commercial information associated with the production of electricity and relating to the sources used to produce electricity, their location, or environmental impact.

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 3	Unchanged
1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, electricity undertakings are operated in accordance with the principles of this Directive, with a view to achieving a competitive market in electricity, and shall not discriminate between these undertakings as regards either rights or obligations.	1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, electricity undertakings are operated in accordance with the principles of this Directive, with a view to achieving a competitive and sustainable market in electricity, and shall not discriminate between these undertakings as regards either rights or obligations.
2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable. In relation to security of supply, as referred to in this paragraph Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.	2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable. In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals, as referred to in this paragraph, Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.
3. Member States shall ensure that all customers enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable prices.	3. Member States shall ensure that all final customers enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable prices. To that end, Member States may appoint a supplier of last resort. Member States shall impose on distribution companies an obligation to connect customers to their grid under terms, conditions and tariffs set in accordance with the procedure laid down in Article 22, 2.
4. Member States shall take appropriate measures to protect final customers, and shall in particular ensure that there. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. These measures shall include, in particular, those set out in the Annex.	4. Member States shall take appropriate measures to protect final customers, and shall in particular ensure that there are adequate safeguards to protect vulnerable customers from disconnection. In this context, Member States may take appropriate measures to protect final customers in remote areas. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall ensure that the eligible customer is effectively able to switch to a new supplier. These measures shall include, in particular, those set out in the Annex.

INITIAL PROPOSAL	AMENDED PROPOSAL
	5. Member States shall ensure that electricity suppliers specify in the bills and in all advertising and promotional materials made available to final customers: (a) the percentage contribution of each energy source to the commercial fuel mix for the electricity supplied; (b) the overall fuel mix of the supplier over the preceding year; (c) the relative importance of each energy source with respect to the production of greenhouse gases. With respect to electricity obtained via an electricity exchange, the aggregate figures provided by the exchange over the preceding year may be used.
5. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion, environmental protection, and security of supply, for the maintenance and construction of the necessary network infrastructure, including interconnection capacity.	6. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion, environmental protection, which may include energy efficiency/demand-side management measures and means to combat climate change, and security of supply. Such measures may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools, for the maintenance and construction of the necessary network infrastructure, including interconnection capacity.
6. Member States may decide not to apply the provisions of Articles 5, 6, 16 and 21 in so far as their application would obstruct the performance, in law or in fact, of the obligations imposed on electricity undertakings in the general economic interest and in so far as the development of trade would not be affected to such an extent as would be contrary to the interests of the Community. The interests of the Community include, inter alia, competition with regard to eligible customers in accordance with this Directive and Article 86 of the Treaty.'	7. Member States may decide not to apply the provisions of Articles 5, 6, 16 and 21 in so far as their application would obstruct the performance, in law or in fact, of the obligations imposed on electricity undertakings in the general economic interest and in so far as the development of trade would not be affected to such an extent as would be contrary to the interests of the Community. The interests of the Community include, *inter alia*, competition with regard to eligible customers in accordance with this Directive and Article 86 of the Treaty.
	8. Member States shall, upon implementation of this Directive, notify the Commission of all measures adopted to fulfil universal service and public service obligations, including consumer protection and environmental protection, and their possible effect on national and international competition, whether or not such measures require a derogation from this Directive. They shall inform the Commission subsequently every two years of any changes to such measures, whether or not they require a derogation from this Directive.

(*) OJ L 257, 21.9.90, p. 13.'

INITIAL PROPOSAL	AMENDED PROPOSAL
2. Article 4 is deleted.	Unchanged
3. Articles 5 and 6 are replaced by the following:	
'Article 5	
1. For the construction of new generating capacity, Member States shall adopt an authorisation procedure, which shall be conducted in accordance with objective, transparent and non-discriminatory criteria.	
2. Member States shall lay down the criteria for the grant of authorisations for the construction of generating capacity in their territory. These criteria may relate to:	
(a) the safety and security of the electricity system, installations and associated equipment;	
(b) protection of public health and safety;	
(c) protection of the environment;	
(d) land use and siting;	
(e) use of public ground;	
(f) energy efficiency;	
(g) the nature of the primary sources;	
(h) characteristics particular to the applicant, such as technical, economic and financial capabilities;	
(i) compliance with measures adopted pursuant to Article 3.	
	3. Member States shall take appropriate measures to streamline and expedite authorisation procedures for small and/or distributed generation. These measures shall apply to all facilities of less than 15 MW and to all distributed generation.
3. The authorisation procedures and criteria shall be made public. Applicants shall be informed of the reasons for any refusal to grant an authorisation. The reasons must be objective, non-discriminatory, well founded and duly substantiated. Appeal procedures shall be made available to the applicant.	4. The authorisation procedures and criteria shall be made public. Applicants shall be informed of the reasons for any refusal to grant an authorisation. The reasons must be objective, non-discriminatory, well founded and duly substantiated. Appeal procedures shall be made available to the applicant.

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 6	Unchanged
1. Member States shall ensure the possibility, in the interests of security of supply, to tender for new on the basis of published criteria. A tendering procedure can, however, only be launched if on the basis of the authorisation procedure the generating capacity being not sufficient to ensure security of supply.	1. Member States shall ensure the possibility, in the interests of security of supply and environmental protection, to tender for new capacity or energy efficiency/demand-side management measures on the basis of published criteria. A tendering procedure can, however, only be launched if on the basis of the authorisation procedure the generating capacity being built or the energy efficiency/demand-side management measures being taken are not sufficient to ensure security of supply and to meet environmental targets.
	2. Member States may ensure the possibility, in the interests of environmental protection and the promotion of infant new technologies, to tender for new capacity on the basis of published criteria. This tender may relate to new capacity or energy efficiency/demand-side management measures. A tendering procedure can, however, only be launched if on the basis of the authorisation procedure the generating capacity being built or the measures being taken are not sufficient to achieve these objectives.
2. Details of the tendering procedure for means of generating capacity shall be published in the *Official Journal of the European Communities* at least six months prior to the closing date for tenders.	3. Details of the tendering procedure for means of generating capacity and energy efficiency/demand-side management measures shall be published in the *Official Journal of the European Communities* at least six months prior to the closing date for tenders.
The tender specifications shall be made available to any interested undertaking established in the territory of a Member State so that it has sufficient time in which to submit a tender.	Unchanged
The tender specifications shall contain a detailed description of the contract specifications and of the procedure to be followed by all tenderers and an exhaustive list of criteria governing the selection of tenderers and the award of the contract, which are covered by the tender. These specifications may also relate to the fields referred to in Article 5(2).	The tender specifications shall contain a detailed description of the contract specifications and of the procedure to be followed by all tenderers and an exhaustive list of criteria governing the selection of tenderers and the award of the contract, including incentives, such as subsidies, which are covered by the tender. These specifications may also relate to the fields referred to in Article 5(2).
3. In invitations to tender for the requisite generating capacity, consideration must also be given to electricity supply offers with long-term guarantees from existing generating units, provided that additional requirements can be met in this way.	4. In invitations to tender for the requisite generating capacity, consideration must also be given to electricity supply offers with long-term guarantees from existing generating units, provided that additional requirements can be met in this way.

INITIAL PROPOSAL	AMENDED PROPOSAL
4. Member States shall designate an authority or a public body or a private body independent of electricity generation, transmission, distribution and supply activities, to be responsible for the organisation, monitoring and control of the tendering procedure referred to in paragraphs 1 to 4. This authority or body shall take all necessary steps to ensure confidentiality of the information contained in the tenders.'	5. Member States shall designate an authority or a public body or a private body independent of electricity generation, transmission, distribution and supply activities, which may be a national regulatory authority referred to in Article 22(1), to be responsible for the organisation, monitoring and control of the tendering procedure referred to in paragraphs 1 to 4. Where a transmission system operator is fully independent from other activities not relating to the transmission system in ownership terms, the transmission system operator may be designated as the body responsible for organising, monitoring and controlling the tendering procedure. This authority or body shall take all necessary steps to ensure confidentiality of the information contained in the tenders.'
4. The following Article 6a is inserted:	Unchanged
'Article 6a	
shall ensure the monitoring of security of supply issues. This monitoring shall, in particular, cover the supply/demand balance on the national market, the level of expected future demand and envisaged additional capacity under planning or construction. They shall publish, by 31 July each year at the latest a report outlining the findings resulting from the monitoring of these issues, as well as any measures taken or envisaged to address them and forward this report to the Commission forthwith.'	Member States or the national regulatory authorities referred to in Article 22(1) shall ensure the monitoring of security of supply issues. This monitoring shall, in particular, cover the supply/demand balance on the national market, the level of expected future demand and envisaged additional capacity under planning or construction, and the quality and level of maintenance of the networks. They shall publish, by 31 July each year at the latest, a report outlining the findings resulting from the monitoring of these issues, as well as any measures taken or envisaged to address them and forward this report to the Commission forthwith.'
5. Article 7 is replaced by the following:	Unchanged
'Article 7	
1. Member States shall designate or shall require undertakings which own transmission systems to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, transmission system operators.	1. Member States shall designate or shall require undertakings which own transmission systems to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, one or more transmission system operators.
2. Member States shall ensure that technical rules establishing the minimum technical design and operational requirements for the connection to the system of generating installations, distribution systems, directly connected consumers' equipment, interconnector circuits and direct lines are developed and published. These requirements shall ensure the interoperability of systems and shall be objective and non-discriminatory. They shall be notified to the Commission in accordance with Article 8 of Council Directive 98/34/EC (*).	Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
	3. For the purposes of this Directive, the transmission system operator shall be responsible for:
	(a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity;
	(b) contributing to security of supply through adequate transmission capacity and system reliability;
	(c) managing energy flows on the system, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services;
	(d) providing to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation, co-ordinated development and interoperability of the interconnected system;
	(e) the non-discrimination as between system users or classes of system users, particularly in favour of its subsidiaries or shareholders.
Unless the system operator is already fully independent from other activities not relating to the transmission system in terms of ownership, the system operator shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission.	4. Unless the transmission system operator is already fully independent from other activities not relating to the transmission system in terms of ownership, the system operator, within the integrated electricity undertaking, shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission.
In order to ensure the independence of the transmission system operator, the following minimum criteria shall apply:	Unchanged
(a) those persons responsible for the management of the transmission system operator may not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, distribution and supply of electricity;	
(b) appropriate measures must be taken to ensure that the interests of the persons responsible for the management of the transmission system are taken into account in a manner that ensures that they are capable of acting independently;	(b) appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the transmission system operator are taken into account in a manner that ensures that they are capable of acting independently;
	(c) the transmission system operator must have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to maintain or develop the network;

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	(d) the transmission system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer. An annual report, setting out the measures taken, must be submitted by the compliance officer to the national regulatory authority referred to in Article 22(1) and published.
(*) OJ L 204, 21.7.1998, p. 37.'	Unchanged
6. The following Article 7a is inserted:	
'*Article 7a*	
Transmission system operators shall procure the energy they use for the carrying out of their functions according to transparent, non-discriminatory and market based procedures.'	
7. In Article 8, the following paragraphs 5 and 6 are added:	
'5. Member States may require transmission system operators for the maintenance and development of the transmission system, including interconnection capacity.	'5. Member States may require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity.
6. Rules adopted by transmission system operators for balancing shall be objective, transparent and non-discriminatory, including rules for the charging of. for the provision of such services by transmission system operators shall'	6. Rules adopted by transmission system operators for balancing the electricity system shall be objective, transparent and non-discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 22(2) in a non-discriminatory and cost-reflective way and shall be published.'
8. Articles 9 and 10 are replaced by the following:	Unchanged
'*Article 9*	
the transmission system operator must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business	Without prejudice to Article 13 or any other legal duty to disclose information, the transmission system operator must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous being disclosed in a discriminatory manner.

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 10	Unchanged
1. Member States shall designate or shall require undertakings that own or are responsible for distribution systems to designate one or more distribution system operators. Member States shall ensure that distribution system operators act in accordance with Articles 10(2), 11 and 12.	
2. Unless the system operator is already fully independent from other activities not relating to the distribution system in terms of ownership, the system operator shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution.	2. Unless the distribution system operator is already fully independent from other activities not relating to the distribution system in terms of ownership, the distribution system operator within the integrated electricity undertaking shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution.
In order to ensure the independence of the distribution system operator, the following criteria shall apply:	In order to ensure the independence of the distribution system operator, the following minimum criteria shall apply:
(a) those persons responsible for the management of the distribution system operator may not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, transmission and supply of electricity;	Unchanged
(b) appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently;	
	(c) the distribution system operator shall have sufficient decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary for the maintenance and development of the network;
	(d) the distribution system operator must establish a compliance programme which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer. An annual report, setting out the measures taken, must be submitted by the compliance officer to the national regulatory authority referred to in Article 22(1), and published.
shall apply from. Member States may decide not to apply this paragraph to integrated electricity undertakings serving less than 100 000 customers.'	This paragraph shall apply from 1 January 2004. Member States may decide not to apply this paragraph to integrated electricity undertakings serving less than 100 000 customers.'

INITIAL PROPOSAL	AMENDED PROPOSAL
9. The following Article 10a is inserted:	Unchanged
'*Article 10a* Distribution system operators shall procure the energy they use to cover energy losses and reserve capacity in their system according to transparent, non-discriminatory and market based procedures.'	
10. In Article 11, the following paragraphs 4 and 5 are added:	
	'4. Where distribution system operators are responsible for balancing the electricity distribution system, rules adopted by them for that purpose shall be objective, transparent and non-discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by distribution system operators shall be established in accordance with Article 22(2) in a non-discriminatory and cost-reflective way and shall be published. 5. When planning the development of the distribution network, energy efficiency/demand-side management measures and/or distributed generation that might supplant the need to upgrade or replace electricity capacity shall be considered by the distribution system operator.'
11. Article 12 is replaced by the following:	Unchanged
'*Article 12* the distribution system operator must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business'	Without prejudice to Article 13 or any other legal duty to disclose information, the distribution system operator must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous being disclosed in a discriminatory manner.'
12. The following Article 12a is inserted:	Unchanged
'*Article 12a* The rules in Articles 7(4) and 10(4) do not prevent the operation of a combined transmission and distribution system operator, which is fully independent in terms of its legal form, organisation and decision making from other activities not relating to transmission or distribution system operation and which meets the requirements of Article 7(4).'	

INITIAL PROPOSAL	AMENDED PROPOSAL
13. Article 13 is replaced by the following:	
'Article 13	
Member States or any competent authority they designate, including the national regulatory authorities referred to in shall have right of access to the accounts of generation, transmission, distribution undertakings which they need to consult in carrying out their checks.'	Member States or any competent authority they designate, including the national regulatory authorities referred to in Article 22(1) shall have right of access to the accounts of generation, transmission, distribution and supply undertakings which they need to consult in carrying out their checks.'
14. In Article 14, paragraph 3 is replaced by the following:	Unchanged
'3. Integrated electricity undertakings shall, in their internal accounting, keep separate accounts, for their transmission, distribution, generation activities, as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. shall include a balance sheet and a profit and loss account for each activity.'	'3. Integrated electricity undertakings shall, in their internal accounting, keep separate accounts, for their transmission, distribution, generation and supply activities, as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. They shall keep separate accounts for supply activities for eligible customers and supply activities for non-eligible customers. Revenue from ownership of the transmission/distribution system shall be specified in the accounts. Where appropriate, they shall keep consolidated accounts for other, non-electricity activities. The internal accounts shall include a balance sheet and a profit and loss account for each activity.
	3a. Member States may decide that companies with an annual production not exceeding 1 TWh are not obliged to publish separate accounts for generation and supply. They shall, at the request of the national regulatory authority referred to in Article 22(1), provide the unbundled accounts to that authority.'
15. Article 15 is deleted.	Unchanged
16. Article 16 is replaced by the following:	
'Article 16	
1. Member States shall ensure the implementation of a system of third party access to the transmission and distribution systems based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. are approved prior to their entry into force by a national regulatory authority referred to in Article 22(1)	1. Member States shall ensure the implementation of a system of third-party access to the transmission and distribution systems based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. Member States shall ensure that these tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force by a national regulatory authority referred to in Article 22(1) and that these *tariffs* are published prior to their entry into force.

INITIAL PROPOSAL	AMENDED PROPOSAL
2. The operator of a transmission or distribution system may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3.'	2. The operator of a transmission or distribution system may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3. Member States shall ensure, where appropriate and when refusal of access takes place, that the transmission or distribution system operator provides relevant information on measures that would be necessary to reinforce the network. The party requesting such information may be charged a reasonable fee reflecting the cost of providing such information.'
17. Articles 17 and 18 are deleted.	Unchanged
18. Article 19 is replaced by the following:	
'*Article 19*	
	1. The eligible customers are the customers which are free to purchase electricity from the supplier of their choice within the Community. Member States shall ensure that these eligible customers are:
	(a) until 1 January 2004, the eligible customers as specified in Article 19(1) to 19(3) of Directive 96/92/EC. Member States shall publish by 31 January each year the criteria for the definition of these eligible customers;
	(b) from 1 January 2004 at the latest, all non-household customers;
	(c) from 1 January 2005 at the latest, all customers.
2. To avoid imbalance in the opening of electricity markets:	Unchanged
(a) contracts for the supply of electricity with an eligible customer in the system of another Member State shall not be prohibited if the customer is considered as eligible in both systems involved;	
(b) in cases where transactions as described in point (a) are refused because of the customer being eligible only in one of the two systems, the Commission may oblige, taking into account the situation in the market and the common interest, the refusing party to execute the requested electricity supply at the request of the Member State where the eligible customer is located.'	

INITIAL PROPOSAL	AMENDED PROPOSAL
19. Article 20 is deleted.	
20. Articles 21 and 22 are replaced by the following:	
'Article 21	
1. Member States shall take the necessary measures to	1. Member States shall take the necessary measures to enable:
(a) all electricity producers and electricity supply within their territory to supply their own premises, subsidiaries and eligible customers through a direct line;	(a) all electricity producers and electricity supply undertakings, established within their territory to supply their own premises, subsidiaries and eligible customers through a direct line;
(b) any eligible customer within their territory to be supplied through a direct line by a producer and supply	(b) any eligible customer within their territory to be supplied through a direct line by a producer and supply undertakings.
2. Member States shall lay down the criteria for the grant of authorisations for the construction of direct lines in their territory. These criteria must be objective and non-discriminatory.	Unchanged
3. The possibility of supplying electricity through a direct line as referred to in paragraph 1 shall not affect the possibility of contracting electricity in accordance with	3. The possibility of supplying electricity through a direct line as referred to in paragraph 1 shall not affect the possibility of contracting electricity in accordance with Article 16.
4. Member States may make authorisation to construct a direct line subject either to the refusal of system access on the basis, as appropriate, of or to the opening of a dispute settlement procedure under	4. Member States may make authorisation to construct a direct line subject either to the refusal of system access on the basis, as appropriate, of Article 16 or to the opening of a dispute settlement procedure under Article 22.
5. Member States may refuse to authorise a direct line if the granting of such an authorisation would obstruct the provisions of Article 3. Duly substantiated reasons must be given for such refusal.	Unchanged
Article 22	
	1. Member States shall designate one or more competent bodies as national regulatory authorities. These authorities shall be wholly independent of the interests of the electricity industry. They shall at least be responsible for continuously monitoring the market to ensure non-discrimination, effective competition and the efficient functioning of the market, in particular with respect to:
	(a) the level of competition;

INITIAL PROPOSAL	AMENDED PROPOSAL
	(b) the rules on the management and allocation of interconnection capacity, in conjunction with the national regulatory authority or authorities of those Member States with which interconnection exists;
	(c) any mechanisms to deal with congested capacity within the national electricity system;
	(d) the time taken by transmission and distribution undertakings to make connections and repairs;
	(e) the publication of appropriate information by transmission and distribution system operators concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential;
	(f) the effective unbundling of accounts, as referred to in Article 14, to ensure there are no cross-subsidies between generation, transmission, distribution and supply activities. For this purpose they shall have access to the accounts;
	(g) the terms, conditions and tariffs for connecting new producers of electricity to guarantee that these are objective, transparent and non-discriminatory, in particular taking full account of the benefits of the various renewable energy sources technologies, distributed generation and combined heat and power.
	2. The national regulatory authorities shall at least be responsible for fixing, approving or proposing prior to their entry into force, the methodologies used to calculate or establish the terms and conditions for:
	(a) connection and access to national networks, including transmission and distribution tariffs;
	(b) the provision of balancing services.
	3. National regulatory authorities shall have the authority to require transmission and distribution system operators, if necessary, to modify the terms and conditions, tariffs, rules, mechanisms and methodologies referred to in paragraph 2, to ensure that they are reasonable and applied in a non-discriminatory manner.

INITIAL PROPOSAL	AMENDED PROPOSAL
	4. Any party having a complaint against a transmission or distribution system operator with respect to the issues mentioned in paragraphs 1, 2 and 3 may refer the complaint to the national regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the national regulatory authority. This period may be further extended with the agreement of the complainant. Any appeal against such a decision shall not have suspensive effect. Where a complaint concerns connection tariffs for major new generation facilities, the two-month period may be extended by the national regulatory authority.
1. Member States shall take measures to ensure that national regulatory authorities are able to carry out their duties referred to in paragraphs 1 to 4 in an efficient and expeditious manner.	5. Member States shall take measures to ensure that national regulatory authorities are able to carry out their duties referred to in paragraphs 1 to 4 in an efficient and expeditious manner.
2. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.	6. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.
3. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.'	7. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.
	8. In the event of cross-border disputes, the national regulatory authority shall be the national regulatory authority covering the system operator which refuses use of, or access to, the system.
	9. Recourse to the national regulatory authority shall be without prejudice to the exercise of rights of appeal under Community law.'
21. The following Article 23a is inserted:	Unchanged
'*Article 23a*	
Member States shall inform the Commission of imports of electricity, that have taken place during the previous calendar year from third countries.'	Member States shall inform the Commission every three months of imports of electricity, in terms of physical flows, that have taken place during the previous calendar year from third countries.'

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22. Article 24 is replaced by the following:	Unchanged
'Article 24	
Member States which can demonstrate, after the Directive has been brought into force, that there are substantial problems for the operation of their small isolated systems, may apply for derogations from the relevant provisions of Chapters IV, V, VI, VII, which may be granted to them by the Commission. The latter shall inform the Member States of those applications prior to taking a decision, taking into account respect for confidentiality. This decision shall be published in the *Official Journal of the European Communities*. This shall also be applicable to Luxembourg.'	Member States which can demonstrate, after the Directive has been brought into force, that there are substantial problems for the operation of their small isolated systems, may apply for derogations from the relevant provisions of Chapters IV, V, VI, VII, which may be granted to them by the Commission. The latter shall inform the Member States of those applications prior to taking a decision, taking into account respect for confidentiality. This decision shall be published in the *Official Journal of the European Communities*. This Article shall also be applicable to Luxembourg.'
23. Article 25 is deleted.	Unchanged
24. Article 26 is replaced by the following:	
'Article 26	
1. The Commission shall monitor and review the application of this Directive and submit an overall progress report to the European Parliament and the Council. The report shall at least cover:	1. The Commission shall monitor and review the application of this Directive and submit an overall progress report to the European Parliament and the Council before the end of the first year following the entry into force of this Directive, and thereafter on an annual basis. The report shall at least cover:
	(a) the experience gained and progress made in creating a complete and fully operational internal market in electricity and the obstacles that remain in this respect, including aspects of market dominance, concentration in the market, predatory or anti-competitive behaviour;
	(b) the extent to which the unbundling and tarification requirements contained in this Directive have been successful in ensuring fair and non-discriminatory access to the Community's electricity system and equivalent levels of competition, as well as the economic, environmental and social consequences of the opening of the electricity market for customers;
	(c) an examination of issues relating to system capacity levels and security of supply of electricity in the Community, and in particular the existing and projected balance between demand and supply, taking into account the physical capacity for exchanges between areas;
	(d) a general assessment of the progress achieved with regard to bilateral relations with third countries which produce and export or transport electricity, including progress in market integration, trade and access to the networks of such third countries;

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	(e) the need for possible harmonisation requirements that are not linked to the provisions of this Directive. Where appropriate, this report may include recommendations.
2. Every two years, the report referred to in paragraph 1, shall also cover an analysis of the different measures taken in the Member States to meet public service obligations, together with an examination of the effectiveness of those measures and, in particular, their effects on competition in the electricity market. Where appropriate, this report may include recommendations as to the measures to be taken at national level to achieve high public service standards, or measures intended to prevent market foreclosure.'	Unchanged
25. The Annex, the text of which is set out in Annex I to this Directive, is added.	
Article 2 **Amendments to Directive 98/30/EC**	
Directive 98/30/EC is amended as follows:	
1. Articles 1, 2 and 3 are replaced by the following:	
'*Article 1*	
This Directive establishes common rules for the transmission, distribution, supply and storage of natural gas. It lays down the rules relating to the organisation and functioning of the natural gas sector, including liquefied natural gas (LNG), access to the market, the operation of systems, and the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas.	This Directive establishes common rules for the transmission, distribution, supply and storage of natural gas. It lays down the rules relating to the organisation and functioning of the natural gas sector, including liquefied natural gas (LNG), access to the market, the operation of systems, and the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas. The rules established by this Directive for natural gas shall also apply to biogas and gas from biomass in so far as such gases can technically and safely be injected into the natural gas system.
Article 2	Unchanged
For the purposes of this Directive:	
1. "natural gas undertaking" means any natural or legal person carrying out at least one of the following functions: production, transmission, distribution, supply, purchase or storage of natural gas, including LNG, which is responsible for the commercial, technical and/or maintenance tasks related to those functions, but shall not include final customers;	

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2. "upstream pipeline network" means any pipeline or network of pipelines operated and/or constructed as part of an oil or gas production project, or used to convey natural gas from one or more such projects to a processing plant or terminal or final coastal landing terminal;	
3. "transmission" means the transport of natural gas through a high pressure pipeline network other than an upstream pipeline network with a view to its delivery to customers;	3. "transmission" means the transport of natural gas through a high-pressure pipeline network other than an upstream pipeline network with a view to its delivery to customers, but not including supply;
	4. "transmission system operator" means a natural or legal person who carries out the function of transmission and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and to ensure the long-term ability of the system to meet reasonable demands for the transportation of gas;
4. "distribution" means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers;	5. "distribution" means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers, but not including supply;
	6. "distribution system operator" means a natural or legal person who carries out the function of distribution and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems, and to ensure the long-term ability of the system to meet reasonable demands for the distribution of gas;
5. "supply" means the sale of natural gas, including LNG, to customers;	7. "supply" means the sale of natural gas, including LNG, to customers;
6. "supply undertaking" means any natural or legal person who carries out the function of supply;	8. "supply undertaking" means any natural or legal person who carries out the function of supply;
7. "storage facility" means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used for production operations;	9. "storage facility" means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used for production operations;
8. "storage" means a natural or legal person who carries out the function of storage;	10. "storage system operator" means a natural or legal person who carries out the function of storage and is responsible for operating a storage facility;

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9. "LNG facility" means a terminal which is used for the liquefaction of natural gas or, offloading, and re-gaseification of LNG,	11. "LNG facility" means a terminal which is used for the liquefaction of natural gas or the importation, offloading, and re-gaseification of LNG, but shall not include any part of LNG terminals used for storage;
10. "LNG system operator" means a natural or legal person who carries out the function of liquefaction of natural gas, or the offloading, storage and re-gaseification of LNG and is responsible for operating a LNG facility;	12. "LNG system operator" means a natural or legal person who carries out the function of liquefaction of natural gas, or the offloading, storage and re-gaseification of LNG and is responsible for operating a LNG facility;
11. "system" means any transmission networks and/or distribution networks and/or LNG facilities owned and/or operated by a natural gas undertaking, including its facilities supplying ancillary services and those of related undertakings necessary for providing access to transmission and distribution;	13. "system" means any transmission networks and/or distribution networks and/or LNG facilities owned and/or operated by a natural gas undertaking, including its facilities supplying ancillary services and those of related undertakings necessary for providing access to transmission and distribution;
12. "ancillary services" means all services necessary for the operation of transmission and/or distribution networks and/or LNG facilities including storage facilities and equivalent flexibility instruments, load balancing and blending;	14. "ancillary services" means all services necessary for the operation of transmission and/or distribution networks and/or LNG facilities including storage facilities and equivalent flexibility instruments, load balancing and blending;
	15. "flexibility instrument" means any instrument, which may help balance the gas demand load of customers with gas supply and includes storage facilities, flexibility in the LNG chain and linepack;
13. "interconnected system" means a number of systems which are linked with each other;	16. "interconnected system" means a number of systems which are linked with each other;
14. "direct line" means a natural gas pipeline complementary to the interconnected system;	17. "direct line" means a natural gas pipeline complementary to the interconnected system;
15. "integrated natural gas undertaking" means a vertically or horizontally integrated undertaking;	18. "integrated natural gas undertaking" means a vertically or horizontally integrated undertaking;
16. "vertically integrated undertaking" means a natural gas undertaking performing at least two or more of the functions of transmission, distribution, production, supply and storage of natural gas;	19. "vertically integrated undertaking" means a natural gas undertaking or a group of undertakings whose mutual relationships are defined in Article 3(3) of Council Regulation (EEC) No 4064/89 and where the undertaking/group concerned is performing at least two or more of the functions of transmission, distribution, production, supply and storage of natural gas;

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17. "horizontally integrated undertaking" means an undertaking performing at least one of the functions of production, transmission, distribution, supply or storage of natural gas, and a non-gas activity;	20. "horizontally integrated undertaking" means an undertaking performing at least one of the functions of production, transmission, distribution, supply or storage of natural gas, and a non-gas activity;
18. "related undertaking" means affiliated undertakings, within the meaning of Article 41 of the Seventh Council Directive, 83/349/EEC, and/or associated undertakings, within the meaning of Article 33(1) thereof, and/or undertakings which belong to the same shareholders;	21. "related undertaking" means affiliated undertakings, within the meaning of Article 41 of the Seventh Council Directive, 83/349/EEC, and/or associated undertakings, within the meaning of Article 33(1) thereof, and/or undertakings which belong to the same shareholders;
19. "system user" means any natural or legal person supplying to, or being supplied by, the system;	22. "system user" means any natural or legal person supplying to, or being supplied by, the system;
20. "customers" means wholesale and final customers of natural gas and natural gas undertakings which purchase natural gas;	23. "customers" means wholesale and final customers of natural gas and natural gas undertakings which purchase natural gas;
	24. "household customer" means a customer purchasing natural gas for his/her own household consumption;
	25. "non-household customer" means a customer purchasing natural gas which is not for its own household use;
21. "final customer" means a customer purchasing natural gas for his/her own use;	26. "final customer" means a customer purchasing natural gas for his/her own use;
	27. "eligible customer" means a customer who is free to purchase gas from the supplier of his or her choice, in the meaning of Article 18;
22. "wholesale customers" inside or outside the system where they are established;	28. "wholesale customers" means any natural or legal persons other than transmission system operators and distribution system operators who purchase natural gas for the purpose of resale inside or outside the system where they are established;
23. "long-term planning" means the planning of supply and transportation capacity of natural gas undertakings on a long-term basis with a view to meeting the demand for natural gas of the system, diversification of sources and securing supplies to customers;	29. "long-term planning" means the planning of supply and transportation capacity of natural gas undertakings on a long-term basis with a view to meeting the demand for natural gas of the system, diversification of sources and securing supplies to customers;
24. "emergent market" means a Member State in which the first commercial supply of its first long-term natural gas supply contract was made not more than 10 years earlier;	30. "emergent market" means a Member State in which the first commercial supply of its first long-term natural gas supply contract was made not more than 10 years earlier;

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25. "security"	31. "security of supply" means both security of supply of natural gas, and technical safety;
	32. "energy imbalance" means the difference between the quantity of gas notified to the transmission or distribution system operator for injection or withdrawal at one or more given locations over a given time period and the metered quantity of gas withdrawn or injected at one or more given locations over the same time period.
Article 3	Unchanged
1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, natural gas undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive market in natural gas, and shall not discriminate between such undertakings as regards either rights or obligations.	1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, natural gas undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive and sustainable market in natural gas, and shall not discriminate between such undertakings as regards either rights or obligations.
2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on natural gas undertakings, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable. Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.	2. Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on natural gas undertakings, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection, including energy efficiency and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable. In relation to security of supply, and the fulfilment of environmental goals, including energy efficiency, Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.
3. Member States shall take appropriate measures to protect final customers and to ensure high levels of consumer protection, and shall. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding general contractual terms and conditions, general information and dispute settlement mechanisms. These measures shall include, in particular, those set out in the Annex.	3. Member States shall take appropriate measures to protect final customers and to ensure high levels of consumer protection, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers from disconnection. In this context, they may take appropriate measures to protect customers in remote areas who are connected to the gas system. Member States may appoint a supplier of last resort for customers connected to the gas network. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding general contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall ensure that the eligible customer is effectively able to switch to a new supplier. These measures shall include, in particular, those set out in the Annex.

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4. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion, environmental protection, and security of supply, for the maintenance and construction of necessary network infrastructure, including interconnection capacity.	4. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion, environmental protection, which may include means to combat climate change, and security of supply. Such measures may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools, for the maintenance and construction of necessary network infrastructure, including interconnection capacity.
5. Member States may decide not to apply Article 5 with respect to distribution insofar as their application would obstruct, in law or in fact, the performance of the obligations imposed on natural gas undertakings in the general economic interest and insofar as the development of trade would not be affected to such an extent as would be contrary to the interests of the Community. The interests of the Community include, inter alia, competition with regard to eligible customers in accordance with this Directive and Article 86 of the Treaty.'	5. Member States may decide not to apply Article 5 with respect to distribution in so far as their application would obstruct, in law or in fact, the performance of the obligations imposed on natural gas undertakings in the general economic interest and in so far as the development of trade would not be affected to such an extent as would be contrary to the interests of the Community. The interests of the Community include, inter alia, competition with regard to eligible customers in accordance with this Directive and Article 86 of the Treaty.
	6. Member States shall, upon implementation of this Directive, notify the Commission of all measures adopted to achieve public service obligations, including consumer and environmental protection, and their possible effect on national and international competition, whether or not such measures require a derogation from the provisions of this Directive. They shall notify the Commission subsequently every two years of any changes to such measures, whether or not they require a derogation from this Directive.'
2. The following Article 4a is inserted:	Unchanged
'*Article 4a*	
shall ensure the monitoring of security of supply issues. This monitoring shall, in particular, cover the supply/demand balance on the national market, the level of expected future demand and available supplies, envisaged additional capacity under planning or construction. The competent authorities shall publish, by 31 July each year at the latest a report outlining the findings resulting from the monitoring of these issues, as well as any measures taken or envisaged to address them and forward this report to the Commission forthwith.'	Member States or the national regulatory authorities referred to in Article 22(1) shall ensure the monitoring of security of supply issues. This monitoring shall, in particular, cover the supply/demand balance on the national market, the level of expected future demand and available supplies, envisaged additional capacity under planning or construction, and the quality and level of maintenance of the networks. The competent authorities shall publish, by 31 July each year at the latest, a report outlining the findings resulting from the monitoring of these issues, as well as any measures taken or envisaged to address them and forward this report to the Commission forthwith.'

INITIAL PROPOSAL	AMENDED PROPOSAL
3. Articles 5, 6 and 7 are replaced by the following:	Unchanged
'Article 5	
Member States shall ensure that technical rules establishing the minimum technical design and operational requirements for the connection to the system of LNG facilities, storage facilities, other transmission or distribution systems, and direct lines, are developed and made available.	
These technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. They shall be notified to the Commission in accordance with Article 8 of Council Directive of (*).	These technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. They shall be notified to the Commission in accordance with Article 8 of Council Directive 98/34/EC of 22 June 1998 (*).
Article 6	Unchanged
Member States shall take the measures necessary to ensure that transmission, storage and LNG act in accordance with Articles 7 and 8.	Member States shall take the measures necessary to ensure that transmission, storage and LNG system operators act in accordance with Articles 7 and 8.
Article 7	Unchanged
1. Member States shall designate or shall require natural gas undertakings which own transmission, storage or LNG facilities to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, one or more system operators.	
2. Each transmission, storage and/or LNG system operator shall:	
	(a) operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment;
	(b) refrain from discriminating between system users or classes of system users, particularly in favour of its related undertakings;
	(c) provide any other transmission system operator, any other storage system operator, any other LNG system operator and/or any distribution system operator, sufficient information to ensure that the transport and storage of natural gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.

INITIAL PROPOSAL	AMENDED PROPOSAL
Rules for balancing the gas system shall be, transparent and non-discriminatory, for the provision of such services by transmission system operators shall be established	Rules adopted by transmission system operators for balancing the gas system shall be objective, transparent and non-discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 22(2) in a non-discriminatory and cost-reflective way and shall be published.
(*) OJ L 204, 21.7.1998, p. 37.'	(*) OJ L 204, 21.7.1998, p. 37.'
4. The following Articles 7a and 7b are inserted:	Unchanged
'Article 7a	
1. Member States may require transmission system operators for the maintenance and development of the transmission system, including interconnection capacity.	1. Member States may require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity.
2. Unless the transmission system operator is already fully independent from other activities not relating to the transmission system in terms of ownership, the system operator shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission.	2. Unless the transmission system operator is already fully independent from other activities not relating to the transmission system in terms of ownership, the system operator, within the integrated natural gas undertaking, shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to transmission.
In order to ensure the independence of the transmission system operator, the following criteria shall apply:	In order to ensure the independence of the transmission system operator, the following minimum criteria shall apply:
(a) those persons responsible for the management of the transmission may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, distribution and supply of natural gas;	(a) those persons responsible for the management of the transmission system operator may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, distribution and supply of natural gas;
(b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the transmission system operator are taken into account in a manner that ensures that they are capable of acting independently;	Unchanged
	(c) the transmission system operator must have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to maintain or develop the network;

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	(d) the transmission system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer. An annual report, setting out the measures taken, must be submitted by the compliance officer to the national regulatory authority referred to in Article 22(1) and published.
Article 7b	Unchanged
Transmission system operators shall procure the energy they use for the carrying out of their functions according to transparent, non-discriminatory and market based procedures.'	
5. Articles 8 to 11 are replaced by the following:	
'*Article 8*	
1. Without prejudice to Article 12 or any other legal duty to disclose information, each transmission, storage and/or LNG shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.	1. Without prejudice to Article 12 or any other legal duty to disclose information, each transmission, storage and/or LNG system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous being disclosed in a discriminatory manner.
2. Transmission shall not, in the context of sales or purchases of natural gas by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.	2. Transmission system operators shall not, in the context of sales or purchases of natural gas by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.
	Article 9
	Member States shall designate or shall require undertakings which own or are responsible for distribution systems to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, one or more distribution system operators and shall ensure that those operators act in accordance with Articles 10 and 11.
Article 10	Unchanged
1. Each distribution shall operate, maintain and develop under economic conditions a secure, reliable and efficient system, with due regard to the environment.	1. Each distribution system operator shall operate, maintain and develop under economic conditions a secure, reliable and efficient system, with due regard to the environment.

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2. In any event, the distribution shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings.	2. In any event, the distribution system operator shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings.
3. Each distribution shall provide any other distribution, and/or any transmission, and/or storage with sufficient information to ensure that the transport of natural gas takes place in a manner compatible with the secure and efficient operation of the interconnected system.	3. Each distribution system operator shall provide any other distribution system operator, and/or any transmission, and/or LNG system operator, and/or storage system operator with sufficient information to ensure that the transport and storage of natural gas takes place in a manner compatible with the secure and efficient operation of the interconnected system. These rules shall also apply to biogas and gas from biomass in so far as such gases can technically and safely be injected into the natural gas system.
4. Unless the system operator is already fully independent from other activities not relating to the distribution system in terms of ownership, the distribution system operator shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution.	4. Unless the distribution system operator is already fully independent from other activities not relating to the distribution system in terms of ownership, the distribution system operator within the integrated natural gas undertaking shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution.
In order to ensure the independence of the distribution system operator, the following minimum criteria shall apply:	Unchanged
(a) those persons responsible for the management of the distribution system operator may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, transmission and supply of natural gas;	
(b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently;	
	(c) the distribution system operator must have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to maintain or develop the network;

INITIAL PROPOSAL	AMENDED PROPOSAL
	(d) the distribution system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer. An annual report, setting out the measures taken, must be submitted by the compliance officer to the national regulatory authority referred to in Article 22(1) and published.
This paragraph shall apply from 1 January 2004. Member States may decide not to apply this paragraph to integrated natural gas undertakings serving less than 100 000 customers at that date.	Unchanged
	5. Where distribution system operators are responsible for balancing the gas system, rules adopted by them for that purpose shall be objective, transparent and non-discriminatory, including rules for the charging of system users for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by system operators shall be established pursuant to a methodology compatible with Article 22(2) in a non-discriminatory and cost-reflective way and shall be published.
Article 11	Unchanged
1. Without prejudice to Article 12 or any other legal duty to disclose information, each distribution shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.	1. Without prejudice to Article 12 or any other legal duty to disclose information, each distribution system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous being disclosed in a discriminatory manner.
2. Distribution shall not, in the context of sales or purchases of natural gas by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.'	2. Distribution system operators shall not, in the context of sales or purchases of natural gas by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.'
6. The following Article 11a is inserted:	Unchanged
'*Article 11a*	
The rules in Articles 7a(2) and 10(4) do not prevent the operation of a combined transmission, and distribution system operator, which is fully independent in terms of its legal form, organisation and decision making from other activities not relating to transmission distribution.'	The rules in Articles 7a(2) and 10(4) do not prevent the operation of a combined transmission, LNG, storage and distribution system operator, which is fully independent in terms of its legal form, organisation and decision making from other activities not relating to transmission LNG, storage and distribution system operations.'

INITIAL PROPOSAL	AMENDED PROPOSAL
7. Article 12 is replaced by the following:	Unchanged
'Article 12	
Member States or any competent authority they designate, including the national regulatory authorities referred to in Article 22(1) and the dispute settlement authorities referred to in Article 23(3), shall have right of access to the accounts of natural gas undertakings as set out in Article 13 which they need to consult in carrying out their functions. Member States and any designated competent authority, the dispute settlement authorities, shall preserve the confidentiality of commercially sensitive information. Member States may introduce exceptions to the principle of confidentiality where this is necessary in order for the competent authorities to carry out their functions.'	Member States or any competent authority they designate, including the national regulatory authorities referred to in Article 22(1) and the dispute settlement authorities referred to in Article 23(3), shall have right of access to the accounts of natural gas undertakings as set out in Article 13 which they need to consult in carrying out their functions. Member States and any designated competent authority, including the national regulatory authorities referred to in Article 22(1) and the dispute settlement authorities, shall preserve the confidentiality of commercially sensitive information. Member States may introduce exceptions to the principle of confidentiality where this is necessary in order for the competent authorities to carry out their functions.'
8. Article 13 is amended as follows:	Unchanged
(a) Paragraph 1 is replaced by the following:	
'1. Member States shall take the necessary steps to ensure that the accounts of natural gas undertakings are kept in accordance with paragraphs 2 to 5 of this Article.'	'1. Member States shall take the necessary steps to ensure that the accounts of natural gas undertakings are kept in accordance with paragraphs 2 to 5 of this Article. Where companies benefit from a derogation from this provision on the basis of Article 26(3), they shall at least keep their internal accounts in accordance with this Article.'
(b) Paragraph 3 is replaced by the following:	Unchanged
'3. Integrated natural gas undertakings shall, in their internal accounting, keep separate accounts for their transmission, distribution, supply, LNG and storage activities, as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. Where appropriate, they shall keep consolidated accounts for non-gas activities. These internal accounts shall include a balance sheet and a profit and loss account for each activity.'	'3. Integrated natural gas undertakings shall, in their internal accounting, keep separate accounts for their transmission, distribution, supply, LNG and storage activities, as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. They shall keep separate accounts for supply activities for eligible customers and supply activities for non-eligible customers. Revenue from ownership of the transmission/distribution network shall be specified in the accounts. Where appropriate, they shall keep consolidated accounts for non-gas activities. These internal accounts shall include a balance sheet and a profit and loss account for each activity.'

INITIAL PROPOSAL	AMENDED PROPOSAL
9. Articles 14 and 15 are replaced by the following:	Unchanged
'Article 14	
1. Member States shall ensure the implementation of a system of third party access to the transmission and distribution system, and LNG facilities based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users that these tariffs shall be approved prior to their entry into force by a national regulatory authority referred to in Article 22(1)	1. Member States shall ensure the implementation of a system of third-party access to the transmission and distribution system, and LNG facilities based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. Member States shall ensure that these tariffs, or the methodologies underlying their calculation shall be approved prior to their entry into force by a national regulatory authority referred to in Article 22(1) and that these tariffs are published prior to their entry into force.
2. Transmission system operators shall, if necessary for the purpose of carrying out their functions including in relation to cross-border transmission, have access to the network of other transmission system operators.	Unchanged
Article 15	
1. For the organisation of access to storage and equivalent flexibility instruments when technically and/or economically necessary for providing efficient access to the system for the supply of customers, as well as for the organisation of access to ancillary services, Member States may choose either or both procedures referred to in paragraphs 2 and 3. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria.	
2. In the case of negotiated access, Member States shall take the necessary measures for natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system to be able to negotiate access.	2. In the case of negotiated access, Member States shall take the necessary measures for natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system to be able to negotiate access to storage and equivalent flexibility instruments, when technically and/or economically necessary for providing efficient access to the system. The parties shall be obliged to negotiate access to storage and equivalent flexibility instruments in good faith.
Contracts for access shall be negotiated with the relevant system operator or natural gas undertakings. Member States shall require and natural gas undertakings to publish their main commercial conditions	Contracts for access to storage and equivalent flexibility instruments shall be negotiated with the relevant storage system operator or natural gas undertakings. Member States shall require storage system operators and natural gas undertakings to publish their main commercial conditions for the use of storage and equivalent flexibility instruments within the first year following implementation of this Directive and on an annual basis every year thereafter.

INITIAL PROPOSAL	AMENDED PROPOSAL
3. Member States opting for a procedure of regulated access shall take the necessary measures to give natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system a right on the basis of published tariffs and/or other terms and obligations for use of This right of access for eligible customers may be given by enabling them to enter into supply contracts with competing natural gas undertakings other than the owner and/or operator of the system or a related undertaking.'	3. Member States opting for a procedure of regulated access shall take the necessary measures to give natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system a right to access to storage and equivalent flexibility instruments, on the basis of published tariffs and/or other terms and obligations for use of that storage and equivalent flexibility instruments, when technically and/or economically necessary for providing efficient access to the system. This right of access for eligible customers may be given by enabling them to enter into supply contracts with competing natural gas undertakings other than the owner and/or operator of the system or a related undertaking.'
10. Article 16 is deleted.	Unchanged
11. Articles 18, 19 and 20 are replaced by the following:	
'Article 18	
	The eligible customers are the customers which are free to purchase gas from the supply undertaking of their choice within the Community. Member States shall ensure that these eligible customers are:
	(a) until 1 January 2004, the eligible customers as specified in Article 18 of Directive 98/30/EC. Member States shall publish by 31 January each year the criteria for the definition of these eligible customers;
	(b) from 1 January 2004 at the latest, all non-household customers;
	(c) from 1 January 2005, all customers.
Article 19	Unchanged
To avoid imbalance in the opening of gas markets:	
(a) contracts for the supply with an eligible customer in the system of another Member State shall not be prohibited if the customer is eligible in both systems involved;	
(b) in cases where transactions as described in point (a) are refused because the customer is eligible in only one of the two systems, the Commission may oblige, taking into account the situation in the market and the common interest, the refusing party to execute the requested supply, at the request of the Member State where the eligible customer is located.	

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 20	
1. Member States shall take the necessary measures to enable:	
(a) natural gas undertakings established within their territory to supply the eligible customers through a direct line	(a) natural gas undertakings established within their territory to supply the eligible customers through a direct line;
(b) any such eligible customer within their territory to be supplied through a direct line by natural gas undertakings.	Unchanged
2. In circumstances where an authorisation (e.g. licence, permission, concession, consent or approval) is required for the construction or operation of direct lines, the Member States or any competent authority they designate shall lay down the criteria for the grant of authorisations for the construction or operation of such lines in their territory. These criteria shall be objective, transparent and non-discriminatory.	
3. Member States may make authorisations to construct a direct line subject either to the refusal of system access on the basis of Article 17 or to the opening of a dispute settlement procedure under Article.'	3. Member States may make authorisations to construct a direct line subject either to the refusal of system access on the basis of Article 17 or to the opening of a dispute settlement procedure under Article 22.'
12. Article 21 is deleted.	Unchanged
13. Article 22 is replaced by the following:	
'*Article 22*	
	1. Member States shall designate one or more competent bodies as national regulatory authorities. These authorities shall be wholly independent of the interests of the gas industry. They shall at least be responsible for continuously monitoring the market to ensure non-discrimination, effective competition and the efficient functioning of the market, in particular with respect to:
	(a) the level of competition;
	(b) the rules on the management and allocation of interconnection capacity, in conjunction with the national regulatory authority or authorities of those Member States with which interconnection exists;
	(c) any mechanisms to deal with congested capacity within the national gas system;
	(d) the time taken by transmission and distribution system operators to make connections and repairs;

INITIAL PROPOSAL	AMENDED PROPOSAL
	(e) the publication of appropriate information by transmission and distribution system operators concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential;
	(f) the effective unbundling of accounts as referred to in Article 13, to ensure there are no cross-subsidies between transmission, distribution, storage, LNG and supply activities;
	(g) the access conditions to storage and equivalent flexibility instruments, as provided for in Article 15, paragraphs 2 and 3.
	2. The national regulatory authorities shall at least be responsible for fixing or approving prior to their entry into force, the methodologies used to calculate or establish the terms and conditions for:
	(a) connection and access to national networks, including transmission and distribution tariffs and terms, conditions and tariffs for access to LNG facilities;
	(b) the provision of balancing services.
	3. National regulatory authorities shall have the authority to require transmission, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs and methodologies referred to in paragraph 2, to ensure that they are reasonable and applied in a non-discriminatory manner.
	4. Any party having a complaint against a transmission, LNG or distribution system operator with respect to the issues mentioned in paragraphs 1, 2 and 3 and in Article 15 may refer the complaint to the national regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the national regulatory authorities. This period may be extended further with the agreement of the complainant. Any appeal against such a decision shall not have suspensive effect.
1. Member States shall take measures to ensure that national regulatory authorities are able to carry out their duties referred to in paragraphs 1 to 4 in an efficient and expeditious manner.	5. Member States shall take measures to ensure that national regulatory authorities are able to carry out their duties referred to in paragraphs 1 to 4 in an efficient and expeditious manner.

INITIAL PROPOSAL	AMENDED PROPOSAL
2. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.	6. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.
3. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.'	7. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.
	8. In the event of cross-border disputes, the national regulatory authority shall be the national regulatory authority covering the system operator, which refuses use of, or access to, the system.
	9. Recourse to the national regulatory authority shall be without prejudice to the exercise of rights of appeal under Community law.'
14. In Article 23, paragraph 1 is replaced by the following:	Unchanged
'1. Member States shall take the necessary measures to ensure that natural gas undertakings and customers, wherever they are located, are able to obtain access to upstream pipeline networks, including facilities supplying technical services incidental to such access, in accordance with this Article, except for the parts of such networks and facilities which are used for local production operations at the site of a field where the gas is produced. The measures shall be notified to the Commission in accordance with the provisions of Article 29.'	'1. Member States shall take the necessary measures to ensure that natural gas undertakings and eligible customers, wherever they are located, are able to obtain access to upstream pipeline networks, including facilities supplying technical services incidental to such access, in accordance with this Article, except for the parts of such networks and facilities which are used for local production operations at the site of a field where the gas is produced. The measures shall be notified to the Commission in accordance with the provisions of Article 29.'
15. In Article 25, paragraphs 1 and 2 are replaced by the following:	Unchanged
'1. If a natural gas undertaking encounters, or considers it would encounter, serious economic and financial difficulties because of its take-or-pay commitments accepted in one or more gas-purchase contracts, an application for a temporary derogation from Article 15 may be sent to the Member State concerned or the designated competent authority. Applications shall, according to the choice of Member States, be presented on a case-by-case basis either before or after refusal of access to the system. Member States may also give the natural gas undertaking the choice to present an application either before or after refusal of access to the system. Where a natural gas undertaking has refused access, the application shall be presented without delay. The applications shall be accompanied by all relevant information on the nature and extent of the problem and on the efforts undertaken by the natural gas undertaking to solve the problem.	

INITIAL PROPOSAL	AMENDED PROPOSAL
If alternative solutions are not reasonably available, and taking into account the provisions of paragraph 3, the Member State or the designated competent authority may decide to grant a derogation.	
2. The Member State, or the designated competent authority, shall notify the Commission without delay of its decision to grant a derogation, together with all the relevant information with respect to the derogation. This information may be submitted to the Commission in an aggregated form, enabling the Commission to reach a well-founded decision. Within four weeks of its receipt of this notification, the Commission may request that the Member State or the designated competent authority concerned amend or withdraw the decision to grant a derogation.	
If the Member State or the designated competent authority concerned does not comply with this request within a period of four weeks, a final decision shall be taken expeditiously in accordance with the advisory procedure of Article 3 of Council Decision (*).	If the Member State or the designated competent authority concerned does not comply with this request within a period of four weeks, a final decision shall be taken expeditiously in accordance with the advisory procedure of Article 3 of Council Decision 1999/468/EC (*).
The Commission shall preserve the confidentiality of commercially sensitive information.	Unchanged
(*) OJ L 184, 17.7.1999, p. 23.'	(*) OJ L 184, 17.7.1999, p. 23.'
16. In Article 26, paragraphs 1, 2 and 3 are replaced by the following:	Unchanged
'1. Member States not directly connected to the interconnected system of any other Member State and having only one main external supplier may derogate from Article 4, of this Directive. A having a market share of more than 75 % shall be considered to be a main supplier. This derogation shall automatically expire from the moment when at least one of these conditions no longer applies. Any such derogation shall be notified to the Commission.	'1. Member States not directly connected to the interconnected system of any other Member State and having only one main external supplier may derogate from Article 4, Article 18 and/or Article 20 of this Directive. A supply undertaking having a market share of more than 75 % shall be considered to be a main supplier. This derogation shall automatically expire from the moment when at least one of these conditions no longer applies. Any such derogation shall be notified to the Commission.
2. A Member State, qualifying as an emergent market, which because of the implementation of this Directive would experience substantial problems, not associated with the contractual take-or-pay commitments referred to in Article 25, may derogate from Article 4, of this Directive. This derogation shall automatically expire from the moment when the Member State no longer qualifies as an emergent market. Any such derogation shall be notified to the Commission.	2. A Member State, qualifying as an emergent market, which because of the implementation of this Directive would experience substantial problems, not associated with the contractual take-or-pay commitments referred to in Article 25, may derogate from Article 4, Article 18 and/or Article 20 of this Directive. This derogation shall automatically expire from the moment when the Member State no longer qualifies as an emergent market. Any such derogation shall be notified to the Commission.

INITIAL PROPOSAL	AMENDED PROPOSAL
3. Where implementation of this Directive would cause substantial problems in a geographically limited area of a Member State, in particular concerning the development of the transmission infrastructure, and with a view to encouraging investments, the Member State may apply to the Commission for a temporary derogation from for developments within this area.'	3. Where implementation of this Directive would cause substantial problems in a geographically limited area of a Member State, in particular concerning the development of the transmission infrastructure, and with a view to encouraging investments, the Member State may apply to the Commission for a temporary derogation from Article 4, Article 7(1), 7(3), 7a(2), Article 9(1), Article 10(4), 10(5), Article 13, Article 14(1), Article 18 and/or Article 20 for developments within this area.'
17. Article 27 is deleted.	Unchanged
18. Article 28 is replaced by the following:	
	'*Article 28* 1. The Commission shall monitor and review the application of this Directive and submit an overall progress report to the European Parliament and the Council before the end of the first year following the entry into force of this Directive, and thereafter on an annual basis. The report shall at least cover: (a) the experience gained and progress made in creating a complete and fully operational internal market in natural gas and the obstacles that remain in this respect including aspects of market dominance, concentration in the market, predatory or anti-competitive behaviour; (b) the extent to which the unbundling and tarification requirements contained in this Directive have been successful in ensuring fair and non-discriminatory access to the Community's gas system and equivalent levels of competition, as well as the economic, environmental and social consequences of the opening of the gas market for customers; (c) an examination of issues relating to system capacity levels and security of supply of natural gas in the Community, and in particular the existing and projected balance between demand and supply, taking into account the physical capacity for exchanges between areas; (d) a general assessment of the progress achieved with regard to bilateral relations with third countries which produce and export or transport natural gas, including progress in market integration, trade and access to the networks of such third countries;

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	(e) the need for possible harmonisation requirements which are not linked to the provisions of this Directive. Where appropriate, this report may include recommendations. 2. Every two years, the report referred to in paragraph 1 shall also cover an analysis of the different measures taken in Member States to meet public service obligations, together with an examination of the effectiveness of those measures, and in particular their effects on competition in the gas market. Where appropriate, the report may include recommendations as to the measures to be taken at national level to achieve high public service standards or measures intended to prevent market foreclosure.'
19. The Annex, the text of which is set out in Annex II to this Directive, is added.	Unchanged
Article 3	
Directives 90/547/EEC and 91/296/EEC are repealed with effect from 1 January 2003.	
Article 4	
Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest. They shall forthwith inform the Commission thereof.	Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive [at . . .] 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.	Unchanged
Article 5	
This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.	
Article 6	
This Directive is addressed to the Member States.	

INITIAL PROPOSAL	AMENDED PROPOSAL
ANNEX I	
'ANNEX	
(Article 3)	Unchanged
Without prejudice to Community rules on consumer protection, in particular Directive 97/7/EC of the European Parliament and of the Council [1] and Council Directive 93/13/EC [2], the measures referred to in Article 3 are:	
Member States shall ensure that final customers:	
(a) Have a right to a contract with their electricity service provider that specifies:	
— the identity and address of the supplier;	
— services provided, the service quality levels offered, as well as the time for the initial connection;	
— the types of maintenance service offered;	
— the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;	
— the duration of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal;	
— any compensation and the refund arrangements which apply if contracted service quality levels are not met; and	
— the method of initiating procedures for settlement of disputes in accordance with point (e).	
	Conditions shall be fair and well-known in advance. In any case, this information should be provided prior to the conclusion of the contract. Where contracts are concluded through intermediaries, the above information shall also be provided prior to the conclusion of the contract.
(b) Are given adequate notice of any intention to modify contractual conditions. Final customers shall be informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect. Member States shall ensure that household customers are free to withdraw from contracts if they do not accept the new conditions, notified to them by their electricity service provider.	Unchanged

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(c) Receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services.	
	(d) Are offered a full choice of payment methods, free of charge. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language. Final customers shall be protected against unfair or misleading selling methods.
(d) Benefit from transparent, simple and inexpensive procedures for dealing with their complaints. Such procedures shall enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC [3].	(e) Benefit from transparent, simple and inexpensive procedures for dealing with their complaints. Such procedures shall enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC [3].
	(f) Are informed about their rights regarding universal service.
[1] OJ L 144, 4.6.1997, p. 19. [2] OJ L 95, 21.4.1993, p. 29. [3] OJ L 115, 17.4.1998, p. 31.'	[3] OJ L 115, 17.4.1998, p. 31.'

ANNEX II

'ANNEX

Without prejudice to Community rules on consumer protection, in particular Directive 97/7/EC of the European Parliament and of the Council [1] and Council Directive 93/13/EC [2], the measures referred to in Article 3 are:	Unchanged
Member States shall ensure that final customers:	
(a) Have a right to a contract with their gas service provider that specifies:	
— the identity and address of the supplier;	
— services provided, the service quality levels offered, as well as the time for the initial connection;	
— the types of maintenance service offered;	
— the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;	

INITIAL PROPOSAL	AMENDED PROPOSAL
— the duration of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal;	
— any compensation and the refund arrangements which apply if contracted service quality levels are not met; and	
— the method of initiating procedures for settlement of disputes in accordance with point (e).	
	Conditions shall be fair and well-known in advance. In any case, this information should be provided prior to the conclusion of the contract. Where contracts are concluded through intermediaries, the above information shall also be provided prior to the conclusion of the contract.
(b) Aregiven adequate notice of any intention to modify contractual conditions. Member States shall ensure that final customers are free to withdraw from contracts if they do not accept the new conditions, notified to them by their gas service provider.	(b) Are given adequate notice of any intention to modify contractual conditions. Customers shall be informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect. Member States shall ensure that final customers are free to withdraw from contracts if they do not accept the new conditions, notified to them by their gas service provider.
(c) Receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gas services.	Unchanged
(d) Are offered	(d) Are offered a full choice of payment methods free of charge. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language. Final customers shall be protected against unfair or misleading selling methods.
(e) benefit from transparent, simple and inexpensive procedures are made available for dealing with their complaints. Such procedures shall enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC [3].	(e) Benefit from transparent, simple and inexpensive procedures are made available for dealing with their complaints. Such procedures shall enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Commission Recommendation 98/257/EC [3].
	(f) Connected to the gas system are informed about their rights to be supplied with natural gas of a specified quality at reasonable prices.

[1] OJ L 144, 4.6.1997, p. 19.
[2] OJ L 95, 21.4.1993, p. 29.
[3] OJ L 115, 17.4.1998, p. 31.'

[3] OJ L 115, 17.4.1998, p. 31.'

Amended proposal for a Regulation of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity [1]

(2002/C 227 E/20)

(Text with EEA relevance)

COM(2002) 304 final — 2001/0078(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 7 June 2002)

[1] OJ C 240 E, 28.8.2001, p. 72.

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,	
Acting in accordance with the procedure laid down in Article 251 of the Treaty,	
Whereas:	
(1) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity [1] constituted an important step in the completion of the internal market in electricity.	
(2) At its meeting in Lisbon on 23 and 24 March 2000, the European Council called for rapid work to be undertaken to complete the internal market in both the electricity and gas sectors and to speed up liberalisation in these sectors with a view to achieving a fully operational internal market in these areas.	
(3) The creation of a real internal electricity market should be promoted through an intensification of trade in electricity, which is currently underdeveloped compared to other sectors of the economy.	
(4) Fair, cost-reflective, transparent and directly applicable rules, completing the provisions of Directive 96/92/EC, should be introduced with regard to cross-border tarification and the allocation of available interconnection capacities, in order to ensure effective access to transmission systems for the purpose of cross-border transactions.	(4) Fair, cost-reflective, transparent and directly applicable rules, taking account of a comparison between efficient network operators from structurally comparable areas and completing the provisions of Directive 96/92/EC, should be introduced with regard to cross-border tarification and the allocation of available interconnection capacities, in order to ensure effective access to transmission systems for the purpose of cross-border transactions.

[1] OJ L 27, 30.1.1997, p. 20. Directive as amended by Directive ...

INITIAL PROPOSAL	AMENDED PROPOSAL
(5) In its Conclusions, the Energy Council of 30 May 2000 invited the Commission, Member States and national regulatory authorities/administrations to ensure a rapid introduction of a robust tarification system and methodology to allocate available interconnection capacity for the longer term.	Unchanged
(6) The European Parliament, in its Resolution of 6 July 2000 on the Commission's second report on the state of liberalisation of energy markets, called for conditions for using networks in Member States that do not hamper cross-border trade in electricity and called on the Commission to submit specific proposals geared to overcoming all the existing barriers to intra-Community trade.	
(7) This Regulation should lay down basic principles with regard to tarification and capacity allocation, whilst providing for the adoption of guidelines detailing further relevant principles and methodologies, in order to allow rapid adaptation to changed circumstances.	
(8) In an open, competitive market, transmission system operators should be compensated for costs incurred as a result of hosting transit of electricity on their networks by the operators of the transmission systems from which transits originate or and for which they are destined.	(8) In an open, competitive market, transmission system operators should be compensated for costs incurred as a result of hosting cross-border flows of electricity on their networks by the operators of the transmission systems from which cross-border flows originate and the systems where those flows end.
(9) Payments and receipts resulting from compensation between transmission system operators should be taken into account when setting national network tariffs.	Unchanged
(10) The actual amount payable for cross-border access to the system can vary considerably, depending on the transmission system operators involved and as a result of differences in the structure of the tarification systems applied in Member States. A certain degree of harmonisation is therefore necessary in order to avoid distortions of trade.	
(11) It would not be appropriate to apply distance-related tariffs, or, a specific tariff to be paid only by exporters or importers	(11) It would not be appropriate to apply distance-related tariffs, or, provided appropriate locational signals are in place, a specific tariff to be paid only by exporters or importers in addition to the general charge for access to the national network.

INITIAL PROPOSAL	AMENDED PROPOSAL
(12) Competition on the internal market can only truly develop if access to the lines interconnecting the different national systems is granted in a non-discriminatory and transparent way. The available capacities of these lines should be set at the maximum complying with the safety standards of secure network operation. Any discrimination in the allocation of available capacities should be shown not to unreasonably distort or hinder the development of trade.	(12) The precondition for effective competition in the internal market is non-discriminatory and transparent charges for network use including interconnecting lines in the transmission system. The available capacities of these lines should be set at the maximum complying with the safety standards of secure network operation. Any discrimination in the allocation of available capacities should be shown not to unreasonably distort or hinder the development of trade.
(13) There should be transparency for market actors concerning available transfer capacities and the security, planning and operational standards that affect the available transfer capacities.	Unchanged
(14) Of revenues flowing from congestion-management procedures, should not constitute a source of extra profit for the transmission system operators.	(14) There should be rules on the use of revenues flowing from congestion-management procedures, unless the specific nature of the interconnector concerned justifies a time-limited exemption from these rules
(15) It should be possible to deal with congestion problems in various ways as long as the methods used provide correct economic signals to transmission system operators and market parties and are based on market mechanisms.	Unchanged
(16) To ensure the smooth functioning of the internal market, provision should be made for procedures which allow the adoption of decisions and guidelines with regard to tarification and capacity allocation by the Commission whilst ensuring the involvement of Member States' regulatory authorities in this process.	
(17) authorities should be required to provide relevant information to the Commission. Such information should be treated confidentially by the Commission. Where necessary, the Commission should have the possibility to request relevant information directly from undertakings concerned.	(17) The Member States and the competent national authorities should be required to provide relevant information to the Commission. Such information should be treated confidentially by the Commission. Where necessary, the Commission should have the possibility to request relevant information directly from undertakings concerned.
(18) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the guidelines adopted on the basis of this Regulation.	Unchanged
(19) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.	

INITIAL PROPOSAL	AMENDED PROPOSAL
(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 the provision of a harmonised framework for cross-border exchanges of electricity, cannot be achieved by the Member States and can therefore, by reason of the scale and effect of the action, 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.	
(21) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1], measures for the implementation of this Regulation should be adopted by use of the regulatory procedure provided for in Article 5 of Decision 1999/468/EC, or by use of the advisory procedure provided for in Article 3 of that Decision, according to the nature of the measures to be adopted,	
HAVE ADOPTED THIS REGULATION:	
Article 1 **Subject matter and scope**	
This Regulation aims at stimulating cross-border exchanges in electricity and thus competition within the internal electricity market, through the establishment of a compensation mechanism for transit of electricity and the setting of harmonised principles on cross-border transmission charges and the allocation of available capacities of interconnections between national transmission systems.	This Regulation aims at stimulating cross-border exchanges in electricity and thus competition within the internal electricity market, through the establishment of a compensation mechanism for cross-border flows of electricity and the setting of harmonised principles on cross-border transmission charges and the allocation of available capacities of interconnections between national transmission systems.
Article 2 **Definitions**	Unchanged
1. For the purpose of this Regulation, the definitions contained in Article 2 of Directive 96/92/EC shall apply.	
2. The following definitions shall also apply:	
(a) means a physical flow of electricity hosted on the transmission system of a Member State, which was neither produced nor is destined for consumption in that Member State, including transit flows which are commonly denominated as 'loop-flows' or 'parallel-flows';	(a) 'cross-border flow' means a physical flow of electricity on a transmission network of a Member State that results from the activity of either generators or consumers outside of that Member State;

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

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(b) 'congestion' means a situation in which an interconnection linking national transmission networks, cannot accommodate all transactions resulting from international trade by market operators, due to a lack of capacity;	(b) 'congestion' means a situation in which an interconnection linking national transmission networks, cannot accommodate all transactions resulting from international trade by market operators, due to a lack of capacity of the interconnectors and/or the national transmission systems concerned;
	(c) 'export' of electricity means the dispatch of electricity in one Member State with the understanding that the simultaneous corresponding take-up ('import') of electricity will take place in another Member State or a third country.
Article 3	Unchanged
Inter transmission system operator compensation mechanism	
1. Transmission system operators shall receive compensation for costs incurred as a result of hosting transit flows of electricity on their network.	1. Transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their network.
2. The compensation referred to in paragraph 1 shall be paid by the operators of national transmission systems from which transit flows originate and/or the systems where those flows end.	2. The compensation referred to in paragraph 1 shall be paid by the operators of national transmission systems from which cross-border flows originate and the systems where those flows end.
3. Compensation payments shall be made on a regular basis with regard to a given period of time in the past. Ex-post adjustments of compensation paid shall be made where necessary to reflect actual costs incurred.	3. Compensation payments shall be made on a regular basis with regard to a given period of time in the past. Ex-post adjustments of compensation paid shall be made where necessary to reflect actual costs incurred and recognised.
The first period of time with regard to which compensation payments shall be made shall be determined in the guidelines referred to in Article 7.	Unchanged
4. Acting in accordance with the procedure referred to in Article the Commission shall decide on the amounts of compensation payments payable.	4. Acting in accordance with the procedure referred to in Article 12(4), the Commission shall decide on the amounts of compensation payments payable.
5. The amounts of transit flows hosted and the amounts of flows originating and/or ending in national transmission systems shall be determined on the basis of the physical flows of electricity actually measured in a given period of time.	5. The amounts of cross-border flows hosted and the amounts of cross-border flows designated as originating and/or ending in national transmission systems shall be determined on the basis of the physical flows of electricity actually measured in a given period of time.
6. The costs incurred as a result of hosting transit flows shall be established on the basis of the forward looking long-run average incremental costs (reflecting costs and benefits that a network bears from hosting transit flows compared to the costs it would bear in the absence of such flows).	6. The costs incurred as a result of hosting cross-border flows shall be established on the basis of the forward looking long-run average incremental costs, taking into account losses, investment in new infrastructure and an appropriate proportion of the cost of existing infrastructure, as far as existing infrastructure was built to transmit cross-border flows. When establishing the costs incurred, standard-costing methodologies shall be used. Benefits that a network incurs as a result of hosting cross-border flows shall be taken into account.

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Article 4 **Charges for access to networks**	Unchanged
1. Charges applied by national network-operators for access to national networks shall be reflect actual costs incurred, and shall be transparent, approximated to those of an efficient network operator and applied in a non-discriminatory manner. They shall not be distance-related.	1. Charges applied by network-operators for access to national networks shall be transparent and reflect actual costs incurred in so far as they correspond to those of an efficient and structurally comparable network operator and applied in a non-discriminatory manner. They shall not be distance-related.
2. Generators and consumers (load) may be charged for access to national networks. The proportion of the total amount of the network charges borne by generators shall be lower than the proportion borne by consumers. Where appropriate, the level of the tariffs applied to generators and/or consumers shall provide locational signals, and take into account the amount of network losses and congestion caused.	Unchanged
3. Payments and receipts resulting from the inter-transmission system operator compensation mechanism shall be taken into account when setting the charges for network access. Actual payments made and received as well as payments expected for future periods of time, estimated on the basis of past periods, shall be taken into account.	
4. Subject to paragraph 2, charges for access to national networks applied to generators and consumers shall be applied independently of the country of destination and respectively origin of the electricity, as specified in the underlying commercial arrangement. Exporters and importers shall not be charged any specific charge in addition to the general charge for access to national networks.	4. Providing that appropriate and efficient locational signals are in place, in accordance with paragraph 2, charges for access to national networks applied to generators and consumers shall be applied independently of the country of destination and respectively origin of the electricity, as specified in the underlying commercial arrangement. This shall be without prejudice to charges on exports and imports resulting from congestion management referred to in Article 6.
5. There shall be no specific network charge on individual transactions for transits of electricity covered by the inter-transmission system operator compensation mechanism.	5. There shall be no specific network charge on individual transactions for transits of electricity.
Article 5 **Provision of information on interconnection capacities**	Unchanged
1. Coordination and information exchange mechanisms shall be put in place by transmission system operators to ensure the security of the networks in the context of congestion management.	1. Transmission system operators shall put in place coordination and information exchange mechanisms to ensure the security of the networks in the context of congestion management.
2. The safety, operational and planning standards used by transmission system operators shall be made public. This publication shall include a general scheme for the calculation of the total transfer capacity and the transmission reliability margin based upon the electrical and physical features of the network. Such schemes shall be subject to the approval of the national national regulatory authorit	2. The safety, operational and planning standards used by transmission system operators shall be made public. This publication shall include a general scheme for the calculation of the total transfer capacity and the transmission reliability margin based upon the electrical and physical features of the network. Such schemes shall be subject to the approval of the national regulatory authorities, referred to in Article 22 of Directive 96/92/EC.

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3. Transmission system operators shall publish estimates of available transfer capacity for each day, indicating any available transfer capacity already reserved. These publications shall be made at specified time intervals before the day of transport and shall include, in any case, week-ahead and month-ahead estimates, The data published shall include a quantitative indication of the expected reliability of the available capacity.	3. Transmission system operators shall publish estimates of available transfer capacity for each day, indicating any available transfer capacity already reserved. These publications shall be made at specified time intervals before the day of transport and shall include, in any case, week-ahead and month-ahead estimates, as well as a quantitative indication of the expected reliability of the available capacity.
Article 6	Unchanged
General principles congestion management	**General principles of congestion management**
1. Network congestion problems shall be addressed with non-discriminatory market-based solutions which give efficient economic signals to the market participants and transmission system operators involved.	Unchanged
2. Transaction curtailment procedures shall only be used in emergency situations where the transmission system operator must act in an expeditious manner and redispatching or countertrading is not possible.	2. Transaction curtailment procedures shall only be used in emergency situations where the transmission system operator must act in an expeditious manner and redispatching or countertrading is not possible. Any such procedure shall be applied in a non-discriminatory manner.
market participants who have been allocated capacity shall be compensated for any curtailment of this capacity.	Except in cases of 'force-majeur', market participants who have been allocated capacity shall be compensated for any curtailment.
3. The maximum capacity of the interconnections shall be made available to market participants, complying with safety standards of secure network operation.	Unchanged
4. Any allocated capacity that will not be used shall be reattributed to the market,	4. Market participants shall inform the transmission system operators concerned a reasonable time ahead of the relevant operational period whether they intend to use allocated capacity. Any allocated capacity that will not be used shall be reattributed to the market, in an open, transparent and non-discriminatory manner.
5. Transmission system operators shall, as far as technically possible, net the capacity requirements of any power flows in opposite direction over the congested interconnection line in order to use this line to its maximum capacity. In any event, transactions that relieve the congestion shall never be denied.	5. Transmission system operators shall, as far as technically possible, net the capacity requirements of any power flows in opposite direction over the congested interconnection line in order to use this line to its maximum capacity. Having full regard to network security, transactions that relieve the congestion shall never be denied.
6. Any rents revenues resulting from the allocation of interconnection capacities shall be used for one or more of the following purposes:	6. Any revenues resulting from the allocation of interconnection capacities which exceed a reasonable return on investment shall be used for one or more of the following purposes:
(a) guaranteeing the actual availability of the allocated capacity;	Unchanged

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(b) network investments maintaining or increasing interconnection capacities;	
(c) reduction of network charges.	
These rents may be put into a fund that is managed by transmission system operators. They shall not constitute a source of extra profit for the transmission system operators.	Deleted
	7. The national regulatory authorities referred to in Article 22 of Directive 96/92/EC, of those Member States linked by any interconnector may, on a case by case basis and in common, decide that an interconnector shall be subject to a time-limited exemption from paragraph 6. The exemption shall be renewable. An interconnector exempt from the provisions of paragraph 6 shall remain subject to the provisions of Article 22 Directive 96/92/EC and the Competition Rules of the EC Treaty.
	8. In order to be eligible for an exemption referred to in paragraph 7, an interconnector must fulfil the following conditions: (a) it is owned by a natural or legal person which is separate at least in terms or its legal form from the transmission system operators whose systems that interconnector links; (b) charges are levied on specific users of the interconnector; (c) at no time since the implementation of Directive 96/92/EC, any part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector; An exemption shall be excluded where Community or national legislation prohibits parties, other than the two transmission and/or distribution system operators concerned, from constructing a new interconnector between the two transmission or distribution systems concerned. An exemption shall normally only apply to direct current interconnectors.
	9. The decision and the conditions relating to the award of an exemption shall be published and notified without delay to the Commission, together with all the relevant information with respect to the decision. This information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well founded decision. Within four weeks of receipt of this notification, the Commission may request that the national regulatory authority concerned amend or withdraw the decision to grant an exemption.

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	If the national regulatory authorities concerned do not comply with this request within a period of four weeks, the Commission shall expeditiously take a final decision in accordance with procedure referred to in Article 12(2) of this Regulation. The Commission shall preserve the confidentiality of commercially sensitive information.
Article 7 **Guidelines**	Unchanged
1. Where appropriate, the Commission shall, acting in accordance with the procedure referred to in Article 12(2), adopt and amend guidelines on the following issues with regard to the inter-transmission system operator compensation mechanism, in accordance with the principles set out in Article 3:	1. Where appropriate, the Commission shall, acting in accordance with the procedure referred to in Article 12(2), adopt and amend guidelines on the following issues relating to the inter-transmission system operator compensation mechanism, in accordance with the principles set out in Article 3:
(a) details of the determination of the transmission system operators liable to pay compensations for transit flows, in accordance with Article 3(2);	(a) details of the determination of the transmission system operators liable to pay compensations for cross-border flows, in accordance with Article 3(2);
(b) details of the payment procedure to be followed, including the determination of the first period of time for which compensations are to be paid, in accordance with the second subparagraph of Article 3(3);	Unchanged
(c) details of methodologies to determine the amount of transits hosted and exports/imports of electricity made in accordance with Article 3(5);	(c) details of methodologies to determine the quantity of cross-border flows hosted and the designation of the amounts of such flows as originating and/or ending in national transmission systems of individual Member States, in accordance with Article 3(5);
(d) details of the methodology to determine the costs incurred as a result of hosting transits of electricity, in accordance with Article 3(6);	(d) details of the methodology to determine the costs incurred as a result of hosting cross-border flows, in accordance with Article 3(6);
	(e) details of the treatment in the context of the inter-TSO compensation mechanism of electricity flows originating or ending in countries outside the EEA;
(e) the participation of national systems which are interconnected through direct current lines, in accordance with Article 3.	(f) the participation of national systems which are interconnected through direct current lines, in accordance with Article 3.
2. The guidelines shall also determine details of harmonisation of the charges applied to generators and consumers (load) under national tariff systems, in accordance with the principles set out in Article 4(2).	2. The guidelines shall also determine the appropriate rules leading to a progressive harmonisation of the charges applied to generators and consumers (load) under national tariff systems, including the reflection of the inter-TSO compensation mechanism in national network charges, in accordance with the principles set out in Article 4.

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3. Where appropriate, the Commission shall, acting in accordance with the procedure referred to in Article 12(2), amend the guidelines on the management and allocation of available transfer capacity of interconnections between national systems set out in the Annex, in accordance with the principles set out in Articles 5 and 6. Where appropriate, in the course of such amendments common rules on minimum safety and operational standards for the use and operation of the network, as referred to in Article 5(2) shall be set.	Unchanged
Article 8 **National regulatory authorities**	
National regulatory authorities and methodologies for congestion management are set and applied in accordance with this Regulation and the guidelines adopted pursuant to Article 7.	National regulatory authorities, referred to in Article 22 of Directive 96/92/EC [1], shall have the responsibility that tariffs for the access to the network and methodologies for congestion management are set and applied in accordance with this Regulation and the guidelines adopted pursuant to Article 7.
	Unchanged
Article 9 **Provision of information and confidentiality**	
1. Member States and national regulatory authorities, shall, on request, provide to the Commission all information necessary for the purpose of Articles 3(4) and 7.	1. Member States and national regulatory authorities, referred to in Article 22 of Directive 96/92/EC [1], shall, on request, provide to the Commission all information necessary for the purpose of Articles 3(4) and 7.
In particular, for the purpose of Article 3(4) national regulatory authorities shall provide on a regular basis costs actually incurred by national associated with hosting transit flows as well as the amount of exports and imports made in a given period. They shall also provide the relevant data and information used for the calculation of those figures.	In particular, for the purpose of Article 3(4) and 3(6), national regulatory authorities shall provide on a regular basis costs actually incurred by national data and all relevant information relating to the physical flows in transmission system operators' networks and the cost of the network.
2. Member States shall ensure that national regulatory authorities and administrations are able and entitled to provide the information required pursuant to paragraph 1.	Unchanged
3. The Commission may also request all information necessary for the purpose of Article 3(4) and 7 directly from undertakings and associations of undertakings.	3. The Commission may also request all information necessary for the purpose of Article 3(4) and 7 directly from undertakings concerned and associations of undertakings.
When sending a request for information to an undertaking or an association of undertakings, the Commission shall at the same time forward a copy of the request to the regulatory authorit, established pursuant to Article 22(1) of Directive 96/92/EC, of the Member State in whose territory the seat of the undertaking or the association of undertakings is situated.	When sending a request for information to an undertaking or an association of undertakings, the Commission shall at the same time forward a copy of the request to the national regulatory authorities, established pursuant to Article 22(1) of Directive 96/92/EC, of the Member State in whose territory the seat of the undertaking or the association of undertakings is situated.

[1] Directive as amended by Directive ...

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4. In its request for information, the Commission shall state the legal basis of the request, the time-limit within which the information is to be provided, the purpose of the request, and also the penalties provided for in Article 11(2) for supplying incorrect, incomplete and misleading information.	4. In its request for information, the Commission shall state the legal basis of the request, the time-limit within which the information is to be provided, the purpose of the request, and also the penalties provided for in Article 11(2) for supplying incorrect, incomplete and misleading information. The Commission shall fix a reasonable time limit taking into account the complexity of the information required and the urgency with which the information is needed.
5. The owners of the undertakings or their representatives and, in the case of legal persons, companies of firms, or of associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients, in which case the client shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.	Unchanged
6. Where an undertaking or association of undertakings does not provide the information requested within the time-limit fixed by the Commission or supplies incomplete information, the Commission shall by decision require the information to be provided. The decision shall specify what information is required and fix an appropriate time-limit within which it is to be supplied. It shall indicate the penalties provided for in Article 11(2). It shall also indicate the right to have the decision reviewed by the Court of Justice of the European Communities.	
The Commission shall at the same time send a copy of its decision to the regulatory authorit referred to in in the second subparagraph of paragraph 3 the Member State within the territory of which the residence of the person or the seat of the undertaking or the association of undertakings is situated.	The Commission shall at the same time send a copy of its decision to the national regulatory authorities referred to in Article 22(1) of Directive 96/92/EC of the Member State within the territory of which the residence of the person or the seat of the undertaking or the association of undertakings is situated.
7. Information collected pursuant to this Regulation shall be used only for the purposes of Articles 3(4) and 7. The Commission shall not disclose information acquired pursuant to this Regulation of the kind covered by the obligation of professional secrecy.	Unchanged
Article 10 **Right of Member States to provide for more detailed measures**	
This Regulation without prejudice to the rights of Member States to maintain or introduce measures that contain more detailed provisions than those set out in this Regulation and the guidelines referred to in Article 7.	This Regulation shall be without prejudice to the rights of Member States to maintain or introduce measures that contain more detailed provisions than those set out in this Regulation and the guidelines referred to in Article 7.

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 11	Unchanged
Penalties	
1. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation 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 [indicate date] at the latest and shall notify it without delay of any subsequent amendment affecting them.	
2. The Commission may by decision impose on undertakings or associations of undertakings fines not exceeding 1 % of the total turnover in the preceding business year where, intentionally or negligently, they supply incorrect, incomplete or misleading information in response to a request made pursuant to Article 9(3) or fail to supply information within the time-limit fixed by a decision adopted pursuant to the first subparagraph of Article 9(6).	
In setting the amount of a fine, regard shall be had both to the gravity and to the duration of the infringement.	
3. Penalties provided for pursuant to paragraph 1 and decisions taken pursuant to paragraph 2 shall not be of criminal law nature.	
Article 12	
Regulatory Committee	**Committee**
1. The Commission shall be assisted by a Committee composed of the representatives of the Member States and chaired by the representative of the Commission.	Unchanged
2. Where reference is made to this paragraph, the regulatory procedure laid down in Articles 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.	2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be two months.	3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be set at three months.
	4. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
Article 13	*Article 13*
Advisory committee	**Commission report**
1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.	The Commission shall monitor the implementation of this Regulation. It shall submit to the European Parliament and the Council no more than three years after the entry into force of this Regulation a report on the experience gained in its application. In particular the report shall examine to what extent the Regulation has been successful in ensuring non-discriminatory and cost-reflective network access conditions for cross-border exchanges of electricity in order to contribute to customer choice in a well-functioning internal market and to long-term security of supply. If necessary, the report shall be accompanied by appropriate proposals and/or recommendations.
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 and Article 8 thereof.	

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 14 **Entry into force**	Unchanged
This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.	
It shall apply from [indicate date].	
This Regulation shall be binding in its entirety and directly applicable in all Member States.	

ANNEX

GUIDELINES ON THE MANAGEMENT AND ALLOCATION OF AVAILABLE TRANSFER CAPACITY OF INTERCONNECTIONS BETWEEN NATIONAL SYSTEMS

General	Unchanged
1. Congestion management method(s) implemented by Member States should deal with short-run congestion in an economically efficient manner whilst simultaneously providing signals or incentives for efficient network and generation investment in the right locations.	
2. In order to minimise the negative impact of congestion on trade, the current network should be used at the maximum capacity that complies with the safety standards of secure network operation.	Deleted
3. The TSOs should provide non-discriminatory and transparent standards, which describe which congestion management methods they will apply under which circumstances. These standards, together with the security standards, should be described in open and publicly available documents.	2. The TSOs should provide non-discriminatory and transparent standards, which describe which congestion management methods they will apply under which circumstances. These standards, together with the security standards, should be described in open and publicly available documents.
4. Different treatment of the different types of cross-border transactions, whether they are physical bilateral contracts or bids into foreign organised markets, should be kept to a minimum when designing the rules of specific methods for congestion management. The method for allocating scarce transmission capacity must be transparent. Any differences in how transactions are treated must be shown not to distort or hinder the development of competition.	3. Different treatment of the different types of cross-border transactions, whether they are physical bilateral contracts or bids into foreign organised markets, should be kept to a minimum when designing the rules of specific methods for congestion management. The method for allocating scarce transmission capacity must be transparent. Any differences in how transactions are treated must be shown not to distort or hinder the development of competition.
5. Price signals that result from congestion management systems should be directional.	4. Price signals that result from congestion management systems should be directional.
6. Every effort should be made to net the capacity requirements of any power flows in opposite direction over the congested tie line in order to use the congested tie line to its maximum capacity. In any adopted congestion management scheme, transactions that relieve the congestion should never be denied.	Deleted

INITIAL PROPOSAL	AMENDED PROPOSAL
7. Any unused capacity must become available to other agents (the use-it-or-lose-it principle). This may be implemented by devising notification procedures.	
8. Any rents resulting from the allocation of interconnection capacities may be used for redispatching or counter trading in order to comply with the firmness of the capacity that was allocated to market parties. In principle, any remaining rents should be spent on network investments for relieving the congestion or on reducing the total network tariff. TSOs may manage these funds, but cannot retain them.	
9. TSOs should offer transmission capacity to the market as 'firm' as possible. A reasonable fraction of the capacity may be offered to the market under condition of decreased firmness, but at all times the exact conditions for transport over cross-border lines should be made known to market parties.	5. TSOs should offer transmission capacity to the market as 'firm' as possible. A reasonable fraction of the capacity may be offered to the market under condition of decreased firmness, but at all times the exact conditions for transport over cross-border lines should be made known to market parties.
10. Considering the fact that the European continental network is a highly meshed network and that the use of interconnection lines has an effect on the power flows on at least two sides of a national border, national Regulators shall ensure that no congestion management procedure with significant effects on power flows in other networks, be devised unilaterally.	6. Considering the fact that the European continental network is a highly meshed network and that the use of interconnection lines has an effect on the power flows on at least two sides of a national border, national Regulators shall ensure that no congestion management procedure with significant effects on power flows in other networks, be devised unilaterally.
Position of long-term contracts	Unchanged
1. Priority access rights to an interconnection capacity can not be assigned to those contracts which violate Articles 81 and 82 of the EC Treaty.	
2. Existing long-term contracts shall have no pre-emption rights when they come up for renewal.	
Provision of information	
1. TSOs should implement appropriate coordination and information exchange mechanisms to guarantee security of the network.	
2. TSOs should publish all relevant data concerning the cross-border total transfer capacities. In addition to the winter and summer ATC values, estimates of transfer capacity for each day should be published by the TSOs at several time intervals before the day of transport. At least accurate week-ahead estimates should be made available to the market and the TSOs should also endeavour to provide month-ahead information. A description of the firmness of the data should be included.	

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3. The TSOs should publish a general scheme for calculation of the total transfer capacity and the transmission reliability margin based upon the electrical and physical realities of the network. Such a scheme should be subject to approval by the regulators of the involved Member States concerned. The safety standards and the operational and planning standards should form an integral part of the information that TSOs should publish in open and public documents.	
Preferred methods for congestion management	**Principles governing methods for congestion management**
1. Network congestion problems should in principle be addressed with market-based solutions. More specifically, congestion management solutions are preferred which give appropriate price signals to the market parties and the TSOs involved.	Deleted
2. Network congestion problems should preferentially be solved with non-transaction based methods, i.e. methods that do not involve a selection between the contracts of individual market parties.	1. Network congestion problems should preferentially be solved with non-transaction based methods, i.e. methods that do not involve a selection between the contracts of individual market parties.
3. The system of market splitting, as used in the Nordpool area, is the congestion management procedure that, in principle, best meets this requirement.	2. The system of market splitting, as used in the Nordpool area, is the congestion management procedure that, in principle, best meets this requirement.
4. In the short term, however, methods for congestion management in Continental Europe that may be used are implicit and explicit auctions and cross-border coordinated redispatching.	3. In the short term, however, methods for congestion management in Continental Europe that may be used are implicit and explicit auctions and cross-border coordinated redispatching.
5. Cross-border coordinated redispatching or counter trading may be used jointly by the concerned TSOs. The costs that TSOs incur in counter-trading and redispatching must, however, be at an efficient level.	4. Cross-border coordinated redispatching or counter trading may be used jointly by the concerned TSOs. The costs that TSOs incur in counter-trading and redispatching must, however, be at an efficient level.
6. Transaction curtailment, following pre-established priority rules, should be left only for emergency situations where the TSOs must act in an expeditious manner and redispatching is not possible.	Deleted
7. The possible merits of a combination of market splitting for solving 'permanent' congestion and counter trading for solving temporary congestion should be immediately explored as a more permanent approach to congestion management.	5. The possible merits of a combination of market splitting for solving 'permanent' congestion and counter trading for solving temporary congestion should be immediately explored as a more permanent approach to congestion management.
Guidelines for explicit auctions	Unchanged
1. The auction system must be designed in such a way that all available capacity is being offered to the market. This may be done by organising a composite auction in which capacities are auctioned for differing duration and with different characteristics (e.g. with respect to the expected reliability of the available capacity in question).	

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2. Total interconnection capacity should be offered in a series of auctions, which, for instance, might be held on a yearly, monthly, weekly, daily and intra-daily basis, according to the needs of the markets involved. Each of these auctions should allocate a prescribed fraction of the available transfer capacity plus any remaining capacity that was not allocated in previous auctions.	
3. The explicit auction procedures should be prepared in close collaboration between the national regulatory authority and the TSO concerned and designed in such a way as to allow bidders to participate also in the daily sessions of any organised market (i.e. power exchange) in the countries involved.	
4. The power flows in both directions over congested tie lines should in principle be netted in order to maximise the transport capacity in the direction of the congestion. However, the procedure for netting of flows should comply with safe operation of the power system.	
5. In order to offer as much capacity to the market as possible, the financial risks related to the netting of flows, should be attributed to those parties causing those risks to materialise.	
6. Any auction procedure adopted should be capable of sending directional price signals to market participants. Transports in a direction opposite the dominant power flow relieve the congestion and should therefore result in additional transport capacity over the congested tie line.	
7. In order not to risk creating or aggravating problems related to any dominant position of market player(s), capping of the amount of capacity that can be bought/possessed/used by any single market player in an auction should be seriously considered by the competent regulatory authorities in the design of an auction mechanisms.	
8. To promote the creation of liquid electricity markets, capacity bought at an auction should be freely tradeable before the moment of notification. until it is notified to the TSO that the capacity bought will be used.	8. To promote the creation of liquid electricity markets, capacity bought at an auction should be freely tradeable until it is notified to the TSO that the capacity bought will be used.

Amended proposal for a Council Regulation establishing additional customs duties on imports of certain products originating in the United States of America

(2002/C 227 E/21)

COM(2002) 316 final — 2002/0095(ACC)

(Submitted by the Commission on 7 June 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The United States of America has imposed a safeguard measure in the form of tariff increases or tariff quotas on imports of steel products from, inter alia, the European Community as from 20 March 2002.

(2) This measure is causing considerable injury to the Community producers concerned and disturbs the balance of concessions and obligations resulting from the WTO Agreement; the measure will significantly limit Community exports of the steel products concerned to the United States of America affecting Community exports worth at least 2 407 million euro per year.

(3) The consultations which were held between the United States of America and the Community as envisaged in the WTO Agreement did not reach any satisfactory solution.

(4) The WTO Agreement gives any affected exporting Member the right to suspend the application of substantially equivalent concessions or other obligations, provided the WTO Council for Trade in Goods does not disapprove.

(5) The imposition of additional customs duties of 100 %, 30 %, 15 %, 13 % and 8 % on selected products originating in the United States of America imported each year into the Community represents the suspension of a substantially equivalent trade concessions, in that the duties collected will not exceed the amount of duties to be collected on Community exports of the products covered by the US safeguard measure, i.e. 626 million euro per year.

(6) The suspension of substantially equivalent concessions should be applied by priority with respect to the steel sector, and to other sectors where appropriate; in particular, the manufactured products originating in the United States of America which have been selected are those on which the Community is not substantially dependent for its supply, but on which the imposition of additional customs duties will have an impact substantially equivalent to the impact on Community exports of the safeguard measure imposed by the United States of America.

(7) For some products designated as 'certain flat steel products' the safeguard measure adopted by the United States of America has not been taken as a result of an absolute increase in imports.

(8) As allowed by the WTO Agreement, a part of the Community's concessions corresponding to that part of the safeguard measure that was not taken as a result of an absolute increase of imports and representing an amount of applicable duties of 379 million euro should therefore be suspended on products of particular relevance to the United States of America from 18 June 2002 until the safeguard measure imposed by the United States of America is lifted.

(9) However, the primary objective of the Community in the short term remains to reach an agreement with the United States of America on both compensation and product exclusions from the safeguard action. If the United States of America were to decide economically meaningful product exclusions and present an acceptable offer on trade compensation, the application of additional duty in the short term could be reconsidered.

(10) This Regulation is without prejudice to the question of the compatibility of the safeguard measure applied by the United States of America with the WTO Agreement; in any event, the additional duty should apply in full from 20 March 2005 until the safeguard measure imposed by the United States of America is lifted; it should however apply immediately after a decision by the WTO Dispute Settlement Body that the safeguard measure imposed by the United States of America is incompatible with the WTO Agreement;

(11) Products for which an import licence with an exemption from or a reduction of duty has been issued prior to the date entry into force of this Regulation should not be subject to these additional customs duties.

(12) Products for which it can be proved that they have been exported from the United States of America to the Community prior to the date of application of the additional customs duties should not be subject to these additional customs duties.

(13) Products affected by the suspension of concessions should be placed under the customs procedure 'processing under customs control' only pursuant to an examination in the Committee of the Customs Code.

(14) The Community provided written notice of the suspension to the Council for Trade in Goods on 14 May 2002; the Council for Trade in Goods has not disagreed with such suspension;

HAS ADOPTED THIS REGULATION:

Article 1

The tariff concessions granted by the Community to the United States of America in respect of the products listed in Annex I and II to this Regulation are hereby suspended from 18 June 2002.

Article 2

1. The customs duties applicable to the products originating in the United States of America listed in Annex I and II shall be increased by an additional ad valorem duty of 100 %, 30 %, 15 %, 13 % or 8 %, as indicated in the Annexes.

2. The application of the additional duties listed in Annex I shall be decided in accordance with the procedure and the modalities set out in Article 3 paragraph 2.

3. The additional duties listed in Annex II shall be applied in accordance with Article 4.

Article 3

1. Prior to 19 July 2002, the Commission shall present a report to the Council on the state of discussions with the United States of America, in particular on the issue of products exclusions and on trade compensation, together with any necessary proposal for a Council decision.

2. The Council, acting in each case by qualified majority on a proposal from the Commission, shall decide on the application of the additional duties listed in Annex I, including on the date of application and definitive content of Annex I

(a) not later than 12 October 2002, if, prior to 19 July 2002, the United States of America has decided on economically meaningful product exclusions and has started its domestic process to present an acceptable offer on trade compensation;

(b) not later than 1 August 2002, if the criteria under (a) are not fulfilled.

3. The additional duties listed in Annex I shall apply until the additional duties in Annex II apply.

Article 4

The additional duties listed in Annex II shall apply

(a) from 20 March 2005, or

(b) from the fifth day following the date of a decision by the WTO Dispute Settlement Body that the safeguard measure imposed by the United States of America is incompatible with the WTO Agreement, if that is earlier. In this event, the Commission shall publish in the *Official Journal of the European Communities* a notice indicating the date of the decision of the WTO Dispute Settlement Body.

Article 5

This Regulation shall apply until the safeguard measure of the United States of America is lifted. The Commission shall publish in the *Official Journal of the European Communities* a notice indicating the date on which the safeguard measure imposed by the United States of America is lifted.

Article 6

1. Products listed in Annex I for which an import licence with an exemption from or a reduction of duty has been issued prior to the date of entry into force of this Regulation shall not be subject to the additional duty laid down in Annex I.

2. Products listed in Annex I for which it can be proved that they are already on their way to the Community on the date of application of this Annex, whose destination cannot be changed, shall not be subject to the additional duty laid down therein.

Products listed in Annex II and not covered by Annex I for which it can be proved that they are already on their way to the Community on the date of application of Annex II, whose destination cannot be changed, shall not be subject to the additional duty laid down in Annex II.

3. Products listed in Annex I and II may be placed under the customs procedure 'processing under customs control' in accordance with Article 551(1) first subparagraph of the Commission Regulation (EEC) No 2454/93 [1] only where the examination of the economic conditions has taken place in the Committee of the Customs Code unless the products and operations are mentioned in Annex 76, Part A of that Regulation.

Article 7

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

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

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[1] OJ L 302, 19.10.1992, p. 1.

ANNEX I

The products covered by this Annex are determined by the product description of the Combined Nomenclature [1] for the CN codes listed below. The product descriptions in this Annex are only for information.

Description and CN codes	Additional duty
Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared falling under CN code:	
0712 20 00	100 %
Apples, pears and quinces, fresh falling under CN code:	
0808 10 90	100 %
Rice falling under CN codes:	
1006 30 98	100 %
1006 40 00	100 %
Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter falling under CN codes:	
2009 11 99	100 %
2009 12 00	100 %
2009 19 98	100 %
T-shirts, singlets and other vests, knitted or crocheted falling under CN codes:	
6109 10 00	100 %
6109 90 10	100 %
6109 90 30	100 %
6109 90 90	100 %
Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear) falling under CN codes:	
6203 42 90	100 %
6203 43 11	100 %
6203 43 19	100 %
Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear) falling under CN code:	
6204 62 90	100 %
Men's or boys' shirts falling under CN code:	
6205 30 00	100 %
Blankets and travelling rugs falling under CN code:	
6301 30 10	100 %
Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated falling under CN code:	
7210 12 11	100 %

[1] Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 279, 23.10.2001, p. 1).

Description and CN codes	Additional duty
Flat-rolled products of stainless steel, of a width of less than 600 mm falling under CN codes:	
7220 20 31	100 %
7220 90 11	100 %
7220 90 39	100 %
7220 90 90	100 %
Other bars and rods of stainless steel; angles, shapes and sections of stainless steel falling under CN codes:	
7222 20 81	100 %
7222 20 89	100 %
Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel falling under CN code:	
7308 30 00	100 %
Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment falling under CN code:	
7310 29 90	100 %
Other cast articles of iron or steel falling under CN code:	
7325 99 90	100 %
Other articles of iron or steel falling under CN code:	
7326 20 90	100 %
Printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing falling under CN codes:	
8443 11 00	100 %
8443 19 90	100 %
Spectacles, goggles and the like, corrective, protective or other falling under CN codes:	
9004 10 91	100 %
9004 10 99	100 %
Articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment falling under CN code:	
9504 10 00	100 %

ANNEX II

The products covered by this Annex are determined by the product description of the Combined Nomenclature [1] for the CN codes listed below. The product descriptions in this Annex are only for information.

Description and CN codes	Additional duty
Vegetables (uncooked or cooked by steaming or boiling in water), frozen falling under CN code:	
0710 40 00	13 %
Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared falling under CN codes:	
0712 20 00	15 %
0712 90 90	13 %
Dried leguminous vegetables, shelled, whether or not skinned or split falling under CN codes:	
0713 33 90	13 %
0713 40 00	13 %
Other nuts, fresh or dried, whether or not shelled or peeled falling under CN code:	
0802 32 00	15 %
Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried falling under CN code:	
0804 50 00	15 %
Citrus fruit, fresh or dried falling under CN code:	
0805 40 00	15 %
Grapes, fresh or dried falling under CN code:	
0806 10 10	15 %
Apples, pears and quinces, fresh falling under CN codes:	
0808 10 90	15 %
0808 20 50	15 %
Apricots, cherries, peaches (including nectarines), plums and sloes, fresh falling under CN code:	
0809 20 95	15 %
Rice falling under CN codes:	
1006 20 98	8 %
1006 30 98	8 %
1006 40 00	8 %
Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006 falling under CN code:	
2005 80 00	15 %
Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter falling under CN codes:	
2009 11 99	15 %
2009 12 00	15 %
2009 19 98	15 %
2009 21 00	15 %
2009 29 99	15 %

[1] Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 279, 23.10.2001, p. 1).

Description and CN codes	Additional duty
Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes falling under CN code:	
2402 20 90	30 %
Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non-perforated punch cards and punch tape paper, in rolls or rectangular (including square) sheets, of any size, other than paper of heading 4801 or 4803; hand-made paper and paperboard falling under CN code:	
4802 56 10	15 %
Toilet or facial tissue stock, towel or napkin stock and similar paper of a kind used for household or sanitary purposes, cellulose wadding and webs of cellulose fibres, whether or not creped, crinkled, embossed, perforated, surface-coloured, surface-decorated or printed, in rolls or sheets falling under CN code:	
4803 00 31	15 %
Toilet paper and similar paper, cellulose wadding or webs of cellulose fibres, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, serviettes, napkins for babies, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibres falling under CN codes:	
4818 20 10	15 %
4818 30 00	15 %
4818 50 00	15 %
Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like falling under CN codes:	
4819 10 00	15 %
4819 20 10	15 %
4819 20 90	15 %
4819 30 00	15 %
4819 40 00	15 %
4819 50 00	15 %
4819 60 00	15 %
Registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise-books, blotting-pads, binders (loose-leaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers, of paper or paperboard falling under CN codes:	
4820 10 30	15 %
4820 10 50	15 %
4820 10 90	15 %
4820 30 00	15 %
4820 50 00	15 %
4820 90 00	15 %
Men's or boys' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, other than those of heading 6103 falling under CN codes:	
6101 30 10	30 %
6101 30 90	30 %

Description and CN codes	Additional duty
Women's or girls' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, other than those of heading 6104 falling under CN codes:	
6102 30 10	30 %
6102 30 90	30 %
Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted falling under CN codes:	
6103 42 10	30 %
6103 42 90	30 %
6103 43 10	30 %
6103 43 90	30 %
Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted falling under CN codes:	
6104 43 00	30 %
6104 62 10	30 %
6104 62 90	30 %
6104 63 10	30 %
6104 63 90	30 %
Men's or boys' shirts, knitted or crocheted falling under CN codes:	
6105 10 00	30 %
6105 20 10	30 %
6105 20 90	30 %
Women's or girls' blouses, shirts and shirt-blouses, knitted or crocheted falling under CN code:	
6106 10 00	30 %
Men's or boys' underpants, briefs, nightshirts, pyjamas, bathrobes, dressing gowns and similar articles, knitted or crocheted falling under CN code:	
6107 11 00	30 %
Women's or girls' slips, petticoats, briefs, panties, nightdresses, pyjamas, négligés, bathrobes, dressing gowns and similar articles, knitted or crocheted falling under CN code:	
6108 22 00	30 %
T-shirts, singlets and other vests, knitted or crocheted falling under CN codes:	
6109 10 00	30 %
6109 90 10	30 %
6109 90 30	30 %
6109 90 90	30 %
Jerseys, pullovers, cardigans, waistcoats and similar articles, knitted or crocheted falling under CN codes:	
6110 11 10	30 %
6110 11 30	30 %
6110 11 90	30 %
6110 12 10	30 %
6110 12 90	30 %
6110 19 10	30 %
6110 19 90	30 %
6110 20 10	30 %

Description and CN codes	Additional duty
6110 20 91	30 %
6110 20 99	30 %
6110 30 10	30 %
6110 30 91	30 %
6110 30 99	30 %
6110 90 10	30 %
6110 90 90	30 %
Track suits, ski suits and swimwear, knitted or crocheted falling under CN codes:	
6112 41 10	30 %
6112 41 90	30 %
Garments, made up of knitted or crocheted fabrics of headings 5903, 5906, or 5907 falling under CN codes:	
6113 00 10	30 %
6113 00 90	30 %
Other garments, knitted or crocheted falling under CN codes:	
6114 20 00	30 %
6114 30 00	30 %
6114 90 00	30 %
Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins and footwear without applied soles, knitted or crocheted falling under CN codes:	
6115 11 00	30 %
6115 12 00	30 %
6115 19 00	30 %
6115 92 00	30 %
6115 93 10	30 %
6115 93 30	30 %
6115 93 91	30 %
6115 93 99	30 %
6115 99 00	30 %
Gloves, mittens and mitts, knitted or crocheted falling under CN codes:	
6116 10 20	30 %
6116 93 00	30 %
Men's or boys' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, other than those of heading 6203 falling under CN codes:	
6201 12 10	30 %
6201 12 90	30 %
6201 13 10	30 %
6201 13 90	30 %
6201 92 00	30 %
6201 93 00	30 %
Women's or girls' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, other than those of heading 6204 falling under CN codes:	
6202 11 00	30 %
6202 93 00	30 %

Description and CN codes	Additional duty
Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear) falling under CN codes:	
6203 11 00	30 %
6203 39 19	30 %
6203 39 90	30 %
6203 42 11	30 %
6203 42 31	30 %
6203 42 35	30 %
6203 42 90	30 %
6203 43 11	30 %
6203 43 19	30 %
6203 43 90	30 %
Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear) falling under CN codes:	
6204 29 18	30 %
6204 29 90	30 %
6204 31 00	30 %
6204 33 90	30 %
6204 42 00	30 %
6204 43 00	30 %
6204 44 00	30 %
6204 49 10	30 %
6204 62 11	30 %
6204 62 31	30 %
6204 62 39	30 %
6204 62 90	30 %
6204 63 11	30 %
6204 63 18	30 %
6204 63 90	30 %
6204 69 18	30 %
6204 69 90	30 %
Men's or boys' shirts falling under CN codes:	
6205 20 00	30 %
6205 30 00	30 %
Women's or girls' blouses, shirts and shirt-blouses falling under CN codes:	
6206 30 00	30 %
6206 40 00	30 %
Garments, made up of fabrics of headings 5602, 5603, 5903, 5906 or 5907 falling under CN codes:	
6210 40 00	30 %
6210 50 00	30 %
Track suits, ski suits and swimwear; other garments falling under CN codes:	
6211 32 10	30 %
6211 32 90	30 %
6211 33 10	30 %
6211 33 41	30 %
6211 33 90	30 %
6211 42 10	30 %
6211 42 90	30 %
6211 43 10	30 %
6211 43 41	30 %
6211 43 90	30 %
6211 49 00	30 %

Description and CN codes	Additional duty
Brassières, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted falling under CN codes:	
6212 10 10	30 %
6212 10 90	30 %
6212 20 00	30 %
6212 90 00	30 %
Ties, bow ties and cravats falling under CN code:	
6215 10 00	30 %
Gloves, mittens and mitts falling under CN code:	
6216 00 00	30 %
Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212 falling under CN code:	
6217 10 00	30 %
Blankets and travelling rugs falling under CN codes:	
6301 30 10	30 %
6301 30 90	30 %
6301 40 10	30 %
6301 40 90	30 %
Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods falling under CN code:	
6306 29 00	30 %
Other made up articles, including dress patterns falling under CN codes:	
6307 10 10	30 %
6307 10 90	30 %
6307 90 99	30 %
Other footwear with outer soles and uppers of rubber or plastics falling under CN codes:	
6402 19 00	30 %
6402 99 10	30 %
6402 99 39	30 %
6402 99 93	30 %
6402 99 96	30 %
6402 99 98	30 %
Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather falling under CN codes:	
6403 19 00	30 %
6403 51 11	30 %
6403 51 15	30 %
6403 51 19	30 %
6403 51 95	30 %
6403 51 99	30 %
6403 59 35	30 %
6403 59 39	30 %
6403 59 95	30 %
6403 59 99	30 %
6403 91 11	30 %
6403 91 13	30 %
6403 91 16	30 %

Description and CN codes	Additional duty
6403 91 18	30 %
6403 91 93	30 %
6403 91 98	30 %
6403 99 11	30 %
6403 99 33	30 %
6403 99 36	30 %
6403 99 38	30 %
6403 99 50	30 %
6403 99 91	30 %
6403 99 93	30 %
6403 99 98	30 %
Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials falling under CN codes:	
6404 11 00	30 %
6404 19 10	30 %
6404 19 90	30 %
Other footwear falling under CN codes:	
6405 90 10	30 %
6405 90 90	30 %
Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable in-soles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof falling under CN code:	
6406 99 80	30 %
Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated falling under CN codes:	
7210 12 11	30 %
7210 12 19	30 %
7210 12 90	30 %
7210 30 10	30 %
7210 30 90	30 %
Flat-rolled products of stainless steel, of a width of 600 mm or more falling under CN codes:	
7219 12 10	30 %
7219 12 90	30 %
7219 13 10	30 %
7219 13 90	30 %
7219 32 10	30 %
7219 33 10	30 %
7219 33 90	30 %
7219 34 10	30 %
7219 34 90	30 %
7219 35 90	30 %
7219 90 10	30 %
7219 90 90	30 %
Flat-rolled products of stainless steel, of a width of less than 600 mm falling under CN codes:	
7220 20 31	30 %
7220 90 11	30 %
7220 90 39	30 %
7220 90 90	30 %

Description and CN codes	Additional duty
Other bars and rods of stainless steel; angles, shapes and sections of stainless steel falling under CN codes:	
7222 20 11	30 %
7222 20 19	30 %
7222 20 21	30 %
7222 20 31	30 %
7222 20 39	30 %
7222 20 81	30 %
7222 20 89	30 %
7222 30 98	30 %
7222 40 99	30 %
Wire of stainless steel falling under CN codes:	
7223 00 11	30 %
7223 00 99	30 %
Flat-rolled products of other alloy steel, of a width of less than 600 mm falling under CN codes:	
7226 92 10	30 %
7226 92 90	30 %
7226 99 80	30 %
Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel falling under CN codes:	
7228 30 61	30 %
7228 30 69	30 %
7228 50 61	30 %
7228 50 69	30 %
7228 50 89	30 %
7228 60 89	30 %
Wire of other alloy steel falling under CN code:	
7229 90 90	30 %
Sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements; welded angles, shapes and sections, of iron or steel falling under CN code:	
7301 20 00	30 %
Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel falling under CN codes:	
7304 29 11	30 %
7304 29 19	30 %
7304 31 91	30 %
7304 31 99	30 %
7304 41 90	30 %
7304 49 91	30 %
7304 59 91	30 %
7304 90 90	30 %
Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel falling under CN codes:	
7306 20 00	30 %
7306 30 29	30 %
7306 40 91	30 %
7306 40 99	30 %
Tube or pipe fittings (for example couplings, elbows, sleeves), of iron or steel falling under CN codes:	
7307 11 10	30 %
7307 11 90	30 %
7307 19 10	30 %
7307 19 90	30 %

Description and CN codes	Additional duty
Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel falling under CN codes:	
7308 10 00	30 %
7308 20 00	30 %
7308 30 00	30 %
7308 40 90	30 %
7308 90 51	30 %
7308 90 59	30 %
7308 90 99	30 %
Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel, of a capacity exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment falling under CN codes:	
7309 00 10	30 %
7309 00 30	30 %
7309 00 51	30 %
7309 00 59	30 %
7309 00 90	30 %
Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment falling under CN codes:	
7310 10 00	30 %
7310 29 10	30 %
7310 29 90	30 %
Containers for compressed or liquefied gas, of iron or steel falling under CN codes:	
7311 00 10	30 %
7311 00 99	30 %
Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated falling under CN codes:	
7312 10 51	30 %
7312 10 59	30 %
7312 10 71	30 %
7312 10 99	30 %
7312 90 90	30 %
Cloth (including endless bands), grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel falling under CN codes:	
7314 14 00	30 %
7314 19 00	30 %
7314 42 90	30 %
7314 49 00	30 %
Chain and parts thereof, of iron or steel falling under CN codes:	
7315 11 90	30 %
7315 12 00	30 %
7315 19 00	30 %
7315 89 00	30 %
7315 90 00	30 %

Description and CN codes	Additional duty
Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel falling under CN codes:	
7318 14 99	30 %
7318 16 99	30 %
Springs and leaves for springs, of iron or steel falling under CN code:	
7320 90 90	30 %
Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel falling under CN codes:	
7321 11 90	30 %
7321 13 00	30 %
Radiators for central heating, not electrically heated, and parts thereof, of iron or steel; air heaters and hot air distributors (including distributors which can also distribute fresh or conditioned air), not electrically heated, incorporating a motor-driven fan or blower, and parts thereof, of iron or steel falling under CN code:	
7322 90 90	30 %
Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel falling under CN codes:	
7323 93 10	30 %
7323 93 90	30 %
7323 99 99	30 %
Sanitary ware and parts thereof, of iron or steel falling under CN codes:	
7324 10 90	30 %
7324 90 90	30 %
Other cast articles of iron or steel falling under CN codes:	
7325 10 99	30 %
7325 99 10	30 %
7325 99 90	30 %
Other articles of iron or steel falling under CN codes:	
7326 20 90	30 %
7326 90 10	30 %
7326 90 30	30 %
7326 90 40	30 %
7326 90 50	30 %
7326 90 60	30 %
7326 90 91	30 %
7326 90 93	30 %
7326 90 95	30 %
7326 90 97	30 %
Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437 falling under CN codes:	
8433 11 10	30 %
8433 11 59	30 %
8433 11 90	30 %
8433 19 90	30 %

Description and CN codes	Additional duty
Printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing falling under CN codes:	
8443 11 00	30 %
8443 19 90	30 %
Tools for working in the hand, pneumatic, hydraulic or with self-contained electric or non-electric motor falling under CN code:	
8467 21 99	30 %
Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units) falling under CN codes:	
8705 10 00	30 %
8705 90 90	30 %
Yachts and other vessels for pleasure or sports; rowing boats and canoes falling under CN codes:	
8903 10 10	30 %
8903 10 90	30 %
8903 91 10	30 %
8903 91 91	30 %
8903 91 93	30 %
8903 91 99	30 %
8903 92 10	30 %
8903 92 99	30 %
8903 99 10	30 %
8903 99 91	30 %
8903 99 99	30 %
Frames and mountings for spectacles, goggles or the like, and parts thereof falling under CN code:	
9003 19 30	30 %
Spectacles, goggles and the like, corrective, protective or other falling under CN codes:	
9004 10 91	30 %
9004 10 99	30 %
Photocopying apparatus incorporating an optical system or of the contact type and thermocopying apparatus falling under CN codes:	
9009 11 00	30 %
9009 12 00	30 %
Wrist-watches, pocket-watches and other watches, including stop-watches, other than those of heading 9101 falling under CN code:	
9102 11 00	30 %
Percussion musical instruments (for example, drums, xylophones, cymbals, castanets, maraccas) falling under CN code:	
9206 00 00	30 %
Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof falling under CN codes:	
9401 61 00	30 %
9401 71 00	30 %

Description and CN codes	Additional duty
Other furniture and parts thereof falling under CN codes:	
9403 60 10	30 %
9403 70 90	30 %
Prefabricated buildings falling under CN code:	
9406 00 39	30 %
Articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment falling under CN code:	
9504 10 00	30 %
Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorised, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees) falling under CN code:	
9603 21 00	30 %
Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating stylos; propelling or sliding pencils; pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609 falling under CN code:	
9608 10 10	30 %

Proposal for a Council Regulation amending Council Regulation (EC) No 92/2002 imposing a definitive anti-dumping duty on imports of urea originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania, and the Ukraine

(2002/C 227 E/22)

COM(2002) 294 final

(Submitted by the Commission on 11 June 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/1996 [1] of 22 December 1995 on protection against dumped imports from countries not members of the European Community, and in particular Articles 8 and 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

(1) The Council, by Regulation (EC) No 92/2002 [2], imposed definitive anti-dumping duties on imports of urea originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania, and the Ukraine and exempted a Bulgarian exporting producer from the said duties as an undertaking had been accepted by the Commission from the company concerned.

(2) Joint Stock Company Achema, in connection with the anti-dumping proceeding concerning imports of urea originating, *inter alia*, in Lithuania offered an acceptable undertaking prior to the publication of the definitive findings but at a stage when it was administratively impossible to include its acceptance in the definitive Regulation.

(3) The Commission, by Decision . . ., accepted the undertaking offer by Joint Stock Company Achema. The reasons for accepting this undertaking are set out in this Decision. The Council recognises that the revisions introduced to the undertaking offer to eliminate the injurious effect of dumping and seriously limit any risk of circumvention in the form of cross-compensation with other products.

(4) In view of the acceptance of the undertaking offer it is necessary to amend Council Regulation (EC) 92/2002 accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1(2) of Regulation (EC) No 92/2002, the row concerning Lithuania is replaced as follows:

Country of origin	Produced by	Definitive anti-dumping duty (euro per ton)	TARIC additional code
Lithuania	All companies	10,05	A999

[1] OJ L 56, 6.3.1996, p. 1, as last amended by Council Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 17, 19.1.2002, p. 1.

Article 2

In Council Regulation (EC) No 92/2002, the table in Article 2(1) is replaced by the following:

Country	Company	TARIC additional code
Bulgaria	Chimco AD, Shose az Mezdra, 3037 Vratza	A272
Lithuania	Joint Stock Company Achema, Taurostos 26, 5005 Jonava	A375

Article 3

This Regulation shall enter into force the 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.

Proposal for a Council Regulation establishing concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with Hungary

(2002/C 227 E/23)

COM(2002) 299 final — 2002/0126(ACC)

(Submitted by the Commission on 11 June 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part [1], provides for certain concessions for certain agricultural products originating in Hungary.

(2) The first improvements to the preferential arrangements of the Europe Agreement with Hungary were provided for in the Protocol adjusting trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary of the other part, to take account of the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union and the outcome of the Uruguay Round negotiations on agriculture, including improvements to the existing preferential arrangements, approved by Council Decision 1999/67/EC [2].

(3) Improvements to the preferential arrangements of the Europe Agreement with Hungary were also provided for as a result of a first round of negotiations to liberalise the agricultural trade. The improvements entered into force as from 1 July 2000 in the form of Council Regulation (EC) No 1727/2000 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with Hungary [3]. The second adjustment of the relevant provisions in the Europe Agreement — which will take the form of another Additional Protocol to the Europe Agreement — has not yet entered into force.

(4) A new Additional Protocol to the Europe Agreement on trade liberalisation for agricultural products has been negotiated.

(5) A swift implementation of the adjustments forms an essential part of the results of the negotiations for the conclusion of a new Additional Protocol to the Europe Agreement with Hungary. It is therefore appropriate to provide for the adjustment, as an autonomous and transitional measure, of the agricultural concessions provided for in the Europe Agreement with Hungary.

(6) Regulation (EC) No 1727/2000 should therefore be repealed.

(7) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [4] has codified the management rules for tariff quotas designed to be used following the chronological order of dates of customs declarations. Tariff quotas under this Regulation should therefore be administered in accordance with those rules.

(8) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [5], they should be adopted by use of the management procedure provided for in Article 4 of that Decision,

HAS ADOPTED THIS REGULATION:

Article 1

1. The conditions for import into the Community applicable to certain agricultural products originating in Hungary as set out in Annex A(a) and Annex A(b) to this Regulation shall replace those set out in Annex VIII to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, hereinafter the 'Europe Agreement'.

2. On the entry into force of the Additional Protocol adjusting the Europe Agreement to take into account the outcome of the negotiations between the parties on new mutual agricultural concessions, the concessions provided for in that Protocol shall replace those referred to in Annex A(a) and Annex A(b) to this Regulation.

[1] OJ L 347, 31.12.1993, p. 2.

[2] OJ L 28, 2.2.1999, p. 1.

[3] OJ L 198, 4.8.2000, p. 6.

[4] OJ L 253, 11.10.1993, p. 1. Regulation last amended by Regulation (EC) No 444/2002 (OJ L 68, 12.3.2002, p. 11).

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

3. The Commission shall adopt detailed rules for the application of this Regulation in accordance with the procedure referred to in Article 3(2).

Article 2

1. Tariff quotas with an order number above 09.5100 shall be administered by the Commission in accordance with Articles 308(a), 308(b) and 308(c) of Regulation (EEC) No 2454/93.

2. Quantities of goods subject to tariff quotas and released for free circulation as from 1 July 2002 under the concessions provided for in Annex A(b) of Regulation (EC) No 1727/2000 shall be fully counted against the quantities provided for in Annex A(b) to this Regulation, except for quantities for which import licences have been issued before 1 July 2002.

Article 3

1. The Commission shall be assisted by the Management Committee for Cereals instituted by Article 23 of Council Regulation (EEC) No 1766/92 [1] or, where appropriate, by the committee instituted by the relevant provisions of the other Regulations on the common organisation of agricultural markets.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

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

Article 4

Regulation (EC) No 1727/2000 is hereby repealed.

Article 5

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 from 1 July 2002.

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

[1] OJ L 181, 1.7.1992, p. 21.

ANNEX A(a)

Custom duties on imports applicable in the Community to products originating in Hungary and listed below shall be abolished.

CN code [1]	CN code	CN code	CN code	CN code
0101 10 90	0604 91 41	0712 39 00	0813 20 00	1504 20 10
0101 90 19	0604 91 49	0712 90 05	0813 30 00	1504 30 10
0101 90 30	0604 91 90	0712 90 30	0813 40 10	1508 10 90
0101 90 90	0604 99 90	0712 90 50	0813 40 30	1508 90
0104 10 30	0701 10 00	0712 90 90	0813 40 95	1511 10 90
0104 10 80	0703 10 90	0713 50 00	0813 50	1511 90
0104 20 90	0703 20 00	0713 90	0814 00 00	1512 11 99
0105 11 11	0703 90 00	0714 20	0901 12 00	1512 19 99
0105 11 19	0704 20 00	0714 90 90	0901 90 90	1512 21
0105 11 91	0704 90 90	0802 11 90	0904 12 00	1512 29
0105 11 99	0705 19 00	0802 12 90	0904 20 90	1513 11 10
0105 12 00	0705 21 00	0802 21 00	0905 00 00	1513 11 91
0105 19 20	0705 29 00	0802 22 00	0907 00 00	1513 11 99
0105 19 90	0706 90	0802 31 00	0910 20 90	1513 19
0106 19 10	0707 00 90	0802 32 00	0910 40 13	1513 21
0106 39 10	0708 10 00	0802 40 00	0910 40 19	1513 29
0205 00	0708 90 00	0802 50 00	0910 40 90	1515
0206 80 91	0709 20 00	0802 90 50	1006 10 10	1516 10
0206 90 91	0709 30 00	0802 90 60	1007 00 10	1516 20 91
0207 13 91	0709 40 00	0802 90 85	1106 10 00	1516 20 95
0207 14 91	0709 51 00	0805 10 80	1106 30	1516 20 96
0207 26 91	0709 52 00	0805 50 90	1107 10	1516 20 98
0207 27 91	0709 5	0806 20	1107 20 00	1518 00 31
0207 35 91	0709 60 10	0808 20 90	1108 20 00	1518 00 95
0207 36 89	0709 70 00	0809 40 90	1208 10 00	1522 00 91
0208 10 11	0709 90 10	0810 10 00	1209 10 00	1601 00 10
0208 10 19	0709 90 20	0810 40 30	1209 21 00	1602 20 11
0208 20 00	0709 90 31	0810 40 50	1209 23 80	1602 20 19
0208 30 00	0709 90 40	0810 40 90	1209 29 50	1602 31 11
0208 40	0709 90 50	0810 50 00	1209 29 60	1602 31 19
0208 50 00	0709 90 90	0810 60 00	1209 29 80	1602 31 30
0208 90 10	0710 10 00	0810 90 95	1209 30 00	1602 31 90
0208 90 55	0710 22 00	0811 10 19	1209 91	1602 32 19
0208 90 60	0710 29 00	0811 20 59	1209 99 91	1602 39 21
0208 90 95	0710 30 00	0811 20 90	1209 99 99	1602 39 29
0210 91 00	0710 80 51	0811 90 31	1210 10 00	1602 39 40
0210 92 00	0710 80 59	0811 90 39	1210 20 10	1602 39 80
0210 93 00	0710 80 61	0811 90 50	1210 20 90	1602 41 90
0210 99 10	0710 80 69	0811 90 70	1211 90 30	1602 42 90
0210 99 21	0710 80 70	0811 90 75	1212 10 10	1602 49 90
0210 99 79	0710 80 80	0811 90 80	1212 10 99	1602 90 10
0407 00 11	0710 80 85	0811 90 85	1214 90 10	1602 90 31
0407 00 19	0711 30 00	0811 90 95	1302 12 00	1602 90 41
0409 00 00	0711 40 00	0812 10 00	1302 13 00	1602 90 69
0410 00 00	0711 90 10	0812 90 10	1302 19 05	1602 90 72
0601	0711 90 50	0812 90 20	1501 00 90	1602 90 74
0602	0711 90 90	0812 90 40	1502 00 90	1602 90 76
0603	0712 20 00	0812 90 50	1503 00 19	1602 90 78
0604 10 90	0712 31 00	0812 90 60	1503 00 90	1602 90 98
0604 91 21	0712 32 00	0812 90 70	1504 10 10	1603 00 10
0604 91 29	0712 33 00	0813 10 00	1504 10 99	2001 10 00

CN code [1]	CN code	CN code	CN code	CN code
2001 90 50	2008 20 59	2008 60 91	2008 99 38	2009 80 89
2001 90 60	2008 20 71	2008 60 99	2008 99 40	2009 80 95
2001 90 65	2008 20 79	2008 80 11	2008 99 43	2009 80 96
2001 90 70	2008 20 91	2008 80 31	2008 99 45	2009 80 97
2001 90 75	2008 20 99	2008 80 39	2008 99 46	2009 80 99
2001 90 85	2008 30 11	2008 80 50	2008 99 47	2009 90 19
2001 90 91	2008 30 31	2008 80 70	2008 99 49	2009 90 29
2001 90 93	2008 30 39	2008 80 91	2008 99 53	2009 90 39
2001 90 96	2008 30 51	2008 80 99	2008 99 55	2009 90 41
2003 20 00	2008 30 55	2008 92 12	2008 99 61	2009 90 49
2003 90 00	2008 30 59	2008 92 14	2008 99 62	2009 90 51
2004 90 30	2008 30 71	2008 92 32	2008 99 68	2009 90 59
2004 90 50	2008 30 75	2008 92 34	2008 99 72	2009 90 73
2004 90 91	2008 30 79	2008 92 36	2008 99 78	2009 90 79
2005 51 00	2008 30 90	2008 92 38	2008 99 99	2009 90 95
2005 59 00	2008 50 11	2008 92 51	2009 31 11	2009 90 96
2005 60 00	2008 50 31	2008 92 59	2009 39 31	2009 90 97
2005 70 10	2008 50 39	2008 92 72	2009 41 10	2009 90 98
2005 90 50	2008 50 59	2008 92 74	2009 49 30	2302 50 00
2005 90 60	2008 50 61	2008 92 76	2009 50	2306 90 19
2005 90 70	2008 50 69	2008 92 78	2009 71	2308 00 90
2005 90 80	2008 50 71	2008 92 92	2009 79 19	2309 10 51
2006 00 91	2008 50 79	2008 92 93	2009 79 30	2309 10 90
2006 00 99	2008 50 92	2008 92 94	2009 79 93	2309 90 10
2007 99 10	2008 50 94	2008 92 96	2009 79 99	2309 90 31
2007 99 91	2008 50 99	2008 92 97	2009 80 19	2309 90 41
2007 99 93	2008 60 11	2008 92 98	2009 80 36	2309 90 51
2008 11 92	2008 60 31	2008 99 11	2009 80 38	2309 90 91
2008 11 94	2008 60 39	2008 99 19	2009 80 50	2309 90 93
2008 11 96	2008 60 51	2008 99 23	2009 80 63	2309 90 95
2008 11 98	2008 60 59	2008 99 25	2009 80 69	2309 90 97
2008 19	2008 60 61	2008 99 26	2009 80 71	
2008 20 19	2008 60 69	2008 99 28	2009 80 73	
2008 20 39	2008 60 71	2008 99 36	2009 80 79	
2008 20 51	2008 60 79	2008 99 37	2009 80 88	

[1] As defined in Commission Regulation (EC) No 2031/2001 of 6 August 2001, amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 279, 23.10.2001, p 1).

ANNEX A(b)

Imports into the Community of the following products originating in Hungary shall be subject to the concessions set out below (MFN = Most Favoured Nation duty).

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.4598	0102 90 05	Live bovine animals of a live weight not exceeding 80 kg	10	178 000 heads	0	(3)
09.4537	0102 90 21 0102 90 29 0102 90 41 0102 90 49	Live bovine animals of a live weight exceeding 80 kg but not exceeding 300 kg	10	153 000 heads	0	(3)
09.4563	ex 0102 90	Heifers and cows not for slaughter of the following mountain breeds: grey, brown, yellow, spotted Simmental and Pinzgau	6 % *ad valorem*	7 000 heads	0	(4)
	0104 10 30 0104 10 80 0104 20 10 0104 20 90	Live sheep or goats	free	unlimited		(5)
	0204	Meat of sheep or goats, fresh, chilled or frozen				
	0210 99 21	Edible meat of sheep and goats, with bone in				
	0210 99 29	Edible meat of sheep and goats, boneless				
	0210 99 60	Edible meat offal of sheep and goats				
09.4707	0201 0202	Meat of bovine animals, fresh, chilled or frozen	free	13 655	1 365	(5)
09.4708	ex 0203	Meat of domestic swine, fresh, chilled or frozen	free	48 000	4 000	(5) (6)
09.4774	0206 10 95	Edible offal of bovine animals, fresh or chilled, thick skirt and thin skirt	free	1 000	100	(5)
	0206 29 91	Edible offal of bovine animals, frozen, other, thick skirt and thin skirt				
	0210 20 10 0210 20 90	Meat of bovine animals, salted, in brine, dried or smoked				
	0210 99 51	Thick skirt and thin skirt of bovine animals				
	0210 99 59	Other offal of bovine animals				
	0210 99 90	Edible flours and meals of meat or meat offal				

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.5861	0207 11 30	Chicken carcasses	free	118 900	9 900	(5)
	0207 11 90					
	0207 12					
	0207 13 50	Breasts of chicken				
	0207 14 50					
	0207 13 60	Legs of chicken				
	0207 14 60					
	0207 13 10	Boneless cuts of chicken				
	0207 14 10					
	0207 26 10	Boneless cuts of turkey				
	0207 27 10					
	0207 26 50	Breasts of turkey				
	0207 27 50					
	0207 32 11	Ducks				
	0207 32 15					
	0207 32 19					
	0207 33 11					
	0207 33 19					
	ex 0207 35 15	Cuts of ducks, boneless				
	ex 0207 36 15					
	ex 0207 35 53	Breasts and cuts thereof of ducks, with bone-in				
	ex 0207 36 53					
	ex 0207 35 63	Legs and cuts thereof of ducks, with bone-in				
	ex 0207 36 63					
	ex 0207 35 79	Breasts and cuts thereof of ducks, the ribs of which have been partially or completely removed				
	ex 0207 36 79					
	0207 32 51	Geese				
	0207 32 59					
	0207 33 51					
	0207 33 59					
	0207 35 11					
	0207 35 23					
	0207 35 51					
	0207 35 61					
	0207 36 11					
	0207 36 23					
	0207 36 51					

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
	0207 36 61 ex 0207 35 31 ex 0207 36 31 ex 0207 35 41 ex 0207 36 41 ex 0207 35 71 ex 0207 36 71 ex 0207 35 79 ex 0207 36 79	Whole wings of geese, with or without tips Backs, necks, backs with necks attached, rumps and wing tips of geese Paletots of geese Breasts and cuts thereof of geese, the ribs of which have been partially or completely removed				
09.4704	0210 11 11 0210 12 11 0210 19 40 0210 19 51	Meat of domestic swine, salted or in brine	free	1 200	100	(5)
09.5501	ex 0210 99 39 ex 0210 99 80	Poultry, dried or smoked	free	2 400	200	(5)
09.4775	0401 0402	Milk and cream, not concentrated, nor containing added sugar or other sweetening matter Milk and cream, concentrated or containing added sugar or other sweetening matter	free	1 300	130	(5)
09.4776	0403 10 11 to 0403 10 39 0403 90 11 to 0403 90 69	Yoghurt, not flavoured nor containing added fruit, nuts or cocoa Buttermilk, curled milk and cream, kephir and other fermented or acidified milk and cream, not flavoured nor containing added fruit, nuts or cocoa	free	50	10	(5)
09.4777	0404	Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents; whether or not containing added sugar or other sweetening matter, nor elsewhere specified or included	free	50	10	(5)
09.4778	0405 10 11 0405 10 19 0405 20 90 0405 90	Natural butter of a fat content, by weight not exceeding 85 % in immediate packing of a net content not exceeding 1 kg Natural butter of a fat content by weight not exceeding 85 %, other Dairy spreads of a fat content, by weight of > 75 % but < 80 % Fats and oils derived from milk	free	300	30	(5)
09.4733	0406	Cheese and curd	free	4 200	350	(5)

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.4716	0407 00 30	Eggs of poultry in shell, not for hatching	free	3 155	315	
09.4717	0408 91 80	Eggs, dried, for human consumption	free	755	80	
09.5503	ex 0702 00 00	Tomatoes, from 1 to 31 October	free	300	30	(8)
09.5105	0703 10 11 0703 10 19	Onions	free	70 200	5 850	
09.5557	0704 90 10	White cabbages and red cabbages	free	2 555	255	
09.5127	ex 0707 00 05	Cucumbers, from 1 November to 15 May	free	2 600	260	(8)
	ex 0707 00 05	Cucumbers, from 16 May to 31 October	free	unlimited		(8)
	0709 10 00	Globe artichokes, fresh or chilled	free	unlimited		(8)
	0709 90 70	Courgettes, fresh or chilled	free	unlimited		(8)
09.5141	0710 21 00	Peas, frozen	free	19 655	1 965	
09.5149	0710 80 95	Other vegetables, frozen	free	25 355	2 535	
09.5151	0710 90 00	Mixtures of vegetables, frozen	free	5 800	580	
	0805 10 10 0805 10 30 0805 10 50	Sanguines and semi-sanguines, fresh Navels, Navelines, Navelates, Salustianas, Vernas, Valencia letes, Maltese, Shamoutis, Ovalis, Trovita, and Hamlins, fresh Other, fresh	free	unlimited		(8)
09.5511	ex 0806 10 10	Table grapes from 15 July to 31 October	free	900	90	(8)
09.5571	0807 11 00 0807 19 00	Melons, including watermelons	free	11 855	990	
09.5157	0808 10 10	Cider apples, in bulk from 16 September to 15 December	free	37 800	3 780	
09.5159	0808 10 20 0808 10 50 0808 10 90	Apples, other than cider apples	free	9 155	915	(8) (9)
	0808 10 20	Apples, other than cider apples	100 %	—	—	(9)
	0808 10 50		100 %	—	—	(9)
	0808 10 90		100 %	—	—	(9)
09.5513	0808 20 10 0808 20 50	Pears	free	2 100	210	(8)
	0809 10 00	Apricots, fresh	free	unlimited		(8)

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
	0809 20	Cherries	free	unlimited		(8) (10)
	0809 40 05	Plums:				
		— for processing in immediate containers of a net weight capacity exceeding 250 kg (12)	free	unlimited		
		— other	free	unlimited		(8) (11)
	0810 20 10	Raspberries	41	unlimited		(7)
	0810 30 10	Blackcurrants	41			(7)
	0810 30 30	Redcurrants	41			(7)
	0810 30 90	Other berries	24			
	0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter	free	unlimited		(7)
	ex 0811 20 19	Frozen raspberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight				
	0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter				
	0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter				
	0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter				
	0811 20 19	Frozen blackberries, mulberries, loganberries, black-, white- or redcurrants and gooseberries	free	unlimited		
09.5865	0812 90 30 0812 90 99	Papaws (papayas) and other fruit and nuts, provisionally preserved	free	1 200	100	
	0901 21 00	Roasted coffee (excl. decaffeinated)	50	unlimited		
	0901 22 00	Roasted decaffeinated coffee				
09.5575	0904 20 10	Sweet peppers, neither crushed or ground	free	1 200	100	
09.4779	1001	Wheat and meslin	free	600 000	60 000	(5)
	1101	Wheat or meslin flour				
	1103 11 10	Durum wheat groats and meal				
	1103 11 90	Common wheat and spelt groats and meal				
	1103 20 60	Wheat pellets				
09.5862	1002 00 00	Rye	free	2 000	200	(5)
	1102 10 00	Rye flour				
	1103 19 10	Rye groats and meal				
	1103 20 10	Rye pellets				

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.5863	1003	Barley	free	7 000	700	(5)
	1102 90 10	Barley flour				
	1103 19 30	Barley groats and meal				
	1103 20 20	Barley pellets				
09.5864	1004 00 00	Oats	free	1 000	100	(5)
	1102 90 30	Oat flour				
	1103 19 40	Groats and meal of oats				
	1103 20 30	Pellets of oats				
09.4780	1005 10 90	Other than hybrid maize seed	free	450 000	45 000	(5)
	1005 90 00	Maize other than seed				
	1102 20 10	Maize flour with fat content of = < 1.5 % by weight				
	1102 20 90	Maize flour with fat content of > 1.5 % by weight				
	1103 13 10	Groats and meal of maize				
	1103 13 90					
	1103 20 40	Maize pellets				
	1008	Buckwheat, millet, canary seed; other cereals	free	unlimited		(5)
	1102 90 90	Cereals flour, other				
	1103 19 90	Groats and meal of other cereals				
	1103 20 90	Cereal pellets, other				
09.5297	1109 00 00	Wheat gluten	free	455	45	
09.4727	1501 00 19	Pig fat (including lard), other	free	2 880	290	
09.5172	1512 11 10	Sunflower seed oil	free	9 000	750	
09.5173	1512 11 91			3 455	290	
09.5174	1512 19 10			1 500	125	
	1517 10 90	Margarine containing = < 10 % milk fats (excl. liquids)	50	unlimited		
	1517 90 99	Other edible mixtures or preparations				
09.4705	1601 00 91	Sausages, dry or other	free	10 500	875	(5)
	1601 00 99					

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.4706	1602 41 10 1602 42 10 1602 49 11 1602 49 13 1602 49 15 1602 49 19 1602 49 30 1602 49 50	Other preparations, preserved meat of domestic swine	free	1 080	90	(5)
09.5705	1602 50 10 1602 50 31 1602 50 39 1602 50 80	Other prepared or preserved meat or meat offal of bovine animals	free	2 400	240	(5)
	ex 1605 90 30	Edible snails, of the genus *Helix pomatia*	free	unlimited		
09.5298	1702 30 1702 40	Glucose and glucose syrup	free	1 055	90	
	1703	Molasses resulting from the extraction or refining of sugar	free	unlimited		(5)
	2001 90 20 2005 90 10	Fruits of the genus Capsicum, other than sweet peppers and pimento, preserved	50	unlimited		
09.5177	2002 90 31 2002 90 39	Preserved tomatoes	free	9 000	900	
09.5179	2002 90 91 2002 90 99	Preserved tomatoes	free	2 520	250	
09.5521	2005 40 00	Peas 'Pisum sativum' prepared or preserved otherwise than by vinegar or acetic acid (excluding frozen)	free	1 355	115	
09.5181	2005 90 75	Sauerkraut	free	4 355	435	
09.5189	ex 2007 99 31 2007 99 33 2007 99 35	Sour cherry jam Strawberry jam Raspberry jam	free	5 255	525	(8)

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
	ex 2007 99 39	Fruit preparations, with sugar content > 30 % by weight, fruit within headings 0801, 0803, 0804 (except figs and pineapples), 0807 20 00, 0810 20 90, 0810 30 90, 0810 40 10, 0810 40 50, 0810 40 70, 0810 40 90	free	unlimited		(8)
	ex 2007 99 98	Other, fruit within headings 0801, 0803, 0804 (except figs and pineapples), 0807 20 00, 0810 20 90, 0810 30 90, 0810 40 10, 0810 40 50, 0810 40 70, 0810 40 90				
09.5205	2009 80 11 2009 80 32 2009 80 33 2009 80 35 2009 80 61 2009 80 83 2009 80 84 2009 80 86	Fruit juice	free	2 555	255	(8)
09.5299	2303 10 11	Residues of starch from maize	free	1 355	135	
09.4723	ex 2309 10	Dog or cat food, put up for retail sale excluding CN codes 2309 10 11, 2309 10 31, 2309 10 51, 2309 10 90	free	17 800	1 780	
09.5207	2401 10 2401 20	Tobacco	20	5 255	440	

(1) Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording of the description of the products is to be considered as having no more than indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of the CN code. Where ex CN codes are indicated, the preferential scheme is to be determined by application to the CN code and corresponding description taken together.

(2) In cases where a MFN minimum duty exits, the applicable minimum duty is equal to the MFN minimum duty multiplied by the percentage indicated in this column.

(3) The quota for this product is opened for Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and the Slovak Republic. In case imports into the Community of live bovine animals may exceed 500 000 heads for any given year, the Community may take the management measures to protect its market, not withstanding any other rights given under the Agreement.

(4) The quota for this product is opened for Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and the Slovak Republic.

(5) This concession is only applicable to products non-benefiting from any kind of export subsidies.

(6) Excluding tenderloin presented alone.

(7) Subject to minimum import price arrangements contained in the Appendix to the present Annex.

(8) The reduction applies only to the *ad valorem* part of the duty.

(9) For these CN-codes, the following concessions — applicable for apples imported within as well as outside the tariff quota — should be applied:
— five additional stages (10 %, 12 %, 14 %, 16 % and 18 %) are herewith introduced for the period 1 January to 14 February, which have to be used before the application of the full specific duty as mentioned in the Combined Nomenclature,
— three additional stages (14 %, 16 % and 18 %) are herewith introduced for the period 15 February to 31 March, which have to be used before the application of the full specific duty as mentioned in the Combined Nomenclature,
— two additional stages (16 % and 18 %) are herewith introduced for the period 1 April to 15 July, which have to be used before the application of the full specific duty as mentioned in the Combined Nomenclature,
— five additional stages (10 %, 12 %, 14 %, 16 % and 18 %) are herewith introduced for the period 16 July to 31 December, which have to be used before the application of the full specific duty as mentioned in the Combined Nomenclature.

(10) In addition to the reduction of the *ad valorem* part of the duty, five additional stages (10 %, 12 %, 14 %, 16 % and 18 %) are herewith introduced which have to be used before the application of the full specific duty as mentioned in the Combined Nomenclature.

(11) In addition to the reduction of the *ad valorem* part of the duty, three additional stages (10 %, 12 % and 14 %) are herewith introduced which have to be used before the application of the full specific duty as mentioned in the Combined Nomenclature.

(12) Entry under this subheading is subject to conditions laid down in the relevant Community provisions (see Articles 291 to 300 of Commission Regulation (EEC) No 2454/93 (OJ L 253, 11.10.1993, p. 71) and subsequent amendments).

Appendix to Annex A(b)

Minimum import price arrangement for certain soft fruit for processing

The importation into the Community of the products listed in this Appendix originating in Hungary will be subject to the conditions described in this Appendix.

1. Minimum import prices are fixed for the following products:

CN Code	Description	Minimum import price (EUR/t net)
ex 0810 20 10	Raspberries, fresh	631
ex 0810 30 10	Blackcurrants, fresh	385
ex 0810 30 30	Redcurrants, fresh	233
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: whole fruit	750
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: other	576
ex 0811 20 19	Frozen raspberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: whole fruit	995
ex 0811 20 19	Frozen raspberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: other	796
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: whole fruit	995
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: other	796
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: without stalk	628
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: other	448
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: without stalk	390
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: other	295

2. The minimum import prices, as set out in point 1, will be respected on a consignment by consignment basis. In the case of a customs declaration value being lower than the minimum import price, a countervailing duty will be charged equal to the difference between the minimum import price and the customs declaration value.

3. If the import prices of a given product covered by this Appendix show a trend suggesting that the prices could go below the level of the minimum import prices in the immediate future, the European Commission will inform the Hungarian authorities in order to enable them to correct the situation.

4. At the request of either the Community or Hungary, the Association Committee shall examine the functioning of the system or the revision of the level of the minimum import prices. If appropriate, the Association Committee shall take the necessary decisions.

5. To encourage and promote the development of trade and for the mutual benefit of all parties concerned, a consultation meeting may be organised three months before the beginning of each marketing year in the European Community. This consultation meeting will take place between the European Commission and the interested European producers' organisations for the products concerned, on the one part and the authorities', producers' and exporters' organisations of all the associated exporting countries, on the other part.

   During this consultation meeting, the market situation for soft fruit including, in particular, forecasts for production, stock situation, price evolution and possible market development, as well as possibilities to adapt supply to demand, will be discussed.

Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures [1]

(2002/C 227 E/24)

COM(2002) 313 final — 2000/0326(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 12 June 2002)

[1] OJ C 120 E, 24.4.2001, p. 79.

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 Articles 80(2) and 175(1) thereof,	
Having regard to the proposal from the Commission,	
Having regard to the opinion of the Economic and Social Committee,	
Having regard to the opinion of the Committee of the Regions,	
Acting in accordance with the procedure laid down in Article 251 of the Treaty,	
Whereas:	
(1) There is a need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from tankers in European waters.	(1) There is a need to ensure that the fullest and most adequate compensation is available to persons or organisations who, directly or indirectly, suffer damage caused by pollution resulting from the escape or discharge of oil from tankers in European waters.
(2) The international regime for liability and compensation of oil pollution damage from ships, as established by the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 as amended by the 1992 Protocol thereto, provide some important guarantees in this respect.	Unchanged
(3) The maximum compensation afforded by the international regime is deemed insufficient to fully cover the costs of foreseeable oil tanker incidents in Europe.	(3) The maximum compensation afforded by the international regime is deemed insufficient to fully cover the costs of foreseeable incidents in Europe.

INITIAL PROPOSAL	AMENDED PROPOSAL
(4) A first step to improve the protection of victims in case of an oil spill in Europe is to considerably raise the maximum amount of compensation available for such spills. This can be done by complementing the international regime through the establishment of a European Fund which compensates claimants who have been unable to obtain full compensation under the international compensation regime, because the totality of valid claims exceed the amount of compensation available under the Fund Convention.	(4) A first step to improve the protection of victims in case of an oil spill in Europe is to considerably raise the maximum amount of compensation available for such spills. This could be done by complementing the existing international regime through the creation of an international supplementary fund. Until such an international fund is fully operational in all EU Member States concerned and provides adequate protection for accidents occurring in EU waters, a European Fund shall be established to compensate claimants who have been unable to obtain full compensation under the international compensation regime, because the totality of valid claims exceed the amount of compensation available under the Fund Convention.
(5) A European oil pollution compensation fund needs to be based on the same rules, principles and procedures as those of the IOPC Fund in order to avoid uncertainty for victims seeking compensation and in order to avoid ineffectiveness or duplication of work carried out within the IOPC Fund.	(5) A European pollution compensation fund needs to be based on the same rules, principles and procedures as those of the IOPC Fund in order to avoid uncertainty for victims seeking compensation and in order to avoid ineffectiveness or duplication of work carried out within the IOPC Fund.
(6) In view of the principle that the polluter should pay, the costs of oil spills should be borne by the industry involved in the carriage of oil by sea.	Unchanged
(7) Harmonised Community measures to provide additional compensation for European oil spills will share the costs of such oil spills between all coastal Member States.	(7) Harmonised Community measures to provide additional compensation for European spills will share the costs of such spills between all Member States.
(8) A Community-wide compensation Fund (COPE Fund) which builds upon the existing international regime is the most efficient way to attain these objectives.	(8) A Community-wide compensation Fund (COPE Fund) which builds upon the existing international regime is at present the most efficient way to attain these objectives.
(9) The COPE Fund shall have the possibility to reclaim its expenses from parties involved in the oil pollution incidents, to the extent that this is permissible under international law.	Unchanged
(10) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1], they should be adopted by use of the management procedure provided for under Article 4 of that Decision.	(10) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1], they should be adopted by use of the management procedure provided for under Article 4 of that Decision. In due course the Commission will examine the possibilities of delegating the daily management of the COPE Fund to the European Maritime Safety Agency as established by Regulation (EC) No . . .
[1] OJ L 184, 17.7.1999, p. 23.	[1] OJ L 184, 17.7.1999, p. 23.

INITIAL PROPOSAL	AMENDED PROPOSAL
(11) Since the adequate compensation of victims of oil spills does not necessarily provide sufficient disincentives for individual operators in the seaborne oil trade to act diligently, a separate provision is needed providing for financial penalties to be imposed on any person who has contributed to an incident by his wrongful intentional or grossly negligent acts or omissions.	Unchanged
(12) A Regulation of the European Parliament and the Council is, in view of the subsidiarity principle, the most appropriate legal instrument as it is binding in its entirety and directly applicable in all Member States and therefore minimises the risk of divergent application of this instrument in Member States.	
(13) A revision of the existing international oil pollution liability and compensation regime should be undertaken in parallel to the measures contained in this regulation in order to achieve a closer link between the responsibilities and actions of the players involved in the transport of oil by sea and their exposure to liability. More particularly, the liability of the shipowner should be unlimited if it is proved that the pollution damage resulted from gross negligence on his part, the liability regime should not explicitly protect a number of other key players involved in the transport of oil at sea and the compensation of damage caused to the environment as such should be reviewed and widened in light of comparable compensation regimes established under Community law	(13) A revision of the existing international oil pollution liability and compensation regime should be undertaken in parallel to the measures contained in this Regulation in order to achieve a closer link between the responsibilities and actions of the players involved in sea transport and their exposure to liability. More particularly, the liability of the shipowner should be unlimited if it is proved that the pollution damage resulted from gross negligence on his part, the liability regime should not explicitly protect a number of other key players involved in sea transport and the compensation of damage caused to the environment as such should be reviewed and widened in light of comparable compensation regimes established under Community law; in addition, progress must be achieved with regard to a liability and compensation regime for damage in connection with the transport of hazardous and noxious substances.
	(13a) This Regulation should be amended in light of changes to the underlying international oil pollution compensation regime in order to avoid inconsistencies between the two regimes,
HAVE ADOPTED THIS REGULATION:	Unchanged
Article 1 **Objective** The purpose of this Regulation is to ensure adequate compensation of pollution damage in EU waters resulting from the transport of oil by sea, by complementing the existing international liability and compensation regime at Community level, and to introduce a financial penalty to be imposed on any person who has been found to have contributed to an oil pollution incident by his wrongful intentional or grossly negligent acts or omissions.	

INITIAL PROPOSAL	AMENDED PROPOSAL

Article 2

Scope

This Regulation shall apply:

1. to pollution damage caused:

   (a) in the territory, including the territorial sea, of a Member State, and

   (b) in the exclusive economic zone of a Member State, established in accordance with international law, or, if a Member State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

2. to preventive measures, wherever taken, to prevent or minimise such damage.

Article 3

Definitions

For the purpose of this Regulation, the following definitions shall apply:

1. 'Liability Convention' shall mean the International Convention on Civil Liability for Oil Pollution Damage, 1992.

2. 'Fund Convention' shall mean the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 as amended by the 1992 Protocol thereto.

3. 'Oil' shall mean any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

4. 'Contributing Oil' shall mean crude oil and fuel oil as defined in points (a) and (b) below:

   (a) 'Crude Oil' shall mean any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as 'topped crudes') or to which certain distillate fractions have been added (sometimes referred to as 'spiked' or 'reconstituted' crudes).

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) 'Fuel Oil' shall mean heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the 'American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396-69)', or heavier.	
5. 'Ton', in relation to oil, shall mean a metric ton.	
6. 'Terminal installation' shall mean any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.	
7. 'Incident' shall mean any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence.	
8. 'Person' shall mean any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.	
9. 'IOPC Fund' shall mean the fund established by the Fund Convention.	
Article 4	
Establishment of a Fund for Compensation for Oil Pollution in European Waters	
A fund for Compensation for Oil Pollution in European Waters (hereinafter 'the COPE Fund') is hereby established with the following aims:	
(a) to provide compensation for pollution damage to the extent that the protection afforded by the Liability Convention and the Fund Convention is inadequate; and	
(b) to give effect to the related tasks set out in this Regulation.	

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 5	
Compensation	
1. The COPE Fund shall pay compensation to any person who is entitled to compensation for pollution damage under the Fund Convention but who has been unable to obtain full and adequate compensation under that Convention, because the totality of valid claims exceed the amount of compensation available under the Fund Convention.	
2. The assessment as to whether a person is entitled to compensation under the Fund Convention shall be determined under the terms of the Fund Convention and carried out in accordance with the procedures foreseen therein.	
3. No compensation shall be paid by the COPE Fund until the relevant assessment referred to in paragraph 2 is approved by the Commission, acting in accordance with Article 9 paragraph 2.	
4. Notwithstanding paragraphs 1 and 2, the Commission may decide not to pay compensation to the shipowner, manager or operator of the ship involved in the incident or to their representatives. Similarly, the Commission may decide not to compensate any person in a contractual relationship with the carrier in respect of the carriage during which the incident occurred or any other person directly or indirectly involved in that carriage. The Commission, acting in accordance with Article 9 paragraph 2, shall establish which claimants, if any, fall under these categories and shall decide accordingly.	
5. The aggregate amount of compensation payable by the COPE Fund shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention and the Fund Convention for pollution damage within the scope of application of this regulation shall not exceed EUR 1 000 million.	
6. Where the amount of established claims exceeds the aggregate amount of compensation payable under paragraph 5, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this regulation shall be the same for all claimants.	
	6a. Without prejudice to Article 6, the COPE Fund shall provide for the possibility of making advance payments to claimants within a period of six months after the claim has been approved in accordance with paragraph 2.

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 6	Unchanged
Contributions by oil receivers	
1. Any person who receives contributing oil in total annual quantities exceeding 150 000 tons carried by sea to ports or terminal installations in the territory of a Member State and is liable to contribute to the IOPC Fund shall be liable to contribute to the COPE Fund.	
2. Contributions shall only be collected following an incident falling under the scope of this Regulation which exceeds or threatens to exceed the maximum compensation limits of the IOPC Fund. The total amount of contributions to be levied for each such incident shall be decided by the Commission in accordance with Article 9, paragraph 2. On the basis of that decision, the Commission shall calculate for each person referred to in paragraph 1 the amount of his contribution, on the basis of a fixed sum for each ton of contributing oil received by such persons.	
3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Member States in the relevant year.	
4. Member States shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the COPE Fund appears on a list to be established and kept up to date by the Commission in accordance with the subsequent provisions of this article.	
5. Each Member State shall communicate to the Commission the name and address of any person who in respect of that State is liable to contribute to the COPE Fund pursuant to this article, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.	
6. For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the COPE Fund and of establishing, where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be prima facie evidence of the facts stated therein.	
7. The contributions shall be made to the Commission and the collection shall be fully completed no later than one year after the decision to levy the contributions has been made by the Commission.	7. The contributions shall be made to the COPE Fund and the collection shall be fully completed no later than one year after the decision to levy the contributions has been made by the Commission.
8. The contributions referred to in this article shall be used solely for the purpose of compensating pollution damage as referred to in Article 5.	Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
9. Any potential surplus of contributions which have been levied for a particular incident and have not been used for the compensation for damage in relation to that incident or any immediately related purpose, shall be returned to the person who made the contribution, no later than 6 months after the completion of the compensation proceedings of that incident.	
10. Where a Member State does not fulfil its obligations relating to the COPE Fund and this results in a financial loss for the COPE Fund, that Member State shall be liable to compensate the COPE Fund for such loss.	
	11. The financial responsibilty of the COPE Fund with respect to any incident shall be limited to the contributions collected and received for that incident in accordance with this article.
Article 7	Unchanged
Subrogation	
The COPE Fund shall, in respect of any amount of compensation paid by it in accordance with Article 5, acquire by subrogation the rights that the person so compensated may enjoy under the Liability Convention or the Fund Convention.	
Article 8	
Representation and management of the COPE Fund	
1. The Commission shall be the representative of the COPE Fund. In this respect, it shall perform the tasks presented by this Regulation or otherwise necessary for the proper operation and functioning of the COPE Fund.	
2. The following decisions relating to the operation of the COPE Fund shall be made by the Commission, acting in accordance with the procedure in Article 9 paragraph 2:	
(a) fixing the contributions to be levied in accordance with Article 6;	
(b) approving the settlement of claims in accordance with Article 5(3) and taking decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 5(6);	
(c) taking decisions in respect of payment to claimants referred to in Article 5(4); and	
(d) determining the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims are compensated as promptly as possible.	

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 9 **Committee**	
1. The Commission shall be assisted by a COPE Fund Committee composed of representatives of the Member States and chaired by the representative of the Commission.	
2. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Articles 7 and 8 thereof. The period provided for in Article 4 paragraph 3 shall be one month.	
	2a. The Commission shall submit an annual report on its activities to the Council and the European Parliament.
	Article 9a **Cooperation with the IOPC Fund**
	The COPE Fund shall, in close cooperation with the IOPC Fund, establish clear administrative rules for the cooperation between the two funds. These rules shall be based upon the principles of transparency, efficiency and cost-effectiveness.
Article 10 **Penalties**	Unchanged
1. Member States shall lay down a system for financial penalties to be imposed on any person who has been found by a court of law to have contributed by his wrongful intentional or grossly negligent acts or omissions to an incident causing or threatening to cause oil pollution in an area referred to in Article 2, paragraph 1.	
2. The penalties awarded in accordance with paragraph 1 shall not affect the civil liabilities of the parties concerned as referred to in this Regulation or elsewhere and shall be unrelated to the damage caused by the incident. They shall be set at a level high enough to dissuade the person from committing or persisting in an infringement.	
3. Penalties referred to in paragraph 1 shall not be insurable.	
4. There shall be a right for the defendant to appeal against penalties referred to in paragraph 1.	

INITIAL PROPOSAL	AMENDED PROPOSAL
	Article 10a **Evaluation** 1. The Commission shall submit a report no later than three years after the entry into force of this Regulation on the progress at an international level to improve the international liability and compensation regime. In particular, the report shall assess the progress made in: (a) increasing the liability of the shipowner under the Liability Convention; (b) removing the prohibition of compensation claims for pollution damage against the charterer, manager and operator of the ship from Article 3(4)(c) of the Liability Convention; (c) increasing the compensation available under the IOPC Fund; (d) widening the compensation for environmental damage in the light of comparable compensation regimes established under Community law; (e) bringing into effect effective regimes for the liability and compensation of pollution damage which is not covered by the existing regime, notably on damage caused by hazardous and noxious substances other than oil and by oil used for the operation or propulsion of ships, irrespective of the type or size of the ship. 2. Should the Commission conclude that the progress referred to in paragraph 1 is insufficient, it shall submit to the European Parliament and to the Council a proposal for Community legislation establishing a Europe-wide maritime pollution liability and compensation regime.
Article 11 **Entry into force** This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*. It shall be applicable on [12 months after its entry into force date]. This Regulation shall be binding in its entirety and directly applicable in all Member States.	Unchanged

Proposal for a Council Regulation laying down the weightings applicable from 1 January 2002 to the remuneration of officials of the European Communities serving in third countries

(2002/C 227 E/25)

COM(2002) 298 final

(Submitted by the Commission on 13 June 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Staff Regulations of officials of the European Communities and the conditions of employment of other servants of the Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68 [1], as last amended by Regulation (EC, ECSC, Euratom) No 2581/2001 [2], and in particular the first paragraph of Article 13 of Annex X thereto,

Having regard to the proposal from the Commission,

Whereas:

(1) Account should be taken of changes in the cost of living in countries outside the Community and the weightings applicable to remuneration paid in the currency of the country of employment to officials serving in third countries should be determined accordingly with effect from 1 January 2002.

(2) Under Annex X to the Staff Regulations, the Council sets the weightings every six months and it will accordingly have to set new weightings for coming half-years.

(3) The weightings to apply with effect from 1 January 2002, in respect of which payment has been made on the basis of a previous Regulation, could lead to retrospective adjustments to remuneration (upwards or downwards).

(4) Provision should be made for back-payments in the event of an increase in remuneration as a result of these weightings.

(5) Provision should be made for the recovery of sums overpaid in the event of a reduction in remuneration as a result of these weightings for the period between 1 January 2002 and the date of the Council decision setting the weightings to apply with effect from 1 January 2002.

(6) However, in order to mirror the weightings applicable within the European Community to remuneration and pensions of officials and other servants of the European Communities, such recovery should be restricted to a period of no more than six months preceding the decision, and for its effects to be spread over a period of no more than twelve months following the date of that decision,

HAS ADOPTED THIS REGULATION:

Article 1

With effect from 1 January 2002, the weightings applicable to remuneration payable in the currency of the country of employment shall be as shown in the annex.

The exchange rates for the calculation of such remuneration shall be those used for implementation of the general budget of the European Union for the month preceding the date referred to in the first paragraph.

Article 2

In accordance with the first paragraph of Article 13 of Annex X to the Staff Regulations, the Council shall set weightings every six months. It shall accordingly set new weightings with effect from 1 July 2002.

The institutions shall make back-payments in the event of an increase in remuneration as a result of these weightings.

For the period between 1 January 2002 and the date of the Council decision setting the weightings applicable with effect from 1 January 2002, the institutions shall make retrospective downward adjustments to remuneration in the event of a reduction as a result of these weightings.

Retrospective adjustments involving the recovery of sums overpaid shall, however, be restricted to a period of no more than six months preceding the decision, and recovery shall be spread over no more than twelve months from the date of that decision.

Article 3

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

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

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[1] OJ L 56, 4.3.1968, p. 1.

[2] OJ L 345, 29.12.2001, p. 1.

ANNEX

	Place of employment	Weightings January 2002
	Albania	97,3
(***)	Algeria	0,0
	Angola	115,9
	Argentina	129,4
	Australia	93,9
	Bangladesh	77,9
	Barbados	142,5
	Belize	103,2
	Benin	88,4
	Bolivia	74,3
	Bosnia and Herzegovina	87,5
	Botswana	55,4
	Brazil	82,4
	Bulgaria	72,1
	Burkina Faso	78,5
(***)	Burundi	0,0
(***)	Cambodia	0,0
	Cameroon	96,1
	Canada	84,5
	Cape Verde	75,6
	Central African Republic	109,8
	Chad	112,5
	Chile	86,2
	China	107,3
	Colombia	82,9
	Congo	103,7
	Costa Rica	104,7
	Côte d'Ivoire	106,1
	Croatia	97,3
	Cyprus	95,1
	Czech Republic	92,0
	Democratic Republic of the Congo	144,9
	Djibouti	141,8
	Dominican Republic	92,4
	Egypt	73,4

	Place of employment	Weightings January 2002
	Equatorial Guinea	95,8
	Eritrea	46,3
	Estonia	74,3
	Ethiopia	80,2
	Fiji	71,1
	FYROM	77,5
	Gabon	116,1
	Georgia	111,2
	Ghana	89,5
	Guatemala	93,8
	Guinea	87,1
	Guinea-Bissau	132,2
	Guyana	70,7
	Haiti	98,4
	Hong Kong	121,9
	Hungary	69,0
	India	61,2
	Indonesia	88,5
	Israel	121,6
	Jamaica	126,4
	Japan (Naka)	152,5
	Japan (Tokyo)	161,3
	Jordan	99,2
	Kazakhstan	117,9
	Kenya	98,5
	Latvia	80,7
	Lebanon	110,9
	Lesotho	44,1
(***)	Liberia	0,0
	Lithuania	76,6
	Madagascar	96,1
	Malawi	105,0
	Mali	86,6
	Malta	103,0
	Mauritania	72,8
	Mauritius	84,5

	Place of employment	Weightings January 2002
	Mexico	102,4
	Morocco	89,6
	Mozambique	81,7
	Namibia	48,4
	Netherlands Antilles	121,0
	New Caledonia	122,2
	Nicaragua	99,4
	Niger	87,7
	Nigeria	102,7
	Norway	134,2
	Pakistan	59,3
	Papua New Guinea	68,3
(***)	Paraguay	0,0
	Peru	112,4
	Philippines	68,7
	Poland	88,7
	Romania	55,1
	Russia	133,6
(***)	Rwanda	0,0
	São Tomé and Príncipe	74,4
	Senegal	81,5
(***)	Sierra Leone	0,0
	Slovakia	68,8
	Slovenia	76,4
	Solomon Islands	97,2
(***)	Somalia	0,0
	South Africa	41,9
	South Korea	108,3
	Sri Lanka	77,8
	Sudan	48,0
	Suriname	81,5
	Swaziland	42,3
	Switzerland	124,8
	Syria	108,4
	Tanzania	80,9
	Thailand	70,9

	Place of employment	Weightings January 2002
	The Comoros	103,3
	The Gambia	60,5
	Togo	96,3
	Tonga	72,7
	Trinidad and Tobago	90,7
	Tunisia	83,6
	Turkey	81,3
	Uganda	99,2
	Ukraine	123,9
	United States (New York)	136,7
	United States (Washington DC)	132,5
	Uruguay	109,3
	Vanuatu	121,9
	Venezuela	115,6
	Vietnam	68,9
	West Bank — Gaza Strip	112,9
	Yugoslavia	63,6
	Zambia	66,0
	Zimbabwe	88,5

(***) Not available.

Amended proposal for a Decision of the European Parliament and of the Council revising Annex I to Decision No 1336/97/EC on a series of guidelines for trans-European telecommunications networks [1]

(2002/C 227 E/26)

COM(2002) 317 final — 2001/0296(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 17 June 2002)

1. **Background**

Transmission of the proposal to the European Parliament and to the Council (COM(2001) 742 — 2001/0296(COD))	10 December 2001
Opinion of the Economic and Social Committee	29 May 2002
Opinion of the Committee of the Regions	
Opinion of the European Parliament (PE T5-0210/2002)	14 May 2002

2. **Objective of the Commission proposal**

The proposal revises the definition of projects of common interest, in the light of experience gained in the period 1997 to 2000. The new definition focuses the programme on services of public interest within the evolving framework of *e*Europe 2005.

3. **Commission opinion on the amendments adopted by the European Parliament**

3.1. *Amendments accepted by the Commission*

Amendment 1, referring to the Council resolution on network and information security.

Amendment 2, clarifying the scope of the action.

Amendment 3, setting dates for a report on the implementation of the programme and a proposal for revision of the guidelines.

Amendment 4, emphasising the contribution of the programme to its objectives.

Amendment 5, clarifying that the programme is not restricted to commercial activity and the criteria for a trans-European service.

Amendment 6, clarifying the requirements for participation in the programme.

Amendment 7, clarifying considerations for the disabled citizen and for new technologies.

Amendment 8, clarifying applications in the area of *e*Government and *e*Administration.

Amendment 9, clarifying the rationale for support to health applications

Amendment 10, reinforcing the subordinate nature of supplementary support and coordination actions.

3.2. *Amended proposal*

Having regard to Article 250, paragraph 2, of the EC Treaty, the Commission amends its proposal as indicated above.

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[1] OJ C 103 E, 30.4.2002, p. 23.

Amended proposal for a Regulation of the European Parliament and of the Council relating to fertilizers [1]

(2002/C 227 E/27)

COM(2002) 318 final — 2001/0212(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 17 June 2002)

1. State of procedure

— The proposal for a Regulation of the European Parliament and of the Council relating to fertilizers (COM(2001) 508 final — 2001/0212(COD)) was adopted by the Commission on 14 September 2001 and then transmitted to the Council and European Parliament on 17 September 2001.

— The Economic and Social Committee gave its opinion on 17 December 2001.

— The European Parliament approved the proposal with three amendments in the first reading on 10 April 2002.

2. Objective of the amended proposal

The amended proposal adapts the original proposal for a Regulation of the European Parliament and of the Council relating to fertilizers in two respects:

— Article 33 is deleted;

— one change to Annex I that was introduced in the original proposal, is removed.

3. Comments on the amendments adopted by the Parliament

3.1. *Amendments accepted by the Commission*

3.1.1. *Amendment 1*

Amendment 1 can be accepted in principle, having regard to the Commission's intention to bring forward proposals on cadmium in fertilizers, subject to a favourable opinion of the Scientific Committee on Toxicity, Ecotoxicity and the Environment (SCTEE).

It should be said also that the formulation of the Parliament in relation to the precise timing of the proposal for bringing forward the legislation to address the cadmium issue could not be accepted, in particular as the deadline proposed, namely 30 June 2002 is not compatible with the exercise of the Commission's right of initiative.

Recital No 15 becomes the following:

> 'Fertilizers can be contaminated by substances that can potentially pose a risk to human and animal health and the environment. Further to the opinion of the Scientific Committee on Toxicity, Ecotoxicity and the Environment (SCTEE), the Commission intends to address the issue of unintentional cadmium content in mineral fertilizers and will, where appropriate, draw up a proposal for a Regulation, which it intends to present to the European Parliament and the Council. Where appropriate, a similar review will be undertaken for other contaminants.'

3.1.2. *Amendment 3*

Amendment 3 can also be accepted because the Commission can accept the argument that any modification of the annexes of the Regulation during a recast of the existing legislation should be avoided.

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[1] OJ C 51 E, 26.2.2002, p. 1.

In Annex I, table E.1.4, the text at the intersection of the fourth column, and the fourth line becomes the following:

'5 % water-soluble Fe, at least $^{8}/_{10}$ of the declared value of which has been chelated.'

This provision is identical to that in Commission Directive 93/69/EEC of 23 July 1993 adapting to technical progress Council Directive 76/116/EEC on the approximation of the laws of the Member States relating to fertilizers ([1]).

3.2. ***Amendments not accepted by the Commission***

Amendment 2 cannot be accepted for the following reasons:

— Article 33 in the draft Regulation is hereby deleted. The deletion of paragraph 1 of Article 33 is logical because it becomes superfluous when the anticipated Decisions, based on Article 95(4) of the Treaty, which are currently at an advanced stage of examination by the Commission, and which would provide for the extension of the derogations to Austria, Finland and Sweden concerning the maximum admissible content of cadmium in fertilizers are adopted;

— Paragraph 2 of Article 33 limits the right of initiative of the Commission.

4. **Conclusion**

In accordance with Article 250(2) of the EC Treaty, the Commission amends its proposal as presented above.

([1]) OJ L 185, 28.7.1993, p. 30.

Proposal for a Directive of the European Parliament and of the Council on setting standards of quality and safety for the donation, procurement, testing, processing, storage, and distribution of human tissues and cells

(2002/C 227 E/28)

COM(2002) 319 final — 2002/0128(COD)

(Submitted by the Commission on 19 June 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152(4)(a) thereof,

Having regard to the proposal from the Commission,

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

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

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

Whereas:

(1) The extensive therapeutic use of human tissues and cells for application in the human body demands that their quality and safety be ensured in order to prevent the transmission of diseases.

(2) The availability of tissues and cells of human origin used for therapeutic purposes is dependent on Community citizens who are prepared to donate them. In order to safeguard public health and to prevent the transmission of infectious diseases by these tissues and cells, all precautionary measures need to be taken during their procurement, processing, storage, distribution and use.

(3) There is an urgent need for a unified framework in order to ensure high standards of quality and safety with respect to the procurement, testing, processing, storage and distribution of tissues and cells across the Community and to facilitate exchanges for the thousand of patients receiving this type of therapy each year. It is essential, therefore, that whatever their intended use, Community provisions should ensure that tissues and cells of human origin are of comparable quality and safety. The establishment of such standards, therefore, will help to reassure the public that human tissues and cells that are procured in another Member State, nonetheless, carry the same guarantees as those in their own country.

(4) It is necessary to regulate the donation, procurement, and testing of all sources of human tissues and cells intended for application in the human body. The processing, preservation, storage and distribution of all human tissues and cells used for transplantation purposes should also be regulated. However, cells for autologous use should be excluded from the scope if they are to be used for the manufacturing of medicinal products. Tissues and allogeneic cells intended to be used for industrially manufactured products, including medical devices, should be covered only as far as donation, procurement and testing are concerned. The further manufacturing steps are covered by the relevant legislation [1].

(5) The proposal excludes blood and blood products (other than haematopoietic progenitor cells), human organs, as well as organs, tissues, or cells of animal origin. Blood and blood products currently are regulated by Directive 2001/83/EC [1], Directive 2000/70/EC [2] and Council Recommendation 98/463/EC [3], and a new directive based on public health principles is currently under discussion in Council and the European Parliament [4]. Tissues and cells used as an autologous graft (tissues removed and transplanted back to the same person), within the same surgical procedure and without being subjected to any banking process, are also excluded from this proposal. The quality and safety considerations associated with this process are completely different.

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[1] Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).

[2] Directive 2000/70/EC of the European Parliament and of the Council of 16 November 2000 amending Council Directive 93/42/EEC as regards medical devices incorporating stable derivates of human blood or human plasma (OJ L 313, 13.12.2000, p. 22).

[3] Council Recommendation of 29 June 1998 on the Suitability of blood and plasma donors and the screening of donated blood in the European Community (OJ L 203, 21.7.1998, p. 14).

[4] Proposal for a Directive of the European Parliament and of the Council setting standards of quality and safety for the collection, testing, processing, storage, and distribution of human blood and blood components and amending Council Directive 89/381/EEC. COM(2000) 816 final — 2000/0323(COD).

(6) This Directive does not cover research using human tissues and cells, such as when used for purposes other than application to the human body, i.e. *in vitro* research or in animal models. Only those cells and tissues that in clinical trials are applied to the human body should comply with the quality and safety standards laid down in this Directive.

(7) This Directive does not interfere with decisions made by Member States concerning the use or non-use of any specific type of human cells, including germ cells and embryonic stem cells. If, however, any particular use of such cells is authorised in a Member State, this Directive will require the application of all provisions necessary to protect public health and guarantee respect for fundamental rights. Moreover, this Directive does not interfere with provisions of Member States defining the legal term 'person' or 'individual'.

(8) The donation, procurement, processing, preservation, storage and distribution of human tissues and cells for transplantation should comply with high standards of quality and safety in order to ensure a high level of health protection in the Community. This Directive should establish standards for each one of the steps in the human tissues and cells transplantation process.

(9) It is necessary to increase confidence among the Member States in the quality and safety of donated tissues and cells, in the health protection of living donors and respect for deceased donors, and in the safety of the transplantation process.

(10) Tissues and cells used for allogeneic therapeutic purposes can be procured from both living and deceased donors. In order to ensure that the health status of a living donor is not affected by the donation, a prior medical examination is required. The dignity of the deceased donor has to be respected.

(11) The use of tissues and cells for application in the human body can cause diseases and unwanted effects. Most of these can be prevented by careful donor evaluation and the testing of each donation in accordance with rules established and updated according to the best available scientific advice.

(12) As a matter of principle, tissue and cell transplantation programmes should be founded on the philosophy of voluntary and unpaid donation, anonymity of both donor and recipient, benevolence of the donor and encouragement of the absence of profit by establishments involved in tissue and cell transplantation services.

(13) The procurement of human tissues and cells must fully respect the Charter of Fundamental Rights of the European Union [1], and take fully into account the principles of the Convention on Human Rights and Biomedicine of the Council of Europe [2], in particular in relation to donor consent.

(14) All necessary measures need to be taken in order to provide prospective donors of tissues and cells with assurances regarding the confidentiality of any health-related information provided to the authorised personnel, the results of tests on their donations, as well as any future traceability of their donation.

(15) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data [3], applies to personal data processed in application of the present directive. Article 8 of this Directive prohibits in principle the processing of data concerning health. Limited exemptions to this prohibition principle are foreseen. Directive 95/46/EC provides also that the controller must implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing.

(16) An accreditation system for tissue banks and a system for notification of adverse events and reactions linked to the procurement, processing, testing, storage, and distribution of tissues and cells of human origin should be established in Member States.

(17) Member States should organise inspection and control measures, to be carried out by officials representing the competent authority, to ensure compliance of the tissue establishments with the provisions of this Directive.

(18) Personnel directly involved in the donation, procurement, testing, processing, preservation, storage and distribution of tissues and cells of human origin should be appropriately qualified and provided with timely and relevant training The provisions laid down in this Directive as regards training should be applicable without prejudice to existing Community legislation on the recognition of professional qualifications.

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[1] OJ C 364, 18.12.2000, p. 1.

[2] Council of Europe. Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine: Convention on human rights and biomedicine. European Treaty Series — No 164. Oviedo, 4.4.1997, p. 11.

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

(19) An adequate system to ensure the traceability of tissues and cells of human origin should be established; traceability should be enforced through accurate substance, donor, recipient, tissue bank, and laboratory identification procedures as well as record maintenance and an appropriate labelling system.

(20) In order to increase the effective implementation of the provisions adopted under this Directive, it is appropriate to provide for penalties to be applied by Member States.

(21) Since the objectives of the proposed action, namely to set high standards of quality and safety for human tissues and cells throughout the Community cannot be sufficiently achieved by the Member States alone and can therefore, by reason of scale and effects, be better achieved at Community level, the Community may adopt measures in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary for this purpose.

(22) It is necessary that the best possible scientific advice is available to the Community in relation to the safety of tissues and cells; in particular in order to assist the Commission in adapting the provisions of this Directive to scientific and technical progress.

(23) The opinions of the Scientific Committee for Medicinal Products and Medical Devices and that of the European Group on Ethics in Science and New Technologies, have been taken into account as well as international experience in this field, and will be sought in the future whenever necessary.

(24) Since the measures necessary for the implementation of this Directive 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 [1], they should be adopted by use of the Regulatory Procedure provided for in Article 5 of that Decision,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Objective

This Directive lays down standards of quality and safety of human tissues and cells used for application to the human body, in order to ensure a high level of protection of human health

Article 2

Scope

1. The provisions of this Directive shall apply to the donation, procurement, and testing of human tissues and cells for application to the human body. The provisions of this Directive shall also apply to the processing, preservation, storage and distribution of human tissues and cells when they are to be used for human transplantation.

In the case of industrially manufactured products derived from tissues and cells, this Directive applies only to donation, procurement and testing.

2. This Directive does not apply to:

(a) tissues and cells used as an autologous graft within the same surgical procedure;

(b) autologous cells to be used for the manufacturing of medicinal products;

(c) blood and blood components as defined by [Directive of the European Parliament and of the Council setting standards of quality and safety for the collection, testing, processing, storage, and distribution of human blood and blood components and amending Council Directive 89/381/EEC];

(d) organs.

Article 3

Definitions

For the purposes of this Directive:

(a) 'Cells': shall mean individual cells or a collection of cells when not bound by any form of connective tissue.

(b) 'Tissue': shall mean all constituent parts of the human body formed by cells.

(c) 'Donor': shall mean a living or deceased individual, including *non-natus*, who is the source of cells or tissues.

(d) 'Organ': shall mean a differentiated and vital part of the human body, formed by different tissues, that maintains its structure, vascularisation, and capacity to develop physiological functions with an important level of autonomy.

(e) 'Procurement': shall mean a process by which the donated tissue or cells become available.

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

(f) 'Processing': shall mean all operations involved in the preparation, manipulation, preservation and packaging of tissues or cells for transplantation.

(g) 'Preservation': shall mean the use of chemical agents, alterations in environmental conditions or other means during processing to prevent or retard biological or physical deterioration of cells or tissues.

(h) 'Quarantine': shall mean the status of retrieved tissue or cells or packaging material, or tissue isolated physically or by other effective means whilst awaiting a decision on their release or rejection.

(i) 'Distribution': shall mean transportation and delivery of tissues or cells for storage, processing or use in recipients.

(j) 'Transplantation': shall mean the process of reconstituting a function by transferring equivalent cells and/or tissues to a recipient.

(k) 'Serious adverse event': shall mean any untoward occurrence associated with the procurement, testing, processing, storage and distribution of tissues and cells that might lead to the transmission of a communicable disease, to death or life-threatening, disabling, or incapacitating conditions for patients or which results in, or prolongs, hospitalisation or morbidity.

(l) 'Serious adverse reaction': shall mean an unintended response, including a communicable disease, in the donor or in the recipient associated with the procurement or transplantation of tissues and cells that is fatal, life-threatening, disabling, incapacitating, or which results in, or prolongs, hospitalisation or morbidity.

(m) 'Tissue bank': shall mean the establishment, public or private, that is responsible for the activities of processing, preservation, storage, and distribution of tissue and cells. It may also be responsible for the procurement of tissues and cells.

(n) 'Tissue establishment': shall mean a tissue bank or health care establishment that hosts a tissue procurement team.

(o) 'Tissue procurement team': shall mean the health care professionals involved in any of the activities necessary for tissue and cell procurement.

(p) 'Allogeneic use': shall mean cells or tissues transplanted from one person to another.

(q) 'Autologous use': shall mean cells or tissues removed from and transplanted back to the same person.

Article 4

Implementation

1. Member States shall designate the competent authority or authorities responsible for implementing the requirements of this Directive.

2. This Directive shall not prevent a Member State from maintaining or introducing more stringent protective measures that comply with the provisions of the Treaty.

3. In carrying out the activities covered by this Directive, the Commission may have recourse to technical and/or administrative assistance to the mutual benefit of the Commission and of the beneficiaries, relating to identification, preparation, management, monitoring, audit and control, as well as to support expenditure.

CHAPTER II

OBLIGATIONS ON MEMBER STATES AUTHORITIES

Article 5

Supervision of tissue procurement

1. Member States shall take all necessary measures to ensure that tissue procurement teams are either part of a tissue bank or a health care establishment duly accredited and inspected.

2. Member States shall take all necessary measures to ensure that tissue procurement teams are notified to the competent authority and that the procurement, including the staff involved, complies with the requirements listed in Part A of Annex I.

Article 6

Accreditation of tissue banks

1. Member States shall ensure that all activities relating to the processing, preservation, storage, and distribution of human tissues and cells for human transplantation are undertaken only by tissue banks that have been accredited by a competent authority for that purpose.

2. Haematopoietic progenitor cells from peripheral blood, umbilical cord and bone marrow, however, may be distributed directly from the health care establishment where the procurement is carried out, which could not be accredited as a tissue bank, to a health care establishment for immediate transplantation.

3. The competent authority, having verified that the tissue bank complies with the requirements set out in Annex I, shall accredit the tissue bank and indicate which activities it may undertake and which conditions apply.

4. The tissue bank shall not undertake any substantial changes to its activities without the prior written approval of the competent authority.

5. The competent authority may suspend or revoke the accreditation of a tissue bank if inspection or control measures demonstrate that it does not comply with the requirements of this Directive.

Article 7

Register of accredited tissue banks and reporting obligations

1. The competent authority shall establish and maintain a publicly accessible register of tissue banks specifying the activities for which they have been accredited.

2. Tissue banks shall maintain an official record on the origin and destination of the tissues and cells processed for application in the human body. An annual report of these activities shall be submitted to the competent authority.

3. Member States and the Commission shall establish a network of the national tissue bank registers.

Article 8

Inspection and control measures

1. Member States shall ensure that the competent authority organises inspections and that tissue banks carry out appropriate control measures in order to ensure that the requirements of this Directive are complied with.

2. The competent authority shall also organise inspections and ensure that appropriate control measures are in place in health care establishments where the procurement of human tissues and cells is carried out, as well as in establishments of third parties as specified in Article 24.

3. Inspections and control measures shall be organised by the competent authority on a regular basis. The interval between two inspections and control measures shall not exceed two years.

4. Inspections and control measures shall be carried out by officials representing the competent authority who must be empowered to:

(a) inspect health care establishments involved in procurement, accredited tissue banks, as well as the facilities of any third parties;

(b) evaluate the procedures and the activities carried out by the health care establishments, tissue banks and the facilities of third parties;

(c) examine any documents relating to the subject of the inspection.

5. The competent authority shall organise inspections and other control measures as appropriate in the event of any serious adverse reaction or serious adverse event.

6. Member States shall, upon the request of another Member State or the Commission, provide information about the results of inspections and control measures carried out in individual tissue banks, healthcare establishment or the facilities of third parties.

Article 9

Import/export of human tissues and cells

1. Member States shall take all necessary measures to ensure that all imports of human tissues or cells from third countries are approved by the competent authority. All tissues and cells that are exported to third countries shall comply with the requirements of this Directive.

2. The import/export of human tissues and cells for transplantation shall be undertaken only through accredited tissue banks.

3. The competent authority shall approve imports of human tissues and cells from third countries only when equivalent standards of quality and safety to the ones laid down in this Directive are ensured.

4. The procedures for verifying the equivalent standards of quality and safety in accordance with paragraph 3 shall be established by the Commission in accordance with the procedure referred to in Article 30(2).

Article 10

Traceability

1. Member States shall ensure that tissue establishments take all necessary measures to ensure that all tissues and cells procured, processed, stored and distributed on their territory can be traced from the donor to recipient and vice versa.

2. The procedures for ensuring traceability at the Community level shall be established by the Commission according to the procedure referred to in Article 30(2).

3. Tissue establishments shall implement a donor identification system and assign a code to each donation and its products.

4. All tissues and cells must be identified with a label that contains the information listed in Annexes VI and VII.

Article 11

Notification of serious adverse events and reactions

1. The Member States shall ensure that there is a system in place to report, register, and transmit information about serious adverse events and reactions related to the procurement, testing, processing, storage, distribution and transplantation of tissues and cells.

2. The responsible person referred to in Article 17 shall notify the competent authority of any serious adverse events and reactions referred to in paragraph 1 and provide a report analysing the cause and the ensuing outcome.

3. The procedure for notifying adverse events and reactions shall be established by the Commission in accordance with the procedure referred to in Article 30(2).

CHAPTER III

DONOR SELECTION AND EVALUATION

Article 12

Principles for tissue and cell donation

1. Member States shall encourage voluntary and unpaid donations of tissues and cells with a view to ensuring that they are in so far as possible provided from such donations

2. Member States shall take all necessary measures to ensure that any promotion and publicity activities in support of the donation of human tissues and cells receive prior approval by the competent authority. Advertising the need for, or availability of, human tissues and cells, with a view to offering or seeking financial gain or comparable advantage shall be prohibited.

3. Member States shall encourage that the procurement of tissues and cells is carried out on a non-profit basis.

Article 13

Consent

1. The procurement of human tissues or cells shall be carried out only after all mandatory consent requirements in force in the Member State are met.

2. Member States shall take all necessary measures to ensure that the recipients, donors or their families are provided with the information listed in Annex III.

Article 14

Data protection and confidentiality

1. Member States shall take all necessary measures to ensure that all data, including genetic information, collated within the scope of this Directive and to which third parties have access have been rendered anonymous so that the donor and the recipient are no longer identifiable.

2. For that purpose, they shall ensure that:

(a) data security measures are in place as well as safeguards against any unauthorised data additions, deletions, or modifications to donor files or deferral records, as well as any transfer of information;

(b) procedures are in place to resolve data discrepancies; and

(c) no unauthorised disclosure of information occurs, whilst guaranteeing the traceability of donations.

3. Member States shall take all necessary measures to ensure that the identity of the recipient(s) is not disclosed to the donor or his family and vice versa, without prejudice to legislation in force in Members States on the conditions of disclosure if the donor is closely related to the recipient.

Article 15

Selection, evaluation, and procurement

1. The tissue procurement team shall ensure that the donor evaluation and selection is carried out according to the requirements specified in Annex IV.

2. The tissue procurement team shall ensure that tissues and cells are procured, packaged and transported to the tissue banks in accordance with Annex VI.

3. In the case of an autologous donation, the suitability criteria shall be established and documented by the physician responsible for the patient, according to the clinical record, the therapeutic indication, and in accordance with the requirements listed in point 2.1 of Annex IV.

4. The tissue banks shall ensure that the selection and acceptance of tissues and cells comply with the requirements of Annex VI. They shall also ensure that all donations are tested in accordance with Annex V.

5. The results of the donor evaluation and testing procedures shall be documented and any relevant abnormal findings shall be reported in accordance with Annex III.

6. The competent authority shall ensure that all the activities related to tissue procurement shall be carried out in accordance with the conditions specified in Annex VI.

CHAPTER IV

PROVISIONS FOR QUALITY AND SAFETY IN TISSUE PROCESSING

Article 16

Quality management

1. Member States shall take all necessary measures to ensure that each tissue establishment sets up and maintains a quality management system.

2. The Commission shall establish in accordance with the procedure laid down in Art 30(2) the Community standards and specifications, referred to in Annex II, for the activities relating to a quality management system.

3. Tissue establishments shall take all necessary measures in order to ensure that the quality management system includes at least the following documentation:

— Standard Operating Procedures;

— Guidelines;

— Training and reference manuals;

— Reporting forms;

— Donor records.

4. Tissue establishments shall take all necessary measures to ensure that this documentation is available for official inspections.

5. Tissue establishments shall keep donor records for a minimum of 30 years after the confirmed clinical use of the last tissue/cell.

Article 17

Responsible person

1. Tissue banks shall designate a responsible person. This person shall fulfil the following minimum conditions and qualifications:

(a) he/she shall possess a diploma, certificate or other evidence of formal qualifications in the field of medical or biological sciences awarded on completion of a university course of study or a course recognised as equivalent by the Member State concerned;

(b) he/she shall have at least two years practical experience, in one or more tissue banks accredited in accordance with Article 6.

2. The designated person referred to in paragraph 1 shall be responsible for:

(a) ensuring that every unit of tissues and cells of human origin has been procured and tested for application in the human body and processed, stored, and distributed, when intended for transplantation, in compliance with the laws in force in the Member State;

(b) providing information to the competent authority as required in Article 6;

(c) implementing the requirements of Articles 7, 10, 11, 15, 16, and 18 to 25 in the tissue bank.

3. Tissue banks shall notify the competent authority of the name of the responsible person referred to in paragraph 1. Where the responsible person is permanently or temporarily replaced, the tissue bank shall provide immediately to the competent authority the name of the new responsible person and his or her date of commencement.

Article 18

Personnel

Personnel directly involved in activities related to the procurement, processing, preservation, storage and distribution of tissues and cells in a tissue establishment shall be qualified to perform such tasks and shall be provided with the relevant training specified in Annex II.

Article 19

Tissue and cell reception

1. The tissue bank shall ensure that human tissue and cells and associated documentation comply with the requirements listed in Annex VI. The documentation to be verified for each tissue or cell is listed in Parts D and E of Annex VI.

2. The tissue bank shall ensure and record the fact that the packaging conditions of the human tissue and cells received comply with the provisions listed in Annex VI. Any tissues and cells that do not comply with these provisions should be discarded in accordance with Annex VI.

3. The acceptance or rejection of the incoming tissues/cells shall be documented.

4. Tissue banks shall ensure that human tissues and cells are correctly identified at all times. Each delivery or batch of tissues or cells must be assigned an identifying code, in accordance with Article 10.

Article 20

Tissue and cell processing

1. The tissue bank shall include in its Standard Operating Procedures all the processing that directly affect quality and safety, and shall ensure that they are carried out under controlled conditions. The tissue bank shall ensure that the equipment used, the working environment, process design, validation, and control conditions are in compliance with Annex VII.

2. Any modifications to the processes used in the preparation of the tissues and cells shall also meet the criteria laid down in paragraph 1.

3. The tissue bank must make special provisions in its Standard Operating Procedures for the handling of tissues and cells to be discarded in order to prevent the contamination of other tissues or cells, the processing environment, or personnel.

Article 21

Tissue and cell storage conditions

1. Tissue banks shall ensure that all procedures associated with the storage of tissues and cells are documented in the Standard Operating Procedures and that the storage conditions comply with requirements listed in Annex VII.

2. Tissue banks shall ensure that all storage processes are carried out under controlled conditions.

3. Tissue banks shall establish and maintain procedures for the control of packaging and storage areas, in order to prevent any condition that might adversely affect the function or integrity of tissue and cells.

4. Processed tissues or cells must be held in quarantine until released by the responsible person referred to in Article 17. Tissues or cells must not be released from quarantine for preservation and storage until all the requirements laid down in the Standard Operating Procedures have been met.

Article 22

Labelling, user information and packaging

Tissue banks shall ensure that labelling, documentation, and packaging conform to the requirements listed in Annex VII Parts D and E.

Article 23

Transport and distribution

The tissue bank shall guarantee the quality of tissues or cells until delivery. Distribution conditions shall comply with the requirements listed in Annex VII.

Article 24

Relationship of tissue banks with third parties

1. A tissue bank shall establish a written agreement with a third party in the following circumstances:

(a) where a third party takes responsibility in one phase of tissue or cell processing on behalf of the tissue bank;

(b) where a third party provides goods and services that affect tissue or cell quality and safety assurance;

(c) where a tissue bank provide services to another tissue bank;

(d) where a tissue bank distributes tissue or cells processed by third parties.

2. The tissue bank shall evaluate and select third parties on the basis of their ability to meet the standards laid down in this Directive.

3. Tissue banks shall notify to the competent authority the complete list of agreements that they have established with third parties.

4. The agreements between tissue bank and third parties shall specify responsibilities to be carried out by the third party and detailed procedures.

5. Tissue banks shall provide copies of agreements with third parties when required by the competent authority.

Article 25

Access to human tissues and cells

1. Member States shall ensure that public and private establishments involved in health care, and establishments authorised to manufacture medicinal products or medical devices, have access to human tissue and cells, without prejudice to the provisions in force in Member States on the use of certain tissues and cells.

2. Such establishments shall report relevant information to the tissue banks in order to facilitate traceability, and ensure quality control and safety.

CHAPTER V

EXCHANGE OF INFORMATION, REPORTS, AND PENALTIES

Article 26

Coding of information

1. Member States shall establish a system for the identification of human tissues and cells, in order to ensure the traceability of all human tissues and cells, as indicated in Article 10.

2. The Commission, in cooperation with Member States, shall design a single European coding system that will provide the basic description and properties of tissues and cells.

Article 27

Reports

1. Member States shall send the Commission, three years after the implementation date indicated in Article 32(1), and every three years thereafter, a report on the activities undertaken in relation to the provisions of this Directive, including an account of the measures taken in relation to inspection and control.

2. The Commission shall transmit to the European Parliament, the Council, the Economic and Social Committee, and the Committee of the Regions, the reports submitted by the Member States on the experience gained in implementing this Directive.

Article 28

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. Member States shall notify those provisions to the Commission by the date specified in Article 33(1) at the latest and shall notify it without delay of any subsequent amendments affecting them.

CHAPTER VI

CONSULTATION OF COMMITTEES

Article 29

Adaptation to technical and scientific progress

The adaptation of the technical requirements set out in Annexes I to VII to technical and scientific progress shall be decided by the Commission in accordance with the procedure referred to in Article 30(2).

Article 30

Regulatory procedure

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

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. The period referred to in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4. The Committee shall adopt its rules of procedure.

Article 31

Consultation of scientific committee

The Commission may consult the relevant scientific committee when adapting the Annexes of this Directive to scientific and technical progress.

CHAPTER VII

FINAL PROVISIONS

Article 32

Transposition

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

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

2. Member States may decide for one year after the date laid down in the first subparagraph of paragraph 1, not to apply the requirements of this Directive to tissue banks operating under national provisions before the entry into force of this Directive.

3. Member States shall communicate to the Commission the texts of the provisions of national law that they have already adopted or which they adopt in the field governed by this Directive.

Article 33

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 34

Addressees

This Directive is addressed to the Member States.

ANNEX I

A. REQUIREMENTS FOR THE PROCUREMENT OF HUMAN TISSUES OR CELLS

The establishment responsible for tissue and cells procurement has to ensure certain minimum requirements and other conditions. It must:

(a) Have links with a medical/surgical team that specialises in cell/tissues procurement, and has the staff with the necessary training and experience required to do this work;

(b) Have a cooperation agreement with the team responsible for donations. The written contractual documents will specify the terms of the relationship as well as the protocols to be followed;

(c) Have Standard Operation Procedures (SOPs) for the procurement, packaging, and transportation of the cells and/or tissues until the moment they are processed;

(d) Have a quality management system;

(e) Ensure that, in addition to the tests described in Annex V, appropriate investigations are carried out to prevent the presence of known transmissible diseases;

(f) Have the facilities and material resources needed for the procurement and packaging of the cells and/or tissues;

(g) Have the staff and services needed for body reconstruction and other mortuary procedures when cell/tissue are retrieved from a deceased person;

(h) Ensure that the procedures for the procurement or collection of the cells and/or tissues are carried out according to Annex VI;

(i) Maintain a register to ensure adequate traceability of the cells/tissues obtained and delivered. Details must be maintained on the procurement procedures, the donor (donor identification, consent and clinical data), the tissues donated, the intended use or destination of the tissues, the date of removal and the tests carried out. Access to this register will be restricted to persons, authorised by the responsible person, who will be required to comply with the confidentiality requirements laid down in the Directive.

B. CRITERIA FOR ACCREDITATION OF TISSUE BANKS

In order to be accredited, tissue banks must:

(a) Have an organisational structure and operational procedures appropriate to the activities for which accreditation is sought, ensuring that it is able to receive, distribute, and allocate tissues and cells for transplantation on a 24 hour basis;

(b) Have documentation showing the links that will be maintained with third parties (medical and non-medical institutions) with which the bank will collaborate. Third party agreements will specify the terms of the relationship as well as the protocols to be followed;

(c) Have staff with adequate training and suitable facilities to carry out the activities for which accreditation is sought, in accordance with the standards laid down in this Directive;

(d) Have a quality assurance programme relating to the activities for which accreditation is sought, in accordance with the standards laid down in this Directive;

(e) Ensure, in accordance with scientific knowledge, that the risks inherent in the use and handling of biological material are minimised;

(f) Have access to a serum bank that maintains at least one sample from each allogeneic donor for a minimum period of 2 years from the distribution of the last anatomical piece of the donor, so that required tests can be performed after grafting;

(g) Have a register with access restricted to persons authorised by the responsible person in order to ensure adequate traceability of the cells/tissues received and distributed. These records should contain information on all donors, anatomical pieces, and tissues and cells with the data required for their identification. The register must meet the confidentiality requirements laid down in the Directive; and

(h) Work according to Standard Operation Procedures, which shall conform to the standards laid down in this Directive.

ANNEX II

QUALITY MANAGEMENT SYSTEM

1. The basic elements of a quality system are:
   (a) A well-defined quality policy;
   (b) A clearly-defined organisational structure and accountability;
   (c) Clearly-defined and effective documentation;
   (d) Standard Operating Procedures (SOPs);
   (e) Correct maintenance of all registers; and
   (f) Process validation by the personnel directly involved.

2. The main functions of a quality system include but are not limited to:
   (a) Ensuring that all processes are correct, verified and documented;
   (b) Ensuring the appropriate analysis and the communication of results to the competent authorities in those cases where: the integrity and function of a human cellular or tissue-based product could be affected, the product could possibly be contaminated, or the product could potentially transmit a communicable disease;
   (c) Ensuring that, if needed, appropriate corrective actions are taken and registered;
   (d) Ensuring that the proper training and education are provided to the staff for each of the activities in which they are involved;
   (e) Establishing and maintaining an appropriate monitoring system;
   (f) Establishing and maintaining a records system;
   (g) Investigating and documenting product deviations and the corrective actions taken; and
   (h) Conducting evaluations, investigations, audits, and other actions necessary to ensure the quality of tissues/cells, products and processes.

3. The basic and on-going training for staff in charge of tissue/cell procurement and staff of the tissue banks shall be:
   (a) Carried out within two months of their joining the tissue establishment and after intervals no longer than two years;
   (b) Carried out when a new activity or a new technology is introduced; and
   (c) Controlled, reviewed and updated periodically, but at least every two years, and be adequate to their needs.

4. The on-going training shall cover at least the following subjects:

4.1. General topics:
   (a) General review of the procedures for obtaining and/or processing human cells and tissues for transplant purposes;
   (b) Legal aspects;
   (c) Ethical aspects;
   (d) Organisational aspects;
   (e) Quality control programmes;
   (f) Quality and safety criteria for the evaluation, procurement, processing and monitoring of cells and tissues for transplantation; and
   (g) Safety at work.

4.2. Specific topics:
   (a) Technical knowledge and specific protocols for each of the tissue bank's activities;
   (b) Management of registers and data analysis programmes;
   (c) Handling of the equipment used for each activity;
   (d) Knowledge of the quality control guidelines and general operation of the health care establishment;
   (e) Knowledge of the personal safety guidelines; and
   (f) Bio-monitoring systems operating at the health care establishment.

ANNEX III

INFORMATION TO BE PROVIDED ON THE DONATION OF CELLS AND/OR TISSUES

A. AUTOLOGOUS (AU) AND ALLOGENEIC (AL) LIVING DONORS

1. The person in charge of the donation process shall ensure that the donor has been properly informed of at least those aspects relating to the donation and procurement process outlined in paragraph 4.
2. The information must be given in an appropriate and clear manner, using terms that are easily understood by the donor.
3. The person providing the information must be required and able to answer any questions asked by the donor.
4. The information must cover: the purpose and nature of the procurement, its consequences and risks; analytical tests, if they are performed; recording and protection of donor data, medical confidentiality; and therapeutic purpose.
5. For the allogeneic living donor (AL), information must be provided to the donor on the evaluation procedure: i.e. the reasons for requiring the donor's medical and personal history, a physical examination, and analytical tests.
6. Information must be given to donors on the applicable safeguards that are intended to protect them.
7. The confirmed results of the analytical tests must be communicated, and clearly explained, to the donor.
8. Information must be given on the necessity for requiring the applicable mandatory consent, certification, and authorisation in order that the tissue and/or cell procurement can be carried out.

B. DECEASED DONOR

1. All information must be given to the donor's relatives and all necessary consents and authorisations must be obtained prior to the procurement of cells/tissues in accordance with the applicable legislation.
2. The confirmed results of the donor's evaluation must be communicated, and clearly explained, to the donor's relatives when these results have relevance for their health or for public health.

ANNEX IV

SELECTION CRITERIA FOR THE DONOR OF TISSUES AND/OR CELLS

1. **Deceased donor**

A. GENERAL CRITERIA FOR EXCLUSION

Deceased donors shall be excluded from donation if any of the following conditions are met:

1. Cause of death unknown.
2. Ingestion of, or exposure to, a toxic substance that may be transmitted in a toxic dose to the tissue recipients.
3. Presence or previous history of malignant disease, except for primary basal cell carcinoma, carcinoma *in situ* of the uterine cervix, and some primary tumours of the central nervous system that have to be evaluated according to the current consensus document of the Council of Europe 'Standardisation of organ donor screening to prevent transmission of neoplasic diseases'. Donors with malignant diseases could be evaluated and considered for cornea donation, except for those with retinoblastoma, melanoma of the anterior pole, haematological neoplasm, and malignant tumours that could affect the anterior pole of the eye.
4. Risk of transmission of diseases caused by prions. This includes:
   - specific selection criteria for people diagnosed with Creutzfeldt-Jakob Disease or having family history of non-iatrogenic Creutzfeldt-Jakob Disease;
   - people with a history of rapid progressive dementia or degenerative neurological diseases of unknown origin;
   - recipients of hormones derived from the human pituitary gland (e.g. growth hormones) and recipients of dura mater.

5. Infection which is not controlled at the time of the donation, including bacterial diseases, systemic viral and fungal infections.

6. History, clinical evidence, or confirmed positive laboratory tests of HIV infection, acute or chronic hepatitis B or hepatitis C infection (For haematopoietic progenitor cells donors, Annex V about the donors with positive tests for HBV and HCH shall be applied).

7. People with a history of chronic haemodialysis.

8. Haemodilution of donor samples:

   With potential donors who have received blood, blood components, colloids within the 48 hours preceding death, or crystalloids within the 1 hour preceding death, a sample of blood taken before the transfusion will have to be available if calculations using the algorithm set out below indicate a haemodilution of over 50 %. If a sample is not available, the donor must be excluded owing to the effect of the haemodilution on the results of the serology tests.

9. Evidence of any other risk factors.

B. SPECIFIC EXCLUSION CRITERIA FOR CHILD DONORS

1. Any child who may present with any of criteria listed in part A will be excluded as a donor.

2. Any children born from mothers with HIV infection or that meet any of the exclusion criteria described in part A must be excluded as donors until the risk of transmission of infection can be definitely ruled out.

   (a) Children aged less than 18 months born from mothers with HIV, hepatitis B or hepatitis C infection or at risk of such infection, or who have been breastfed by their mothers during the previous 12 months, cannot be considered as donors regardless of the results of the analytical tests;

   (b) Children who have not been breastfed by their mothers during the previous 12 months, and for whom analytical tests, physical examinations, and reviews of medical records do not provide evidence of HIV, hepatitis B or hepatitis C infection, can be accepted as donors.

C. EXTERNAL PHYSICAL INSPECTION

A physical examination of the body shall be performed to detect any signs that may be sufficient in themselves to exclude the donor, or which may be assessed in the light of the donor's medical and personal history. Attention should be given to the following: tumours (e.g. melanoma), infections (e.g. genital ulcers, anal condylomas), risk factors for transmissible diseases (e.g. vessel puncture, tattoos, piercing), traumas to the donor's body, and scars from recent or old operations.

D. SPECIFIC SELECTION CRITERIA

Specific selection criteria for tissues from deceased donors shall be taken into account case by case on the basis of current scientific knowledge.

2. **Living donor**

2.1. *Autologous living donor*

1. The medical doctor responsible for the patient-donor must determine, based on the patient's medical history and therapeutic indications, and document the viability of the transplant.

2. If the removed cells or tissues are stored or cultured, the same serology tests must be carried out as for an allogeneic living donor. Positive results will not rule out the person undergoing the treatment.

2.2. *Allogeneic living donor*

1. The selection criteria for the allogeneic living donor shall be established and documented by the responsible physician based on the donor's physical status, clinical and personal record, the results of clinical analyses, and other laboratory tests establishing the donor's health.

2. The same exclusion criteria as for deceased donors have to be followed, but others may need to be added: e.g. pregnancy (except for donors of haematopoietic progenitors cells and amniotic membrane) and breastfeeding. The specific exclusion criteria for each tissue/cells shall also need to be taken into account.

ANNEX V

LABORATORY TESTS REQUIRED FOR DONORS

1. **Serology tests required for donors**

Infection	Tissues and cells: recommendation in case of positive result
HIV 1 and 2	Contraindication to donation
Hepatitis B	HBs Ag positive is a contraindication to donation Anti HBc positive requires complementary tests
Hepatitis C	Contraindication to donation
Treponema pallidum	Requires tests to detect specific antibodies for T. pallidum. A positive result contraindicates donation
HTLV-I and II in donors living or coming from high incidence areas, or their sexual partners or children	Contraindication to donation

2. **General requirements to be met when determining serological markers**

1. The tests should be carried out by a qualified laboratory, authorised by the competent authority in the Member State.
2. The serological tests will be carried out on the donor's serum or plasma; they should not be performed on other fluids or secretions such as the aqueous or vitreous humour.
3. The type of test used shall be in agreement with the scientific knowledge.
4. All blood samples should be obtained immediately prior or after the tissue procurement in case of a deceased donor.
5. In the case of living donors (except allogeneic bone marrow and peripheral blood cells donors, for practical reasons), blood samples should be obtained at the time of donation, with an admitted margin of ± 7 days and a repeat sample after 6 months.
6. In case of an allogeneic haematopoietic progenitor cell transplantation, blood samples shall be tested within 30 days prior to donation.
7. If in a living donor (except allogeneic haematopoietic progenitor cell donors) the blood sample is drawn 6 days after procurement and tested by nucleic acid amplification technique (NAT), a repeat blood sample is not necessary for HIV, HBV and HCV.

ANNEX VI

CELL AND/OR TISSUE PROCUREMENT PROCEDURES, AND RECEPTION AT THE TISSUE BANK

A. VERIFICATION PROCEDURE

Consent

Before the procurement of tissues or cells, the person responsible from the procurement team shall confirm that the consent for the procurement has been obtained according with the legislation in place in the Member State.

Donor identification

(a) Donor and donation data shall be registered and maintained in a manner that ensures correct donor identification and traceability of each individual tissue and cell.

(b) The data registration system has to be validated to ensure that the recorded information ensures correct identification and traceability.

B. FACILITIES AND PROCEDURES FOR THE PROCUREMENT OF TISSUES AND CELLS

Donations shall be retrieved in appropriate facilities that minimise bacterial contamination of procured tissues or cells. For living donors, the procurement environment must also ensure their health and safety.

C. PROCUREMENT PROCEDURES FOR TISSUES AND CELLS

The procurement procedures shall be appropriate for the type of donor and the type of tissue/cells donated. They should also protect those properties of the tissue/cells that are required for their ultimate clinical use, and at the same time avoid microbiological contamination during the process. In the case of deceased donations, the time interval from death to procurement shall be specified so as to ensure the protection of the required biological properties.

D. DONOR DOCUMENTATION

1. For each donor, there should be a dossier that contains: donor identification, the consent form, clinical data, laboratory test results, and results of other tests carried out. Data related with the procurement process shall also be registered.

2. In case an autopsy was carried out, the results shall be included in the dossier.

3. All the records must be legible and permanent and shall be in compliance with data protection legislation.

4. Donor clinical records shall be maintained for at least 30 years in the registry of the procurement establishment.

5. The date and time of procurement (start and end) must be recorded.

E. DATA TO BE REGISTERED

The data that must be registered in the tissue bank includes:

(a) Consent;

(b) Donor identification and characteristics: type of donor, age, sex, cause of death, and presence of risk factors;

(c) Review of clinical data against donor selection criteria;

(d) Results of physical examination, of laboratory tests and of other tests (autopsy report when one was conducted);

(e) Date and time of the death/perfusion;

(f) Date and time of the procurement, and health care establishment where the procurement is carried out;

(g) Conditions under which the cadaver is kept: refrigerated (or not), time of start of refrigeration and time of transfer to procurement site;

(h) Place of procurement, procurement team, and person in charge of procurement;

(i) Degree of asepsis;

(j) Details about the preservation solutions used during procurement, including composition, lot, date of expiry, temperature, amount, concentration and preparation method;

(k) Grafts obtained and relevant characteristics;

(l) Relevant incidents that have occurred before, during, and after procurement;

(m) Destination of the cells/tissues procured;

(n) Method of preservation until arrival of tissues/cells at the bank;

(o) In the case of cellular cultures, it is necessary also to document:

— Characteristics of the lesion to be treated;

— Medicinal allergies (e.g. antibiotics) of the recipient.

F. PACKAGING

1. Following procurement, all donations shall be packed individually in a manner that minimises the risk of contamination and preserves the required characteristics and biological function of the cells/tissues.

2. The packaged cells/tissues shall be shipped in a rigid container suitable for transport, which maintains the integrity of the contents and the specified temperature.

3. Any accompanying tissue or blood samples for testing shall be correctly labelled and identified.

G. LABELLING OF THE RETRIEVED TISSUE/CELLS

Every package containing tissues or cells must be labelled at least with:

(a) Donor identification number or code; and

(b) Type of tissue/cells.

H. LABELLING OF THE SHIPPING CONTAINER

When tissues/cells are shipped, every shipping container must be labelled at least with:

(a) Identification of the tissue/cells;

(b) Identification of the procurement establishment (address and phone number) and the person in charge of the delivery;

(c) Identification of the tissue bank of destination (address and phone number) and the person in charge of the reception at the destination;

(d) Date and time of harvesting;

(e) In the cases of haematopoietic progenitors, the following shall be added: DO NOT IRRADIATE; and

(f) In the case of 'autologous' donors, the following shall be added: 'for autologous use only'.

I. RECONSTRUCTION OF CADAVER

Once the tissues have been retrieved, the deceased donor body should be reconstructed so that it is as similar as possible to its original anatomical shape. Reconstruction methods should minimise any impact on normal funeral procedures.

J. RECEIPT OF THE TISSUE/CELLS AT THE PROCESSING/STORAGE ESTABLISHMENT

When the retrieved tissues/cells arrive at the processing/storage establishment, there shall be a documented verification that the consignment, including, transport conditions, packaging, labelling and associated documentation and samples, meet the requirements of this Annex and the specifications of the receiving bank. Each bank shall have a documented procedure for handling non-conforming consignments of tissues/cells.

ANNEX VII

CELL AND TISSUE PROCESSING, STORAGE, AND DISTRIBUTION

A. PROCESSING

1. Every tissue and cell processing facility must have an adequate system of process control.

2. When technical procedures cannot be verified at any particular time throughout the process, they must be continuously monitored to ensure that the established Standard Operating Procedures are met.

3. Where a microbial inactivation procedure is applied to the tissue or cells, it must be specified, documented, and validated.

4. Where any processing step is carried out by a third party, an agreement must be documented to demonstrate the required performance specification and validation.

5. The processes should undergo regular critical evaluation to ensure that they continue to achieve the intended results.

6. Before new processes are implemented, they must be validated to demonstrate that they will consistently result in tissues that comply with the SOPs of the tissue bank. Where any significant change in processing occurs, involving new or modified equipment, major overhauls or change of location, these validation steps must be repeated and documented.

7. Environments in which tissues are processed must be adequately controlled to minimise or avoid the potential for tissue contamination. Where tissues or cells are exposed to the environment during processing, without a subsequent microbial inactivation process, an air quality of Grade A (< 3 500 particles per m^3 of minimum 0,5 μm) is required, usually by using a laminar air flow (LAF) cabinet. The background environment must be suitable to maintain a Grade A in the LAF. Where tissues or cells are exposed to the environment during processing with a subsequent microbial inactivation process, a Grade C environment (< 350 000 particles per m^3 of minimum 0,5 μm and < 2 000 particles per m^3 of 5 μm) is required.

B. STORAGE

1. Storage conditions, including relevant parameters such as temperature, must be defined to maintain the required tissue and cell properties.
2. Critical parameters (e.g. temperature, humidity, sterility) must be controlled, monitored, and recorded continuously to demonstrate compliance with the specified conditions.
3. Maximum storage time must be specified for each type of storage condition.
4. The selected period must reflect possible deterioration of the required tissue and cell properties, changing donor selection and testing criteria over time and the availability of alternative treatments.

C. DISTRIBUTION

1. Transport conditions, including relevant parameters such as temperature, must be defined to maintain the required tissue and cell properties.
2. Packaging must ensure that the tissue is maintained in the condition established in the Standard Operating Procedures. If the packaging has not received market validation for this purpose, then critical parameters, such as temperature and humidity must be continuously controlled during the delivery process.
3. Where distribution is carried out by a contracted third party, a documented agreement must be in place to ensure that the required conditions are maintained.
4. A documented system must be in place for the recall of tissue or cells in the event that a potential risk to the recipient(s) is identified following distribution.

D. FINAL LABELLING FOR DISTRIBUTION

1. Every unit of tissue/cells distributed has to be accompanied by a label with at least the following information:
   (a) Identification number or code of the tissue/cells;
   (b) Characteristics of the tissue or cell;
   (c) Identification of the tissue bank;
   (d) Lot number.
2. The following information shall be provided either on the label or in accompanying documentation:
   (a) Morphology and functional data;
   (b) Date of distribution of the tissue/cell;
   (c) Serological determinations carried out on the donor and results;
   (d) Storage recommendations;
   (e) Instructions for opening the container, package, and any required manipulation;
   (f) Expiry date after opening/manipulation; and
   (g) Instructions on reporting serious adverse reactions and/or events.

E. EXTERNAL LABELLING OF THE SHIPPING CONTAINER

Every container shall be labelled with at least the following information:

(a) Identification of the originating tissue bank;

(b) Identification of the health care establishment of destination;

(c) A statement that the package contains human tissue/cells;

(d) In the case of haematopoietic progenitors, the following shall be added: 'DO NOT IRRADIATE';

(e) Recommended transport conditions (e.g. keep cool, in upright position, etc.); and

(f) Safety instructions/method of cooling (when applicable) [for instance: liquid N_2 poses a hazard for transport, manipulation of dry ice with bare hands also, etc.].

Proposal for a Council Regulation on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States)

(2002/C 227 E/29)

COM(2002) 335 final — 2002/0129(ACC)

(Submitted by the Commission on 21 June 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Pending ratification by the Member States of the European Community and the ACP States of the ACP-EC Partnership Agreement signed at Cotonou on 23 June 2000, hereinafter referred to as the 'Cotonou Agreement' ([1]), early application of this Agreement is provided for by Decision No 1/2000 of the ACP-EC Council of Ministers of 27 July 2000 regarding transitional measures valid from 2 August 2000 until the entry into force of the ACP-EC Partnership Agreement ([2]).

(2) In order to facilitate the transition to the new trading arrangements, and in particular the Economic Partnership Agreements, the non-reciprocal trade preferences applied under the Fourth ACP-EC Convention should be maintained during the preparatory period until 31 December 2007 for all ACP States, under the conditions defined in Annex V to the Cotonou Agreement.

(3) For agricultural products originating in the ACP States and listed in Annex I to the Treaty or subject to specific rules as a result of the implementation of the common agricultural policy, Article 1(a) of Annex V to the Cotonou Agreement provides for a more favourable treatment than that granted to third countries benefiting from the most-favoured-nation clause for the same products.

(4) In Declaration XXII to the Cotonou Agreement concerning agricultural products referred to in Article 1(a) of Annex V, the Community declared that it will take all the measures required to ensure that the corresponding agricultural regulations are adopted in good time.

(5) It should be specified that the advantages resulting from Annex V to the Cotonou Agreement are granted only to originating products within the meaning of its Protocol 1 concerning the definition of the concept of 'originating products' and methods of administrative cooperation.

(6) For reasons of simplification and transparency a complete list of the products concerned and the specific import provisions applicable to them should be contained in an Annex, with references to tariff quotas, tariff ceilings or reference quantities contained in a separate Annex.

(7) There have traditionally been trade flows from the ACP States to the French overseas departments and measures should therefore be maintained to encourage the import of certain products originating in the ACP States into the French overseas departments to cover local consumption requirements, including consumption following processing. Provisions should also be made for altering the arrangements governing access to the markets for products originating in the ACP States referred to in Annex V to the Cotonou Agreement, particularly in the light of the said departments' economic development requirements.

(8) Although the tariff advantages resulting from Annex V to the Cotonou Agreement are calculated on the basis of rates laid down in the Common Customs Tariff, and in accordance with the rules governing it, they should be calculated on the basis of the autonomous duty where, for the products concerned, that duty is lower than the conventional duty.

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

(10) It should be stipulated that the safeguard clauses provided for in [Council Regulation on the safeguard measures provided for in the ACP-EU Partnership Agreement] apply.

(11) Since the present Regulation is to replace Council Regulation (EC) No 1706/98 of 20 July 1998 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EEC) No 715/90 ([4]), that Regulation should be repealed.

([1]) OJ L 317, 15.12.2000, p. 3.

([2]) OJ L 195, 1.8.2000, p. 46.

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

([4]) OJ L 215, 1.8.1998, p. 12.

(12) As the present Regulation implements international commitments, which the Community has already taken, the Regulation enters into force on the day following that of its publication in the *Official Journal of the European Communities*,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. This Regulation shall apply to the import of products originating in the ACP States, parties to the Cotonou Agreement.

2. The rules of origin applicable to the products referred to in paragraph 1 shall be those in Protocol 1 of Annex V to the Cotonou Agreement.

3. Agricultural products originating in the ACP States shall be imported under the arrangements of Annex I to this Regulation, subject to the specific arrangements contained in Annex II.

Article 2

Specific provisions regarding certain products in Annex I

1. For the purposes of the tariff ceilings and reference quantities referred to in Annex II the provisions of Article 308d of Commission Regulation (EEC) 2454/93 [1] shall apply.

2. If in the course of the calendar year, the tariff ceiling, as provided for in Annex II, has been reached the Commission may in accordance with the procedure in Article 7(2) adopt a regulation re-establishing, until the end of the calendar year, the customs duties applicable to third countries in respect of imports of the products concerned. The duties applicable shall be reduced by 50 %.

3. If in the course of a calendar year imports of a product exceed the reference quantity, as referred to in Annex II, a decision may be taken by the Commission in accordance with the procedure in Article 7(2) to make the imports subject to a tariff ceiling equal to the reference quantity, having regard to the annual balance of trade in the product.

4. When reference is made to this Article, the duty reduction referred to in Annex I shall not be applied when the Community, in accordance with its Uruguay Round commitments, applies additional duties.

5. If an ACP State is not able to supply its annual allocation within quota 18, as provided for in Annex II, as a result of an actual or foreseeable decline of its exports due to a disaster such as drought, or cyclone or due to animal diseases and it does not wish to benefit from the possibility of delivery in the current or following calendar year, it may request, by 1 September of each calendar year at the latest, to reallocate the relevant quantities among the other States concerned, up to the limit of 52 100 tonnes, expressed in boneless meat.

A decision on this request for reallocation shall be taken in accordance with the procedure referred to in Article 6(2).

6. The tariff quotas Q9, Q10, Q13a, Q13b, Q15, Q16 and Q17 referred to in Annexes I and II shall be managed in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

Article 3

French overseas departments

1. Subject to paragraphs 3 and 4, customs duties to products with CN codes 0102, 0102 90, 0102 90 05, 0102 90 21, 0102 90 29, 0102 90 41, 0102 90 49, 0102 90 51, 0102 90 59, 0102 90 61, 0102 90 69, 0102 90 71, 0102 90 79, 0201, 0202, 0206 10 95, 0206 29 91, 0709 90 60, 0712 10 90, 0714 10 91, 0714 90 11 and 1005 90 00 shall not be applied to imports into the French overseas departments of products originating in the ACP States or in the overseas countries and territories which are intended for use in the overseas departments and are released on the market there.

2. Customs duty shall not be applied to direct imports into the overseas department of Réunion of rice falling within CN code 1006, excluding rice for sowing falling within CN code 1006 10 10.

3. If imports into the French overseas departments of maize originating in the ACP States or in the overseas countries and territories have exceeded 25 000 tonnes in a calendar year and are causing or are likely to cause serious disturbances on those markets, the Commission shall, at the request of a Member State or on its own initiative, take the necessary measures.

Any Member State may, within three working days of notification of the measure taken by the Commission, refer that measure to the Council.

The Council, acting by a qualified majority, may take a different decision within one month.

4. The exemption from customs duty for products from the French overseas departments falling within CN codes 0714 10 91 and 0714 90 11 shall apply within the limits of an annual quota of 2 000 tonnes.

[1] OJ L 253, 11.10.1993, p. 1.

5. Within the limits of an annual quantity of 8 000 tonnes, the customs duty fixed pursuant to Article 10(1) of Council Regulation (EEC) No 1766/92 [1], shall not be applied to imports into the overseas department of Réunion of wheat bran falling within CN code 2302 30, originating in the ACP States.

Article 4

Tariff preferences

The tariff preferences provided for by this Regulation shall be calculated on the basis of the rates of the autonomous duty where, for the products concerned that duty is lower than the conventional duty as laid down in the Common Customs Tariff.

Article 5

Implementation

The measures necessary for the implementation of this Regulation shall be adopted in accordance with the procedure referred to in Article 6(2) or where appropriate in accordance with the procedure referred to in Article 7(2).

Article 6

Committee procedure

1. For the implementation of this Regulation, the Commission shall be assisted by the Management Committee for Cereals instituted by Article 22 of Council Regulation (EEC) No 1766/92, or by the management committees instituted by the other regulations on the common organisation of the market for the products concerned.

In the case of agricultural products covered by Council Regulation (EEC) No 827/68 [2] and products not covered by a common organisation of the markets, the Commission shall be assisted by the Management Committee for Hops instituted by Article 20 of Regulation (EEC) No 1696/71 [3].

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

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

Article 7

Customs Code Committee

1. The Commission shall be assisted, where necessary, by the Customs Code Committee instituted by Article 248a of Council Regulation (EEC) No 2913/92 [4].

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

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

Article 8

Safeguard clauses

[Council Regulation on the safeguard measures provided for in the ACP-EU Partnership Agreement] shall be applicable to the products covered by this Regulation.

Article 9

Repeal

Regulation (EC) No 1706/98 is hereby repealed.

Article 10

Entry into force

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

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

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[1] OJ L 181, 1.7.1992, p. 21.

[2] OJ L 151, 30.6.1968, p. 16.

[3] OJ L 175, 4.8.1971, p. 1.

[4] OJ L 302, 19.10.1992, p. 1.

ANNEX I

LIST OF PRODUCTS INCLUDED IN THE ARRANGEMENT REFERRED TO IN ARTICLE 1(3)

CN Code: For reasons of simplification the products are listed in table form.

Description: Notwithstanding the rules for the interpretation of the Combined Nomenclature, the description of the products is considered as indicative, the tariff preferences scheme being determined by the coverage of the CN code. Where ex CN codes are indicated, the tariff preferences are determined by application of the CN code and description taken together.

Column C: Products for which the customs duties shall be entirely suspended.

Column D: Products for which the customs duties duty shall be reduced by 16 %.

Column E: Products for which the 'ad valorem' duty shall be reduced by 100 %.

Column F: Products subject to the tariff quotas, tariff ceilings or reference quantities and provisions specified in Annex II.

Column G: The letters in this column refer as follows:

— a indicates that the products are subject to the provisions in Article 2(2),

— b indicates that the products are subject to the provisions in Article 2(3),

— c indicates that the products are subject to the provisions in Article 2(4),

— d indicates that the products are subject to the provisions in Article 2(5).

— e indicates that the products are subject to the provisions in Article 2(6).

Column H: The MFN duty shall be reduced by the amount in EUR/t or by the percentage number indicated.

CN Code 2000	Description	C	D	E	F	G	H
0101	Live horses, asses, mules and hinnies	x					
0102	Live bovine animals						
0102 90 05	Other than pure-bred breeding animals			x	Q18	d	
0102 90 21				x	Q18	d	
0102 90 29				x	Q18	d	
0102 90 41				x	Q18	d	
0102 90 49				x	Q18	d	
0102 90 51				x	Q18	d	
0102 90 59				x	Q18	d	
0102 90 61				x	Q18	d	
0102 90 69				x	Q18	d	
0102 90 71				x	Q18	d	
0102 90 79				x	Q18	d	
0103	Live swine						
0103 91 10	Domestic swine, weighing < 50 kg		x				
0103 92 11	Sows, having farrowed at least once, weighing >= 160 kg		x				
0103 92 19	Other domestic swine		x				

CN Code 2000	Description	C	D	E	F	G	H
0104	Live sheep and goats						
0104 10 30	Lambs 'sheep up to a year old'				Q1		
0104 10 80	Other sheep				Q1		
0104 20 10	Pure-bred breeding goats	x					
0104 20 90	Other goats				Q1		
0105	Live poultry		x				
0106	Other live animals	x					
0201	Meat of bovine animals, fresh or chilled			x	Q18	d	
0202	Meat of bovine animals, frozen			x	Q18	d	
0203	Meat of swine, fresh, chilled or frozen						
0203 11 10	Fresh or chilled domestic swine carcases and ½ carcases				Q7		
0203 12 11	Fresh or chilled unboned, domestic swine hams and cuts thereof				Q7		
0203 12 19	Fresh or chilled unboned, domestic swine shoulders and cuts thereof				Q7		
0203 19 11	Fresh or chilled fore-ends and cuts thereof of domestic swine				Q7		
0203 19 13	Fresh or chilled loins and cuts thereof of domestic swine				Q7		
0203 19 15	Fresh or chilled bellies and cuts thereof of domestic swine				Q7		
ex 0203 19 55	Fresh or chilled boneless meat of domestic swine (excl. tenderloin presented separately)				Q7		
0203 19 59	Fresh or chilled unboned meat of domestic swine				Q7		
0203 21 10	Frozen domestic swine carcases and ½ carcases				Q7		
0203 22 11	Frozen unboned hams and cuts thereof of domestic swine				Q7		
0203 22 19	Frozen unboned shoulders and cuts thereof of domestic swine				Q7		
0203 29 11	Frozen fore-ends and cuts thereof of domestic swine				Q7		
0203 29 13	Frozen loins and cuts thereof of domestic swine				Q7		
0203 29 15	Frozen bellies and cuts thereof of domestic swine				Q7		
ex 0203 29 55	Frozen boned meat of domestic swine (excl. the tenderloin in one piece)				Q7		
0203 29 59	Frozen unboned meat of domestic swine				Q7		
0204	Meat of sheep or goats, fresh, chilled or frozen						
	Domestic sheep				Q2		
	Other species				Q1		
0205	Meat of horses, fresh or chilled	x					
0206	Edible offal of bovine animals etc.						

CN Code 2000	Description	C	D	E	F	G	H
0206 10 95	Fresh or chilled bovine thick and thin skirt			x	Q18	d	
0206 29 91	Frozen bovine thick and thin skirt			x	Q18	d	
0206 80 91	of horses, asses, mules and hinnies, fresh or chilled	x					
0206 90 91	of horses, asses, mules and hinnies, frozen	x					
0207	Meat and edible offal of fowls etc.				Q3		
0208	Meat and offal of rabbit	x					
0209	Pig fat, free of lean meat, and poultry fat not rendered etc.						
0209 00 11	Subcutaneous pig fat, fresh, chilled, frozen, salted or in brine				Q7		
0209 00 19	Subcutaneous pig fat, dried or smoked				Q7		
0209 00 30	Pig fat (other than subcutaneous)				Q7		
0209 00 90	Poultry fat		x				
0210	Meat and edible offal, salted or in brine etc.						
0210 11 11	Unboned domestic swine hams and cuts thereof, salted or in brine				Q7		
0210 11 19	Unboned domestic swine shoulders and cuts thereof, salted or in brine				Q7		
0210 11 31	Unboned domestic swine hams and cuts thereof, dried or smoked				Q7		
0210 11 39	Unboned domestic swine shoulders and cuts thereof, dried or smoked				Q7		
0210 11 90	Unboned hams, shoulders and cuts thereof of non-domestic swine, salted, in brine, dried or smoked	x					
0210 12 11	Bellies and cuts thereof of domestic swine, salted or in brine				Q7		
0210 12 19	Bellies and cuts thereof of domestic swine, dried or smoked				Q7		
0210 12 90	Bellies and cuts thereof of non-domestic swine, salted, in brine, dried or smoked	x					
0210 19 10	Bacon sides or spencers of domestic swine, salted or in brine				Q7		
0210 19 20	¾ sides or middles of domestic swine, salted or in brine				Q7		
0210 19 30	Fore-ends and parts thereof of domestic swine, salted or in brine				Q7		
0210 19 40	Loins and cuts thereof of domestic swine, salted or in brine				Q7		
0210 19 51	Other boneless meat of domestic swine, salted or in brine				Q7		

CN Code 2000	Description	C	D	E	F	G	H
0210 19 59	Other unboned meat of domestic swine, salted or in brine				Q7		
0210 19 60	Domestic swine fore-ends and cuts thereof, dried or smoked				Q7		
0210 19 70	Domestic swine loins and cuts thereof, dried or smoked				Q7		
0210 19 81	Dried or smoked boneless domestic swine meat				Q7		
0210 19 89	Unboned, dried or smoked domestic swine meat				Q7		
0210 19 90	Meat of non-domestic swine	x					
0210 20	Unboned meat of bovine animals			x	Q18	d	
0210 91 00	Meat of primates	x					
0210 92 00	Meat of whales, dolphins and porpoises, of manatees and dugongs	x					
0210 93 00	Meat of reptiles	x					
0210 99 10	Meat of horses, salted, in brine or dried	x					
0210 99 21	Meat with bone in			x			
	Domestic sheep				Q2		
	Other species				Q1		
0210 99 29	Boneless meat of sheep and goats			x			
	Domestic sheep				Q2		
	Other species				Q1		
0210 99 31	Reindeer meat	x					
0210 99 39	Other meat	x					
0210 99 41	Livers of domestic swine				Q7		
0210 99 49	Other offal of domestic swine				Q7		
0210 99 51	Thick offal of bovine animals			x	Q18	d	
0210 99 59	Other offal of bovine animals	x					
0210 99 60	Offal of sheep and goats	x					
0210 99 71	Fatty goose or duck livers, salted or in brine		x				
0210 99 79	Other poultry liver		x				
0210 99 80	Other edible meat offal	x					
0210 99 90	Edible flours and meals of meat or meat offal			x			
03	Fish and crustaceans, molluscs, and other aquatic invertebrates	x					
0401	Milk and cream, not concentrated		x				
0402	Milk and cream concentrated				Q5		
0403	Buttermilk, curdled milk and cream yoghurt etc.						

CN Code 2000	Description	C	D	E	F	G	H
0403 10 11	Yoghurt		x				
0403 10 13			x				
0403 10 19			x				
0403 10 31			x				
0403 10 33			x				
0403 10 39			x				
0403 10 51				x			
0403 10 53				x			
0403 10 59				x			
0403 10 91				x			
0403 10 93				x			
0403 10 99				x			
0403 90 11	Other		x				
0403 90 13			x				
0403 90 19			x				
0403 90 31			x				
0403 90 33			x				
0403 90 39			x				
0403 90 51			x				
0403 90 53			x				
0403 90 59			x				
0403 90 61			x				
0403 90 63			x				
0403 90 69			x				
0403 90 71				x			
0403 90 73				x			
0403 90 79				x			
0403 90 91				x			
0403 90 93				x			
0403 90 99				x			
0404	Whey, whether or not concentrated or containing sugar etc.		x				
0405	Butter and other fats and oils derived from milk		x				
0406	Cheese and curd				Q6		
0407	Birds' eggs, in shell, fresh, preserved or cooked						
0407 00 11	Of turkey or goose, for hatching		x				
0407 00 19	Of other poultry, for hatching		x				
0407 00 30	Other poultry eggs		x				

CN Code 2000	Description	C	D	E	F	G	H
0407 00 90	Birds' eggs	x					
0408	Birds' eggs, not in shell, and egg yolks, fresh etc., whether or not containing added sugar or other sweetening matter						
0408 11 80	Egg yolks, dried, suitable for human consumption		x				
0408 19 81	Egg yolks, liquid, suitable for human consumption,		x				
0408 19 89	Other egg yolks frozen or otherwise preserved, suitable for human consumption		x				
0408 91 80	Dried birds' eggs, suitable for human consumption		x				
0408 99 80	Other birds' eggs, suitable for human consumption		x				
0409	Natural honey	x					
0410	Edible products of animal origin, not elsewhere specified or included	x					
05	Products of animal origin not elsewhere specified or included	x					
06	Live trees and other plants	x					
0701	Potatoes, fresh or chilled	x					
0702	Tomatoes other than cherry tomatoes from 15/11-30/4				Q13a	e	
	Cherry tomatoes from 15/11-30/4				Q13b	e	
0703	Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled						
0703 10 19	Onions, from 16 May to 31 January						15 %
	from 1 February to 15 May	x					
0703 10 90	Shallots		x				
0703 20 00	Garlic, from 1 June to 31 January						15 %
	from 1 February to 31 May	x					
0703 90 00	Leeks and other alliaceous vegetables		x				
0704	Cabbages, cauliflowers, kohlrabi etc., fresh or chilled						
0704 10 00	Cauliflowers and headed broccoli		x				
0704 20 00	Brussels sprouts		x				
0704 90 10	White and red cabbages		x				
0704 90 90	Chinese cabbages from 1 January to 31 October						15 %
	from 1 November to 31 December	x					
	Other cabbages		x				
0705	Lettuce, fresh and chilled						
0705 11 00	Iceberg salads from 1/11-30/6						15 %
	Iceberg salads from 1/7-31/10	x					
	Other cabbage lettuce		x				
0705 19 00	Other lettuce		x				
0705 21 00	Witloof chicory		x				

CN Code 2000	Description	C	D	E	F	G	H
0705 29 00	Other chicory		x				
0706	Carrots, turnips, salad beetroot, etc., fresh or chilled						
0706 10 00	Carrots from 1/4-31/12						15 %
	Carrots from 1/1-31/3	x					
	Turnips		x				
0706 90 10	Celeriac		x				
0706 90 30	Horseradish	x					
ex 0706 90 90	Salad beetroot and radishes	x					
0707	Cucumbers and gherkins, fresh or chilled						
ex 0707 00 05	Small winter cucumbers from 1/11-15/5			x			
	Winter cucumbers, other than small cucumbers		x				
0707 00 90	Gherkins		x				
0708	Leguminous vegetables, shelled or unshelled, fresh or chilled	x					
0709	Other vegetables fresh or chilled						
0709 10	Artichokes, from 1/1-30/9						15 %
	from 1/10-31/12			x			
0709 20	Asparagus, from 1/2-14/8						15 %
	from 16/1-31/1						40 %
	from 15/8-15/1	x					
0709 30	Aubergines	x					
0709 40	Celery (excl. celeriac)	x					
0709 51 00	Cultivated mushrooms		x				
0709 52 00	Truffles		x				
0709 59 10	Chanterelles		x				
0709 59 30	Flap mushrooms		x				
0709 59 90	Other mushrooms	x					
0709 60	Sweet peppers	x					
0709 70 00	Spinach, New Zealand spinach and orache spinach		x				
0709 90 10	Salad vegetables other than lettuce and chicory		x				
0709 90 20	Chard (or white beet) and cardoons		x				
0709 90 40	Capers		x				
0709 90 50	Fennel		x				
0709 90 60	Sweet corn						1,81
0709 90 70	Courgettes			x			
0709 90 90	Other leguminous vegetables	x					
0710	Vegetables, uncooked or cooked by steaming or boiling in water; frozen						
0710 10	Potatoes	x					

CN Code 2000	Description	C	D	E	F	G	H
0710 21	Peas, shelled or unshelled	x					
0710 22	Beans, shelled or unshelled	x					
0710 29	Other leguminous vegetables, shelled or unshelled	x					
0710 30	Spinach, New Zealand spinach and orache spinach	x					
0710 40	Sweet corn			x			
0710 80 51	Sweet peppers	x					
0710 80 59	Fruits of genus Capsicum or Pimenta	x					
0710 80 61	Mushrooms	x					
0710 80 69		x					
0710 80 70	Tomatoes	x					
0710 80 80	Artichokes	x					
0710 80 85	Asparagus	x					
0710 80 95	Other vegetables	x					
0710 90 00	Mixtures of vegetables	x					
0711	Vegetables, provisionally preserved etc., but unsuitable in that state for immediate consumption						
0711 30 00	Capers	x					
0711 40 00	Cucumbers and gherkins	x					
0711 51 00	Mushrooms of the genus Agaricus	x					
0711 59 00	Other mushrooms; truffles	x					
0711 90 10	Fruits of genus Capsicum or Pimenta (excl. sweet pepper)	x					
0711 90 30	Sweet corn			x			
0711 90 50	Onions	x					
0711 90 80	Other	x					
0711 90 90	Mixture of vegetables	x					
0712	Dried vegetables, whole, cut, sliced broken or in powder, but not further prepared						
0712 20	Onions	x					
0712 31	Mushrooms of the genus Agaricus	x					
0712 32	Wood ears (Auricularia spp.)	x					
0712 33	Jelly fungi (Tremella spp.)	x					
0712 39	Other mushrooms; truffles	x					
0712 90 05	Potatoes, whether or not cut or sliced, but not further prepared	x					
0712 90 19	Sweet corn						1,81
0712 90 30	Tomatoes	x					

CN Code 2000	Description	C	D	E	F	G	H
0712 90 50	Carrots	x					
ex 0712 90 90	Other dried vegetables and mixtures of vegetables, excl. olives	x					
0713	Dried leguminous vegetables etc.	x					
0714	Manioc, arrowroot, salep, jerusalem etc.						
0714 10 10	Pellets of manioc flour and meal						8,38
0714 10 91	Manioc, fresh and whole or without skin and frozen, whether or not sliced, for human consumption, in packings =< 28 kg	x					
0714 10 99	Other manioc						6,19
0714 20 10	Sweet potatoes, fresh, whole, for human consumption	x					
0714 90 11	Arrowroot, salep and similar roots and tubers with high starch content, either fresh and whole or without skin and frozen, whether or not sliced, for human consumption, in packings =< 28 kg	x					
0714 90 19	Other arrowroot Other salep and similar roots and tubers with high starch content	x					 6,19
0714 90 90	Other roots and tubers	x					
0801	Coconuts, brazil nuts and cashew nuts, fresh or dried, whether or not shelled or peeled	x					
0802	Other nuts, fresh or dried, whether or not shelled or peeled						
0802 11 90	Almonds in shell (excl. bitter)		x				
0802 12 90	Almonds, shelled (excl. bitter)		x				
0802 21 00	Hazelnuts in shell		x				
0802 22 00	Hazelnuts, shelled		x				
0802 31 00	Walnuts in shell	x					
0802 32 00	Walnuts, shelled	x					
0802 40 00	Chestnuts		x				
0802 50 00	Pistachios	x					
0802 90	Other nuts	x					
0803	Bananas, including plantains, fresh or dried						
0803 00 11	Plantains, fresh	x					
0803 00 90	dried	x					
0804	Dates, figs, pineapples etc., fresh or dried						
0804 10	Dates	x					
ex 0804 20 10	Fresh figs from 1/11-30/4				C3		
0804 20 90	Dried figs	x					
0804 30	Pineapples	x					
0804 40	Avocados	x					

CN Code 2000	Description	C	D	E	F	G	H
0804 50	Guavas, mangoes and mangosteens	x					
0805	Citrus fruit fresh or dried						
0805 10	Oranges from 1/10-14/05						80 % (1)
	from 15 May to 30 September				Rq1	b	
0805 20	Mandarins from 1/10-14/05						80 % (1)
	from 15 May to 30 September				Rq2	b	
0805 40	Grapefruit	x					
0805 50 90	Limes	x					
0805 90	Other citrus fruit	x					
0806	Grapes, fresh or dried						
ex 0806 10 10	Seedless table grapes, fresh (other than of variety Emperor)						
	— from 1 December to 31 January				Q14		
	— from 1 February to 31 march				Rq3	b	
0806 20	dried	x					
0807	Melons, (incl. watermelons) and papaws, fresh	x					
0808	Apples, pears and quinces, fresh						
0808 10	Apples				Q15	e	
0808 20 10	Perry pears, in bulk, from 1 August to 31 December				Q16	e	
0808 20 50	Other pears				Q16	e	
0808 20 90	Quinces		x				
0809	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh						
0809 10	Apricots, from 1/5-31/8 (1)						15 %
	from 1/9-30/4	x					
ex 0809 20 05	Cherries from 1/11-31/3	x					
0809 30	Peaches, incl. Nectarines, from 1/4-30/11 (1)						15 %
	Peaches, incl. Nectarines, from 1/12-31/3	x					
0809 40 05	Plums, from 1/4-14/12 (1)						15 %
	Plums, from 15/12-31/3	x					
0809 40 90	Sloes	x					
0810	Other fruit, fresh						
0810 10 00	Strawberries from 1 November to end February				Q17	e	
0810 20	Raspberries, blackberries, mulberries and loganberries		x				
0810 30	Black-, white- or redcurrants and gooseberries		x				

CN Code 2000	Description	C	D	E	F	G	H
0810 40 30	Fruit of species Vaccinium myrtillus	x					
0810 40 50	Fruit of species Vaccinium Macrocarpum and Vaccinium Corymbosum						duty reduced to 3 %
0810 40 90	Other fruits of genus Vaccinium						duty reduced to 5 %
0810 60 00	Durians	x					
0810 90	Other fresh fruit	x					
0811	Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, etc.						
0811 10 11	Strawberries with a sugar content exceeding 13 % by weight			x			
0811 10 19	Other strawberries containing sugar or other sweetening matters	x					
0811 10 90	Strawberries not containing sugar or other sweetening matter	x					
0811 20 11	Raspberries, blackberries, mulberries, loganberries, black, white or red currants and gooseberries, with a sugar content exceeding 13 % by weight			x			
0811 20 19	Other raspberries, blackberries etc., containing sugar or other sweetening matter	x					
0811 20 31	Raspberries, not containing sugar or other sweetening matter	x					
0811 20 39	Black currants, not containing sugar or other sweetening matter	x					
0811 20 51	Red currants, not containing sugar or other sweetening matter	x					
0811 20 59	Blackberries and mulberries, not containing sugar or other sweetening matter	x					
0811 20 90	Loganberries, whitecurrants and gooseberries, not containing sugar or other sweetening matter	x					
0811 90 11	Other, with a sugar content exceeding 13 % by weight			x			
0811 90 19				x			
0811 90 31	Other	x					
0811 90 39		x					
0811 90 50		x					
0811 90 70		x					
0811 90 75		x					
0811 90 80		x					
0811 90 85		x					
0811 90 95		x					
0812	Fruits and nuts provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption	x					
0813	Fruit, dried, other than that of heading 0801 to 0806; mixtures of nuts or dried fruits of this chapter	x					
0814	Peel of citrus fruit or melons etc.	x					
09	Coffee, tea, mate and spices	x					

CN Code 2000	Description	C	D	E	F	G	H
1001	Wheat and meslin						
1001 10	Durum wheat				Q10	e	
1001 90 10	Spelt for sowing	x					
1001 90 91	Common wheat and meslin seed				Q10	e	
1001 90 99	Spelt, common wheat and meslin (excl. seed)				Q10	e	
1002	Rye				Q10	e	
1003	Barley				Q10	e	
1004	Oats				Q10	e	
1005	Maize (corn)						
1005 10 90	Maize seed (excl. hybrid)						1,81
1005 90	Maize (excl. seed)						1,81
1006	Rice						
1006 10 10	Rice in the husk for sowing	x					
1006 10 21	Round grain rice in the husk, parboiled				Q11		
1006 10 23	Medium grain rice in the husk, parboiled				Q11		
1006 10 25	long grain rice in the husk, length/width ratio > 2 but < 3, parboiled				Q11		
1006 10 27	long grain rice in the husk, length/width ratio >= 3, parboiled				Q11		
1006 10 92	Other round grain rice in the husk				Q11		
1006 10 94	Other medium grain rice in the husk				Q11		
1006 10 96	Other long grain rice in the husk, length/width ratio > 2 but < 3				Q11		
1006 10 98	Other long grain rice in the husk, length/width ratio >= 3,				Q11		
1006 20	Husked (brown) rice				Q11		
1006 30	Semi-milled or wholly milled rice				Q11		
1006 40	Broken rice				Q12		
1007	Grain sorghum				C1	a	
1008	Buckwheat, millet, canary seed; other cereals						
1008 10 00	Buckwheat				Q10	e	
1008 20 00	Millet				C2	a	
1008 90	Other cereals				Q10	e	
1101	Wheat or meslin flour		x				
1102	Cereals flours, other than of wheat or meslin						
1102 10	Rye flour		x				
1102 20 10	Maize flour, with fat content of =< 1,5 % by weight						7,3
1102 20 90	Maize flour, with fat content of > 1,5 % by weight						3,6

CN Code 2000	Description	C	D	E	F	G	H
1102 30 00	Rice flour						3,6
1102 90 10	Barley flour						7,3
1102 90 30	Oat flour						7,3
1102 90 90	Other cereal flours						3,6
1103	Cereals groats, meal and pellets						
1103 11	Wheat groats and meal		x				
1103 13 10	Groats and meal of maize, 'corn', with a fat content, by weight, of =< 1,5 %						7,3
1103 13 90	Groats and meal of maize, 'corn', with a fat content, by weight, of > 1,5 %						3,6
1103 19 10	Rye groats and meal						7,3
1103 19 30	Barley groats and meal						7,3
1103 19 40	Groats and meal of oats						7,3
1103 19 50	Rice groats and meal						3,6
1103 19 90	Groats and meal of other cereals						3,6
1103 20 10	Rye pellets						7,3
1103 20 20	Barley pellets						7,3
1103 20 30	Pellets of oats						7,3
1103 20 40	Maize pellets						7,3
1103 20 50	Rice pellets						3,6
1103 20 60	Wheat pellets [2]						
1103 20 90	Pellets of other cereals						3,6
1104	Cereal grains otherwise worked, etc.						
1104 12 10	Rolled grains of oats						3,6
1104 12 90	Flaked grains of oats						7,3
1104 19 10	Rolled or flaked grains of wheat						7,3
1104 19 30	Rolled or flaked grains of rye						7,3
1104 19 50	Rolled or flaked grains of maize						7,3
1104 19 61	Rolled grains of barley						3,6
1104 19 69	Flaked grains of barley						7,3
1104 19 91	Flaked rice						7,3
1104 19 99	Other rolled or flaked grains						7,3
1104 22	Other worked grains of oats						3,6
1104 23	Other worked grains of maize (corn)						3,6
1104 29	Pearled barley grains						7,3
	Other worked grains of other cereals						3,6
1104 30	Germ of cereals, whole, rolled, flaked or ground						7,3

CN Code 2000	Description	C	D	E	F	G	H
1105	Flour, meal, powder, flakes, granules and pellets of potatoes	x					
1106	Flour, meal, and powder of the dried leguminous vegetables etc.						
1106 10	of dried leguminous vegetables of heading 0713	x					
1106 20 10	– of sago or of roots and tubers of heading 0714, denatured, excl. arrowroot						7,98
	– of arrowroot, denatured	x					
1106 20 90	– of sago and of roots and tubers of heading 0714, other than denatured, excl. arrowroot						29,18
	– of arrowroot, other than denatured	x					
1106 30	of the products of Chapter 8	x					
1108	Starches; inulin						
1108 11	Wheat starch						24,8
1108 12	Maize starch						24,8
1108 13	Potato starch						24,8
1108 14	Manioc starch (3)						
1108 19 10	Rice starch						37,2
1108 19 90	of arrowroot	x					
	Other starches (excl. arrowroot) (3)						
1108 20	Inulin	x					
1109	Wheat gluten, whether or not dried						219
1208	Flours and meal of oil seeds or oleaginous fruits						
1208 10	of soy bean	x					
1209	Seeds fruit and spores, of a kind used for sowing	x					
1210	Hop cones, fresh or dried whether or not ground, powdered or in the form of pellets	x					
1211	Plants and parts of plants (incl. seeds and fruits) etc., fresh or dried, whether or not cut, crushed or powdered	x					
1212	Locust beans, seaweeds etc., fresh, chilled, frozen or dried, whether or not ground, etc.						
1212 10	Locust beans	x					
1212 30	Apricot, peach (including nectarine) or plum stones and kernels	x					
1212 91	Sugar beet		x			c	
1212 99 20	Sugar cane		x			c	
1214 90 10	Mangolds, swedes and other fodder roots	x					
13	Lacs, gums, resins and other vegetable saps and extract	x					

CN Code 2000	Description	C	D	E	F	G	H
1501	Pig fat (including lard) and poultry fat		x				
1502	Fats of bovine animals, sheep or goats, other than those of heading 1503	x					
1503	Lard stearin, lard oil, oleostearin, oleo-oil and tallow oil, not emulsified or mixed or otherwise prepared	x					
1504	Fats and oils and their fractions of fish or marine mammals, whether or not refined, but not chemically modified	x					
1505	Wool grease and fatty substances therefrom	x					
1506	Other animal fats and oils and their fractions, whether or not refined, but not chemically modified	x					
1507	Soya-bean oil and its fraction whether or not refined.	x					
1508	Ground-nut oil and its fraction, whether or not refined, but not chemically modified	x					
1511	Palm oil and its fractions, whether or not refined, but not chemically modified:	x					
1512	Sunflower-seed, safflower or cotton-seed oil and fractions thereof	x					
1513	Coconut, palm kernel or babassu oil and fractions thereof	x					
1514	Rape, colza or mustard oil and fractions thereof	x					
1515	Other fixed vegetable fats and oils and their fractions	x					
1516	Animal or vegetable fats, oils and their fractions	x					
1517 10 10	Margarine, excluding liquid margarine, containing more than 10 % but not more than 15 % by weight of milk fats			x			
1517 10 90	Other margarine (excl. liquid margarine)	x					
1517 90 10	– – – Liquid margarine and edible mixtures, containing more than 10 % but not more than 15 % by weight of milk fats			x			
1517 90 91	Other	x					
1517 90 93		x					
1517 90 99		x					
1518	Animal or vegetable fats and oils and their fractions	x					
1520	Glycerol, crude; glycerol waters and glycerol lyes	x					
1521	vegetable waxes (excl. triglycerides)	x					
1522 00 10	Degras	x					
1522 00 91	oil foots and dregs; soapstocks	x					
1522 00 99	Other	x					
1601	Sausages and similar products, of meat, offal or blood, preparations based on these products				Q8		
1602	Other prepared or preserved meat, meat offal or blood						

CN Code 2000	Description	C	D	E	F	G	H
1602 10	Homogenised preparations		x				
1602 20 11	of goose or duck liver containing >= 75 % by weight of fatty livers	x					
1602 20 19	Other, of goose or duck liver	x					
1602 20 90	of liver of other animals		x				
1602 31	Other, of turkey				Q4		
1602 32	Other, of fowls of the species gallus domesticus				Q4		
1602 39	Of other poultry of heading 0105				Q4		
1602 41 10	Hams and cuts thereof, of domestic swine		x				
1602 41 90	Hams and cuts thereof, of other swine	x					
1602 42 10	Shoulders and cuts thereof, of domestic swine		x				
1602 42 90	Shoulders and cuts thereof, of other swine	x					
1602 49	Other including mixtures		x				
1602 50 10	of bovine animals, uncooked, incl. mixtures of cooked meat or offal and uncooked meat or offal				Q18	d	
1602 50 31	Corned beef, in airtight containers	x					
1602 50 39	Other meat or offal of bovine animals, in airtight containers	x					
1602 50 80	Other meat or offal of bovine animals	x					
1602 90	Other, including preparations of blood of any animal						
1602 90 10			x				
1602 90 31		x					
1602 90 41		x					
1602 90 51			x				
1602 90 61					Q18	d	
1602 90 69		x					
1602 90 72		x					
1602 90 74		x					
1602 90 76		x					
1602 90 78		x					
1602 90 98		x					
1603	Extracts and juices of meat, fish, crustaceans, molluscs and other aquatic invertebrates	x					
1604	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs	x					
1605	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved	x					

CN Code 2000	Description	C	D	E	F	G	H
1702	Other sugars, maltose etc. in solid form; sugar syrups not containing added flavouring or colouring matter, etc.						
1702 11	Lactose and lactose syrup, containing by weight >= 99 % lactose, expressed as anhydrous lactose, calculated on the dry matter		x				
1702 19 00	Other lactose and lactose syrup,		x				
1702 20	Maple sugar and maple syrup,		x			c	
1702 30	Glucose and glucose syrup, not containing fructose or containing in the dry state less than 20 % by weight of fructose						
1702 30 10			x			c	
1702 30 51							117
1702 30 59							81
1702 30 91							117
1702 30 99							81
1702 40 10	Isoglucose containing, in the dry state, >= 20 % and < 50 % by weight of fructose		x			c	
1702 40 90	Glucose and glucose syrup containing, in the dry state, >= 20 % and < 50 % by weight of fructose						81
1702 50	Chemically pure fructose	x					
1702 60	Other fructose and fructose syrup, containing, in the dry state, > 50 % by weight of fructose (excl. invert sugar)		x			c	
1702 90 10	Chemically pure maltose	x					
1702 90 30	Isoglucose		x			c	
1702 90 50	Maltodextrine and maltodextrine syrup						81
1702 90 60	Artificial honey, whether or not mixed with natural honey		x			c	
1702 90 71	Caramel containing, in the dry state, >= 50 % by weight of sucrose		x			c	
1702 90 75	Caramel, containing, in the dry state, < 50 % by weight of sucrose, in powder form, whether or not agglomerated						117
1702 90 79	Other caramel, containing, in the dry state, < 50 % by weight of sucrose						81
1702 90 80	Inulin syrup, containing in the dry state 50 % by weight of fructose		x			c	
1702 90 99	Other sugars, including invert sugar		x			c	
1703	Molasses resulting from the extraction or refining of sugar				Q9	e	
1704	Sugar confectionery, not containing cocoa						
1704 10	Chewing gum, whether or not sugar coated			x			
1704 90 10	Liquorice extract containing > 10 % sucrose, without other added substances	x					
1704 90 30	White chocolate	x					

CN Code 2000	Description	C	D	E	F	G	H
1704 90 51	Pastes, including marzipan, in immediate packings >= 1 kg			x			
1704 90 55	Throat pastilles and cough drops			x			
1704 90 61	Sugar coated 'panned' goods			x			
1704 90 65	Gum and jelly confectionery, incl. fruit pastes in the form of sugar confectionery			x			
1704 90 71	Boiled sweets			x			
1704 90 75	Toffees, caramels and similar sweets			x			
1704 90 81	Compressed tablets			x			
1704 90 99	Other			x			
1801	Cocoa beans, whole or broken, raw or roasted	x					
1802	Cocoa shells, husks, skins and other cocoa waste	x					
1803	Cocoa paste (excl. defatted)	x					
1804	Cocoa butter, fat and oil	x					
1805	Cocoa powder, not containing added sugar or other sweetening matter	x					
1806	Chocolate and other food preparations containing cocoa						
1806 10 15	Cocoa powder, containing added sugar or other sweetening matter but containing no sucrose or containing less than 5 % by weight of sucrose, incl. inverted sugar expressed as sucrose or isoglucose expressed as sucrose	x					
1806 10 20	Cocoa powder, containing added sugar or other sweetening matter, containing 5 % or more but less than 65 % by weight of sucrose			x			
1806 10 30	Cocoa powder, powder, containing added sugar or other sweetening matter, containing >= 65 % but < 80 % sucrose, incl. inverted sugar expressed as sucrose or isoglucose expressed as sucrose			x			
1806 10 90	Cocoa powder, powder, containing added sugar or other sweetening matter, containing >= 80 % sucrose, incl. inverted sugar expressed as sucrose or isoglucose expressed as sucrose			x			
1806 20	Other preparations, in blocks, slabs or bars weighing more than 2 kg	x					
1806 31	Other preparations, filled, in blocks, slabs or bars of =< 2 kg	x					
1806 32	Other preparations, not filled	x					
1806 90 11	Chocolates, whether or not filled, containing alcohol	x					
1806 90 19	Chocolates, whether or not filled, not containing alcohol	x					
1806 90 31	Other chocolate and chocolate products, filled	x					
1806 90 39	Other chocolate and chocolate products, not filled	x					
1806 90 50	Sugar confectionery and substitutes therefor, containing cocoa	x					
1806 90 60	Spreads containing cocoa			x			

CN Code 2000	Description	C	D	E	F	G	H
1806 90 70	Preparations containing cocoa, for making beverages			x			
1806 90 90	Other chocolate and food preparations containing cocoa			x			
1901	Malt extract, food preparations of flour, etc.						
1901 10 00	Preparations for infant use, retail sale (4)			x			
1901 20 00	Mixes and doughs for the preparation of bakers' wares of heading 1905 (4)			x			
1901 90 11	Malt extract with a dry extract content of >= 90 %			x			
1901 90 19	Malt extract with a dry extract content of < 90 %			x			
1901 90 91	Containing no milkfats, sucrose, isoglucose, glucose or starch or containing less than 1,5 % milkfat, 5 % sucrose, isoglucose, glucose or starch, excluding food preparations in powder form of goods of headings 0401 to 0404	x					
1901 90 99	Other (4)			x			
1902	Pasta, whether or not cooked or stuffed, etc.						
1902 11 00	Uncooked pasta, not stuffed or otherwise prepared, containing eggs			x			
1902 19	Other uncooked pasta, neither stuffed nor otherwise prepared			x			
1902 20 10	Stuffed pasta, whether or not cooked or otherwise prepared, containing > 20 % fish, crustaceans, or other aquatic invertebrates	x					
1902 20 30	Stuffed pasta, whether or not cooked or otherwise prepared, containing > 20 % sausages and the like, meat, offal and fats of any kind		x				
1902 20 91	Cooked pasta, stuffed			x			
1902 20 99	Pasta, otherwise prepared, stuffed			x			
1902 30	Other pasta			x			
1902 40	Couscous			x			
1903	Tapioca and substitutes therefor prepared from starch, in the form of flakes, grains, pearls, siftings or similar forms	x					
1904	Prepared foods obtained by swelling or roasting cereals or cereal products based on maize			x			
1905	Bread, pastry, cakes etc.						
1905 10	Crisp bread			x			
1905 20	Gingerbread and the like, whether or not containing cocoa, containing < 30 % sucrose, incl. invert sugar expressed as sucrose			x			
1905 31	Sweet biscuits	x					
1905 32	Waffles and wafers			x			
1905 40	Rusk, toasted bread and similar toasted products			x			

CN Code 2000	Description	C	D	E	F	G	H
1905 90	Other			x			
2001 10	Cucumbers and gherkins	x					
2001 20 00	Onions	x					
2001 90 20	Fruit of genus capsicum (excl. sweet peppers and pimentos)	x					
2001 90 30	Sweetcorn 'zea mays var. saccharata'			x			
2001 90 40	Yams, sweet potatoes and similar parts of plants containing >= 5 % starch			x			
2001 90 50	Mushrooms	x					
2001 90 60	Palm hearts	x					
2001 90 65	Olives	x					
2001 90 70	Sweet peppers	x					
2001 90 75	Salad beetroot 'beta vulgaris var. conditiva'	x					
2001 90 85	Red cabbages	x					
2001 90 91	Tropical fruit and tropical nuts	x					
ex 2001 90 96	Vegetables, fruit, nuts and other edible parts of plants, except vine leaves	x					
2002	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid	x					
2003	Mushrooms and truffles, prepared or preserved otherwise than by vinegar or acetic acid	x					
2004	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than of heading 2006						
2004 10 10	Cooked potatoes	x					
2004 10 91	Potatoes, in the form of flour, meal or flakes			x			
2004 10 99	Other potatoes	x					
2004 90 10	Sweet corn 'zea mays var. zaccharata'			x			
ex 2004 90 30	Sauerkraut and capers	x					
2004 90 50	Peas and immature beans	x					
2004 90 91	Cooked onions, not otherwise prepared	x					
2004 90 98	Other vegetables	x					
2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen						
2005 10	Homogenised	x					
2005 20 10	Potatoes in the form of flour, meal or flakes			x			
2005 20 20	Potatoes, thinly sliced, cooked in fat or oil, whether or not salted or flavoured, in airtight packings, suitable for direct consumption		x				
2005 20 80	Other potatoes		x				
2005 40	Peas 'pisum sativum'	x					
2005 51	Shelled beans 'vigna spp., phaseolus spp.',.	x					

CN Code 2000	Description	C	D	E	F	G	H
2005 59	Other beans 'vigna spp., phaseolus spp.'	x					
2005 60	Asparagus	x					
2005 70	Olives	x					
2005 80	Sweet corn 'zea mays var. saccharata'			x			
2005 90	Other vegetables and mixtures of vegetables	x					
2006 00	Vegetables, fruit, nuts, fruit peel and other parts of plants, preserved by sugar (drained, glacé or crystallised)						
2006 00 31				x			
2006 00 35				x			
2006 00 38				x			
2006 00 91		x					
2006 00 99		x					
2007	Jams, fruit, jellies, marmaledes etc.						
2007 10	Homogenised preparations						
2007 10 10		x					
2007 10 91		x					
2007 10 99		x					
2007 91	of citrus fruit						
2007 91 10				x			
2007 91 30				x			
2007 91 90		x					
2007 99	Other						
2007 99 10		x					
2007 99 20		x					
2007 99 31		x					
2007 99 33		x					
2007 99 35		x					
2007 99 39		x					
2007 99 51		x					
2007 99 55		x					
2007 99 58		x					
2007 99 91		x					
2007 99 93		x					
2007 99 98		x					
2008	Fruit, nuts and other edible parts of plants etc.						
2008 11	Ground nuts	x					
2008 19	Other nuts and other seeds, including mixtures	x					

CN Code 2000	Description	C	D	E	F	G	H
2008 20	Pineapples	x					
2008 30 11	Citrus fruit, with a sugar content exceeding 9 % by weight, of an actual alcoholic strength by mass not exceeding 11,85 % mas	x					
2008 30 19	Grapefruit segments	x					
	– – – other			x			
2008 30 31		x					
2008 30 39		x					
2008 30 51		x					
2008 30 55		x					
2008 30 59		x					
2008 30 71		x					
2008 30 75		x					
2008 30 79		x					
2008 30 90		x					
2008 40	Pears	x					
2008 50	Apricots			x			
2008 60	Cherries			x			
2008 70	Peaches, including nectarines			x			
2008 80	Strawberries	x					
2008 91	Palm heart	x					
2008 92	Other	x					
2008 99	Other						
2008 99 11		x					
2008 99 19		x					
2008 99 21		x					
2008 99 23		x					
2008 99 25		x					
2008 99 26		x					
2008 99 28		x					
2008 99 32		x					

CN Code 2000	Description	C	D	E	F	G	H
ex 2008 99 33	Tamarinds	x					
2008 99 33	Mangoes, mangosteens, papaws, cashew apples, lychees, jackfruit, sapodillo plums, carambola and pitahaya			x			
2008 99 34				x			
2008 99 36		x					
2008 99 37		x					
2008 99 38		x					
2008 99 40		x					
2008 99 43		x					
2008 99 45		x					
2008 99 46		x					
2008 99 47		x					
2008 99 49		x					
2008 99 53		x					
2008 99 55		x					
2008 99 61		x					
2008 99 62		x					
2008 99 68		x					
2008 99 72		x					
2008 99 78		x					
2008 99 85		x					
2008 99 91				x			
ex 2008 99 99	Other, except vine leaves	x					
2009 11	Orange juice, frozen			x			
2009 12 00	Orange, not frozen, of a brix value not exceeding 20	x					
2009 19	Other			x			
2009 21 00	Grapefruit juice of a brix value not exceeding 20	x					
2009 29	Other	x					
2009 31	Juice of any other single citrus fruit, of a brix value not exceeding 20	x					
2009 39	Other			x			
2009 41	Pineapple juice of a brix value not exceeding 20	x					
2009 49	Other	x					
2009 50	Tomato juice	x					
2009 61	Grape juice, of a brix value not exceeding 20	x					

CN Code 2000	Description	C	D	E	F	G	H
2009 69	Other	x					
2009 71 10	Apple juice, of a brix value not exceeding 20	x					
2009 71 91		x					
2009 71 99		x					
2009 79	Other			x			
2009 80	Juice of any other single fruit or vegetable						
2009 80 11				x			
2009 80 19		x					
2009 80 32		x					
2009 80 33				x			
2009 80 35				x			
2009 80 36		x					
2009 80 38		x					
2009 80 50		x					
2009 80 61				x			
2009 80 63		x					
2009 80 69		x					
2009 80 71		x					
2009 80 73		x					
2009 80 79		x					
2009 80 83		x					
2009 80 84				x			
2009 80 86				x			
2009 80 88		x					
2009 80 89		x					
2009 80 95		x					
2009 80 96		x					
2009 80 97		x					
2009 80 99		x					
2009 90 11	Mixtures of juice			x			
2009 90 19		x					

CN Code 2000	Description	C	D	E	F	G	H
2009 90 21	Other mixtures			x			
2009 90 29		x					
2009 90 31				x			
2009 90 39		x					
2009 90 41		x					
2009 90 49		x					
2009 90 51		x					
2009 90 59		x					
2009 90 71				x			
2009 90 73		x					
2009 90 79		x					
2009 90 92	Mixtures of juices of tropical fruit	x					
2009 90 94	Other			x			
2009 90 95		x					
2009 90 96		x					
2009 90 97		x					
2009 90 98		x					
2101 11	Extracts, essences and concentrates of coffee	x					
2101 12	Preparations with a basis of extracts, essences and concentrates of coffee	x					
2101 20	Extracts, essences and concentrates of tea or mate	x					
2101 30 11	Roasted chicory	x					
2101 30 19	Other roasted coffee substitutes			x			
2101 30 91	Extracts, essences and concentrates of roasted chicory	x					
2101 30 99	Extracts, essences and concentrates of other roasted coffee substitutes			x			
2102	Yeasts (active or inactive)						
2102 10 10	Culture yeasts	x					
2102 10 31	Dried bakers' yeast			x			
2102 10 39	Other bakers' yeast			x			
2102 10 90	Other active yeasts	x					
2102 20	Inactive yeasts; other single cell micro organisms, dead:	x					
2102 30	Prepared baking powders	x					
2103	Sauces and preparations thereof etc.	x					
2104	Soups and broths and preparations therefor	x					
2105	Ice cream and other edible ice, whether or not containing cocoa			x			

CN Code 2000	Description	C	D	E	F	G	H
2106	Food preparations not elsewhere specified or included						
2106 10	Protein concentrates and textured protein substances, containing 1,5 % or more milk fats, 5 % or more sucrose or isoglucose, 5 % or more glucose or starch			x			
2106 90	Other						
2106 90 20		x					
2106 90 30			x			c	
2106 90 51			x				
2106 90 55							81
2106 90 59			x			c	
2106 90 98				x			
2201	Waters, including natural or artificial mineral waters, not containing added sugar or other sweetening matter nor flavoured	x					
2202	Waters, incl. mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages						
2202 10	waters, incl. mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured	x					
2202 90	Other waters and non-alcoholic beverages						
2202 90 10		x					
2202 90 91				x			
2202 90 95				x			
2202 90 99				x			
2203	Beer made from malt	x					
2204	Wine of fresh grapes etc.						
2204 30 92	Other grape must, of a density of 1,33 g/cm^3 or less, concentrated	x					
2204 30 94	other	x					
2204 30 96	Other grape must, of a density more than 1,33 g/cm^3 concentrated	x					
2204 30 98	Other	x					
2205	Vermouth and other wine of fresh grapes	x					
2206	Other fermented beverages	x					
2207	Undenatured ethyl alcohol of an alcoholic strength by volume >= 80 % vol	x					
2208	Undenatured ethyl alcohol of an alcoholic strength by volume < 80 % vol	x					
2209	Vinegar and substitutes for vinegar obtained from acetic acid						
2209 00 91	vinegar substitutes, in containers holding =< 2 l	x					

CN Code 2000	Description	C	D	E	F	G	H
2209 00 99	vinegar substitutes, in containers holding > 2 l	x					
23	Residues and waste from the fodder industries etc.						
2302 10	bran, sharps and other residues of maize						7,2
2302 20	bran, sharps and other residues of rice						7,2
2302 30	bran, sharps and other residues of wheat						7,2
2302 40	bran, sharps and other residues of other cereals						7,2
2302 50	bran, sharps and other residues of leguminous plants	x					
2303	Residues of starch manufacture and similar residues						
2303 10 11	residues from the manufacture of starch from maize, of a protein content exceeding 40 % by weight						219
2308 00 90	Other vegetable materials and vegetable waste	x					
2309 10	Dog or cat food, put up for retail sale						
2309 10 13							10,9
2309 10 15			x				
2309 10 19			x				
2309 10 33							10,9
2309 10 39			x				
2309 10 51							10,9
2309 10 53							10,9
2309 10 59			x				
2309 10 70			x				
2309 10 90		x					
2309 90	Other preparations of a kind used in animal feeding						
2309 90 10		x					
2309 90 31							10,9
2309 90 33							10,9
2309 90 35			x				
2309 90 39			x				
2309 90 41							10,9
2309 90 43							10,9
2309 90 49			x				
2309 90 51							10,9
2309 90 53							10,9
2309 90 59			x				
2309 90 70			x				
2309 90 91		x					
2309 90 95		x					
2309 90 97		x					

CN Code 2000	Description	C	D	E	F	G	H
24	Tobacco and manufactured tobacco substitutes	x					
29	Organic chemicals						
2905	Acyclic alcohols and their halogenated sulphonated, nirtrated or nitrosated derivatives			x			
33	Essential oils and resinoids etc.						
3301	Essential oils and resinoids etc.	x					
3302	Mixtures of odoriferous substances						
3302 10 29	Other mixtures			x			
35	Albuminoidal substances						
3501	Casein, caseinates etc.	x					
3503		x					
3504		x					
3505							
3505 10 10				x			
3505 10 50		x					
3505 10 90				x			
3505 20				x			
38							
3809 10				x			
3824							
3824 60				x			
50		x					
52		x					

(1) Only reduction of *ad valorem* duty.

(2) Reduction by 16 % and then by EUR 7,3/t.

(3) Reduction by 50 % and then by EUR 24,8/t.

(4) Only exemption from EA (agricultural element) whether or not containing less than 1,5 % by weight of milk fat, with a starch or flour content of 50 % or over but of less than 75 % by weight.

ANNEX II

SPECIFIC ARRANGEMENT REGARDING PRODUCTS IN ANNEX I

Column Q: Order numbers for certain tariff ceilings, tariff quotas and reference quantities.

Column R: The acronym refers to products, which are marked in column F of Annex I and subject to a tariff quota, a tariff ceiling or a reference quantity. Example: Rq1: Reference quantity 1, TC2: Tariff ceiling 2, Q14: Quota 14.

Column S: The limit of the tariff quotas, tariff ceilings or reference quantities in tonnes net weight.

Column T: Description of the product concerned by the tariff quotas, tariff ceilings or reference quantities.

Column U: Specifies rules applying within the tariff quotas, tariff ceilings or reference quantities.

Q	R	S	T	U
	Q1	100	Live sheep and goats	Reduction by 100 % of customs duties
	Q2	500	Meat of sheep and goats	Reduction by 65 % of specific duties
	Q3	400	Poultry meat	Reduction by 65 % of customs duties
	Q4	500	Prepared poultry meat	Reduction by 65 % of customs duties
	Q5	1 000	Milk and cream	Reduction by 65 % of customs duties
	Q6	1 000	Cheese and curd	Reduction by 65 % of customs duties
	Q7	500	Pig meat	Reduction by 50 % of customs duties
	Q8	500	Prepared pig meat	Reduction by 65 % of customs duties
09.1631	Q9 (5)	600 000	Molasses	Reduction by 100 % of customs duties
09.1633	Q10 (5)	15 000	Wheat and meslin	Reduction by 50 % of customs duties
	Q11 (1) (3)	125 000	Husked rice	Reduction of customs duties by 65 % and by EUR 4,34/t (products of CN code 1006 30 shall be reduced by EUR 16,787/t then by 65 % and by EUR 6,52/t)
	Q12 (3)	20 000	Broken rice	Reduction by 65 % and by EUR 3,62/t
09.1601	Q13a (5)	2 000	Tomatoes other than cherry tomatoes	Reduction by 60 % of *ad valorem* duties
09.1613	Q13b (5)	2 000	Cherry tomatoes	Reduction by 100 % of *ad valorem* duties
	Q14	800	Seedless table grapes	Exemption within quota
09.1610	Q15 (5)	1 000	Apples	Reduction by 50 % of *ad valorem* duties
09.1612	Q16 (5)	2 000	Pears	Reduction by 65 % of *ad valorem* duties
09.1603	Q17 (5)	1 600	Strawberries	Exemption within quota
	Q18 (2)	52 100	Boneless meat	Specific duties shall be reduced by 92 % (4)
12.0201	TC1	100 000	Sorghum	Reduction of customs duties by 60 %
12.0203	TC2	60 000	Millet	Reduction of customs duties by 100 %

Q	R	S	T	U
26.0010	TC3	200	Fresh figs	Exemption from 1 November to 30 April
12.0105	Rq1	25 000	Oranges	Reduction by 100 % of *ad valorem* customs duties between 15 May to 30 September
12.0115	Rq2	4 000	Mandarins	Reduction by 100 % of *ad valorem* customs duties between 15 May to 30 September
12.0120	Rq3	100	Seedless table grapes	Exemption from 1 February to 31 March

([1]) Quantities of rice at other stages of processing than husked rice shall be converted at the rates laid down in Article 1 of Commission Regulation No 467/67/EEC.

([2]) For countries not subject to the quota, reductions shall apply as stated in column E to Annex I (i.e *ad valorem* duties reduced by 100 %).

([3]) The reduction of customs duty shall only apply to imports of which the importer provides proof that an export charge of an amount equivalent to the reduction has been collected by the exporting country.

([4]) Quota 18 shall apply on a country-by-country basis per calendar year to the following quantities, expressed in boneless meat:

Botswana	18 916
Kenya	142
Madagascar	7 579
Swaziland	3 363
Zimbabwe	9 100
Namibia	13 000

([5]) The measures apply from 1 January to 31 December unless otherwise indicated.

Proposal for a Council Regulation on a transitional product-specific safeguard mechanism for imports originating in the People's Republic of China and amending Council Regulation (EC) No 519/94 on common rules for imports from certain third countries

(2002/C 227 E/30)

COM(2002) 342 final — 2002/0133(ACC)

(Submitted by the Commission on 25 June 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) By Regulation (EC) No 3285/94 [1] the Council adopted common rules for imports which contain provisions on safeguard measures.

(2) By Regulation (EC) No 519/94 [2] the Council adopted common rules for imports from certain third countries which also contain provisions on safeguard measures.

(3) The Protocol on the Accession of the People's Republic of China (hereinafter referred to as 'China') to the World Trade Organisation (hereinafter referred to as 'the Protocol') provides for product-specific transitional safeguard measures (hereinafter referred to as 'safeguard measures') and product-specific transitional trade diversion measures (hereinafter referred to as 'trade diversion measures').

(4) The Protocol entered into force on 11 December 2001.

(5) In view of the considerable difference between the provisions on safeguard measures contained in the Protocol on the one hand and in Council Regulation (EC) No 519/94 and Council Regulation (EC) No 3285/94 on the other hand, it is necessary to have a specific Regulation for safeguard measures and trade diversion measures on certain imports originating in China.

(6) According to the Protocol, safeguard measures may be imposed when products of Chinese origin are being imported into the Community in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the Community industry.

(7) Market disruption shall exist whenever imports of a product are increasing rapidly so as to be a significant cause of material injury or threat of material injury to the Community industry.

(8) It seems necessary to illustrate which factors have to be taken into consideration for the determination of market disruption.

(9) The Protocol provides for the imposition of trade diversion measures in situations where an action by China or another Member to the World Trade Organisation (hereinafter referred to as 'WTO') taken to prevent or remedy market disruption in that WTO Member's market causes or threatens to cause an increase in imports of a product originating in China into the Community.

(10) It is appropriate to lay down guidance as to the factors which may be relevant for determining whether trade diversion has taken place.

(11) It is advisable to define the term 'Community industry'.

(12) It is upon a request by a Member State or the Commission that a safeguard or trade diversion investigation is initiated; it is necessary to limit the possibility of initiating an investigation concerning safeguard measures on the same subject matter before the lapse of one year after the completion of a previous investigation; there should be no such limitation concerning trade diversion measures.

(13) It is necessary to lay down the manner in which interested parties should be given notice of the information which the Community authorities require, and should have ample opportunity to present all relevant evidence and to defend their interests; it is also desirable to set out clearly the rules and procedures to be followed during the investigation, in particular the rules whereby interested parties are to make themselves known, present their views and submit information within specified time limits, if such views and information are to be taken into account; it is also appropriate to set out the conditions under which an interested party may have access to, and comment on, information presented by other interested parties.

[1] OJ L 349, 31.12.1994, p. 53.

[2] OJ L 67, 10.3.1994, p. 89.

(14) It is necessary to lay down the conditions under which provisional measures may exceptionally be imposed, including that such duties may be imposed by the Commission and only for a period of 200 days.

(15) The Protocol requires that definitive measures may only be imposed 60 days after the receipt of a request for consultations by China and if such consultations have not led to a mutually satisfactory solution.

(16) It seems advisable to foresee — under certain conditions and provided that the operation of the internal market is not disrupted — the possibility of imposing measures limited to one or several Member States.

(17) It seems appropriate to provide that safeguard measures are to lapse after four years unless a review indicates that they should be maintained.

(18) It is advisable to provide for interim reviews, in cases where a Member State or the Commission request to examine the effects of a safeguard or trade diversion measure and the necessity to maintain the measure.

(19) It is necessary to provide for a review of a trade diversion measure when the WTO Member taking an action to address market disruption notified the WTO Committee on Safeguards of any modification of the action.

(20) It is expedient to permit the suspension of safeguard and trade diversion measures where there is a temporary change in market conditions which makes the continued imposition of measures temporarily inappropriate.

(21) In order to ensure proper enforcement of measures, it is necessary that Member States monitor, and report to the Commission, the import trade of products subject to investigation or subject to measures and also the amount of duties collected under this Regulation, where applicable.

(22) It is also necessary to provide for consultation of an Advisory Committee at regular and specified stages of the investigation; whereas, the Committee should consist of representatives of Member States with a representative of the Commission as chairman; whereas, pursuant to recital 12 of Council Decision 1999/468/EC [1], the Advisory Committee does not fall under the scope of application of the abovementioned Council Decision.

(23) It is expedient to provide for verification visits to check information submitted on trends in import volumes and market disruption, such visits being, however, conditional on proper replies to questionnaires being received.

(24) Provision should be made for the treatment of confidential information so that business or governmental secrets are not divulged.

(25) It is essential that provision be made for proper disclosure of essential facts and considerations to parties which qualify for such treatment and that such disclosure be made, with due regard to the decision-making process in the Community, within a time period which permits parties to defend their interests.

(26) It is prudent to provide for an administrative system under which arguments can be presented as to whether measures are in the Community interest, including the interests of consumers, and to lay down the time periods within which such information has to be presented as well as the disclosure rights of the parties concerned.

(27) The Report of the Working Parties on the Accession of China to the WTO (hereinafter referred to as 'the Report') provides for a gradual phasing out of the non-textile quotas which the Community maintains vis-à-vis some products of Chinese origin.

(28) It is therefore appropriate to repeal Annex II of Council Regulation (EC) No 519/94 to reflect this phasing out.

(29) It is appropriate to increase the quantities already allocated through import licences for 2002 in order to take into account the increase foreseen in the phasing-out timetable for 2001 and 2002.

(30) It is appropriate to remove from surveillance measures those Chinese products currently covered and listed in Annex III of Council Regulation (EC) No 519/94, which should be repealed.

(31) It is appropriate to remove from Annex I to Council Regulation (EC) No 519/94 those countries who have become Members to the WTO and to delegate to the Commission the responsibility for updating the Annex.

(32) The Protocol provides for the expiry of the section related to safeguard and trade diversion measures 12 years after the entry into force of the Protocol; it is therefore necessary to determine that any measures taken under this Regulation shall expire at the latest on 11 December 2013,

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

HAS ADOPTED THIS REGULATION:

TITLE I

TRANSITIONAL PRODUCT-SPECIFIC SAFEGUARD MECHANISM

Article 1

Principles

1. In cases where products of Chinese origin are being imported into the Community in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the Community industry, a safeguard measure may be imposed in accordance with the following provisions.

2. If an action by China or another Member of the WTO to prevent or remedy market disruption in that WTO Member's market causes or threatens to cause significant trade diversions into the Community, a trade diversion measure may be imposed in accordance with the following provisions.

Article 2

Determination of market disruption

1. Market disruption shall exist whenever imports of a product, like or directly competitive with a product produced by the Community industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury to the Community industry.

2. In determining if market disruption exists, only objective factors shall be considered, including:

(a) the volume of imports under investigation;

(b) the effect of such imports on prices for like or directly competitive products in the Community; and

(c) the effect of such imports on the Community industry producing like or directly competitive products.

Article 3

Determination of significant trade diversion

1. Significant trade diversion shall exist when an action by China or another WTO Member taken to prevent or remedy market disruption in that WTO Member's market causes or threatens to cause an increase in imports of a product from China into the Community.

2. Objective criteria have to be applied in determining whether actions to prevent or remedy market disruption cause or threaten to cause significant diversion of trade. Among the factors to be examined are:

(a) the actual or imminent increase in market share of imports from China into the Community;

(b) the nature or extent of the action taken or proposed by China or other WTO Members;

(c) the actual or imminent increase in the volume of imports from China due to the action taken or proposed;

(d) conditions of demand and supply in the Community market for the products at issue; and

(e) the extent of exports from China to the WTO Member(s) applying a provisional or definitive safeguard measure.

Article 4

Definition of Community industry

For the purposes of this Regulation, the term 'Community industry' shall be interpreted as referring to the Community producers as a whole of the like or directly competitive products operating within the territory of the Community or those of them whose collective output of the like or directly competitive products constitutes a major proportion of the total Community production of those products.

Article 5

Initiation of proceedings

1. An investigation shall be initiated upon request of a Member State or on the Commission's own initiative if it is apparent to the Commission that there is sufficient evidence to justify the initiation of an investigation.

2. The Commission shall be informed by the Member States should trends in imports appear to call for safeguard or trade diversion measures. This information shall contain the evidence available, as determined on the basis of the criteria laid down in Articles 1, 2 and 3, as appropriate. The Commission shall immediately pass this information on to all the Member States.

3. Prior to the initiation of an investigation the Commission shall notify China of its intention to initiate an investigation. The notification may be accompanied by an invitation for consultations with the aim of clarifying the situation as to matters referred to in Articles 1, 2 and 3, as appropriate, and arriving at a mutually satisfactory solution.

4. Where, after consultation of Member States, it is apparent that there is sufficient evidence to justify initiating a proceeding and any consultations under paragraph 3 of this Article have not led to a mutually satisfactory solution, the Commission shall publish a notice in the *Official Journal of the European Communities*.

5. The notice of initiation of the proceedings shall announce the initiation of an investigation, the scope of the investigation, indicate the product concerned, give a summary of the information received and provide that all relevant information is to be communicated to the Commission; it shall state the periods within which interested parties may make themselves known, present their views in writing and submit information, if such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard by the Commission in accordance with Article 6(4).

6. Except for good cause, no investigation concerning safeguard measures as defined in Article 1(1) on the same subject matter shall be initiated less than one year after the completion of a previous investigation.

7. An investigation shall not hinder the procedures of customs clearance.

Article 6

The investigation

1. Following the initiation of the proceeding, the Commission shall commence an investigation. Such investigation shall cover both the existence of increased imports and market disruption or the existence of trade diversion. The existence of increased imports and market disruption shall be investigated simultaneously. For the purpose of a representative finding, an investigation period shall be selected. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

2. The Commission shall seek all information it deems to be necessary to make a determination with regard to the criteria laid down in Articles 1, 2 and 3, as appropriate, and where it considers it appropriate, endeavour to verify this information.

3. The Commission may request Member States to supply information, and Member States shall take whatever steps are necessary in order to give effect to such requests. Where this information is of general interest or where its transmission has been requested by a Member State, the Commission shall forward it to the Member States, provided it is not confidential, in which case a non-confidential summary shall be forwarded.

4. The interested parties which have made themselves known in accordance with Article 5(5) and the government of China shall be heard if they have, within the period prescribed in the notice published in the *Official Journal of the European Communities*, made a written request for a hearing showing that they are an interested party actually likely to be affected by the result of the proceeding and that there are particular reasons why they should be heard.

5. Opportunities shall, on request, be provided for interested parties, which have made themselves known in accordance with Article 5(5), and the government of China to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Oral information provided under this paragraph shall be taken into account by the Commission in so far as it is subsequently confirmed in writing.

6. The interested parties which have made themselves known in accordance with Article 5(5) and the government of China, may, upon written request, inspect all information made available to the Commission by any party to an investigation, as distinct from internal documents prepared by the authorities of the Community or its Member States, which is relevant to the presentation of their cases and not confidential within the meaning of Article 17, and that it is used in the investigation. Such parties may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated in the response.

7. For proceedings initiated pursuant to Article 5(4) an investigation shall, whenever possible, be concluded within nine months from the initiation of the investigation. In exceptional circumstances, this time limit may be extended by a further maximum period of two months; the Commission shall then publish a notice in the *Official Journal of the European Communities* setting forth the duration of the extension and a summary of the reasons therefor.

Article 7

Imposition of provisional safeguard measures

1. Provisional safeguard measures shall be applied in critical circumstances where delay would cause damage which it would be difficult to repair, after a preliminary determination that imports have caused or threatened to cause market disruption to the Community industry and if the Community interest calls for intervention. The Commission shall take such provisional measures after consultation with Member States or, in cases of extreme urgency, after informing the Member States. In this latter case, consultation shall take place 10 days, at the latest, after notification of the Member States of the action taken by the Commission.

2. Provisional safeguard measures can, *inter alia*, take the form of customs duties and quantitative restrictions of imports originating in China.

3. The duration of the provisional measures shall not exceed 200 days.

4. Should the provisional safeguard measure be repealed because the conditions contained in Articles 1, 2 or 3, as appropriate, were not met, any duties collected as a result of the provisional measures shall be automatically refunded. The procedure laid down in Article 235 *et seq*. of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1] shall apply.

Article 8

Termination without measures

Where, after consultation with Member States, safeguard or trade diversion measures are unnecessary and there is no objection raised within the Advisory Committee, the investigation or proceeding shall be terminated by Commission Decision. In all other cases, the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal for a Council Regulation that the proceeding be terminated. The proceeding shall be deemed terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

Article 9

Imposition of definitive measures

1. Where the facts as finally established show that the conditions laid down in Articles 1, 2 and 3, as appropriate, are met, and the Community interest calls for intervention in accordance with Article 19, the Commission shall request consultations with the government of China with a view to seeking a mutually satisfactory solution.

2. If the consultations referred to in paragraph 1 of this Article do not lead to a mutually satisfactory solution within 60 days of the receipt of a request for consultations, a definitive safeguard or trade diversion measure shall be imposed by the Council acting by simple majority on a proposal submitted by the Commission after consultation of the Advisory Committee. Where provisional measures are in force, a proposal for definitive action shall be submitted to the Council not later than one month before the expiry of such duties.

3. Definitive safeguard measures can, *inter alia*, take the form of customs duties and quantitative restrictions of imports originating in China.

Article 10

Regional measures

Where it emerges, primarily on the basis of the factors referred to in Articles 2 and 3, respectively, that the conditions laid down for the adoption of measures pursuant to Articles 7 and 9 are met in one or more Member States of the Community, the Commission, after having examined alternative solutions, may exceptionally authorise the application of safeguard measures limited to the Member State concerned if it considers that such measures applied at that level are more appropriate than measures applied throughout the Community. These measures must be temporary and must not disrupt the operation of the internal market. The measures shall be adopted in accordance with the provisions laid down in Articles 7 and 9 respectively.

Article 11

Duration

1. A safeguard measure shall remain in force only for such period of time as may be necessary to prevent or remedy the market disruption. The period shall not exceed four years unless it is extended under Article 12(1).

2. A trade diversion measure shall be terminated not later than 30 days after the expiration of the action taken by the WTO Member involved against imports from China.

Article 12

Review of safeguard measures

1. The initial period of duration of a safeguard measure may be extended provided it is determined that

— the safeguard measure continues to be necessary to prevent or remedy market disruption

— and there is evidence that Community producers are adjusting.

2. Extensions shall be adopted in accordance with the procedures of this Regulation applying to investigations and using the same procedures as the initial measures. A measure so extended shall not be more restrictive than it was at the end of the initial period.

3. While any safeguard measure is in operation, consultations shall be held within the Advisory Committee, either at the request of a Member State or on the initiative of the Commission, in order to examine the effects of the measure and to ascertain whether its application is still necessary.

4. Where, as a result of the consultations referred to in the preceding paragraph, the Commission considers that any safeguard measure should be revoked or amended, it shall proceed as follows:

(a) Where the measure was enacted by the Council, the Commission shall propose to the Council that it be revoked or amended. The Council shall act by simple majority.

[1] OJ L 302, 19.10.1992, p. 1.

(b) In all other cases, the Commission shall revoke or amend the safeguard measures.

Article 13

Review of trade diversion measures

1. Trade diversion measures shall be reviewed when the WTO Member who had taken an action on the basis of which a trade diversion measure was imposed under this Regulation has notified the WTO Committee on Safeguards of any modification of that action.

2. Paragraph 3 and 4 of Article 12 apply *mutatis mutandis* to trade diversion measures.

Article 14

General provisions

1. Provisional or definitive measures shall be imposed by Regulation. If the measures take the form of duties, they shall be collected by Member States in the form, at the rate specified and according to the other criteria laid down in the Regulation imposing such measures. Such duties shall also be collected independently of the customs duties, taxes and other charges otherwise imposed on imports.

2. Regulations imposing provisional or definitive measures, and Decisions terminating or suspending investigations or proceedings, shall be published in the *Official Journal of the European Communities*. Such Regulations or Decisions shall contain in particular and with due regard to the protection of confidential information, a description of the product and a summary of the facts and considerations relevant to determinations of increased imports and market disruption. In each case, a copy of the Regulation or Decision shall be sent to known interested parties and the government of China. The provisions of this paragraph shall apply *mutatis mutandis* to reviews.

3. Special provisions, in particular with regard to the common definition of the concept of origin, as contained in Council Regulation (EEC) No 2913/92 of 12 October 1992, may be adopted pursuant to this Regulation.

4. In the Community interest, measures imposed pursuant to this Regulation may, after consultation of the Advisory Committee, be suspended by a Decision of the Commission for a period of 9 months. The suspension may be extended for a further period, not exceeding one year, if the Council so decides, acting by simple majority on a proposal from the Commission. Measures may only be suspended where market conditions have temporarily changed to an extent that market disruption would be unlikely to resume as a result of the suspension. Measures may, at any time and after consultation, be reinstated if the reason for suspension is no longer applicable.

5. Member States shall report to the Commission every month on the import trade of products subject to investigation and to measures, and on the amount of duties collected pursuant to this Regulation.

Article 15

Consultations

1. Any consultations provided for in this Regulation except those provided for in Articles 5(3) and 9(1) shall take place within an Advisory Committee, which shall consist of representatives of each Member State, with a representative of the Commission as chairman. Consultations shall be held immediately on request by a Member State or on the initiative of the Commission, and in any event within a period of time which allows the time limits set by this Regulation to be adhered to.

2. The Committee shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, with all relevant information.

3. Where necessary, consultation may be in writing only; in that event, the Commission shall notify the Member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation which the chairman shall arrange, provided that such oral consultation can be held within a period of time which allows the time limits set by this Regulation to be adhered to.

Article 16

Verification visits

1. The Commission shall, where it considers it appropriate, carry out visits to examine the records of exporters, producers, importers and representative associations of exporters, producers or importers and the Community industry, to verify information provided on the existence of increased imports and market disruption or trade diversion. In the absence of a proper and timely reply a verification visit may not be carried out.

2. The Commission may carry out investigations in third countries, provided that it obtains the agreement of the parties concerned, that it notifies the government of the country in question and that the latter does not object to the investigation. As soon as the agreement of the parties concerned has been obtained, the Commission should notify the country of origin and/or export of the names and addresses of the parties to be visited and the dates agreed.

3. The parties concerned shall be advised of the nature of the information to be verified during verification visits and of any further information which needs to be provided during such visits, though this should not preclude requests made during the verification for further details to be provided in the light of information obtained.

4. In investigations carried out pursuant to paragraphs 1, 2 and 3, the Commission shall be assisted by officials of those Member States who so request.

Article 17

Confidentiality

1. Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information) or which is provided on a confidential basis by parties to an investigation shall, if good cause is shown, be treated as such by the Community authorities.

2. Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. Those summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarisation is not possible must be provided.

3. If it is considered that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information available or to authorise its disclosure in generalised or summary form, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct. Requests for confidentiality shall not be arbitrarily rejected.

4. This Article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken pursuant to this Regulation are based, nor disclosure of the evidence relied on by the Community authorities in so far as is necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interests of the parties concerned that their business or governmental secrets should not be divulged.

5. The Commission, the Council and the Member States, or the officials of any of these, shall not reveal any information received pursuant to this Regulation for which confidential treatment has been requested by its supplier, without specific permission from the supplier. Exchanges of information between the Commission, the Council and Member States, or any information relating to consultations made pursuant to Article 12, or consultations described in Articles 5(3) and 9(1), or any internal documents prepared by the authorities of the Community or its Member States, shall not be divulged to the public or any party to the proceeding except as specifically provided for in this Regulation.

6. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

Article 18

Disclosure

1. The interested parties and the government of China, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures, and the disclosure shall be made in writing as soon as possible thereafter.

2. The parties mentioned in paragraph 1 may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive safeguard or trade diversion measures, or the termination of an investigation or proceedings without the imposition of measures, particular attention being paid to the disclosure of any facts or considerations which are different from those used for any provisional measures.

3. Requests for final disclosure shall be addressed to the Commission in writing and be received, in cases where a provisional measure has been applied, not later than one month after publication of the imposition of that measure. Where a provisional measure has not been applied, parties shall be provided with an opportunity to request final disclosure within time limits set by the Commission.

4. Final disclosure shall be given in writing. It shall be made, due regard being had to the protection of confidential information, as soon as possible and, normally, not later than one month prior to a definitive decision or the submission by the Commission of any proposal for final action pursuant to Articles 8 and 9. Where the Commission is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision which may be taken by the Commission or the Council but where such decision is based on any different facts and considerations, these shall be disclosed as soon as possible.

5. Representations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.

Article 19

Community interest

1. A determination as to whether the Community interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers; and a determination pursuant to this Article shall only be made where all parties have been given the opportunity to make their views known pursuant to paragraph 2. Measures may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures.

2. In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Community interest, the importers and their representative associations, representative users and representative consumer organisations may, within the time limits specified in the notice of initiation of the investigation, make themselves known and provide information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this paragraph, and they shall be entitled to respond to such information.

3. The parties which have acted in conformity with paragraph 2 may request a hearing. Such requests shall be granted when they are submitted within the time limits set in paragraph 2, and when they set out the reasons, in terms of the Community interest, why the parties should be heard.

4. The parties which have acted in conformity with paragraph 2 may provide comments on the application of any provisional measures imposed. Such comments shall be received within one month of the application of such measures if they are to be taken into account and they, or appropriate summaries thereof, shall be made available to other parties who shall be entitled to respond to such comments.

5. The Commission shall examine the information which is properly submitted and the extent to which it is representative, and the results of such analysis, together with an opinion on its merits, shall be transmitted to the Advisory Committee. The balance of views expressed in the Committee shall be taken into account by the Commission in any proposal made pursuant to Article 9.

6. The parties which have acted in conformity with paragraph 2 may request the facts and considerations on which final decisions are likely to be taken to be made available to them. Such information shall be made available to the extent possible and without prejudice to any subsequent decision taken by the Commission or the Council.

7. Information shall only be taken into account where it is supported by actual evidence which substantiates its validity.

TITLE II

QUOTAS FOR CERTAIN PRODUCTS ORIGINATING IN CHINA

Article 20

Principles and phasing-out of quotas

1. Imports into the Community of products originating in China shall take place freely, except for a limited number of products originating in China which, owing to the sensitivity of certain sectors of the Community industry, are subject to quantitative quotas at Community level.

2. These quotas will be applicable until 2005, at the annual levels provided in the table of Annex I. This new Annex replaces Annex II to Council Regulation (EC) No 519/94.

Article 21

Attribution of import licenses

1. For the calendar year 2002, the level of each individual licence will be automatically increased by an amount equivalent to the one listed in Annex II to this Regulation, depending on the product. This shall be done by a Commission regulation establishing the allocation method for the additional quantities resulting from the quota increase.

2. For the subsequent years, the procedures established by Council Regulation (EC) No 520/94 of 7 March 1994 establishing a Community procedure for administering quantitative quotas [1] will be applicable to the allocation of import licenses for the quotas referred to in Annex I.

TITLE III

GENERAL AND FINAL PROVISIONS

Article 22

Repeal and amendment of certain provisions

1. Article 1(2) second indent, Article 1(3), Annex II listing the quotas for certain products originating in China, Annex III listing the products from China subject to surveillance measures and the references to Annex III in Article 1(4) and Article 4(3)(a) of Council Regulation (EC) No 519/94 are hereby repealed.

[1] OJ L 66, 10.3.1994, p. 1.

2. Albania, Georgia, China, Kyrgyzstan, Moldova and Mongolia shall be removed from Annex I to Council Regulation (EC) No 519/94.

3. The Commission may, after consultation of the Committee established under Article 4 of Council Regulation (EC) No 519/94, amend Annex I to Council Regulation (EC) No 519/94 by Commission Regulation, in order to remove countries from the list of third countries contained in this Annex when they become Members of the WTO.

Article 23

Final provisions

1. This Regulation shall be without prejudice to the operation of the instruments establishing the common organisation of agricultural markets or of Community or national administrative provisions derived therefrom or of the specific instruments applicable to goods resulting from the processing of agricultural products; it shall operate by way of complement to those instruments.

2. The provisions of Title I of this Regulation shall not apply to those products in respect of which such rules provide for the application of quantitative import restrictions.

3. Measures imposed under this Regulation shall at the latest expire on 11 December 2013.

Article 24

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities* and will expire on 11 December 2013.

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

ANNEX I

Phasing-out timetable of industrial (non-textile) quotas on imports originating in China

Product description	HS/CN Code	2003	2004	2005
Footwear	ex 6402 99 (1)	47 480 959	54 603 102	removal
	6403 51 6403 59	3 712 459	4 269 328	removal
	ex 6403 91 (1) ex 6403 99 (1)	14 698 530	16 903 310	removal
	ex 6404 11 (2)	22 106 953	25 422 996	removal
	6404 19 10	38 683 955	44 486 548	removal
Tableware, kitchenware of porcelain or china	6911 10	73 139	84 110	removal
Ceramic tableware, kitchenware, other than of porcelain or china	6912 00	55 334	63 634	removal

(1) Excluding footwear involving special technology: shoes which have a cif price per pair of not less than ECU 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact or materials such as low-density polymers.

(2) Excluding:
(a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bats or the like, with a non-injected sole;
(b) footwear involving special technology: shoes which have a cif price per pair of not less than ECU 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact or materials such as low-density polymers.

ANNEX II

Increase in the quotas for 2002

Product description	HS/CN Code	2002
Footwear	ex 6402 99 (1)	10,25 %
	6403 51 6403 59	15,5 %
	ex 6403 91 (1) ex 6403 99 (1)	10,25 %
	ex 6404 11 (2)	10,25 %
	6404 19 10	10,25 %
Tableware, kitchenware of porcelain or china	6911 10	32,25 %
Ceramic tableware, kitchenware, other than of porcelain or china	6912 00	32,25 %

(1) Excluding footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact or materials such as low-density polymers.

(2) Excluding:

(a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bats or the like, with a non-injected sole;

(b) footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact or materials such as low-density polymers.

Proposal for a Council Decision establishing a Tripartite Social Summit for Growth and Employment

(2002/C 227 E/31)

COM(2002) 341 final — 2002/0136(CNS)

(Submitted by the Commission on 26 June 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 202 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The social partners are associated in implementation of the coordinated employment strategy established by the Luxembourg European Council of 20 and 21 November 1997 within the Standing Committee on Employment established by Council Decision 70/532/EC setting up the Standing Committee on Employment of the European Communities [1], amended by Decision 99/207/EC of 9 March 1999 [2].

(2) The Cologne European Council of 3 and 4 June 1999 set up a macroeconomic dialogue with the participation of representatives from the Council, the Commission, the European Central Bank and the social partners.

(3) The Lisbon European Council of 23 and 24 March 2000 set a new strategic goal for the next decade and agreed that achievement of that goal required an overall strategy designed to integrate structural reforms, the coordinated European employment strategy, social protection and macroeconomic policies. In its Communication on the social dialogue, the Commission stresses that the Tripartite Social Summit should contribute to the debate on these topics.

(4) In their joint contribution to the Laeken European Council, the social partners pointed out that the Standing Committee on Employment had not led to a similar integration of concertation and that it did not meet the need for coherence and synergy between the various processes in which they were involved.

They also proposed, in their contribution, that the Standing Committee on Employment should be replaced by a tripartite concertation committee for growth and employment which would be the forum for consultation between the social partners and the public authorities in the overall European strategy defined at the Lisbon European Council.

(5) The Laeken European Council which met on 14 and 15 December 2001 took note of the social partners' willingness to develop and improve coordination of concertation on the various aspects of the Lisbon strategy. This was confirmed by the Barcelona European Council of 15 and 16 March 2002,

HAS DECIDED AS FOLLOWS:

Article 1

Establishment

A Tripartite Social Summit for Growth and Employment (hereinafter referred to as 'the Summit') is hereby established.

Article 2

Tasks

The task of the Summit shall be to ensure, in compliance with the Treaty and with due regard for the powers of the institutions and bodies of the European Community, that there is continuous concertation between the Council, the Commission and the social partners in order to enable the social partners to contribute, on the basis of their social dialogue, to the various components of the integrated economic and social strategy launched at the Lisbon European Council in March 2000 and supplemented by the Gothenburg European Council in June 2001. For that purpose, it shall draw on the upstream work of and discussions between the Council, the Commission and the social partners in the different concertation forums.

Article 3

Membership

1. The Summit shall consist of the Council Presidency at Head of State or Government level and the two subsequent Presidencies, the Commission and representatives of the social partners.

2. The social partners' representatives shall number 20 at most and shall be divided into two delegations of equal size comprising 10 workers' representatives and 10 employers' representatives.

Each delegation shall consist of representatives of European cross-industry organisations either representing general interests or more specific interests of supervisory and managerial staff and small and medium-sized businesses at European level.

The technical coordination shall be provided for the workers' delegation by the European Trade Union Confederation (ETUC) and for the employers' delegation by the Union of Industrial and Employers' Confederations of Europe (UNICE).

[1] OJ L 273, 17.12.1970, p. 25; Decision amended by Decision 75/62/EEC (OJ L 21, 28.1.1975, p. 17).

[2] OJ L 72, 18.3.1999, p. 33.

Article 4

Operation

1. The Summit shall meet at least once a year. A meeting shall be held just before the spring European Council.

2. The Summit shall be chaired jointly by the President-in-Office of the Council and the President of the Commission.

3. The matters to be discussed shall be determined jointly by the Council Presidency, the Commission and the workers' and employers' cross-industry organisations taking part in the Summit's work.

4. The joint chairs of the Summit shall report to the European Council on the discussions and the results at the meetings.

5. The meetings of the Summit shall be convened by the joint chairs on their own initiative.

6. The Summit members representing the social partners' organisations referred to in Article 3(2) shall receive travelling and subsistence expenses as determined by the Council.

7. Rules of procedure shall be drawn up on the initiative of the joint chairs to determine how the Summit operates.

Article 5

Repeal

Decision 99/207/EEC shall be repealed. The repeal shall take effect from the date of the first meeting of the Summit established by this Decision.

Article 6

Entry into force

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

Amended proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/6/EEC on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community [1]

(2002/C 227 E/32)

(Text with EEA relevance)

COM(2002) 351 final — 2001/0135(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 26 June 2002)

1. **Background**

Transmission of the proposal to the European Parliament and to the Council (COM(2001) 318 — 2001/0135(COD)) in accordance with Article 71 of the Treaty	14 June 2001
Opinion of the Economic and Social Committee	28 November 2001
Opinion of the European Parliament — first reading	7 February 2002

2. **Objective of the proposal**

Following its Communication on Road Safety of March 2000 (COM(2000) 125 final) and the positive reception by the European Parliament and the Council in their respective resolutions who underlined speed limitation devices as one of the most cost-effective measures for road safety, the Commission proposes to extend the scope of application of Directive 92/6/EEC and require speed limitation devices not allowing speeds higher than 90 km/h for lighter categories of trucks between 3,5 and 12 tonnes (category N2) and devices not allowing speeds higher than 100 km/h for small buses with more than eight seats in addition to the driver's seat and having a weight not more than 10 tonnes (category M2 and part of category M3). Goods vehicles of over 12 tonnes (category N3) and passenger vehicles of over 10 tonnes (the rest of category M3) are already covered by 92/6/EEC.

The Commission also proposes a limited retrofitting of these devices so as to extend the effects of the proposal and to avoid market distortion.

3. **Commission opinion on the amendments adopted by the Parliament**

Of the ten amendments adopted by the Parliament, the Commission has accepted 2 of them (Amendments 4 and 6), if necessary with some formal or editorial modifications; has accepted the principle of 3 amendments (5, 7 and 10), has accepted in part 1 amendment (9) and has rejected 4 amendments (1, 2, 3, 8).

3.1. *Amendments accepted by the Commission*

Amendment 4 gives the possibility for Member States to require a lower limit in the speed limitation device for vehicles in the transport of dangerous goods.

Amendment 6 gives the possibility to a flexible implementation concerning the very lightest vehicles (M2; N2 of less than or equal to 7.5 tonnes). The Commission accepts this as Article 4(3) of the modified Directive 92/6/EEC with the following editorial change making clearer the categories concerned and the limitation to national territory:

> 'During a period of five years from the date of entry into force of the Directive Member States may exempt from the application of Article 2 and Article 3 vehicles of category M2 and of category N2 with a maximum weight exceeding 3.5 tonnes but less than or equal to 7.5 tonnes, which are registered on their territory and do not circulate in the territory of another Member State.'

[1] OJ C 270 E, 25.9.2001, p. 77.

3.2. *Amendments accepted by the Commission in principle or in part*

Amendment 5 separates vehicles already covered under Article 4(1) of modified Directive 92/6/EEC and vehicles falling under the extension of the scope under Article 4(2). The Commission accepts this with the following changes in Article 4(2) which align the dates with the accepted amendment 6 and makes clearer the intention to limit the retrofitting to vehicles fulfilling the Euro 3 emission standards:

'As regards motor vehicles of category M2, motor vehicles of category M3 having a maximum weight exceeding 5 metric tonnes but less than or equal to 10 metric tonnes and vehicles of category N2, Articles 2 and 3 shall apply to:

vehicles registered as from [the first day of the month following the end of the second year after the entry into force of this Directive]

— from [the first day of the month following the end of the second year after the entry into force of this Directive],

vehicles in conformity with the limiting values of Council Directive 88/77/EEC as modified [1] and registered between 1 October 2001 and [the first day of the month following the end of the second year after the entry into force of this Directive],

— from [the first day of the month following the end of the third year after the entry into force of this Directive] at the latest in the case of vehicles used for both national and international transport operations,

— from [the first day of the month following the end of the fourth year after the entry into force of this Directive] at the latest in the case of vehicles used exclusively for national transport operations.'

Amendment 7 gives the possibility to continue to use national standards in the approval of speed limitation devices before the entry into force of the Directive. The Commission accepts this with the change of the date to be aligned with other dates:

'The speed limitation devices referred to in Articles 2 and 3 must meet the technical specifications set out in the Annex of Council Directive 92/24/EEC [2]. However, all the vehicles covered by this Directive which are registered before [the first day of the month following the end of the second year after the entry into force of this Directive] may continue to be equipped with speed limitation devices meeting the technical standards set by the competent national authorities.'

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[1] Council Directive 88/77/EEC of 3 December 1987 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous pollutants from diesel engines for use in vehicles (OJ L 36, 9.2.1988, p. 33) as lastly modified by Commission Directive 2001/27/EC of 10 April 2001 adapting to technical progress Council Directive 88/77/EEC on the approximation of the laws of the Member States relating to measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles (Text with EEA relevance) (OJ L 107, 18.4.2001, p. 10).

[2] Council Directive 92/24/EEC of 31 March 1992 relating to speed limitation devices or similar speed limitation on-board systems of certain categories of motor vehicles (OJ L 129, 14.5.1992, p. 154).

Amendment 10 concerns the date of implementation of the Directive by Member States. The Commission accepts this with the alignment of this date with the other dates:

> 'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [the first day of the month following the end of the second year after the entry into force of this Directive] at the latest. They shall forthwith inform the Commission thereof.'

Amendment 9 concerns a report from the Commission on Intelligent Speed Management (ISA) and speed limitation devices in 18 months time. The Commission would accept a study in the context of Road Safety towards 2010, but not as a separate report taking into account that in any case 18 months is much too short time for any meaningful evaluation. Therefore the Commission accepts a new Article 6 a as follows:

> 'As part of the Road Safety Action Programme for the period 2002-2010, the Commission shall assess the road safety and road traffic implications of adjusting the speed limitation devices used by category M2 vehicles and by category N2 vehicles with a maximum mass of 7.5 tonnes or less to the speed settings laid down by this Directive.
>
> If necessary, the Commission shall submit appropriate proposals.'

3.3. *Amendments not accepted by the Commission*

The Commission cannot accept amendments 1, 2 and 3, because they are not making the text any clearer.

The Commission cannot accept amendment 8 on time-limited possibilities to overrule the speed limitation device. The Commission considers that a time-limited higher speed is unresolved technologically and would make enforcement more difficult.

4. **Amended proposal**

Having regard to Article 250, paragraph 2, of the EC Treaty, the Commission modifies its proposal as indicated above.

Proposal for a Council Regulation amending Regulation (EEC) No 3950/92 establishing an additional levy in the milk and milk products sector

(2002/C 227 E/33)

COM(2002) 307 final — 2002/0135(CNS)

(Submitted by the Commission on 27 June 2002)

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 order to permit the maintenance of traditional dairy farming in Madeira, Council Regulation (EC) No 1453/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Azores and Madeira and repealing Regulation (EEC) No 1600/92 (POSEIMA) [1] stipulates that Council Regulation (EEC) No 3950/92 [2] is not, within the limit of local production, to apply to Madeira.

(2) Regulation (EEC) No 3950/92 sets the reference quantities applicable in each Member State. The exemption must not affect application of the levy arrangements in Portugal. The reference quantity for Portugal should therefore be reduced by an amount equal to that of the quantities available to producers in Madeira that were used in determining it. The Annex to the Regulation is amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 3950/92 is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 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.

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[1] OJ L 198, 21.7.2001, p. 26.

[2] OJ L 405, 31.12.1992, p. 1. Regulation as last amended by Commission Regulation (EC) No 603/2001 (OJ L 89, 29.3.2001, p. 18).

ANNEX

(a) Total reference quantities (Article 3(2)) applicable from 1 April 2000 to 31 March 2001

(tonnes)

Member State	Deliveries	Direct sales
Belgium	3 171 279,539	139 151,461
Denmark	4 454 616,417	731,583
Germany	27 768 686,841	96 129,159
Greece	674 471,000	842,000
Spain	5 828 977,475	87 972,525
France	23 832 232,240	403 565,760
Ireland	5 332 448,840	9 315,160
Italy	10 100 482,000	213 578,000
Luxembourg	268 254,000	795,000
Netherlands	10 992 901,000	81 791,000
Austria	2 583 251,804	166 149,196
Portugal	1 863 166,000	9 295,000
Finland	2 397 527,921	9 120,645
Sweden	3 300 000,000	3 000,000
United Kingdom (1)	14 420 829,479	181 825,521

(1) Specific quota increase for allocation to Northern Ireland.

(b) Total reference quantities (Article 3(2)) applicable from 1 April 2001 to 31 March 2002

(tonnes)

Member State	Deliveries	Direct sales
Belgium	3 171 279,539	139 151,461
Denmark	4 454 616,417	731,583
Germany	27 768 686,841	96 129,159
Greece	699 671,000	842,000
Spain	6 028 977,475	87 972,525
France	23 832 232,240	403 565,760
Ireland	5 386 448,840	9 315,160
Italy	10 316 482,000	213 578,000
Luxembourg	268 254,000	795,000
Netherlands	10 992 901,000	81 791,000
Austria	2 583 251,804	166 149,196
Portugal (1)	1 861 166,000	9 295,000
Finland	2 397 527,921	9 120,645
Sweden	3 300 000,000	3 000,000
United Kingdom (2)	14 427 921,479	181 825,521

(1) Except Madeira.
(2) Specific quota increase for allocation to Northern Ireland.

(c) Total reference quantities (Article 3(2)) applicable from 1 April 2002 to 31 March 2005

(tonnes)

Member State	Deliveries	Direct sales
Belgium	3 171 279,539	139 151,461
Denmark	4 454 616,417	731,583
Germany	27 768 686,841	96 129,159
Greece	699 671,000	842,000
Spain	6 028 977,475	87 972,525
France	23 832 232,240	403 565,760
Ireland	5 386 448,840	9 315,160
Italy	10 316 482,000	213 578,000
Luxembourg	268 254,000	795,000
Netherlands	10 992 901,000	81 791,000
Austria	2 583 251,804	166 149,196
Portugal [1]	1 861 166,000	9 295,000
Finland	2 397 527,921	9 120,645
Sweden	3 300 000,000	3 000,000
United Kingdom	14 427 921,479	181 825,521

[1] Except Madeira.

(d) Total reference quantities (Article 3(2)) applicable from 1 April 2005 to 31 March 2006

(tonnes)

Member State	Deliveries	Direct sales
Belgium	3 187 831,539	139 151,461
Denmark	4 476 893,417	731,583
Germany	27 908 010,841	96 129,159
Greece	699 671,000	842,000
Spain	6 028 977,475	87 972,525
France	23 953 411,240	403 565,760
Ireland	5 386 448,840	9 315,160
Italy	10 316 482,000	213 578,000
Luxembourg	269 599,000	795,000
Netherlands	11 048 274,000	81 791,000
Austria	2 596 998,804	166 149,196
Portugal [1]	1 870 528,000	9 295,000
Finland	2 409 550,921	9 120,645
Sweden	3 316 515,000	3 000,000
United Kingdom	14 500 871,479	181 825,521

[1] Except Madeira.

(e) Total reference quantities (Article 3(2)) applicable from 1 April 2006 to 31 March 2007

(tonnes)

Member State	Deliveries	Direct sales
Belgium	3 204 383,539	139 151,461
Denmark	4 499 169,417	731,583
Germany	28 047 334,841	96 129,159
Greece	699 671,000	842,000
Spain	6 028 977,475	87 972,525
France	24 074 590,240	403 565,760
Ireland	5 386 448,840	9 315,160
Italy	10 316 482,000	213 578,000
Luxembourg	270 944,000	795,000
Netherlands	11 103 648,000	81 791,000
Austria	2 610 745,804	166 149,196
Portugal [1]	1 879 891,000	9 295,000
Finland	2 421 572,921	9 120,645
Sweden	3 333 030,000	3 000,000
United Kingdom	14 573 821,479	181 825,521

[1] Except Madeira.

(f) Total reference quantities (Article 3(2)) applicable from 1 April 2007 to 31 March 2008

(tonnes)

Member State	Deliveries	Direct sales
Belgium	3 220 935,539	139 151,461
Denmark	4 521 446,417	731,583
Germany	28 186 658,841	96 129,159
Greece	699 671,000	842,000
Spain	6 028 977,475	87 972,525
France	24 195 769,240	403 565,760
Ireland	5 386 448,840	9 315,160
Italy	10 316 482,000	213 578,000
Luxembourg	272 290,000	795,000
Netherlands	11 159 021,000	81 791,000
Austria	2 624 492,804	166 149,196
Portugal [1]	1 889 253,000	9 295,000
Finland	2 433 595,921	9 120,645
Sweden	3 349 545,000	3 000,000
United Kingdom	14 646 772,479	181 825,521

[1] Except Madeira.

Proposal for a regulation of the European Parliament and the Council on the prevention of money laundering by means of customs cooperation

(2002/C 227 E/34)

COM(2002) 328 final — 2002/0132(COD)

(Submitted by the Commission on 2 July 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 135 thereof,

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) Money laundering via cross-border cash movements represents a threat to the security and financial interests of the Member States and the Community. This threat can be effectively combated by the customs administrations. Customs officials are present at the borders, where controls are most effective. Indeed, some have built up practical experience in the matter. They are, moreover, able to control both cash and the valuables that are substitutes for it.

(2) Furthermore, customs administrations are already familiar with international cooperation, and in particular the exchange of information pursuant to Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [1], and to the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations [2].

(3) Account should also be taken of complementary activities carried out in other international forums. In particular, Recommendation No 22 of the OECD's Financial Action Task Force calls on governments to take measures to detect cash movements.

(4) Recourse to customs cooperation is necessary because the machinery introduced by Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering [3] covers only money laundering operations conducted through credit institutions, financial institutions and certain professions.

(5) The consequence is that large sums of money of dubious origin are entering and leaving the Community which cannot be detected by this mechanism. Some Member States have nevertheless taken initiatives outside the framework of the Community and introduced legislation allowing their customs services to perform controls on such sums. Other Member States, however, have no such legislation. The probability of detecting money laundering therefore depends on the Member State through which cash is brought in or taken out. This diminishes the protection afforded by the external frontiers against money laundering.

(6) The existing legislation should therefore be supplemented by having recourse to customs cooperation arrangements under Article 135 of the Treaty, which now gives formal expression to customs cooperation. This should serve to harmonise the control methods instituted by national law and enable all the Community's customs administrations to gather information on cash entering or leaving the Community customs territory in sums equal to those covered by Directive 91/308/EEC. In these circumstances, the most appropriate way to gather such information is by imposing an obligatory declaration. In case of suspicion, the information is designed to be transmitted to the authorities which, by virtue of Directive 91/308/EEC, coordinate action against money laundering.

(7) Accordingly, cash movements should be subject to the principle of obligatory declaration at the external frontiers. This is the most expedient way to control acts by which Community and national rules on laundering might be circumvented. However, in order to focus the authorities' action on significant instances of laundering, only movements of EUR 15 000 or more should be subject to an obligatory declaration.

[1] OJ L 82, 22.3.1997, p. 1.

[2] OJ C 24, 23.1.1998, p. 2.

[3] OJ L 166, 28.6.1991, p. 77; Directive as amended by Directive 2001/97/EC of the European Parliament and of the Council (OJ L 344, 28.12.2001, p. 76).

(8) The form of the obligatory declaration should also be laid down, otherwise it should be void. Imposing the use of a standard pre-printed declaration form will enable customs administrations to improve synergies and to exchange information more easily. In view of the preventive purpose and dissuasive character of the declaration, it may not be lodged after the external frontier has been crossed. The moment at which this formality has to be accomplished must therefore be determined. Lastly, it must be specifically laid down that the obligation to declare applies to the person carrying the cash, regardless of whether that person is the owner.

(9) It is desirable to establish the definitions needed for a uniform interpretation of this Regulation. The term 'competent authorities' must cover not only the customs administrations, which bear primary responsibility for these rules, but any non-customs services which, subject to their remit and to each Member State's specific administrative arrangements, contribute to this Regulation's implementation. This definition will cover cases in which departments other than customs, such as police and border guards, are authorised to receive and check such declarations. In addition, 'cash' should encompass the whole range of fungible assets.

(10) As far as geographical scope is concerned, in conformity with the requirements of the Treaty, and in particular Article 299(3), (4) and (6)(c) thereof, Directive 91/308/EEC does not apply to certain European countries and territories, including Monaco, the Channel Islands and the Isle of Man. Attention should therefore be paid to the risk of money laundering attaching to such countries and territories, and special arrangements should be made in their regard. The declaration should be given on demand, on entering or leaving such countries and territories, regardless of whether the movement is within the Community or to a non-member country.

(11) In order to combine this Regulation with the national law governing money laundering, provision should be made for the automatic transmission of information gathered by controls. Such information must be accessible to the customs services of the Member State of residence and, as the case may be, the Member State of origin or destination, and also to the money laundering authorities of the Member States concerned. Where relevant, the information must also be transmitted to the Commission. Similarly, provision should be made for certain information to be transmitted whenever there are suspicions over repeated cash movements involving sums lower than the threshold laid down.

(12) Customs officials should be vested with the powers needed to exercise effective control.

(13) The powers of the customs authorities should be supplemented by the Member States' obligation to lay down penalties. However, penalties should only be imposed for failure to make a declaration, not for money laundering offences disclosed by the customs controls set out in this Regulation. Though genuinely dissuasive penalties are called for, fines should nevertheless be restricted as to their amount. The absence of any limit would enable Member States to impose fines so high as unduly to compromise the principle of the free movement of capital, or even to negate it altogether.

(14) Provision should be made, in the event of cash movements connected with terrorism, for information gathered to be transmitted, under certain conditions, to non-member countries.

(15) This Regulation in no way affects the application of general or specific Community rules on administrative cooperation, especially in the matter of customs or in the protection of the Community's financial interests, in particular where those rules might improve or strengthen the current machinery for administrative cooperation.

(16) Since the objective of the Regulation, namely strengthening customs cooperation in the fight against money laundering, cannot be sufficiently achieved by the Member States acting in isolation and can therefore, by reason of the transnational scale of money laundering in the internal market, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(17) This act respects the fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

Article 1

Obligation to declare

1. Any natural person entering or leaving the Community customs territory and carrying a sum of EUR 15 000 or more in cash shall be obliged to declare that sum in accordance with this Regulation.

Any natural person entering or leaving those parts of the Community customs territory to which Directive 91/308/EEC does not apply and carrying a sum of EUR 15 000 or more in cash shall also be obliged to declare that sum in accordance with this Regulation.

2. The obligation to declare shall not have been fulfilled unless the person referred to in paragraph 1 has completed the declaration form corresponding to the specimen in the Annex and handed it in to the customs office of the Member State through which he is entering or leaving the Community customs territory or parts of the Community customs territory to which Directive 91/308/EEC does not apply.

Moreover, the obligation to declare is not fulfilled if the information given is incorrect or incomplete.

Article 2

Definitions

For the purposes of this Regulation:

1. 'Community customs territory' shall mean the territory of the Member States referred to in Article 3(1) of Council Regulation (EEC) No 2913/92 [1] establishing the Community customs code.

2. 'Competent authorities' shall mean the customs authorities of the Member States and the other authorities responsible for applying this Regulation.

3. 'Cash' shall mean:

   (a) currency (banknotes, coins);

   (b) traveller's cheques or postal cheques;

   (c) any anonymous or bearer certificate of a financial or monetary character which is convertible into cash, irrespective of the issuer, and in particular negotiable securities and other bonds.

Article 3

Reporting

1. Where there is material or circumstantial evidence that cash is being carried for the purposes of money laundering operations, information obtained through the declaration provided for in Article 1 or subsequent controls shall automatically be transmitted to the competent authorities of, respectively, the Member State of residence of the person referred to in Article 1(1) and the Member State through which that person entered or left the Community customs territory.

It shall also be transmitted to the national authorities responsible under Article 6 of Directive 91/308/EEC for combating money laundering in the country through which the person concerned entered or left the Community customs territory.

Where the money laundering operations appear to involve the proceeds of fraud or any other illegal activity adversely affecting the financial interests of the Community, the information shall also be transmitted to the Commission.

2. Where there is material or circumstantial evidence that a natural person is repeatedly entering or leaving the Community customs territory or parts of the Community customs territory to which Directive 91/308/EEC does not apply with sums of cash lower than the threshold fixed in Article 1, the name of that person, his nationality and the registration number of the means of transport used may also be transmitted, with the material or circumstantial evidence, to the competent authorities and, in the circumstances described in paragraph 1, to the Commission.

3. The provisions of Titles V and VI of Regulation (EC) No 515/97 shall apply *mutatis mutandis* to the transmission of information gathered pursuant to this Regulation.

Article 4

Powers of the competent authorities

In order to check compliance with the obligation under Article 1 to declare, officials of the competent authorities shall be empowered, even where there is no prior evidence that an offence is being committed, to control persons and their baggage, to question persons about the provenance of cash found in the course of such controls and to detain such cash by administrative decision.

Cash may be detained for up to three working days; that period may, however, be extended in accordance with national law. The period shall, in any event, be no longer than is necessary for the investigation.

Article 5

Penalties

1. Without prejudice to the penalties applicable in the event of money laundering, the Member States shall, in accordance with their national legislation, make sure that proceedings are initiated against those responsible where controls or inspections carried out under this Regulation establish that the obligation to declare laid down in Article 1 has not been fulfilled.

Those proceedings shall, in accordance with the relevant provisions of national law, be such as to produce effects proportionate to the seriousness of the offence constituted by the failure to make a declaration or the lodging of an inaccurate or incomplete declaration, and thereby deter others from committing offences of a similar nature.

[1] OJ L 302, 19.10.1992, p. 2.

2. The level of fines resulting from the procedures referred to in paragraph 1 may not exceed a quarter of the sum carried.

3. Member States shall notify to the Commission, at the latest by 31 December 2003, the applicable penalties in the event of non-compliance with the obligation to declare.

Article 6

Relations with non-member countries

1. Where there is material or circumstantial evidence that cash is being carried for the purposes of money laundering operations by or for terrorist groups, the information obtained under this Regulation may be divulged to a non-member country, with the consent of the competent authorities having provided the information and subject to compliance with their internal provisions on the transfer of personal data to non-member countries.

2. Member States shall notify the Commission of exchanges of information with non-member countries in the course of mutual administrative assistance where particularly relevant to the effectiveness of action against money laundering under this Regulation and where such information falls within the scope of this Regulation.

Article 7

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

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

ANNEX

DECLARATION FORM

I hereby declare that I am carrying a total of EUR 15 000 or more in the form of the sums, bonds or securities listed below.

TYPE OF DECLARATION	ENTERING THE COMMUNITY	Yes/No (*)		
	LEAVING THE COMMUNITY	Yes/No (*)		
DECLARANT	SURNAME, FIRST NAME			
	Address (main residence)			
	Nationality			
	Date of birth			
	Place of birth			
IDENTITY OF THE OWNER OF THE FUNDS (if they are being carried for another person)	SURNAME, FIRST NAME			
	Address (main residence)			
	Nationality			
INTENDED RECIPIENT OF THE FUNDS	SURNAME, FIRST NAME			
	Address (main residence)			
	Nationality			
		(*)	AMOUNT	CURRENCY
NATURE OF THE SUMS, BONDS OR SECURITIES:	Banknotes, coins	Yes/No		
	Traveller's cheques/postal cheques	Yes/No		
	Any other anonymous or bearer certificates of a financial or monetary character, such as negotiable securities and other bonds	Yes/No		
		TOTAL	(in EUR)	
PURPOSE OF THE FUNDS				
ROUTE	Country of origin/Member State of departure			
	Country of provenance/Member State of exit			
	Member State/Country of final destination			
MEANS OF TRANSPORT	AIR	Yes/No		
	SEA	Yes/No		
	ROAD	Yes/No		
	RAIL	Yes/No		

(*) Delete as applicable.

In the event of inaccurate or incomplete information, the signatory will be considered not to have fulfilled the obligation to declare.

Place, Date and Signature