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(Preparatory Acts)

COMMISSION

Proposal for a Council Decision on the position to be taken by the Community within the Association Committee established by the Europe Agreement between the European Communities and their Member States, of the one part, and Lithuania, of the other part, with regard to the adoption of a Regional aid map on the basis of which public aid granted by Lithuania will be assessed

(2003/C 20 E/01)

COM(2002) 35 final — 2002/0028(ACC)

(Submitted by the Commission on 1 February 2002)

EXPLANATORY MEMORANDUM

1. This is a proposal for the adoption of a Regional aid map on the basis of which public aid granted by Lithuania will be assessed.

   According to Article 64(4)(a) of the Europe Agreement, the Parties recognised that during the first five years after its entry into force, any public aid granted by Lithuania shall be assessed taking into account the fact that Lithuania shall be regarded as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community.

   On 24 July 2000 the EU-Lithuania Association Council adopted decision No 2/2000 with regard to the extension for a further period of five years of Lithuania as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community. The decision was applied as from 1 January 2000 and expires on 31 December 2004.

   Article 2 of decision No 2/2000 obliged Lithuania to submit the GDP per capita figures which have been harmonised at NUTS II level to the European Commission within six months of the date of the adoption of the decision. On that basis, the Lithuanian State aid monitoring authority and the European Commission jointly evaluated the eligibility of the region as well as the maximum aid intensities in relation thereto, in order to draw up the regional aid map on the basis of the Community guidelines on national regional aid ([1]).

2. According to the Community guidelines on national regional aid, in the case of regions falling under Article 87(3)(a) of the Treaty the intensity of regional aid must in general not exceed the rate of 50 % NGE, except in the outermost regions, where it may be as much as 65 % NGE. In the NUTS level II regions eligible under Article 87(3)(a) whose per capita GDP/PPS is greater than 60 % of the Community average, the intensity of regional aid must not exceed 40 % NGE, except in the outermost regions, where it may be as high as 50 % NGE. The GDP/PPS of each region and the Community average to be used in the analysis must relate to the average of the last three years for which statistics are available.

   All the above mentioned ceilings may be raised by 15 percentage points gross in the case of aid granted to small and medium-sized enterprises ([2]). They nevertheless constitute upper limits which apply to the total aid whenever assistance is granted concurrently under several regional schemes, and regardless of whether it comes from local, regional, national or Community sources. Beneath these ceilings, it will be ensured that the regional aid intensity is adjusted to reflect the seriousness and intensity of the regional problems addressed.

3. The Commission hereinafter submits the joint proposal to the Council and requests the Council to adopt the attached proposal for an Association Committee Decision.

([1]) OJ C 74, 10.3.1998, p. 9.

([2]) OJ L 107, 30.4.1996, p. 4.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the first sentence of Article 300(2) thereof;

Having regard to the proposal from the Commission;

Having regard to Article 64(4)(a) of the Europe Agreement;

Having regard to Article 4(2) of the Implementing Rules for the application of the provisions on State aid of the Europe Agreement;

Having regard to decision No 2/2000 of the EU-Lithuania Association Council of 24 July 2000 with regard to the extension for a further period of five years of Lithuania as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community;

Whereas:

(1) Article 2 of the decision No 2/2000 obliged Lithuania within six months of the date of the adoption of the decision to submit the GDP per capita figures which have been harmonised at NUTS II level to the European Commission;

(2) The Lithuanian State aid monitoring authority and the European Commission jointly evaluated the eligibility of the regions as well as the maximum aid intensities in relation thereto in order to draw up the regional aid map on the basis of the Community guidelines on national regional aid [1];

(3) According to the above mentioned decision, a joint proposal shall be submitted to the Association Committee, which shall take a decision to this effect.

(4) According to the Community guidelines on national regional aid, in the case of regions falling under Article 87(3)(a) of the Treaty the intensity of regional aid must in general not exceed the rate of 50 % NGE, except in the outermost regions, where it may be as much as 65 % NGE;

(5) In the NUTS level II regions eligible under Article 87(3)(a) whose per capita GDP/PPS is greater than 60 % of the Community average, the intensity of regional aid must not exceed 40 % NGE, except in the outermost regions, where it may be as high as 50 % NGE;

(6) The GDP/PPS of each region and the Community average to be used in the analysis must relate to the average of the last three years for which statistics are available;

(7) All the above mentioned ceilings may be raised by 15 percentage points gross in the case of aid granted to small and medium-sized enterprises [2], and constitute upper limits which apply to the total aid whenever assistance is granted concurrently under several regional schemes, and regardless of whether it comes from local, regional, national or Community sources;

(8) Beneath these ceilings, it will be ensured that the regional aid intensity is adjusted to reflect the seriousness and intensity of the regional problems addressed;

(9) The seriousness and intensity of the regional problems addressed must be assessed within the broader context of all the countries which have concluded Europe agreements with the European Communities;

(10) Lithuania consists of a single NUTS II region, which has a per capita GDP/PPS that does not exceed 60 % of the Community average, according to statistical data available for years 1996-1998;

(11) The relative situation of each NUTS III level region does not justify any differentiation of the level of regional aid;

(12) The maximum aid intensities applicable therein, as jointly evaluated by the Lithuanian State aid monitoring authority and the European Commission, are in conformity with the requirements set by the Community guidelines on national regional aid;

HAS DECIDED AS FOLLOWS:

The position to be taken by the Community within the Association Committee established by the Europe Agreement between the European Communities and their Member States, of the one part, and Lithuania, of the other part, with regard to the adoption of the regional aid map shall be based on the draft decision of the Association Committee annexed to this Decision.

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[1] OJ C 74, 10.3.1998, p. 9.

[2] OJ L 107, 30.4.1996, p. 4.

Decision No . . ./2001 of the Association Committee between the European Communities and their Member States, of the one part, and Lithuania, of the other part, of . . . adopting a regional aid map on the basis of which public aid granted by Lithuania will be assessed

THE ASSOCIATION COMMITTEE,

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Lithuania, of the other part [1] and in particular Article 64(4)(a) thereof,

Having regard to Article 4(2) of the Implementing Rules for the application of the provisions on State aid of the Europe Agreement;

Having regard to decision No 2/2000 of the EU-Lithuania Association Council of 24 July 2000 with regard to the extension for a further period of five years of Lithuania as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community;

(1) Whereas Article 2 of the decision No 2/2000 obliged Lithuania within six months of the date of the adoption of the decision to submit the GDP per capita figures which have been harmonised at NUTS II level to the European Commission;

(2) Whereas the Lithuanian State aid monitoring authority and the European Commission jointly evaluated the eligibility of the regions as well as the maximum aid intensities in relation thereto in order to draw up the regional aid map on the basis of the Community guidelines on national regional aid [2];

(3) Whereas according to the above mentioned decision, a joint proposal shall be submitted to the Association Committee, which shall take a decision to this effect;

(4) Whereas according to the Community guidelines on national regional aid, in the case of regions falling under Article 87(3)(a) of the Treaty the intensity of regional aid must in general not exceed the rate of 50 % NGE, except in the outermost regions, where it may be as much as 65 % NGE;

(5) Whereas in the NUTS level II regions eligible under Article 87(3)(a) whose per capita GDP/PPS is greater than 60 % of the Community average, the intensity of regional aid must not exceed 40 % NGE, except in the outermost regions, where it may be as high as 50 % NGE;

(6) Whereas the GDP/PPS of each region and the Community average to be used in the analysis must relate to the average of the last three years for which statistics are available;

(7) Whereas all the above mentioned ceilings may be raised by 15 percentage points gross in the case of aid granted to small and medium-sized enterprises [3], and constitute upper limits which apply to the total aid whenever assistance is granted concurrently under several regional schemes, and regardless of whether it comes from local, regional, national or Community sources;

(8) Whereas beneath these ceilings, it will be ensured that the regional aid intensity is adjusted to reflect the seriousness and intensity of the regional problems addressed;

(9) Whereas the seriousness and intensity of the regional problems addressed must be assessed within the broader context of all the countries which have concluded Europe agreements with the European Communities;

(10) Whereas Lithuania consists of a single NUTS II region, which has a per capita GDP/PPS that does not exceed 60 % of the Community average, according to statistical data available for years 1996-1998;

(11) Whereas the relative situation of each NUTS III level region does not justify any differentiation of the level of regional aid;

(12) Whereas the maximum aid intensities applicable therein, as jointly evaluated by the Lithuanian State aid monitoring authority and the European Commission, are in conformity with the requirements set by the Community guidelines on national regional aid;

[1] OJ L 51, 20.2.1998 p. 3.

[2] OJ C 74, 10.3.1998, p. 9.

[3] OJ L 107, 30.4.1996, p. 4.

HAS DECIDED AS FOLLOWS:

Article 1

The maximum aid intensity applicable in Lithuania shall be limited, in net grant equivalent, to 50 %.

Article 2

The maximum aid intensity referred to under Article 1 may be raised by 15 gross percentage points in the case of aid granted to small and medium-sized enterprises. It shall constitute an upper limit which applies to the total aid whenever assistance is granted concurrently under several regional schemes, and regardless of whether it comes from local, regional, national or Community sources.

Article 3

This Decision shall enter into force on the day of its adoption. It shall expire on 31 December 2004, or the date of Lithuania's accession to the EU, whichever comes earlier.

Done at Brussels, . . .

For the Association Committee

The President

Proposal for a Council Regulation concerning certain restrictive measures in respect of certain members of the Government of Zimbabwe

(2003/C 20 E/02)

COM(2002) 88 final

(Submitted by the Commission on 11 February 2002)

EXPLANATORY MEMORANDUM

The Council has expressed serious concern about the situation in Zimbabwe, in particular the recent escalation of violence and intimidation of political opponents and the harassment of the independent press. It has noted that the Government of Zimbabwe has not taken effective measures to improve the situation as called for by the European Council in Laeken last December.

The Council has further expressed serious concern about recent legislation in Zimbabwe which, if enforced, would seriously infringe the freedom of speech, assembly and association and violate the norms and standards for free and fair elections.

In view of the above Common Position 2002/. . ./CFSP provides that certain restrictive measures should be implemented against Zimbabwe by means of in particular freezing of funds and a ban on exports on repression equipment.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Council Common Position 2002/. . ./CFSP,

Having regard to the proposal from the Commission,

Whereas:

(1) The Council has expressed serious concern about the situation in Zimbabwe, in particular the recent escalation of violence and intimidation of political opponents and the harassment of the independent press. It has noted that the Government of Zimbabwe has not taken effective measures to improve the situation as called for by the European Council in Laeken last December.

(2) The Council has further expressed serious concern about recent legislation in Zimbabwe which, if enforced, would seriously infringe the freedom of speech, assembly and association and violate the norms and standards for free and fair elections.

(3) Common Position 2002/. . ./CFSP provides that certain restrictive measures should be implemented against certain members of the Government of Zimbabwe, in particular freezing of funds, financial asset or economic resources and a ban on exports on repression equipment.

(4) 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 said measures 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

For the purpose of this Regulation:

1. 'Funds, financial assets or economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

2. Freezing of funds means: preventing any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.

Article 2

Without prejudice to the powers of the Member States in the exercise of their public authority, the provision to Zimbabwe of 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 shall be prohibited.

Article 3

1. All funds, financial assets or economic resources belonging to any natural or legal persons, entities or bodies engaged in activities that undermine democracy, human rights and the rule of law in Zimbabwe and listed in Annex I, shall be frozen.

2. No funds, financial assets or economic resources shall be made available directly or indirectly to or for the benefit of persons, entities or bodies listed in Annex I.

Article 4

1. Notwithstanding the applicable rules concerning reporting, confidentiality and professional secrecy natural and legal persons, entities and bodies shall:

(a) provide immediately to the Commission any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 3. In particular information in respect of funds owned or controlled by persons listed in Annex 1 during the period of 6 months before the entry into force of this Regulation shall be provided;

(b) cooperate with competent authorities in any verification of this information;

(c) inform immediately the Commission on any transaction or activity where there is reasonable doubt about its compatibility with the provisions of this Regulation.

2. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

3. Any information directly received by the Commission shall be made available to the competent authorities of the Member States concerned.

Article 5

Article 3 shall not apply to

(a) the crediting of frozen accounts on the condition that any additions shall be frozen

(b) the use of frozen funds for

— essential human needs of a natural person included in Annex I such as payments for foodstuffs, medicines, the rent or mortgage for the family residence and fees and charges concerning medical treatment of members of that family, to be fulfilled within the Community;

— payment of taxes, compulsory insurance premiums and fees for public utility services such as gas, water, electricity and telecommunications to be paid in the Community;

— payment of charges due to a financial institution in the Community for the maintenance of accounts;

The Commission shall be informed of any payment made under this paragraph and of conclusive evidence of the fulfilment of the conditions and the purposes. Such evidence shall be kept available for at least 5 years for inspection by competent authorities.

Article 6

It shall be prohibited, knowingly and intentionally, to sell supply, export or ship, directly or indirectly, equipment which might be used for internal repression as listed in Annex II to any person, entity or body for the purpose of any business carried on in or operated from the territory of Zimbabwe.

Article 7

The Commission shall be empowered:

— To amend Annex I taking into account decisions in respect of the Annex of Common Position 2002/. . ./CFSP.

Article 8

The participation, knowingly and intentionally, in related activities the object or effect of which is, directly or indirectly to promote the transactions or activities referred to in article 4 or to circumvent the provisions of this Regulation shall be prohibited.

Article 9

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 judgements handed down by national courts.

Article 10

The freezing in good faith of funds, financial assets or economic resources according to this Regulation by an institution or person or by an employee or director of such an institution or person shall not involve the institution or person or directors or employees in liability of any kind.

Article 11

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.

Article 12

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 13

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

This Regulation shall apply for a renewable 6 month period after that date.

It shall be kept under constant review.

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

ANNEX I

LIST OF PERSONS, ENTITIES AND BODIES REFERRED TO IN ARTICLE 2

. . . . . .

ANNEX II

EQUIPMENT FOR INTERNAL REPRESSION ENVISAGED BY ARTICLE 6

The list below does not comprise the articles that have been specially designed or modified for military use and that are covered by the arms embargo confirmed by the common position 96/635/CFSP.

Helmets providing ballistic protection, anti-riot helmets, anti-riot shields and ballistic shields and specially designed components therefor.

Specially designed fingerprint equipment.

Power controlled searchlights.

Construction equipment provided with ballistic protection.

Hunting knives.

Specially designed production equipment to make shotguns.

Ammunition hand-loading equipment.

Communications intercept devices.

Solid-state optical detectors.

Image-intensifier tubes.

Telescopic weapon sights.

Smooth-bore weapons and related ammunition, other than those specially designed for military use, and specially designed components therefor; except:

1. signal pistols;

2. air- and cartridge-powered guns designed as industrial tools or humane animal stunners.

Simulators for training in the use of firearms and specially designed or modified components and accessories therefor.

Bombs and grenades, other than those specially designed for military use, and specially designed components therefor.

Body armour, other than those manufactured to military standards or specifications, and specially designed components therefor.

All-wheel-drive utility vehicles capable of off-road use that have been manufactured or fitted with ballistic protection, and profiled armour for such vehicles.

Water cannon and specially designed or modified components therefor.

Vehicles equipped with a water cannon.

Vehicles specially designed or modified to be electrified to repel borders and components therefor specially designed or modified for that purpose.

Acoustic devices represented by the manufacturer or supplier as suitable for riot-control purposes, and specially designed components therefor.

Leg-irons, gang-chains, shackles and electric-shock belts, specially designed for restraining human beings; except:

— handcuffs for which the maximum overall dimension including chain does not exceed 240 mm when locked.

Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating substance (such as tear gas or pepper sprays), and specially designed components therefor.

Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (including electric-shocks batons, electric shock shields, stun guns and electric shock dart guns (tasers)) and components therefor specially designed or modified for that purpose.

Electronic equipment capable of detecting concealed explosives and specially designed components therefor; except:

— TV or X-ray inspection equipment.

Electronic jamming equipment specially designed to prevent the detonation by radio remote control of improvised devices and specially designed components therefor.

Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except:

— those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflaters, electric-surge arresters of fire sprinkler actuators).

Equipment and devices designed for explosive ordnance disposal; except:

1. bomb blankets;

2. containers designed for folding objects known to be, or suspected of being improvised explosive devices.

Night vision and thermal imaging equipment and image intensifier tubes or solid state sensors therefor.

Software specially designed and technology required for all listed items.

Linear cutting explosive charges.

Explosives and related substances as follows:

— amatol,

— nitrocellulose (containing more than 12,5 % nitrogen),

— nitroglycol,

— pentaerythritol tetranitrate (PETN),

— picryl chloride,

— tinitorphenylmethylnitramine (tetryl),

— 2, 4, 6-trinitrotoluene (TNT)

Software specially designed and technology required for all listed items.

Proposal for a Council Regulation opening an autonomous quota for imports of high-quality beef

(2003/C 20 E/03)

COM(2002) 94 final — 2002/0050(ACC)

(Submitted by the Commission on 21 February 2002)

EXPLANATORY MEMORANDUM

In spite of the difficulties experienced in 2001, the beef market is now on the way to becoming more stable. Demand of consumers in the Community is increasing specially on high-quality beef.

The Community's interest is developing harmonious trade relations with third countries. Some of them are classified by the Commission as countries producing high-quality beef. The BSE crisis prevented that some of these countries benefit from the high-quality beef arrangements. Therefore exports of high-quality beef are very modest given the application of the full tariff to meat products from these countries.

An additional reduced-tariff-quota on high-quality beef would satisfy at the same time the consumer interests as well as supplier interests and it would not have a significant impact on the total volume of beef imports into the Community.

Consequently, the Commission proposes the opening of an autonomous *erga omnes* tariff quota of 1 000 tonnes of high-quality fresh, chilled or frozen beef at a duty-rate of 20 % *ad valorem*.

In order to give guaranties of equal and continuous access for all operators concerned in the Community to the said quota an appropriate monitoring of the quota should be ensured. To this end, the utilisation of the quota should be based on the presentation of a certificate of authenticity guaranteeing the type and origin of the products.

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) In view of the Community's interest in developing harmonious trade relations with third countries, provision should be made for opening, as an autonomous measure, a Community import tariff quota of 1 000 tonnes of high-quality fresh, chilled or frozen beef.

(2) In spite of the difficulties experienced in 2001, the beef market is now on the way to becoming more stable. Demand of consumers in the Community is increasing, especially for high-quality beef. An additional reduced-tariff-quota for high-quality beef would satisfy at the same time the consumer interests as well as supplier interests. It would not have a significant impact on the total volume of beef imports into the Community.

(3) All operators concerned in the Community should be offered equal and continuous access to that quota. It is also necessary to insure appropriate monitoring. To this end, the utilisation of the quota should be based on the presentation of a certificate of authenticity guaranteeing the type and origin of the products.

(4) Under Article 32 of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1], tariff quotas for the products covered by the present Regulation are to be administered by the Commission in accordance with detailed rules adopted under the procedure laid down in Article 43 of Regulation (EC) No 1254/1999,

[1] OJ L 160, 26.6.1999, p. 21. Regulation last amended by Commission Regulation (EC) No 2345/2001 (OJ L 315, 1.12.2001, p. 29).

HAS ADOPTED THIS REGULATION:

Article 1

1. An annual Community import tariff quota of 1 000 tonnes, expressed in product weight, of high-quality fresh, chilled or frozen beef falling within NC codes 0201 30 00 and 0202 30 90 of the Common Customs Tariff is opened.

2. The applicable duty for the quota shall be 20 % *ad valorem*.

3. The quota year shall run from 1 July to 30 June.

Article 2

Detailed rules for the application of this Regulation, adopted in accordance with the procedure laid down in Article 43 of Regulation (EC) No 1254/1999, shall include provisions making the utilisation of the quota referred to in Article 1 subject to the presentation of a certificate of authenticity guaranteeing the type and origin of the products.

Article 3

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

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

Proposal for a Council Decision concluding consultations with Liberia under Article 96 and Article 97 of the Cotonou Agreement

(2003/C 20 E/04)

COM(2002) 103 final

(Submitted by the Commission on 21 February 2002)

EXPLANATORY MEMORANDUM

1. The Council of the European Union decided, on 23 July 2001, to open consultations with the Liberian Government pursuant to Article 96 and to Article 97 of the Cotonou Agreement. This decision was based on the fact that on a number of occasions, since its arrival on power in 1997, the Government had acted in ways that amounted to a failure to fulfil its obligations stemming from the essential elements of Article 9 of the Agreement; that it had also acted in violation of good governance requirements as serious corruption is made possible by the lack of transparency of the management of public utilities and resources.

2. The consultations took place in Brussels on 9 November 2001. According to the conclusions of the Presidency and of the Commission [1], they were held in an open and constructive spirit, as the European Union could note the Liberian authorities' willingness to remedy the problems and was encouraged by the following commitments:

   — to systematically launch legal investigations each time there are serious and corroborated reports that members of the armed forces are involved in violence towards civilians, including in the war zone of Lofa county,

   — to expand the ongoing training programme on human rights to all security personnel,

   — to review the relevant legislation in order to create a credible independent human rights commission, with representation of the civil society,

   — to review the relevant legislation in order to create a credible independent national reconciliation commission, with representation of the civil society,

   — to continue to encourage the return of key opposition leaders, especially by the withdrawal of accusations against them; that their personal protection will be guaranteed,

   — that NGO members and journalists who remain within the law will not be harassed for speaking against the Government, which will publicly commit itself accordingly,

   — that procedures for granting short-wave radio licenses will be simplified and accelerated; to review the law, with a view to have it amended, and also have the cases of Radio Veritas and Star Radio reviewed on their request,

   — to review the relevant legislation in order to create a credible independent election commission in close consultation with the main political partners,

   — to revitalise the judicial review body so that it can advise and make independent recommendations to the Government,

   — to improve the payment of proper salaries and expenses to the civil service in particular as regards the operation of the administration of justice,

   — that all public utility and parastatal revenue including those from the forestry sector will be accounted for in a transparent manner,

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[1] General Secretariat of the Council, doc. No 164/01 ACP.

— to undertake to further liberalise the fuel and rice sectors to ensure competition and transparency,

— to comply with UN requests in relation to the involvement of Liberia in the conflict in Sierra Leone, in particular in terms of cutting all ties with the R.U.F.

The conclusions of the meeting also provided that an intensive dialogue would be held with the Liberian authorities on the various points raised, in order to prepare the conclusion of the consultations.

3. This intensive dialogue process is now completed. Two EU/Liberia monitoring meetings were held in Monrovia, on 6 December 2001 and on 12 February 2002, co-chaired by the EU Presidency, represented first by the Ambassador of Belgium accredited in Liberia, in the presence of Mr Dahlgren, as Representative of the EU Presidency for the Mano River Union, and on the second occasion by the Ambassador of Spain accredited in Liberia. The Head of the Delegation of the European Commission took part to these meetings.

On 22 January 2002, a letter was sent by the EU Presidency and the European Commission to the Ambassador of Liberia to the EU [1], as a reply to the intermediary report on the situation prepared by the Government of Liberia and dated 19 December 2001 [2].

The dialogue process focussed on measures proposed by the Government of Liberia in order to fulfil the undertakings mentioned above. The following measures have been planned and/or launched:

— in the recent period, several members of the security forces have been subject to legal investigation in relation with their involvement in cases which amount to human rights violations;

— a plan to expand the human rights training to all the security forces is under preparation;

— reviews of the existing human rights and reconciliation commissions are underway; as regards reconciliation, a national forum has been announced for July 2002, where all opposition leaders would be invited;

— President Taylor has publicly called on opposition leaders to return to Liberia stating that they will be protected;

— the strengthening and expansion of the elections commissions is planned;

— Radio Veritas is to receive its short wave licence back and the resumption of the operation of Star Radio is under consideration; short wave broadcasting facilities will be made available to opposition politicians during the elections period;

— a judicial review body ('Judicial Reform Committee') is to be revitalised;

— measures to improve the public management of fiscal revenue drawn from the forestry sector and the maritime registry are planned;

— further liberalisation of the rice sector is underway, as the dominant position of the main importer is decreasing;

— the principle of external audits of the parastatal agencies and the Government financial institutions has been accepted.

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[1] General Secretariat of the Council, doc. No SGS2/0511 ACP.

[2] The Government of Liberia response to the concerns of the European Union, 19 December 2001.

Nevertheless, serious points of concern remain:

— misconduct by the security forces towards civilians, which amount to human rights violations, is still reported;

— uncertainties remain about the real intentions of the authorities with regard to enhancing the independence of the human rights and of the reconciliation commissions;

— no concrete guarantee that all opposition leaders will be treated equally in the run-up to the 2003 elections has been given;

— transparency remains insufficient in the management of public utilities and of parastatal revenue, and no liberalisation of the fuel sector is foreseen.

As for the compliance of the Government of Liberia with UN request to cut all ties with the Revolutionary United Front in Sierra Leone, a new mission of the UN Expert panel is due in April 2002, which should lead to a decision of the UN Security Council in May.

4. The Government of Liberia appears to have confirmed its intention to comply with a number of the undertakings given at the opening of the consultations. Some concrete achievements can be reported, even though high uncertainties remain on the sustainability of the democratic and financial transparency processes promised by the Government.

Therefore the Commission proposes to build on the current results of the consultations and to prompt the Government of Liberia to implement sustainable democratic and good governance process:

(a) by continuing political dialogue;

(b) by funding institutional building and poverty alleviation in parallel;

(c) by conditionally and gradually re-launching development cooperation with Liberia.

The following concrete steps are expected from the Government of Liberia in the near future:

— to ensure the independence of an efficient and effective judiciary;

— to conduct an external independent audit of Government financial institutions and parastatal agencies;

— to effectively guarantee the personal security and freedom of movement of opposition leaders in Liberia;

— to establish an independent and efficient human rights commission;

— to implement a human rights training programme for all security forces;

— to establish an independent and efficient reconciliation commission, in charge of organising and supervising a reconciliation forum (July 2002);

— to implement decisions taken to enlarge access to short-wave broadcasting;

— to establish an independent and efficient election commission;

— to dismantle the monopoly on fuel import.

These steps are expected to be part of general trends towards improving human rights, democracy, rule of law and good governance in Liberia, which would imply:

— the improvement of the human rights situation and effective fight against impunity;

— the constant promotion and guarantee of freedom of press;

— elections in 2003, in compliance with international standards, with participation of all opposition leaders on an equal basis with the candidate of the current ruling party;

— enhanced transparency in the way public concessions and licences are run and on the fiscal revenue derived therefrom.

It is also expected that Liberia will soon be in a position to be considered as having complied with the request of the UN Security Council that all ties with the RUF be cut.

In practice, the situation will be reviewed every six months. To start with, institution support can be made available to help implement political and financial undertakings. According to the pace of political reforms, a decision could be made to conclude negotiations on the 8th EDF prior to the signature of the National indicative programme. A first instalment aimed at funding institution building and direct support to populations in view of the 2003 elections could then be implemented. If these elections are considered to international standards in an overall context of an improved situation, a second instalment could be implemented in order to fund infrastructure support and poverty alleviation, and the notification of the 9th EDF could be made.

5. As regards the conditional and gradual re-launch of EU aid to Liberia, the Commission proposes to take the following measures, in accordance with Article 96-2(c) and of Article 97-3 of the Cotonou Agreement:

— regular follow-up will be ensured by means of a close political dialogue, involving the Presidency of the European Union and the European Commission, and six-monthly political reviews;

— implementation of current projects funded under Article 72 of the Cotonou Agreement continues;

— contributions to regional projects, operations of a humanitarian nature, trade cooperation and trade related preferences are not affected;

— institution support to allow for the implementation of the measures aimed at fulfilling undertakings given within the consultations can be provided;

— the 8th EDF National indicative programme is prepared; it will be divided into two instalments: a first instalment will cover institution building and direct support to populations, and a second one more structured aid. Its signature and the implementation of the first instalment will be linked to actual progress made in restoring efficient democratic structures and in improving public financial management. The implementation of the second instalment is conditional upon the holding of elections to international standards in 2003 in a wider context of improvement of the political and governance situation;

— support to the preparation of the elections will be provided subject to the existence of a framework which would allow for them to be held with respect for international standards;

— notification of the 9th EDF allocation will be made once elections to international standards have taken place;

— the Commission continues to exercise the function of National Authorising Officer on behalf of the latter and cooperates with the authorities in view of creating the conditions for returning this function to the Government.

6. In the light of the above, and in keeping with Articles 9, 96 and 97 of the Cotonou Agreement, as already put into anticipated application by decision 1/2000 of the ACP-EC Council of Ministers, the Commission proposes to the Council to conclude the consultations with Liberia and to adopt the attached decision.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 300 paragraph 2 subparagraph 2 thereof,

Having regard to the internal agreement on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement, as put into provisional application by decision of the representatives of the governments of the Member states of 18.9.2000, and, in particular, Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Government of Liberia has acted on a number of occasions in ways that amount to a failure to fulfil its obligations stemming from the essential elements of Article 9 of the Agreement; it has also acted in violation of good governance requirements as serious cases of corruption can be identified.

(2) Consultations under Articles 96 and 97 of the ACP-EC Cotonou Agreement were held on 9 November 2001 with the ACP countries and Liberia, at which the Liberian authorities explained their point of view and made specific commitments particularly as regards the human rights situation, democratic principles, the rule of law and good governance.

(3) Some positive steps have recently been taken to meet these commitments; nevertheless more substantial action to address all the commitments and to uphold the situation in a sustainable manner still needs to be undertaken,

HAS DECIDED AS FOLLOWS:

Article 1

Consultations with Liberia under Articles 96 and 97 of the ACP-EC Cotonou Agreement are hereby concluded.

Article 2

The measures specified in the annexed draft letter are hereby adopted as appropriate measures within the meaning of Article 96.2(c) and of Article 97.3 of the ACP-EC Cotonou Agreement. These measures will expire two (2) years from the adoption of the present decision by the Council.

Article 3

This Decision takes effect on the day of its adoption.

This Decision shall be published in the *Official Journal of the European Communities*.

ANNEX

DRAFT LETTER TO THE MINISTER OF FOREIGN AFFAIRS

Brussels, . . .
D(2002)

H.E. Mr Monie CAPTAN
Minister of Foreign Affairs
Liberia

Dear Minister,

The European Union attaches the utmost importance to the provisions of Article 9 of the ACP-EC Cotonou Agreement. As essential elements of the Partnership Agreement, respect for human rights, democratic institutions and the rule of law, and as a fundamental element, good governance, are the basis of our relations.

Thus, the European Union has been concerned by reports of human rights abuses in Liberia since the end of the civil war, and about the apparent impunity of the security forces in their relations with civilians. The absence of political opposition activity in the country, especially in the run up to the 2003 elections and reported limitations to freedom of expression have also been a matter of deep concern. The European Union has also been deeply preoccupied by the lack of transparency in the public accounting system and by the risks of serious corruption in particular out of the management of natural resources and of the exploitation of monopolies. Furthermore, the assistance Liberia has offered to the R.U.F., accused of gross human rights violations in Sierra Leone, induced the European Union to support the sanctions decided by the United Nations Security Council in March 2001.

The Council of the European Union therefore decided, on 23 July 2001, to open consultations with the Liberian Government pursuant to Article 96 and to Article 97 of the Cotonou Agreement, with a view to assessing the situation in detail and remedying it.

The opening meeting of the consultations took place in Brussels on 9 November 2001. A number of key issues were addressed; the point of view of the Liberian Government was presented and a series of commitments were made:

— to systematically launch legal investigations each time there are serious and corroborated reports that members of the armed forces are involved in violence towards civilians, including in the war zone of Lofa county,

— to expand the ongoing training programme on human rights to all security personnel,

— to review the relevant legislation in order to create a credible independent human rights commission, with representation of the civil society,

— to review the relevant legislation in order to create a credible independent national reconciliation commission, with representation of the civil society,

— to continue to encourage the return of key opposition leaders, especially by the withdrawal of accusations against them; that their personal protection will be guaranteed,

— that NGO members and journalists who remain within the law will not be harassed for speaking against the Government, which will publicly commit itself accordingly,

— that procedures for granting short-wave radio licenses will be simplified and accelerated; to review the law, with a view to have it amended, and also have the cases of Radio Veritas and Star Radio reviewed on their request,

— to review the relevant legislation in order to create a credible independent election commission in close consultation with the main political partners,

— to revitalise the judicial review body so that it can advise and make independent recommendations to the Government,

— to improve the payment of proper salaries and expenses to the civil service in particular as regards the operation of the administration of justice,

— that all public utility and parastatal revenue including those from the forestry sector will be accounted for in a transparent manner,

— to undertake to further liberalise the fuel and rice sectors to ensure competition and transparency,

— to comply with UN requests in relation to the involvement of Liberia in the conflict in Sierra Leone, in particular in terms of cutting all ties with the R.U.F.

It was also agreed that an intensive dialogue would be held with the Liberian authorities on the various points raised at the consultation meeting in view of the conclusion of the consultations. This process is now completed. It focussed on the measures which the Government itself proposed could be implemented to fulfil the undertakings.

The Liberian authorities have indicated their willingness to make progress on the various issues raised by the European Union. In particular, we welcome that:

— in the recent period, several members of the security forces have been subject of legal investigation in relation to their involvement in cases which amount to human rights violations;

— a plan to expand the human rights training to all the security forces is under preparation;

— reviews of the existing human rights and reconciliation commissions are underway; as regards reconciliation, a national forum has been announced for July 2002, to which all opposition leaders would be invited;

— President Taylor has publicly called on opposition leaders to return to Liberia stating that they will be protected;

— Radio Veritas is to receive its short wave licence back and the resumption of the operation of Star Radio is under consideration;

— a judicial review body ('Judicial Reform Committee') is to be revitalised;

— measures to improve the public management of fiscal revenue drawn from the forestry sector and the maritime registry are planned;

— further liberalisation of the rice sector is underway, as the dominant position of the main importer is decreasing;

— the principle of external audits of the parastatal agencies and of the Government financial institutions has been accepted.

More generally, the Government indicated that it would uphold all the fundamental rights of all citizens and residents in Liberia.

However the following points continue to give cause for concern despite the commitments already taken:

— the human rights situation still needs to be improved;

— in view of 2003 elections, guarantees are not yet sufficient that all candidates will be treated equally;

— transparency in the management of public accounts, especially as regards resources drawn from the fuel, timber and rice sectors, is not established.

Furthermore, the European Union calls the Liberian authorities to continue their efforts to comply with the UN requests as regards their relations with the RUF in Sierra Leone.

In the light of the above the European Community and its Member States have decided to conclude the consultations held under Article 96 and Article 97 of the ACP-EC Cotonou Agreement. Awaiting substantive steps to fulfil the commitments taken to uphold the respect of human rights, democracy, rule of law and good governance principles, it is decided to gradually and conditionally re-launch EU co-operation in line with progress made.

In particular, the European Union invites the Government of Liberia to take the following measures in the near future:

— to ensure the independence of an efficient and effective judiciary;

— to conduct an external independent audit of Government financial institutions and parastatal agencies;

— to effectively guarantee the personal security and freedom of movement of opposition leaders in Liberia;

— to establish an independent and efficient human rights commission;

— to implement a human rights training programme extended to all security forces;

— to establish an independent and credible reconciliation commission, in charge of organising and supervising a reconciliation forum (July 2002);

— to implement decisions taken to enlarge access to short-wave broadcasting;

— to establish an independent and credible election commission;

— to dismantle the monopoly on fuel imports.

These steps are expected to be part to general trends towards improving human rights, democracy, the rule of law and good governance in Liberia, which would imply:

— the improvement of the human rights situation and effective fight against impunity;

— the constant promotion and guarantee of freedom of press;

— elections are prepared for 2003, in compliance with international standards, with participation of all opposition leaders on an equal basis with the candidate of the current ruling party;

— enhanced transparency in the way public concessions and licences are issued and on the revenue derived therefrom.

It is also expected that Liberia will soon be in a position to be considered as having complied with the request of the UN Security Council in relation with the situation in Sierra Leone.

As regards the implementation of its aid, the Community has decided to take the following measures, in the sense of Article 96-2(c) and of Article 97-3:

— regular follow-up will be ensured by means of a close political dialogue, involving the Presidency of the European Union and the European Commission, and six-monthly political reviews;

— implementation of current projects funded under Article 72 of the Cotonou Agreement continues;

— contributions to regional projects, operations of a humanitarian nature, trade co-operation and trade related preferences are not affected;

— institution support to allow for the implementation of the measures aimed at fulfilling undertakings given within the consultations can be provided;

— the 8th EDF National indicative programme is prepared; it will be divided into two instalments: a first instalment will cover institution building and direct support to populations, and a second one more structured aid. Its signature and the implementation of the first instalment will be linked to actual progress made in restoring efficient democratic structures and in improving public financial management. The implementation of the second instalment is conditional upon the holding of elections to international standards in 2003 in a wider context of improvement of the political and governance situation;

— support to the preparation of the elections will be provided subject to the existence of a framework which would allow for them to be held with respect for international standards;

— notification of the 9th EDF allocation will be made once free and fair elections have taken place;

— the Commission continues to exercise the function of National Authorising Officer on behalf of the latter and cooperates with the authorities in view of creating the conditions for returning this function to the Government.

The European Union will continue to follow closely the situation in Liberia. We propose that our intensive political dialogue should continue, on the basis of Article 8 of the Cotonou Agreement.

Yours faithfully,

For the Commission *For the Council*

Proposal for a Directive of the European Parliament and of the Council on specific stability requirements for ro-ro passenger ships

(2003/C 20 E/05)

(Text with EEA relevance)

COM(2002) 158 final — 2002/0074(COD)

(Submitted by the Commission on 25 March 2002)

EXPLANATORY MEMORANDUM

GENERAL INTRODUCTION

1. Background

The stability following collision damage is an issue of prime importance for the survivability of ro-ro passenger ships, due to their particular design. It is obvious that in general, the longer the period a ship remains afloat in case of serious damage, the more efficient the eventual evacuation or search and rescue operations can be. In that perspective the stability requirements applicable to these ships influence directly the safety of passengers and crew. These considerations become even more important in view of the escalating size of ro-ro ships serving Community ports and the increasing number of passengers and crew they carry.

As both practise and research has demonstrated, the most dangerous problem for a ro-ro ship with an enclosed ro-ro deck is the one posed by the effect of a build-up of significant amount of water on that deck. However, with the application of the appropriate technical standards a damaged vessel may stay afloat even when a certain amount of water made its way to the ro-ro deck (the car deck). Research has clearly shown that the residual freeboard of the ship and the waves height in a particular sea area had a significant effect on the amount of water which may accumulate following collision damage.

The stability of ro-ro passenger ships has been addressed at international level by the International Maritime Organisation and specific standards have been established in that respect, particularly on the basis of the SOLAS 90 Convention [1] and Resolution A265. These standards, implicitly include the effect of water entering the ro-ro deck in a sea state in the order of 1,5 m significant wave height and have a phasing-in timetable for existing ships ranging from 1 October 1998 to 1 October 2010.

Following the Estonia disaster, eight European countries (Denmark, Finland, Germany, Ireland, Netherlands, Norway, Sweden and the United Kingdom) decided in February 1996 to require higher standards of damage stability for ro-ro passenger ships than those prescribed by SOLAS 90. These new standards were introduced in the context of the Stockholm Agreement (SA) to which the above eight countries became parties. The Stockholm Agreement stability requirements are complementary to the SOLAS 90 standard, aimed at increasing the survivability of the ro-ro vessels in sea states between 1,5 m and 4 m significant wave height. These complementary requirements take specifically into account the probability of water accumulation in the car deck, up to a height of 0,5 m. The Stockholm Agreement established a phasing-in period ranging from 1 April 1997 to 1 October 2002.

At the adoption of the Stockholm Agreement, noting its regional application, the Commission announced its intention to examine the prevailing local conditions, under which ro-ro passenger ferries sail in all European waters and that this examination would include the extent and effect of the application of the Agreement in the region covered by it. The statement concluded that in the light of this examination the Commission would take a decision with regard to the need for further initiatives.

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[1] International Convention for the Safety of Life at Sea as revised in 1990.

The Council entered a similar statement into the meeting of the 2074th Council meeting of 17 March 1998 at which Council Directive 98/18/EC on safety rules and standards for passenger ships was adopted ([1]). In this statement the need to ensure the same level of safety for all ro-ro passenger ferries operating in similar conditions was more precisely defined by referring to both international and domestic voyages. Directive 98/18/EC made mandatory the application of SOLAS 90 stability standards to domestic EU trades for new class A, B, C and D ships and existing class A and B ships ([2]).

Following the last serious accident involving a ro-ro passenger ship, the 'Express Samina' which occurred in Greece in September 2000, the European Parliament invited the Commission to examine the effectiveness of the Stockholm Agreement and other measures for improving the stability and safety of passenger vessels ([3]).

In this context and following a thorough analysis on the Stockholm Agreement, the Commission included this item in its work programme for 2001.

2. **The SOLAS stability requirements and the Stockholm Agreement**

2.1. The question of stability of passenger vessels has been addressed repeatedly by the International Maritime Organisation (IMO) in the context of the International Convention for the Safety of Life at Sea (SOLAS) and the first damage stability requirements were introduced in 1948 followed by improvements in 1960 and 1974. However, the major step in the development of stability standards for ro-ro ships came in 1990 with the introduction of a new section ([4]) in the SOLAS Convention. These requirements (known as SOLAS 90 stability standard) are internationally accepted and apply to passengers vessels involved in international voyages from/to EU ports, as well as to domestic trades within Member States by means of the Directive 98/18/EC. The SOLAS 90 standard implicitly include the effect of water entering the ro-ro deck in a sea state in the order of 1.5 m significant wave height.

The SOLAS 90 requirements have a phasing-in period for all existing ro-ro passenger ships with dates of compliance ranging from 1 October 1998 to 1 October 2010 depending on a combination of different factors ([5]).

2.2. In the aftermath of the Estonia disaster, 8 European countries (Denmark, Finland, Germany, Ireland, Netherlands, Norway, Sweden and the United Kingdom), agreed in February 1996 in Stockholm to require higher standards of damage stability for ro-ro passenger ships than what had been determined just a few years earlier by the IMO SOLAS 90 standard. The key idea behind this initiative was that a ship should be designed to resist capsize even when a certain quantity of water has made its way to the vehicle (ro-ro) deck.

The Stockholm Agreement (SA) was established in the context of IMO Resolution 14 of the 1995 SOLAS Conference, allowing contracting governments to conclude such an agreement if they consider that prevailing sea conditions and other local conditions require specific stability requirements in a designated area. It was notified to the IMO on 1 April 1996 in accordance with operative paragraph 3 of Resolution 14 and entered into force on 1 April 1997 in accordance with its article 10 ([6]). In simplified terms, the SA standards are complementary to SOLAS 90 standards with the addition of technical requirements to satisfy explicitly the 'water in the car deck' probability. Compliance with these requirements is measured whether on basis of numerical calculations defined in the Agreement or by performing model experiments in accordance with the model testing method of SOLAS 95 Resolution 14.

([1]) OJ L 144, 15.5.1998, p. 1.

([2]) These classes are defined in line with the type of sea area the ships operate, in accordance with article 4 of Council Directive 98/18/EC.

([3]) EP Resolution B5-0783, 0787 and 0791/2000 of 5 October 2000.

([4]) SOLAS Chapter II-1, part B.8 (Stability in damaged condition).

([5]) These factors are: the vessel's A/Amax value, the number of persons carried and its age. (The A/Amax calculation procedure is a simplified version of probabilistic damage stability calculation of ships, adopted by IMO as a means of trying to compare the survivability of one ship against another in order to achieve a hierarchy for phasing-in purposes. It is not a survivability standard.)

([6]) IMO Circular letter No 1891 of 29 April 1996.

According to the logic of the Agreement, the residual freeboard of the vessel and the significant wave height (hs) of the area where a ship operates determine the height of water on the car deck that would arise following the occurrence of an accidental damage. Consequently, a ship should be designed to withstand the significant wave heights that prevail in the routes, or areas, where she operates. Taking into account the above parameters, the result from the application of the SA stability requirements is that a vessel should resist capsize even with a flooded ro-ro deck up to a level of 0.5 metre. The maps indicating significant wave heights values by area that appear in the Stockholm Agreement, have been defined by the contracting governments and they are based on all year round statistics.

The specific stability requirements of the SA are applicable to ro-ro passenger ships regardless of flag, operating on regular international voyages carrying passengers between designated ports to or from designated ports in the area covered by the Agreement. As for their enforcement, the Agreement provided for a phasing-in period ranging from 1 April 1997 for ro-ro passenger ships with the lowest A/A_{max} values, to 1 October 2002 for ships already complying with the SOLAS 90 stability standard.

3. **The EU position towards the Stockholm Agreement**

3.1. At the conclusion of the Conference at which the Agreement was adopted, the Commission services issued a statement, taking note of the Agreement concluded and expressing the opinion that the same level of safety should be ensured for all ro-ro passenger ferries operating in similar conditions. Noting that the Agreement is not applicable in other parts of the European Union, the Commission announced its intention to examine the prevailing local conditions, under which ro-ro passenger ferries sail in all European waters and that this examination would include the extent and effect of the application of the Agreement in the region covered by it. The statement concluded that in the light of this examination the Commission would take a decision with regard to the need for further initiatives.

This Commission statement was confirmed at the 1907th meeting of the Council, on 11 March 1996, at which the outcome of the Stockholm Agreement was discussed by the Ministers of Transport.

The Council agreed to enter a similar statement into the meeting of the 2074th Council meeting of 17 March 1998 at which Council Directive 98/18/EC on safety rules and standards for passenger ships was adopted. In this statement the need to ensure the same level of safety for all ro-ro passenger ferries operating in similar conditions was more precisely defined by referring to both international and domestic voyages. Directive 98/18/EC made mandatory the application of SOLAS 90 stability standards to domestic EU trades for new class A, B, C and D ships and existing class A and B ships.

3.2. Furthermore, Directive 1999/35/CE on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high speed passenger crafts, provides in its article 4.1.e that ro-ro ferries shall fulfil the specific stability requirements adopted at regional level, when operating in the region covered by such regional rules. This obliges host States to check that ro-ro ferries 'comply with specific stability requirements adopted at regional level, and transposed into their national legislation in accordance with the notification procedure laid down in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services, when operating in that region a service covered by that national legislation, provided those requirements do not exceed those specified in the Annex of Resolution 14 (Stability Requirements Pertaining to the Agreement) of the 1995 SOLAS Conference and have been notified to the Secretary-General of the IMO, in accordance with the procedures specified in point 3 of that resolution'.

3.3. Following its earlier commitment the Commission contracted a study to examine the extent and effect of the application of the Stockholm Agreement concerning specific stability requirements for ro-ro passenger ships and the suitability of extending its scope of application to European waters not covered by it. Furthermore the economic impact of the application of the Stockholm Agreement has been analysed and found acceptable, as demonstrated in the following chapter.

3.4. The European Parliament with its Resolution B5-0783, 0787 and 0791/2000 of 5 October 2000, which followed the 'Express Samina' accident, stressed that it 'awaits the evaluation by the Commission of the effectiveness of the Stockholm Agreement and other measures for improving the stability and safety of passenger vessels'

3.5. Following the evaluation made by the Commission, based on consultation of interested parties and inputs from various sources including the findings of the above study, it is considered that a legislative initiative in the field covered by the Stockholm Agreement is justified.

JUSTIFICATION FOR THE PROPOSED COMMUNITY INITIATIVE

Research following the accidents of Herald of Free Enterprise and Estonia, demonstrated that the worst stability related danger for a ro-ro ship with an enclosed ro-ro deck is caused by the effect of a build-up of significant amount of water on that deck.

The current IMO damage stability requirements applicable to ro-ro passenger ships (SOLAS 90), which also apply to domestic EU trades by means of the Directive 98/18/EC, implicitly include the effect of water entering the ro-ro deck in a sea state in the order of 1,5 m significant wave height. However, the damage stability requirements defined by the Stockholm agreement increase the survivability of the vessels in more severe sea states, since they complement the SOLAS requirements to take into account the effect of water which could accumulate on the ro-ro deck following damage.

The Commission has declared that it could propose the application of these specific stability requirements for the entire EU after having studied the local conditions in the South European waters. Although the expert study of the Commission sustains that other safety critical conditions (as visibility or water temperatures) may be generally less severe in the South European waters, the significant wave heights values are comparable or even higher than those in the Baltic sea, whilst waves are known to be steeper in South European waters.

The analysis shows that the introduction of the SA in the North of Europe took place without particular trouble for the industry or the contracting governments. Based on a sample of 82 vessels, out of a total of 140 that needed to comply with the Agreement, it appears that 36 % of the vessels in that sample did not need any upgrade. Furthermore, 69 % of the total 140 vessels were upgraded for less than 1 million EURO. The estimated total cost of upgrade was around 85 mio Euro. However it is important to note that most of that cost is related to the accelerated compliance with SOLAS 90 standards (a necessary step before compliance with the Stockholm Agreement) rather than just to compliance with the Agreement as such.

The economic analysis in the study concludes that, given the common value of significant wave heights in the Southern EU waters is around 2,5 metres, the modification cost of the South European fleet for compliance with the provisions of the SA will be approximately the same as the associated cost for compliance with the requirements of the SOLAS 90 two compartment standard ([1]). Since full compliance with SOLAS Regulations is to take place by 2010, on the basis of the IMO timetable (international trades) and of Directive 98/18/CE (domestic EU trades) the industry should have already planned to invest in the coming years in the upgrade of the vessels concerned. The study states that 264, operating both in international and domestic trades, vessels will be affected from the SOLAS upgrade and that the cost of compliance will be among 106 and 250 million Euro (these figures do not take into account possible removals from service of aged ro-ro ships). As already mentioned, compliance of these ships with the specific stability requirements set out in the Stockholm Agreement will not increase their SOLAS compliance cost in a prohibitive way.

It appears therefore that the application of the SA stability requirements to the South European ro-ro passenger vessels will offer a uniformity of stability requirements and an increased level of survivability of ro-ro passenger ships throughout the EU, without increasing substantially the economic effort of the affected part of the industry, which has to comply anyway with the SOLAS 90 standard.

([1]) SOLAS 90 two compartment standard establishes that the ship can survive without capsizing with two main compartments flooded following damage.

In light of the above, the Commission is of the opinion that the division of north/south as regards stability requirements for ro-ro vessels in damaged condition (Stockholm Agreement standards in the North and SOLAS 90 standards in the South) does not seem justified on grounds of the safety parameters or for techno-economic reasons.

A European Parliament and Council Directive imposing the specific stability standards as defined in the Stockholm Agreement to all ro-ro passenger ships engaged in international voyages from/to EU ports is the right way forward. It is to be noted that newly built ferries, both for operation in Northern and in Southern Europe, generally comply with the aforementioned increased stability standards. The upgrading of existing ro-ro passenger ships operating in southern Europe will require a transitional period, as it was the case with the introduction of the Stockholm Agreement standards for the fleet operating in northern Europe.

Taking into account that operating conditions for ro-ro passenger ships in domestic voyages in the Member States are often similar to those in international voyages, the Commission proposal amending Council Directive 98/18/EC contains specific provisions to that respect. In fact it provides for the introduction of the same or equivalent stability standards for ro-ro ships operating in domestic voyages, as those proposed for ro-ro ships operating in international voyages.

CONTENT OF THE PROPOSED DIRECTIVE

The proposed Directive will introduce the specific stability requirements of the Stockholm Agreement to the entire EU, covering all ro-ro passenger ships operating from/to EU ports in international voyages.

The specific stability requirements are a complement to the present international IMO standard (SOLAS 90) and are already applicable to 7 northern EU Member States, which are parties to the Stockholm Agreement established in the context of the IMO Resolution 14 of the 1995 SOLAS Conference. This Directive will create a uniformity of stability requirements for ro-ro passenger vessels operating under same conditions and will introduce in the EU framework a regional Agreement agreed under IMO auspices.

The main advantage of the proposed stability requirements is their contribution to an improved survivability of this type of ships following collision damage and the direct connection of the applicable standard to the specific service the ships are engaged in. The requirements are indeed established on the basis of the values of the significant wave heights occurring in the sea areas the ships travel. Taking into account the operating conditions of the ship, the specific stability requirements guarantee the ship's stability in damaged condition with up to 0,5 metres of water accumulated in its ro-ro deck.

In view of the structural modifications that the existing ships may have to undergo in order to comply with the new stability requirements, the Directive introduces a phasing-in period, taking into account the compliance dates of SOLAS 90.

SPECIAL CONSIDERATIONS

Article 1

The purpose of this Directive is to lay down a uniform level of specific stability requirements for ro-ro passenger ships, which will improve the survivability of this type of vessels in case of collision damage and provide a higher level of safety for the passengers and the crew. In view of the fact that 7 northern EU Member States already apply these specific stability requirements by means of a regional Agreement, the proposed Directive will result at the introduction of this regional Agreement in the Community framework and its extension to the Southern European waters and the Atlantic coast.

Article 2

This article contains the definitions of the key terms used in the Directive and are based on the IMO SOLAS Convention (International Convention for the safety of life at sea) definitions, as well as existing Community legislation, particularly Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships.

Article 3

Article 3 defines the scope of the Directive. This will apply to all ro-ro passenger ships operating to or from a port of a Member State on a regular service, regardless of their flag, when engaged on international voyages.

Article 4

This article specifies that the value of the significant wave heights shall be used for determining the height of water on car deck when applying the specific stability standard.

Article 5

This Article specifies that in the light of Article 4, Member States have to establish the sea areas under their jurisdiction as well as the areas between Member State and Member States and third countries, where ro-ro passenger ships which serve the Community ports undertake voyages.

These areas and the corresponding significant wave heights will be notified to the Commission and be publicly available by the competent maritime authorities of Member States.

Article 6

This Article establishes the connection to the specific stability requirements set out in the Annex 1 of the Directive. These requirements will apply in addition to the requirements of SOLAS regulation II-1/8 on stability in damaged conditions.

The specific stability requirements are therefore complementary to the SOLAS 90 stability standard and take specifically into account the effect of water which could accumulate on the ro-ro deck following damage, in order to enable the ship to survive in more severe sea states than 1,5 m significant wave height.

The specific stability requirements introduced by this Directive are based on a mathematical formula which calculates the height of water on the ro-ro deck following a collision damage depending on two basic parameters: the ship's residual free board and the significant wave height in the sea area where the ship operates.

This article makes also reference to the guidelines to Member States for applying the specific stability requirements set out in Annex I, which are presented in the Annex II of the Directive. These guidance notes were presented to the International Maritime Organisation by the governments of Denmark, Finland, Sweden and the United Kingdom at the 40 session of the IMO sub-Committee on stability and Load Lines and Fishing vessels safety of 5 July 1996.

Article 7

Article 7 specifies that new ships will comply with the specific stability requirements as from 1 October 2004, while it introduces a phasing-in period for the compliance of existing ships. Such period has been considered necessary in view of the structural modifications the existing ships will have to undertake, in addition to the modifications which they will have to undertake on the basis of the SOLAS 90 requirements. A final deadline for compliance has been set on 1 October 2010. This timetable takes into account that the large majority of ro-ro passenger ships will have to comply with SOLAS stability standards by 1 October 2005 and that the final date of compliance under SOLAS is also 1 October 2010.

Article 8

Article 8 refers to the compliance certificate to be issued to all vessels falling under the scope of this Directive by the flag State Administration. Certificates of compliance issued by a Member State will be accepted by all Member states. Each Member State acting on its capacity as host state shall accept the operational certificate issued by a non Member State certifying that a ship complies with the specific stability requirements established in this Directive

Article 9

The provisions of that article authorise the specific treatment of ro-ro passenger ships operating only on seasonal basis in an area where the significant wave height during such season is of a lower value than that for a year round operation in the same area. In such case, the specific stability requirements introduced by this Directive will be based on the seasonal values of the significant wave heights to be defined by Member States. Such seasonal operation may offer certain flexibility to operators wishing to introduce additional ships on a high season, offering additional possibilities to the travelling public, without lowering at all the safety standard provided.

Article 10 and 11

Article 10 makes reference to the possible adaptation of the Annexes to the Directive, in the light of the technical progress, the experience gained or of regulatory developments in the international (IMO) level. As established in Article 11, in such case the Commission will be assisted by the Committee established pursuant to Article 12(1) of Directive 93/75/EC ([1]).

Article 12

Following this article, Member Sates shall lay down a system of dissuasive measures, penalties for breaching the national provisions adopted pursuant to this Directive. In view of the complex technical nature of the standards introduced, particular vigilance is requested by the Member States in their implementation.

Article 13

This article sets up a deadline for the transposition of this Directive in the national legislation of Member States, which is 1 January 2004.

Article 14

No comments.

Article 15

No comments.

([1]) Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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) Within the framework of the common transport policy further measures must be taken to improve safety in maritime transport of passengers.

(2) The Community wishes to avoid by all appropriate means shipping accidents involving ro-ro passenger ships and resulting in loss of life.

(3) The survivability of ro-ro ships following collision damage, as determined by their damage stability standard, is an essential factor for the safety of passengers and crew and is particularly relevant for search and rescue operations; the most dangerous problem for the stability of a ro-ro ship with an enclosed ro-ro deck, following collision damage, is the one posed by the effect of a build up of significant amount of water on that deck.

(4) Persons using ro-ro passenger ships and crew employed on board such vessels throughout the Community, have the right to demand the same high level of safety regardless of the area in which ships operate.

(5) In view of the internal market dimension of maritime transport of passengers, action at Community level is the most effective way of establishing a common minimum level of safety for ships throughout the Community.

(6) Action at Community level is the best way to ensure the harmonised enforcement of principles agreed on within the International Maritime Organisation (IMO), thus avoiding distortions of competition between the operators of ro-ro passenger ships operating in the Community.

(7) General stability requirements for ro-ro passenger vessels in damaged conditions were established at international level by the 1990 SOLAS Conference and were included in the chapter II-1, Part B8 of the SOLAS Convention (SOLAS 90 standard). These requirements are applicable in the entire Community owing to the direct application to international voyages of the SOLAS Convention and the application to domestic voyages of Council Directive 1998/18/EC of 17 March 1998 on safety rules and standards for passenger ships ([1]).

(8) The damage stability standard of SOLAS 90 implicitly include the effect of water entering the ro-ro deck in a sea state in order of 1,5 m significant wave height.

(9) IMO Resolution 14 of the 1995 SOLAS Conference, allowed IMO members to conclude regional agreements if they consider that prevailing sea conditions and other local conditions require specific stability requirements in a designated area.

(10) Eight northern European countries, including seven Community Member States, agreed in Stockholm on 28 February 1996 to introduce a higher stability standard for ro-ro passenger vessels in damaged condition in order to take into account the effect of water accumulation on the ro-ro deck and to enable the ship to survive in more severe states than the SOLAS 90 standard, up to 4 m significant wave heights.

(11) Under this agreement, known as the Stockholm Agreement, the specific stability standard is directly related to the sea area in which the vessel operates and more particularly to the significant wave height recorded in the area of operation; the significant wave height of the area where the ship operates determines the height of water on the car deck that would arise following the occurrence of an accidental damage.

(12) At the conclusion of the Conference at which the Stockholm Agreement was adopted, the Commission noted that the Agreement was not applicable in other parts of the Community and announced its intention to examine the prevailing local conditions under which ro-ro passenger ships sail in all European waters and to take appropriate initiatives.

(13) The Council entered a statement in the minutes of the 2074th Council meeting of 17 March 1998 stressing the need to ensure the same level of safety for all passenger ferries operating in similar conditions, whether on international or on domestic voyages.

(14) In the aftermath of the 'Express Samina' accident, the European Parliament adopted on 5 October 2000, its resolution B5-0783, 0787 and 0791/2000 where it expressly stated that it awaited the evaluation by the Commission of the effectiveness of the Stockholm Agreement and other measures for improving the stability and safety of passenger ships.

(15) Following an expert study by the Commission, the wave height conditions in South European waters were found similar to those in the north; while general meteorological conditions may be generally more favourable in the south, the stability standard determined in the context of the Stockholm Agreement is based solely on the significant wave height parameter and the way this influences the accumulation of water on the ro-ro deck.

(16) The application of Community safety standards regarding the stability requirements for ro-ro passenger ships is essential for the safety of these vessels and has to be part of the common maritime safety framework.

(17) In the interest of improving safety and avoiding distortion of competition, the common safety standards regarding stability should apply to all ro-ro passenger ships, regardless of the flag that they fly, providing regular services to or from a port in the Member States on international voyages.

(18) The safety of ships is primarily the responsibility of flag States and therefore each Member State should ensure compliance with the safety requirements applicable to the ro-ro passenger ships flying the flag of that Member State.

(19) Member States should also be addressed in their capacity as host States; the responsibilities exercised in that capacity are based on specific port State responsibilities that are fully in line with the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

(20) The specific stability requirements introduced by this Directive should be based on a method which calculates the height of water on the ro-ro deck following a collision damage in relation to two basic parameters: the ship's residual free board and the significant wave height in the sea area where the ship operates.

([1]) OJ L 144, 15.5.1998, p. 1.

(21) Member States should determine and publicise the significant wave heights in the sea areas under their jurisdiction; for international routes the significant wave heights should be established in agreement between the States at both ends of the route. Significant wave heights for seasonal operation in the same sea areas may also be determined.

(22) Every ro-ro passenger vessel engaged in voyages within the scope of this Directive, should fulfil the stability requirements in relation of the significant wave heights determined for its area of operation; it should carry a certificate of compliance issued by the flag Member State, which should be accepted by all other Member States.

(23) The SOLAS 90 stability standards provides equivalent level of safety to the specific stability requirements established by this Directive for ships operating in sea areas where the significant wave height is equal or less than 1,5 m.

(24) In view of the structural modifications that the existing ships may need to undergo in order to comply with the specific stability requirements, those requirements should be introduced over a period of years in order to allow sufficient time to the affected part of the industry to comply: to that end, a phasing-in timetable for existing ships should be provided.

(25) 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.

(26) Since the objectives of the proposed action, namely to safeguard human life at sea by improving the survivability of ro-ro vessels in the event of damage, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle 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 in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to lay down a uniform level of specific stability requirements for ro-ro passenger ships, which will improve the survivability of this type of vessels in case of collision damage and provide a higher level of safety for the passengers and the crew.

Article 2

Definitions

For the purpose of this Directive, the following definitions shall apply:

(a) 'ro-ro passenger ship' means a seagoing passenger vessel with facilities to enable road or rail vehicles to roll on and roll off the vessel, and carrying more than 12 passengers;

(b) 'new ship' means a ship the keel of which is laid or which is at a similar stage of construction on or after 1 October 2004: a similar stage of construction means the stage at which:

(i) construction identifiable with a specific ship begins; and

(ii) assembly of that ship has commenced comprising at least 50 tonnes or 1 % of the estimated mass of structural material, whichever is less;

(c) 'an existing ship' means a ship which is not a new ship;

(d) 'a passenger' is every person other than the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship;

(e) 'International Conventions' means the 1974 International Convention for the Safety of Life at Sea (the 1974 SOLAS Convention), and the 1966 International Convention on Load Lines, together with Protocols and amendments thereto in force on the date of adoption of this Directive;

(f) 'regular service' means a series of ro-ro passenger ship crossings serving traffic between the same two or more ports, which is operated either:

(i) according to a published timetable; or

(ii) with crossings so regular or frequent that they constitute a recognisable systematic series;

(g) 'Stockholm Agreement' means the Agreement concluded at Stockholm on 27 and 28 February 1996 in pursuance of SOLAS 95 Conference Resolution 14 'Regional Agreements on Specific Stability Requirements for ro-ro Passenger Ships', adopted on 29 November 1995;

(h) 'administration of flag State' means the competent authorities of the State whose flag the ro-ro passenger ship is entitled to fly;

(i) 'host State' means a Member State to or from whose ports a ro-ro passenger ship is engaged on a regular service;

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

(j) 'international voyage' means a sea voyage from a port of a Member State to a port outside that Member State, or vice versa;

(k) 'specific stability requirements' means the stability requirements set out in Annex I;

(l) 'significant wave height' or ('hs') is the average height of the one third highest observed wave heights over a given period;

(m) 'residual freeboard' is the minimum distance between the damaged ro-ro deck and the waterline at the location of the damage, without taking into account the additional effect of the sea water accumulated on the damaged ro-ro deck.

Article 3

Scope

1. This Directive shall apply to all ro-ro passenger ships operating to or from a port of a Member State on a regular service, regardless of their flag, when engaged on international voyages.

2. Each Member State, in its capacity as host State, shall ensure that ro-ro passenger ships, flying the flag of a State which is not a Member State, comply fully with the requirements of this Directive before they may be engaged on voyages from or to ports of that Member State in accordance with the provisions of article 4 of Directive 1999/35/EC.

Article 4

Significant wave heights

The significant wave heights (hs) shall be used for determining the height of water on the car deck when applying the specific stability standard contained in Annex 1. The figures of significant wave heights shall be those which are not exceeded by a probability of more than 10 % on a yearly basis.

Article 5

Sea Areas

1. Member States shall establish, not later than six months before the date mentioned in Article 13, a list of sea areas under their jurisdiction and the corresponding values of significant wave heights.

2. The sea areas and the applicable values of the significant wave height in these areas shall be defined by agreement between the Member States or between Member States and third countries at both ends of the route. Where the ship's route crosses more than one sea area, the ship shall satisfy the specific stability requirements for the highest value of significant wave height identified for these areas.

3. The list shall be notified to the Commission and published in a public database available in the internet site of the competent maritime authority. The location of such information as well as any updates to the list and the reasons for such updates shall also be notified to the Commission.

Article 6

Specific stability requirements

1. Without prejudice to the requirements of regulation II-1/8 of the Safety of Life at Sea (SOLAS) Convention relating to watertight subdivision and stability in damaged condition, all ro-ro passenger ships referred to in Article 3(1) shall comply with the specific stability requirements set out in Annex I to this Directive.

2. For ro-ro passenger ships operating in sea areas where the significant wave height is equal to or lower than 1,5 metres, compliance with the requirements of regulation II-1/8 the Safety of Life at Sea (SOLAS) Convention shall be considered equivalent to compliance with the specific stability requirements set out in Annex I.

3. In applying the requirements set out in Annex I, Member States shall use the guidelines set out in Annex II, in so far this is practicable and compatible with the design of the ship in question.

Article 7

Introduction of the specific stability requirements

1. New ro-ro passenger ships shall comply with the specific stability requirements as set out in Annex I.

2. Existing ro-ro passenger ships shall comply with the specific stability requirements as set out in Annex I by not later than 1 October 2010.

Article 8

Certificates

1. All new and existing ro-ro passenger ships flying the flag of a Member State shall carry a certificate confirming compliance with the specific stability requirements established in Article 6 and Annex I.

This certificate shall be issued by the Administration of the flag State and will indicate the significant wave height up to which the ship can satisfy the specific stability requirements as well as the area for which the certificate has been originally issued.

The certificate shall remain valid as long as the vessel operates in the same area or in another area within which the same value of significant wave height has been registered.

2. Each Member State acting in its capacity as host State shall recognise the certificate issued by another Member State in pursuance of this Directive.

3. Each Member State acting in its capacity as host State shall accept the certificate issued by a non member country certifying that a ship complies with the specific stability requirements established.

Article 9

Seasonal operation

1. If a shipping company operating a regular scheduled service on a year round basis wishes to introduce additional ro-ro passenger ships to operate for a shorter season on that service, it shall notify the competent authority of the host state or states not later than three months before the said additional ships are operated on that service.

Where such seasonal operation takes place under conditions of lower significant wave height than those established for the same sea area for a year round operation, the seasonal significant wave height value may be used by the competent authority for determining the height of water when applying the specific stability standard contained in Annex I. The seasonal value of the significant wave height to apply shall be agreed between the Member States or between Member States and third countries at both ends of the route.

2. Following agreement of the competent authority of the host State or States for a seasonal operation within the meaning of paragraph 1, the ro-ro passenger ship which undertakes such seasonal operations shall have to carry a certificate of compliance with the provisions of this Directive, as provided for in Article 8(1).

Article 10

Adaptations

In order to take account of developments at international level and, in particular, in the International Maritime Organisation (IMO) or to improve the effectiveness of this Directive in the light of experience and of e technical progress, the Annexes may be amended in accordance with the procedure laid down in Article 11(2).

Article 11

Committee

1. The Commission shall be assisted by the Committee set up pursuant to Article 12(1) of Directive 93/75/EEC [1] composed of representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be of eight weeks.

Article 12

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 the measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Article 13

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 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 14

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 15

Addressees

This Directive is addressed to the Member States.

[1] OJ L 247, 5.10.1993, p. 19.

ANNEX I

SPECIFIC STABILITY REQUIREMENTS FOR RO-RO PASSENGER SHIPS

(As referred to in Article 6)

1. In addition to the requirements of regulation II-1/8 of the Safety at Sea (SOLAS) Convention relating to watertight subdivision and stability in damaged condition, all ro-ro passenger ships referred to in Article 3 (1) shall comply with the requirements of this Annex.

1.1. The provisions of regulation II-1/8.2.3 shall be complied with when taking into account the effect of a hypothetical amount of sea water which is assumed to have accumulated on the first deck above the design waterline of the ro-ro cargo space or the special cargo space as defined in regulation II-2/3 assumed to be damaged (referred to as 'the damaged ro-ro deck' hereinafter). The other requirements of regulation II-1/B/8 need not be complied with in the application of the stability standard contained in this Annex. The amount of assumed accumulated sea water shall be calculated on the basis of a water surface having a fixed height above:

(a) the lowest point of the deck edge of the damaged compartment of the ro-ro deck, or

(b) when the deck edge of the damaged compartment is submerged then the calculation is based on a fixed height above the still water surface at all heel and trim angles;

as follows:

— 0,5 m if the residual freeboard (f_r) is 0,3 m or less;

— 0,0 m if the residual freeboard (f_r) is 2,0 m or more; and

— intermediate values to be determined by linear interpolation, if the residual freeboard (f_r) is 0,3 m or more but less than 2,0 m;

where the residual freeboard (f_r) is the minimum distance between the damaged ro-ro deck and the final waterline at the location of the damage in the damage case being considered without taking into account the effect of the volume of assumed accumulated water on the damaged ro-ro deck;

1.2. when a high-efficiency drainage system is installed, the Administration of the flag State may allow a reduction in the height of the water surface.

1.3. For ships in geographically defined restricted areas of operation, the Administration of the flag State may reduce the height of the water surface prescribed in accordance with paragraph 1.1 by substituting such height of the water surface by the following:

1.3.1. 0,0 m if the significant wave height (h_s) defining the area concerned is 1,5 m or less;

1.3.2. the value determined in accordance with 1.1 if the significant wave height (h_s) defining the area concerned is 4,0 m or above;

1.3.3. intermediate values to be determined by linear interpolation if the significant wave height (h_s) defining the area concerned is 1,5 m or more but less than 4,0 m;

provided that the following conditions are fulfilled:

1.3.4. the flag State Administration is satisfied that the defined area is represented by the significant wave height (h_s) which is not exceeded with a probability of more than 10 %; and

1.3.5. the area of operation and, if applicable, the part of the year for which a certain value of the significant wave height (h_s) has been established are entered into the certificates.

1.4. as an alternative to the requirements of subparagraphs 1.1 or 1.3, the flag State Administration may exempt application of the requirements of subparagraphs 1.1 or 1.3 and accept proof, established by model tests carried out for an individual ship in accordance with the model test method, which appears in Appendix, justifying that the ship will not capsize with the assumed extent of damage as provided in SOLAS regulation II-1/8.4 in the worst location being considered under 1.1, in an irregular seaway, and

1.5. reference to acceptance of the results of the model test as an equivalence to compliance with paragraphs 1.1 or 1.3 and the value of the significant wave height (h_s) used in the model tests shall be entered into the ship's certificates.

1.6. the information supplied to the master in accordance with SOLAS regulations II-1/8.7.1 and II-1/8.7.2, as developed for compliance with regulations II-1/8.2.3 to II-1/8.2.3.4, shall apply unchanged for ro-ro passenger ships approved according to these requirements.

2. For assessing the effect of the volume of the assumed accumulated sea water on the damaged ro-ro deck in paragraph 1, the following provisions shall prevail:

2.1. a transverse or longitudinal bulkhead shall be considered intact if all parts of it lie inboard of vertical surfaces on both sides of the ship, which are situated at a distance from the shell plating equal to one-fifth of the breadth of the ship, as defined in regulation II-1/2, and measured at right angles to the centreline at the level of the deepest subdivision load line.

2.2. in cases where the ship's hull is structurally partly widened for compliance with the provisions of this Annex, the resulting increase of the value of one-fifth of the breadth of it is to be used throughout, but shall not govern the location of existing bulkhead penetrations, piping systems, etc., which were acceptable prior to the widening.

2.3. the tightness of transverse or longitudinal bulkheads which are taken into account as effective to confine the assumed accumulated sea water in the compartment concerned in the damaged ro-ro deck shall be commensurate with the drainage system, and shall withstand hydrostatic pressure in accordance with the results of the damage calculation. Such bulkheads shall be at least 2,2 m in height. However, in case of a ship with hanging car decks, the minimum height of the bulkhead shall be not less than the height to the underside of the hanging deck when in its lowered position.

2.4. for special arrangements such as, e.g., full width hanging decks and wide side casings, other bulkhead heights may be accepted based on detailed model tests.

2.5. the effect of the volume of the assumed accumulated sea water need not be taken into account for any compartment of the damaged ro-ro deck, provided that such a compartment has on each side of the deck freeing ports evenly distributed along the sides of the compartment complying with the following:

2.5.1. $A \geq 0{,}3\ l$

where A is the total area of freeing ports on each side of the deck in m^2; and l is the length of the compartment in m;

2.5.2. the ship shall maintain a residual freeboard of at least 1,0 m in the worst damage condition without taking into account the effect of the assumed volume of water on the damaged ro-ro deck; and

2.5.3. such freeing ports shall be located within the height of 0,6 m above the damaged ro-ro deck, and the lower edge of the ports shall be within 2 cm above the damaged ro-ro deck; and

2.5.4. such freeing ports shall be fitted with closing devices or flaps to prevent water entering the ro-ro deck whilst allowing water which may accumulate on the ro-ro deck to drain.

2.6. when a bulkhead above the ro-ro deck is assumed damaged, both compartments bordering the bulkhead shall be assumed flooded to the same height of water surface as calculated in paragraphs 1.1 or 1.3 above.

3. When determining significant wave height, the wave heights given on the maps or list of sea areas established by Member States in line with Article 5 of this Directive shall be used.

3.1. For ships which are to be operated only for a shorter season, the host State Administration shall determine in agreement with the other country whose port is included in the ships route, the significant wave height to be used.

4. Model tests shall be conducted in accordance with Appendix 1.

Appendix

Model test method

1. *Objectives*

In the tests provided for in paragraph 1.4 of the stability requirements included in Annex I, the ship should be capable of withstanding a seaway as defined in paragraph 3 hereunder in the worst damage case scenario.

2. *Ship model*

2.1. The model should copy the actual ship for both outer configuration and internal arrangement, in particular all damaged spaces having an effect on the process of flooding and shipping of water. The damage should represent the worst damage case defined for compliance with regulation II-1/8.2.3.2 of the Safety at Sea Convention (SOLAS 90). An additional test is required at a level keel midship damage, if the worst damage location according to SOLAS 90 is outside the range ± 10 % Lpp from the midship. This additional test is only required when the ro-ro spaces are assumed to be damaged.

2.2. The model should comply with the following:

2.2.1. Length between perpendiculars (Lpp) is to be at least 3 m.

2.2.2. The hull is to be thin enough in areas where this feature has influence on the results.

2.2.3. The characteristics of motion should be modelled properly to the actual ship, paying particular attention to scaling of radii of gyration in roll and pitch motions. Draught, trim, heel and centre of gravity should represent the worst damage case.

2.2.4. Main design features such as watertight bulkheads, air escapes, etc., above and below the bulkhead deck that can result in asymmetric flooding should be modelled properly as far as practicable to represent the real situation.

2.2.5. The shape of the damage opening shall be as follows:

2.2.5.1. rectangular side profile with a width according to regulation II-1/8.4.1 of the Safety at Sea Convention and unlimited vertical extent;

2.2.5.2. isosceles triangular profile in the horizontal plane with a height equal to B/5 according to regulation II-1/8.4.2 of the Safety at Sea Convention.

3. *Procedure for experiments*

3.1. The model should be subjected to a long-crested irregular seaway defined by the JONSWAP spectrum with a significant wave height h_s defined in 1.3 of the stability requirements and having peak enhancement factor and peak period T_p as follows:

3.1.1. $T_p = 4\sqrt{H_s}$ with $\gamma = 3{,}3$; and

3.1.2. T_p equal to the roll resonant period for the damaged ship without water on deck at the specified loading condition but not higher than $6\sqrt{H_s}$ and with $\gamma = 1$.

3.2. The model should be free to drift and placed in beam seas (90° heading) with the damage hole facing the oncoming waves. The model should not be restrained in a manner to resist capsize. If the ship is upright in flooded condition, 1° of heel towards the damage should be given.

3.3. At least 5 experiments for each peak period should be carried out. The test period for each run shall be of such duration that a stationary state has been reached but should be run for not less than 30 min in full-scale time. A different wave realisation train should be used for each test.

3.4. If none of the experiments result in final inclination towards the damage, the experiments should be repeated with 5 runs at each of the two specified wave conditions or, alternatively, the model should be given an additional 1° angle of heel towards the damage and the experiment repeated with 2 runs at each of the two specified wave conditions. The purpose of these additional experiments is to demonstrate, in the best possible way, survival capability against capsize in both directions.

3.5. The tests are to be carried out for the following damage cases:

3.5.1. the worst damage case with regard to the area under the GZ curve according to the Safety at Sea Convention; and

3.5.2. the worst midship damage case with regard to the residual freeboard in the midship area if required by 2.1.

4. *Survival criteria*

The ship should be considered as surviving if a stationary state is reached for the successive test runs as required in 3.3, provided that angles of roll of more than 30° against the vertical axis, occurring more frequently than in 20 % of the rolling cycles or steady heel greater than 20° should be taken as capsizing events even if a stationary state is reached.

5. *Test approval*

5.1. Proposals for model test programmes should be submitted to the host State Administration to be approved in advance. It should also be borne in mind that lesser cases of damage may create a worst-case scenario.

5.2 The test should be documented by means of a report and a video or other visual record containing all relevant information on the ship and test results.

ANNEX II

INDICATIVE GUIDELINES TO NATIONAL ADMINISTRATIONS

(as referred to in Article 6.(3))

PART I

Application

In line with the provisions of Article 6(3), these guidelines shall be used by the national administrations of Member States in the application of the specific stability requirements set out in Annex I, in so far this is practicable and compatible with the design of the ship in question. The paragraph numbers appearing below correspond to those in Annex I.

Para 1

As a first step all ro-ro passenger ships referred to in Article 3(1) must comply with the 'SOLAS 90' standard of residual stability as it applies to all passenger ships constructed on or after 29 April 1990. It is the application of this requirement that defines the residual freeboard f_r, necessary for the calculations required in paragraph 1.1.

Para 1.1.

1. This paragraph addresses the application of a hypothetical amount of water accumulated on the bulkhead (ro-ro) deck. The water is assumed to have entered the deck via a damage opening. This paragraph requires that the vessel in addition to complying with the full requirements of the SOLAS '90 further complies with that part of the SOLAS '90 criteria contained in paragraphs 2.3 to 2.3.4 of regulation 8 of Chapter II-1 Part B of SOLAS with the defined amount of water on deck. For this calculation no other requirements of Chapter II-1 regulation 8 need be taken into account. For example the vessel does not, for this calculation, need to comply with the requirements for the angles of equilibrium or non-submergence of the margin line.

2. The accumulated water is added as a liquid load with one common surface inside all compartments which ate assumed flooded on the car deck. The height (h_w) of water on deck is dependent on the residual freeboard (f_r) after damage, and is measured in way of the damage (see fig 1). The residual freeboard, is the minimum distance between the damaged ro-ro deck and the final waterline (after equalisation measures if any have been taken) in way of the assumed damage after examining all possible damage scenarios in determining the compliance with SOLAS '90 as required in para 1 of Annex I. No account should be taken of the effect of the hypothetical volume of water assumed to have accumulated on the damaged ro-ro deck when calculating f_r.

3. If f_r is 2,0 m or more, no water is assumed to accumulate on the ro-ro deck. If f_r is 0,3 m or less, then height h_w is assumed to be 0,5 metres. Intermediate heights of water are obtained by linear interpolation (see fig 2).

Para 1.2.

Means for drainage of water can only be considered as effective if these means are of a capacity to prevent large amounts of water from accumulating on the deck ie many thousand of tonnes per hour which is far beyond the capacities fitted at the time of the adoption of these regulations. Such high efficiency drainage systems may be developed and approved in the future (based on guidelines to be developed by the International Maritime Organisation)

Para 1.3.

1. 1. The amount of assumed accumulated water-on — deck may, in addition to any reduction in accordance with paragraph 1.1, be reduced for operations in geographically defined restricted areas, These areas are designated in accordance with the significant wave height (h_s) defining the area in line with the provisions of Article 5.

2. If the significant wave height (h_s), in the area concerned, is 1,5 m or less then no additional water is assumed to accumulate on the damaged ro-ro deck. If the significant wave height in the area concerned is 4,0 m or more then the height of the assumed accumulated water shall be the value calculated in accordance with paragraph 1.1. Intermediate values to be determined by linear interpolation (see fig 3).

3. The height h_w is kept constant, therefore the amount of added water is variable as it is dependent upon the heeling angle and whether at any particular heeling angle the deck edge is immersed or not. (see fig 4). It should be noted that the assumed permeability of the car deck spaces is to be taken as 90 % (MSC/Circ.649 refers), whereas other assumed flooded spaces permeabilities are to be those prescribed in SOLAS.

4. If the calculations to demonstrate compliance with the Directive relate to a significant wave height less than 4,0 m that restricting significant wave height must be recorded on the vessel's passenger ship safety certificate.

Para 1.4./1.5.

As an alternative to complying with the new stability requirements in paragraphs 1.1 or 1.3 an Administration may accept proof of compliance via model tests. The model test requirements are detailed in the Appendix to Annex I. Guidance notes on the model tests are contained in part II of this Annex.

Para 1.6.

Conventionally derived SOLAS '90 limiting operational curve(s) (KG or GM) may not remain applicable in cases where 'water on deck' is assumed under the terms of the Directive and it may be necessary to determine revised limiting curve(s) which take into account the effects of this added water. To this effect sufficient calculations corresponding to an adequate number of operational draughts and trims must be carried out.

Note: Revised limiting operational KG/GM Curves may be derived by iteration, whereby the minimum excess GM resulting from damage stability calculations with water on deck is added to the input KG (or deducted from the GM) used to determine the damaged freeboards (f_r), upon which the quantities of water on deck are based, this process being repeated until the excess GM becomes negligible.

It is anticipated that operators would begin such an iteration with the maximum KG/minimum GM which could reasonably be sustained in service and would seek to manipulate the resulting deck bulkhead arrangement to minimise the excess GM derived from damage stability calculations with water on deck.

Para 2.1.

As for conventional SOLAS damage requirements bulkheads inboard of the B/5 line are considered intact in the event of side collision damage.

Para 2.2.

If side structural sponsons are fitted to enable compliance with this regulation, and as a consequence there is an increase in the breadth (B) of the ship and hence the vessel's B/5 distance from the ship's side, such modification shall not cause the relocation of any existing structural parts or any existing penetrations of the main transverse watertight bulkheads below the bulkhead deck (see fig 5).

Para 2.3.

1. Transverse or longitudinal bulkheads/barriers which are fitted and taken into account to confine the movement of assumed accumulated water on the damaged ro-ro deck need not be strictly 'watertight'. Small amounts of leakage may be permitted subject to the drainage provisions being capable of preventing an accumulation of water on the 'other side' of the bulkhead/barrier. In such cases where scuppers become inoperative as a result of a loss of positive difference of water levels other means of passive drainage must be provided.

2. The height (B_h) of transverse and longitudinal bulkheads/barriers shall be not less than ($8 \times H_w$) metres, where hw is the height of the accumulated water as calculated by application of the residual freeboard and significant wave height (paras 1.1. and 1.3 refers). However in no case is the height of the bulkhead/barrier to be less than the greatest of:

   (a) 2,2 metres; or

   (b) the height between the bulkhead deck and the lower point of the underside structure of the intermediate or hanging car decks, when these are in their lowered position. It should be noted that any gaps between the top edge of the bulkhead and the underside of the plating must be 'plated-in' in the transverse or longitudinal direction as appropriate (see fig 6).

   Bulkheads/barriers with a height less than that specified above, may be accepted if model tests are carried out in accordance with Part II of this Annex to confirm that the alternative design ensures appropriate standard of survivability. Care needs to be taken when fixing the height of the bulkhead/barrier such that the height shall also be sufficient to prevent progressive flooding within the required stability range. This range is not to be prejudiced by model tests.

   Note: The range may be reduced to 10 degrees provided the corresponding area under the curve is increased (MSC 64/22 refers)

Para 2.5.1.

The area 'A' relates to permanent openings. It should be noted that the 'freeing ports' option is not suitable for ships which require the buoyancy of the whole or part of the superstructure in order to meet the criteria. The requirement is that the freeing ports shall be fitted with closing flaps to prevent water entering, but allowing water to drain.

These flaps must not rely on active means. They must be self-operating and it must be shown that they do not restrict outflow to a significant degree. Any significant efficiency reduction must be compensated by the fitting of additional openings so that the required area is maintained.

Para 2.5.2.

For the freeing ports to be considered effective the minimum distance from the lower edge of the freeing port to the damaged waterline shall be at least 1,0 m. The calculation of the minimum distance shall not take into account the effect of any additional water on deck (see fig 7).

Para 2.5.3.

Freeing ports must be sited as low as possible in the side bulwark or shell plating. The lower edge of the freeing poet opening must be no higher than 2 cm above the bulkhead deck and the upper edge of the opening no higher than 0,6 m (see fig 8).

Note: Spaces to which paragraph 2.5 applies, ie those spaces fitted with freeing ports or similar openings, shall not be included as intact spaces in the derivation of the intact and damage stability curves.

Para 2.6.

1. The statutory extent of damage is to be applied along the length of the ship. Depending on the subdivision standard the damage may not affect any bulkhead or may only affect a bulkhead below the bulkhead deck or only bulkhead above the bulkhead deck or various combinations.

2. All transverse and longitudinal bulkheads/barriers which constrain the assumed accumulated amount of water must be in place and secured at all times when the ship is at sea.

3. In those cases where the transverse bulkhead/barrier is damaged the accumulated water-on-deck shall have a common surface level on both sides of the damaged bulkhead/barrier at the height h_w (see fig 9).

PART II

Model testing

The purpose of these guidelines is to ensure uniformity in the methods employed in the construction and verification of the model as well as in the undertaking and analyses of the model tests, while appreciating that available facilities and costs will affect in some way this uniformity.

The content of paragraph 1 of the Appendix to Annex I is self explanatory.

Paragraph 2 — Ship model

2.1. The material of which the model is made is not important in itself, provided that the model both in the intact and damaged condition is sufficiently rigid to ensure that its hydrostatic properties are the same as those of the actual ship and also that the flexural response of the hull in waves is negligible.

It is also important to ensure that the damaged compartments are modelled as accurately as practicably possible to ensure that the correct volume of flood water is represented.

Since ingress of water (even small amounts) into the intact parts of the model will affect its behaviour, measures must be taken that this ingress does not occur.

2.2. Model particulars

2.2.1. In recognising that scale effects play an important role in the behaviour of the model during tests, it is important to ensure that these effects are minimised as much as practically possible. The model should be as large as possible since details of damaged compartments are easier constructed in larger models and the scale effects are reduced. It is therefore recommended that the model length is not less than that corresponding to 1:40 scale. However it is required that the model is not less than 3 meters long at the subdivision load line.

2.2.2. (a) The model in way of the assumed damages must be as thin as practically possible to ensure that the amount of flood water and its centre of gravity is adequately represented. It is recognised that it may not be possible for the model hull and the elements of primary and secondary subdivision in way of the damage to be constructed with sufficient detail and due to these constructional limitations it may not be possible to calculate accurately the assumed permeability of the space.

(b) It has been found during tests that the vertical extent of the model can affect the results when tested dynamically. It is therefore required that the ship is modelled to at least three super structure standard heights above the bulkhead (freeboard) deck so that the large waves of the wave train do not break over the model.

(c) It is important that not only the draughts in the intact condition are verified, but also that the draughts of the damaged model are accurately measured for correlation with those derived from the damaged stability calculation. After measuring the damaged draughts it may be found necessary to make adjustments to the permeability of the damaged compartment by either introducing intact volumes or by adding weights. However it is also important to ensure that the centre of gravity of the flood water is accurately represented. In this case any adjustments made must err on the side of safety.

(d) If the model is required to be fitted with barriers on deck and the barriers are less than the height required as per paragraph 2.3 of Annex 1 of this Directive the model is to be fitted with CCTV so that any 'splashing over' and any accumulation of water on the undamaged area of the deck can be monitored. In this case a video recording of the event is to form part of the tests records.

2.2.3. In order to ensure that the model motion characteristics represent those of the actual ship it is important that the model is both inclined and rolled in the intact condition so that the intact GM and the mass distribution are verified.

The transverse radius of gyration of the actual ship is not to be taken as being greater than 0,4 B and the longitudinal radius of gyration is not to be taken as being more than 0,25 L.

The transverse rolling period of the model is to be obtained by:

$$\frac{2\pi \times 0{,}4\ B}{\sqrt{gGM\lambda}}$$

Where

GM: metacentric height of the actual (intact) ship

g: acceleration due to gravity

λ: scale of model

B: breadth of actual ship

Note

While inclining and rolling the model in the damage condition may be accepted as a check for the purpose of verifying the residual stability curve such tests are not to be accepted in lieu of the intact tests.

Nevertheless the damaged model must be rolled in order to obtain the rolling period required to perform the tests as per paragraph 3.1.2.

2.2.4. The contents of this paragraph are self explanatory. It is assumed that the ventilators of the damage compartment of the actual ship are adequate for unhindered flooding and movement of the flood water. However in trying to scale down the ventilating arrangements of the actual ship undesirable scale effects may be introduced. In order to ensure that these do not occur it is recommended to construct the ventilating arrangements to a larger scale than that of the model, ensuring that this does not affect the flow of water on the car deck.

2.2.5.2. The isosceles triangular profile of the prismatic damage shape is that corresponding to the load waterline.

Additionally in cases where side casings of width less than B/5 are fitted and in order to avoid any possible scale effects, the damage length in way of the side casings must not be less than (2) metres.

Paragraph 3 — Procedure for experiments

3.1. — Wave Spectra

The JONSWAP spectrum it to be used as this describes fetch and duration limited seas which correspond to the majority of the conditions world-wide. In this respect it is important that not only the peak period of the wave train is verified but also that the zero crossing period is correct.

3.1.1. Corresponding to a peak period of $4\sqrt{h_s}$ and given that the enhancement factor γ is 3.3, the zero crossing period is not to be greater than:

$\{T_p/(1{,}20 \text{ to } 1{,}28)\} \pm 5\ \%$;

3.1.2. The zero crossing period corresponding to a peak period equal to the rolling period of the damaged model and given that the factor γ is to be 1, is not to be greater than:

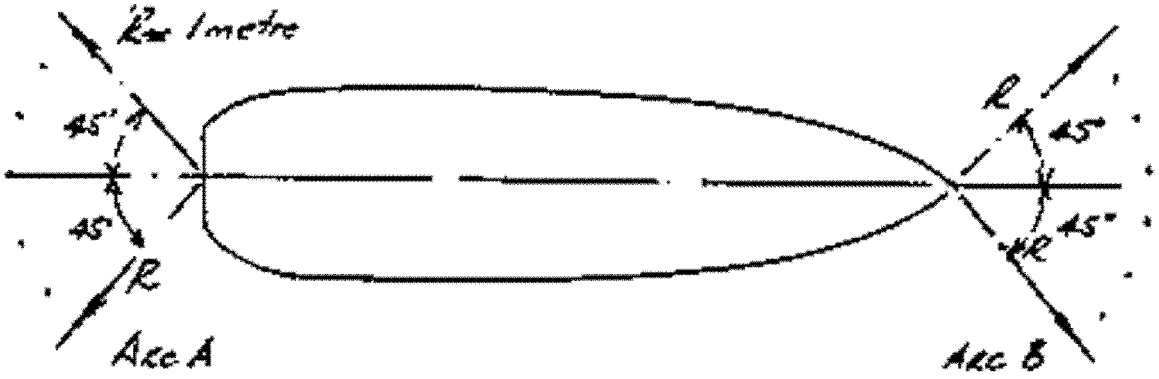
$\{T_p/(1{,}3 \text{ to } 1{,}4)\} \pm 5\ \%$.

noting that if the rolling period of the damaged model is greater than $6\sqrt{h_s}$, the peak period is to be limited to $6\sqrt{h_s}$.

Note

It has been found that it is not practical to set limits for zero crossing periods of the model wave spectra according to the nominal values of the mathematical formulae. Therefore an error margin of 5 % is allowed.

It is required that for every test run the wave spectrum is recorded and documented. Measurements for this recording are to be taken in the immediate vicinity of the model (but not on the leeside) — see figure a below — and also near the wave-making machine. It is also required that the model is instrumented so that its motions (roll, heave and pitch) as well as its attitude (heel, sinkage and trim) are monitored and recorded though out the test.



The 'near the model' wave measuring probe to be positioned either on arc A or arc B (Figure (a)).

3.2., 3.3., 3.4.

The contents of these paragraphs are considered self explanatory.

3.5. — Simulated damages

Extensive research carried out for the purpose of developing appropriate criteria for new vessels has clearly shown that in addition to the GM and freeboard being important parameters in the survivability of passenger ships, the area under the residual stability curve up to the angle of maximum GZ is also an other major factor. Consequently in choosing the worst SOLAS damage for compliance with the requirement of paragraph 3.5.1 the worst damage is to be taken as that which gives the least area under the residual stability curve up to the angle of the maximum GZ.

Paragraph 4 — Survival criteria

The contents of this paragraph are considered self explanatory.

Paragraph 5 — Test approval

The following documents are to be part of the report to the Administration:

(a) damage stability calculations for worst SOLAS and mid-ship damage (if different);

(b) general arrangement drawing of the model together with details of construction and instrumentation;

(c) inclining experiment and rolling test reports;

(d) calculations of actual ship and model rolling periods; and

(e) nominal and measured wave spectra (near the wave-making machine and near the model respectively)

(f) representative record of model motions, attitude and drift

(g) relevant video recordings.

Note

All tests must be witnessed by the Administration.

Figures referred to in Annex 2

(Indicative Guidelines to National Administrations)

Figure 1

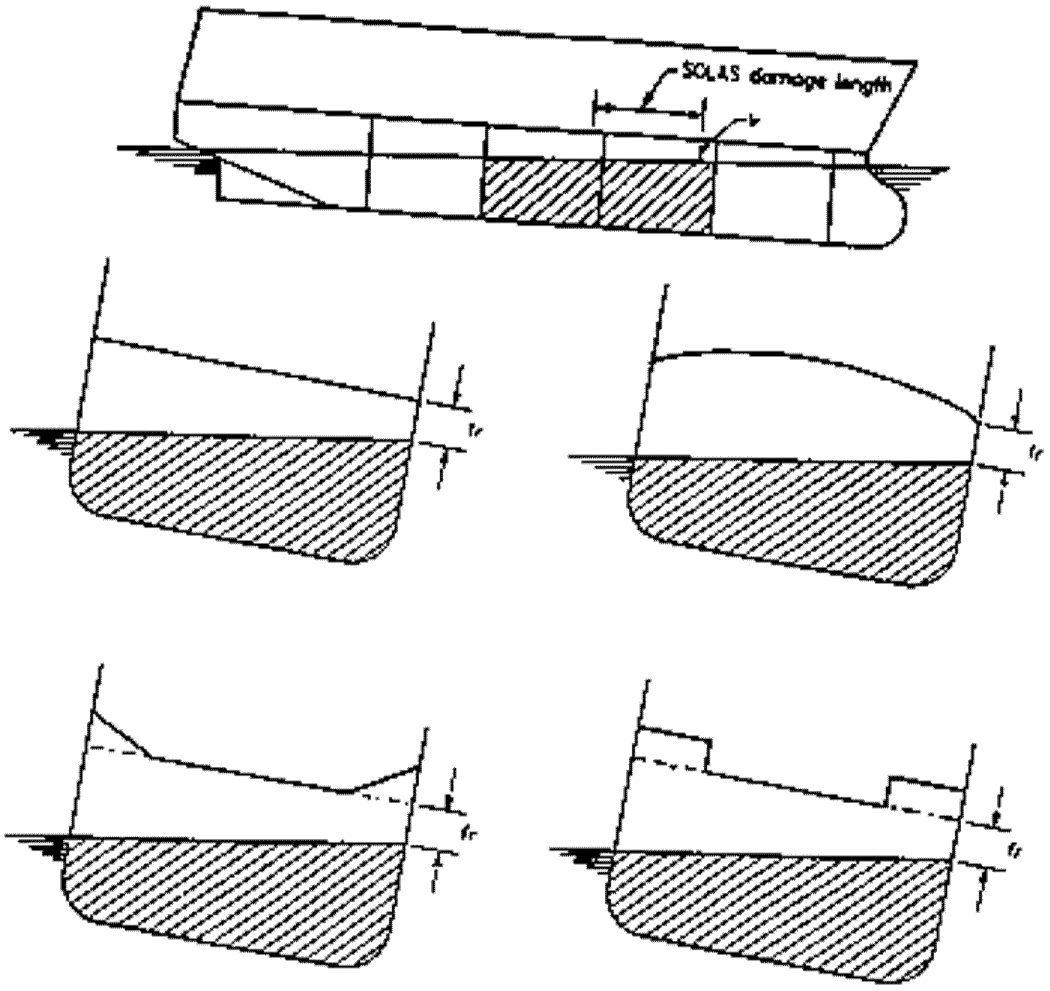
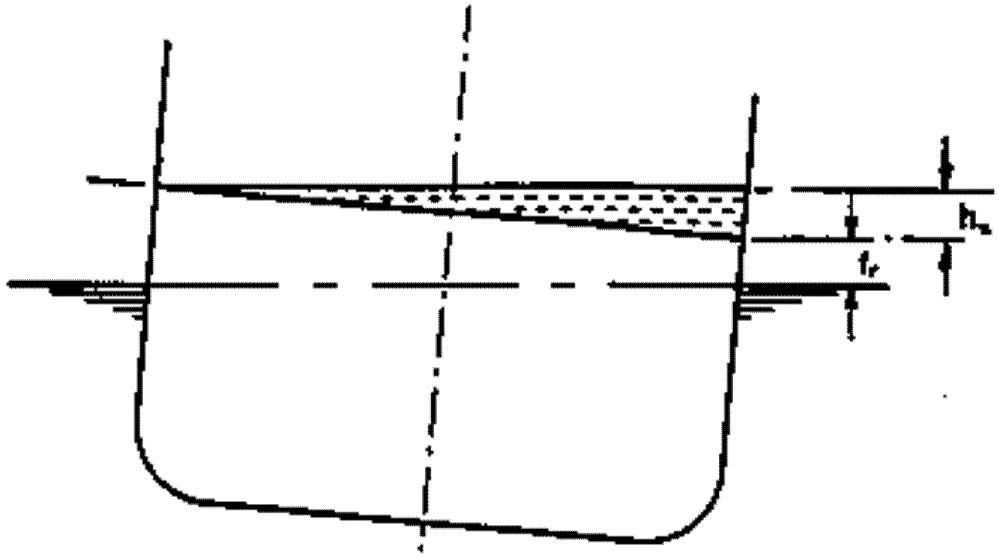


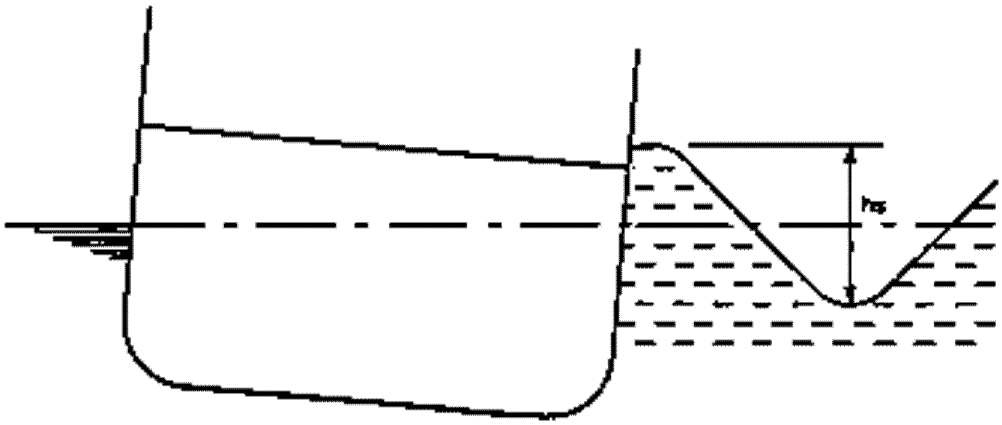
Figure 2



1. If $f_r \geq 2{,}0$ metres, height of water on deck (h_w) = 0,0 metres

2. If $f_r \leq 0{,}3$ metres, height of water on deck (h_w) = 0,5 metres

Figure 3



1. If $h_s \geq 4{,}0$ metres, height of water on deck is calculated as per fig 3

2. If $h_s \leq 1{,}5$ metres, height of water on deck (h_w) = 0,0 metres

For example

If f_r = 1,15 metres and h_s = 2,75 metres, Height h_w = 0,125 metres

Figure 4

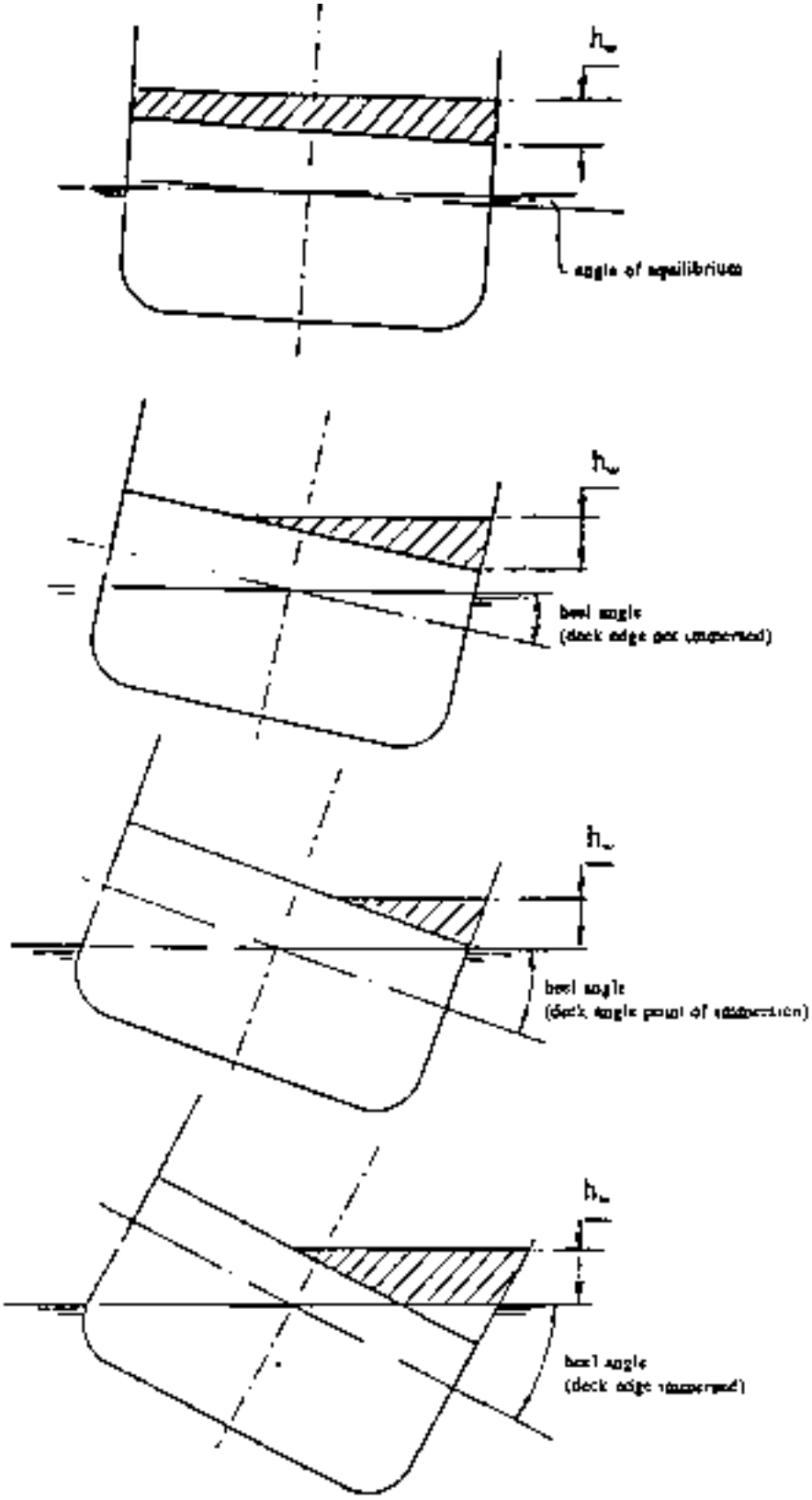

h_w
angle of equilibrium
h_w
heel angle
(deck edge not immersed)
h_w
heel angle
(deck edge point of immersion)
h_w
heel angle
(deck edge immersed)

Figure 5

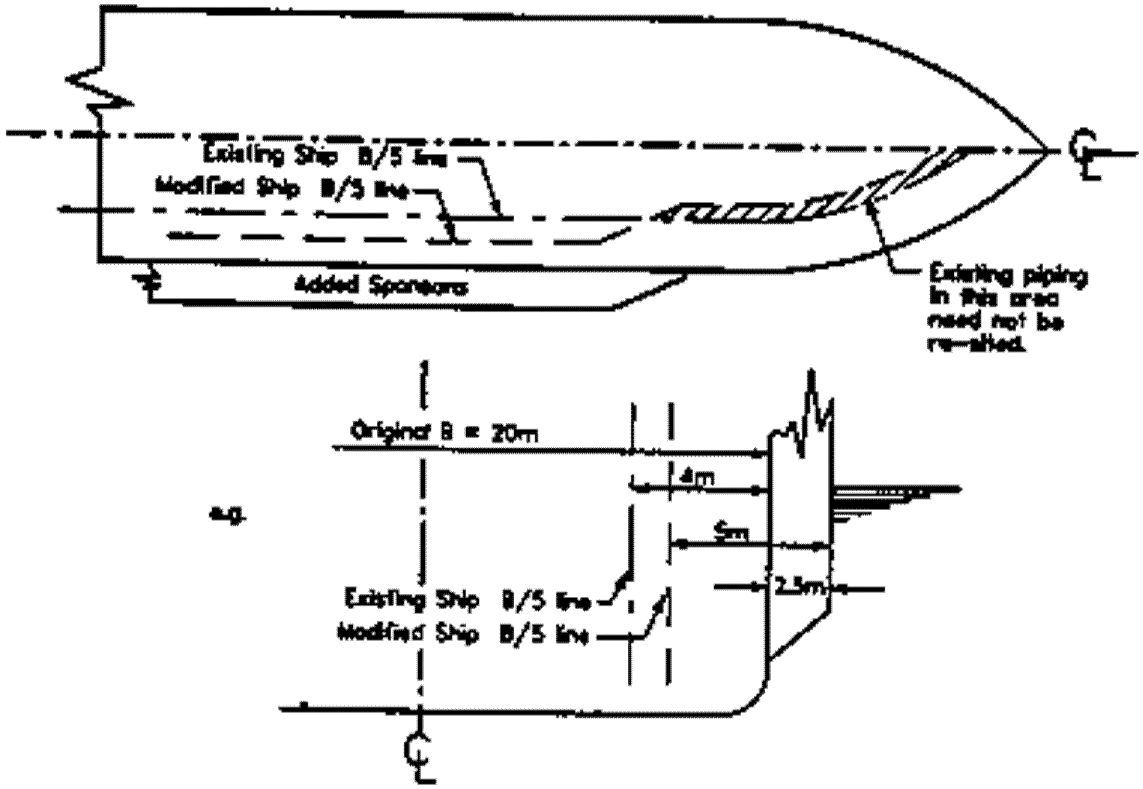

Existing Ship B/5 line
Modified Ship B/5 line
Added Spaceers
Existing piping in this area need not be re-allied.
e.g.
Original B = 20m
4m
5m
2.5m
Existing Ship B/5 line
Modified Ship B/5 line

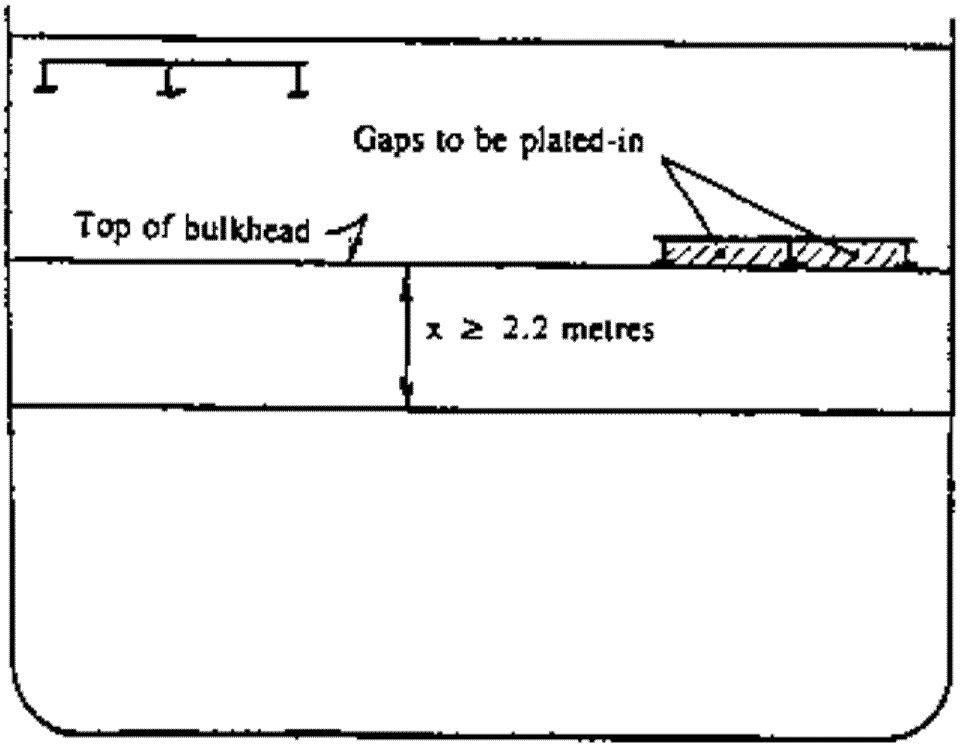
Figure 6

Ship without hanging car decks

Example 1

Height of water on deck = 0,25 metres

Minimum required height of barrier = 2,2 metres



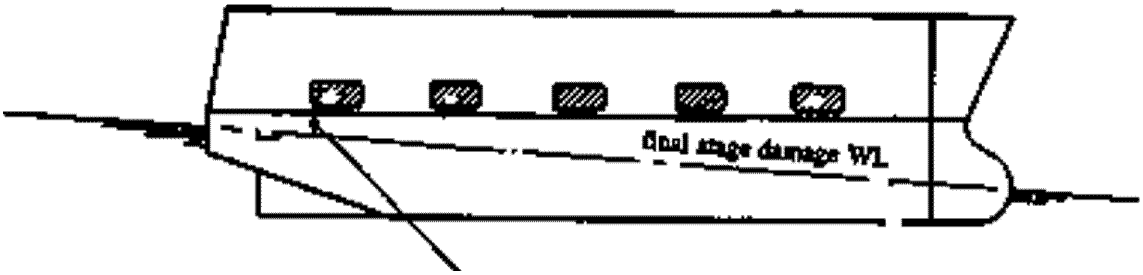
Ship with hanging deck (in way of the barrier)

Example 2

Height of water on deck (hw) = 0,25 metres

Minimum required height of barrier = x

Figure 7



Minimum required freeboard to freeing port = 1,0 m

Figure 8

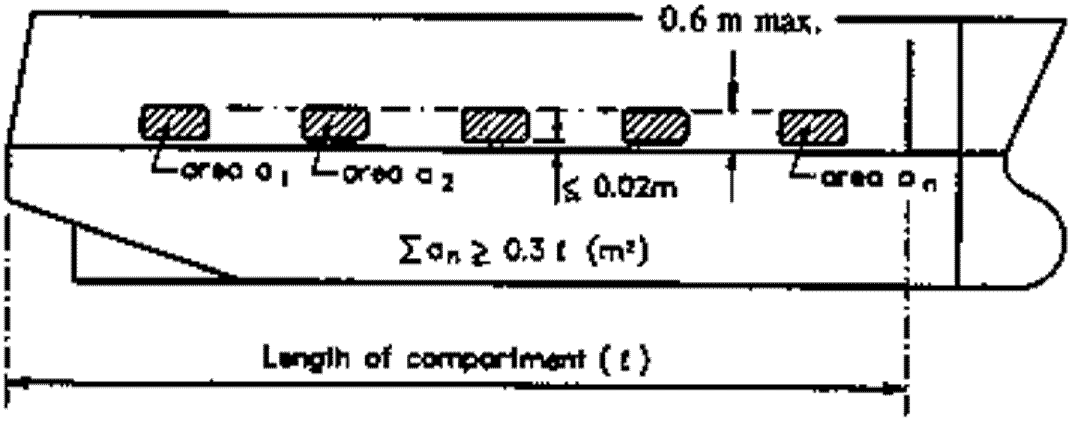
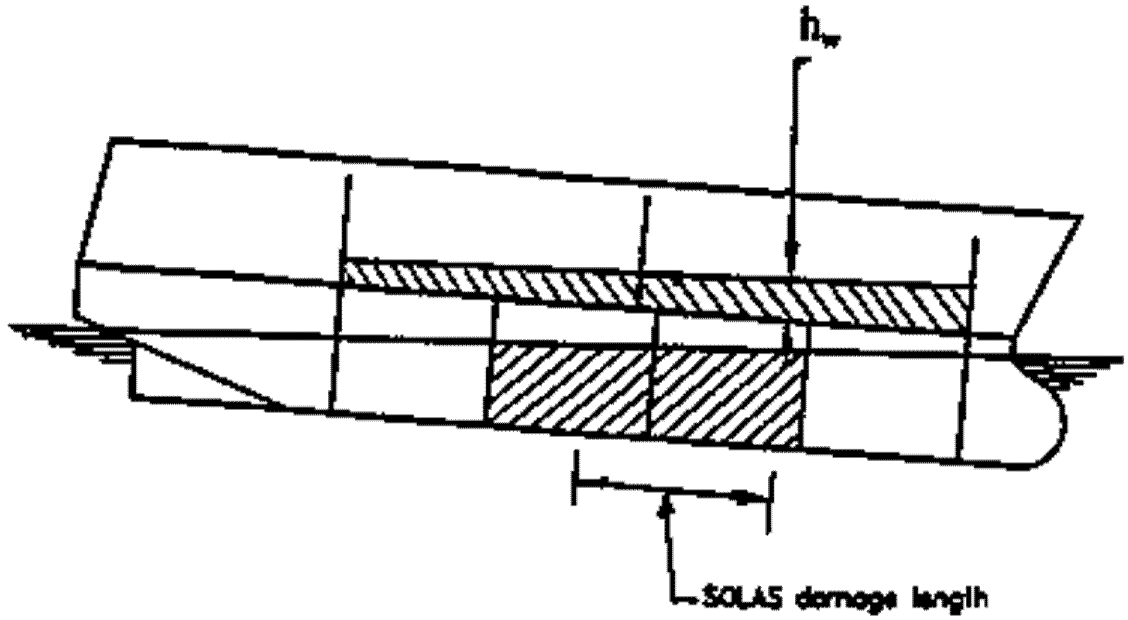
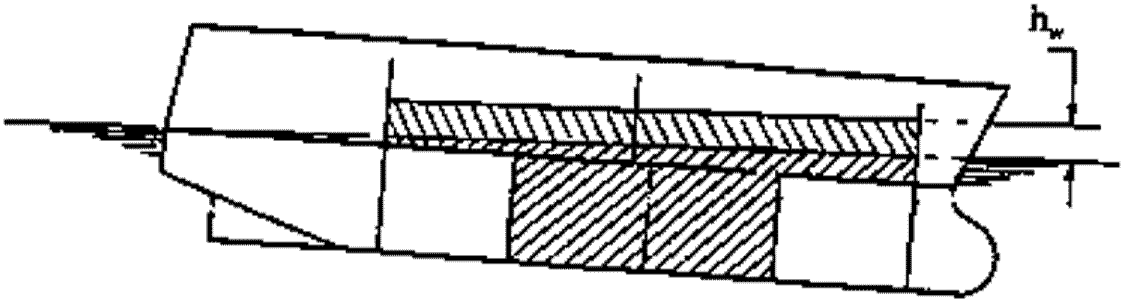


Figure 9



Deck edge not immersed



Deck edge immersed

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

Title of proposal

Proposal for a Directive of the European Parliament and of the Council on specific stability requirements for ro-ro passenger ships.

Document reference number

COM(2002) 158 — 2002/0074(COD)

The proposal

1. *Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?*

The obligations of the Community in this context are the improvement of safety in maritime transport as provided for in Article 80(2) of the Treaty. The objective of the action proposed is the establishment of harmonised safety requirements regarding the stability of ro-ro passenger ships operating on international voyages from/to EU ports.

Referring to the principle of subsidiarity, it will be the responsibility of the Community to ensure a framework of rules providing a harmonised level of safety for passenger ships operating under the same conditions throughout the EU. The responsibility of the Member States is to adopt within their own national legislation measures which will ensure the effective application of the Directive.

The impact on business

2. *Who will be affected by the proposal?*

— *which sectors of business*

— *which sizes of business (what is the concentration of small and medium-sized firms)*

— *are there particular geographical areas of the Community where these businesses are found.*

The business sector which will be affected by this proposal are entities operating ro-ro passenger ships to and from Community ports. A vast majority of passenger ships sailing in Community waters are operated by medium-sized and large enterprises. Taking into account that the specific stability requirements introduced by this Directive are already in place in seven northern EU Member States which apply the Stockholm Agreement, the proposal will have in practise implications only for the companies operating such type of vessels in the Mediterranean sea. Since the 70 % of the ro-ro passenger ships operating in this area are under the Greek and the Italian flag, it is expected that there will be economic impact mainly for companies operating vessels under these two flags. Nevertheless, the large majority of ro-ro passenger ships trading in the south European waters operate in domestic voyages, and thus outside the scope of this Directive. Their case is addressed by the proposal revising Council Directive 98/18/EC. It has generally been noted that following the introduction of the Stockholm Agreement, new ro-ro passenger vessels are built with the aim to satisfy the specific stability requirements even when these are built for trading in the South EU waters.

3. *What will business have to do to comply with the proposal?*

Member States shall bring into force the laws, regulations and administrative procedures so that operators of ro-ro passenger ships comply with the specific stability requirements. The application of these requirements will oblige the operators of existing ships (those trading in the areas under the Directive) to proceed with structural modifications on these ships in order to upgrade them up to the level established by this Directive. A first step for business will be to subject their ships to the model test of compliance in order to check the need for an upgrade.

4. *What economic effects is the proposal likely to have?*

— *on employment*

— *on investment and the creation of new businesses*

— *on the competitiveness of businesses.*

No impact is expected on employment following the introduction of the requirements of this Directive. The phasing-in timetable for existing ships, provided for in the Directive, will give sufficient time to the shipping companies to upgrade their ships. Taking into account the running SOLAS upgrade time-table, the Directive gives a sufficient period to comply with the additional stability requirements.

The analysis conducted by the Commission demonstrates that the introduction of the SA in the North of Europe took place without particular trouble for the industry or the contracting governments. Based on a sample of 82 vessels, out of a total of 140 that needed to comply with the Agreement, it appears that 36 % of the vessels in that sample did not need any upgrade. Furthermore, 69 % of the total 140 vessels were upgraded for less than 1 million Euro. The estimated total cost of upgrade was around 85 mio Euro. However it is important to note that most of that cost related to the accelerated compliance with SOLAS 90 standards (a necessary step before compliance with the Stockholm Agreement) rather than just to compliance with the Agreement as such.

Given the common value of significant wave heights in the Southern EU waters is around 2,5 metres, the modification cost of the South European fleet for compliance with the provisions of the SA will be approximately the same as the associated cost for compliance with the requirements of the SOLAS 90 two compartment standard [1]. Since full compliance with SOLAS Regulations is to take place by 2010, on the basis of the IMO timetable (international trades) and of Directive 98/18/CE (domestic EU trades) the industry should have already planned to invest in the coming years in the upgrade of the vessels concerned. The study states that 264 vessels trading in the South European waters (international and domestic) will be affected from the SOLAS upgrade and that the cost of compliance will be among 106 and 250 million Euro (these figures do not take into account possible removals from service of aged ro-ro ships). As already mentioned, compliance of these ships with the specific stability requirements set out in the Stockholm Agreement will not increase their SOLAS compliance cost in a prohibitive way.

It appears therefore that the application of the SA stability requirements to the South European ro-ro passenger vessels will offer a uniformity of stability requirements and an increased level throughout the EU, without increasing substantially the economic effort of the affected part of the industry, which has to comply anyway with the SOLAS 90 standard.

The proposal is likely to have a beneficial impact on the competitive position of the business, since it will harmonise the stability standards applied to ro-ro passenger vessels trading in the EU creating a global market which will make possible the operation of these ships to all EU trades where the same significant wave height conditions are met. By establishing a harmonised safety regime for all ro-ro passenger ships serving EU ports, regardless of flag, a level playing field will be created for all operators involved, minimising the risks for distortion of competition by operators trying to gain a competitive edge by economising on the safety standard.

5. *Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc.)?*

Fulfilling the requirements of the proposal should not constitute insurmountable financial burdens for the affected companies. The experience from the introduction of these standards in the Northern European waters demonstrated that the financial implications for the industry were reasonable.

Consultation

6. *List the organisations which have been consulted about the proposal and outline their main views.*

The Commission held a consultation meeting on 25 October 2001 with parties interested on this issue, which was attended by representatives of shipowners (ECSA, ICS, BIMCO), seafarers (ETF), classification societies (IACS), shipbuilders (CESA) and disabled (European Disabilities Forum-EDF).

The proposed action was met with scepticism by the shipowner representatives, particularly in view of the cost implications this will have for existing ships. These representatives felt that general weather conditions in the South did not justify the generalisation by EU Law of the regional requirements defined in the Stockholm Agreement. However, the measure was clearly supported by the seafarers representatives and the users organisation present at the meeting on the grounds that it will offer additional safety to the travelling public and the crew. These two organisations found essential that ships operating under similar significant wave height conditions had to comply with the same safety standard.

[1] The SOLAS 90 two compartment standard establishes that the ship can survive without capsizing with two main compartments flooded following damage.

Proposal for a Directive of the European Parliament and of the Council amending Council Directive 98/18/EC of 17 March 1998, on safety rules and standards for passenger ships

(2003/C 20 E/06)

(Text with EEA relevance)

COM(2002) 158 final — 2002/0075(COD)

(Submitted by the Commission on 25 March 2002)

EXPLANATORY MEMORANDUM

1. Background and objectives

In order to ensure harmonisation of safety regulations applying to passenger ferries operating within the EU, the European Commission in 1996 proposed a Directive to apply rules equivalent to those applicable at the international level in a harmonised manner also to the domestic trade. Council Directive 98/18/EC was subsequently adopted on 17 March 1998, and entered into force the same year. The rules included in Annex I to the Directive translate the relevant international instruments into safety requirements for vessels operating on domestic services. These requirements apply to all types of domestic passenger ferries, whilst taking into account their size, age and the characteristics of the sea area in which they are licensed to operate.

Although a relatively recently adopted Directive, the European Commission considers that certain provisions contained therein should be simplified or updated in order to provide sufficient protection for passengers on domestic journeys in the EU Member States. This Directive, therefore proposes to amend Council Directive 98/18/EC in the following way, to:

— update the Directive taking into account developments of international conventions and codes for maritime safety, notably the 2000 High Speed Craft Code,

— simplify and improve the procedure for the definition and publication of sea areas, a procedure that is crucial for the implementation of this directive, since the safety requirements applying to a specific vessel depend on the sea area in which it operates,

— introduce specific stability requirements for certain categories of ro-ro passenger ships operating on domestic services, equivalent to those in the proposed Directive on specific stability requirements for ro-ro passenger ships engaged on international voyages, and phase out ro-ro passenger ships which are not upgraded to comply with such stability requirements,

— require that Member States endeavour to make all its passenger vessels, regardless of size, age and the sea area in which they operate, safe and accessible for passengers with reduced mobility. This is in line with other proposals by the Commission to render other modes of transport accessible and safe for such passengers,

— remove the derogation for Greece, thus simplifying the Directive given the marginal impact of the derogation.

2. Justification of the proposed measures

The objective of the proposed measure is to amend existing Council Directive 98/18/EC. The justification is multi-fold. Despite being a relatively recently adopted Directive, certain problems related to its implementation have already been identified. The principal problem with the Directive at Community level, relates to the difficulty of verifying implementation, mainly since the current procedure for publication of sea areas is not practicable. This short-coming has an implication at Community level, and for all Member States, since the implementation of Directive 98/18/EC cannot be verified, without having a proper and workable arrangement in place for the designation and publication of sea areas.

It is furthermore justified to ensure that the Directive is made flexible to update certain articles in relation to developments at international level, in particular in relation to the safety of high speed crafts.

The introduction of more specific stability requirements for ro-ro passenger ships operating on domestic services is also justified, to improve safety and to ensure an equivalent level of safety between international and domestic services.

The introduction of safety guidelines for passengers with reduced mobility is in line with the principle introduced by the Amsterdam Treaty on combating discrimination on grounds of, among other things, disability and age.

Finally, it should be noted that certain provisions have been introduced that leave a large degree of flexibility to the Member States in line with the principle of subsidiarity, notably as regards safety and access requirements for passengers with reduced mobility.

3. Content of the proposal

The proposal contains two articles making modifications to the existing articles of Council Directive 98/18/EC, and articles to ensure the applicability of such modifications.

4. Specific considerations

4.1. *Definitions (Article 1.1)*

New definition 2 (w) on 'persons with reduced mobility' is introduced with reference to proposed new Article 6b. The definition used is that of Directive 2001/85/EC of the European Parliament and of the Council of 20 November 2001 [1], relating to special provisions for vehicles used for the carriage of passenger comprising more than eight seats in addition to the driver's seat, and amending Directives 70/156/EEC and 97/27/EC. This definition, recently agreed by Council and Parliament, has been found appropriate by the Commission for this Directive also, as it relates to safety and access requirements for a particular mode of public transport for passengers with reduced mobility. See also paragraph 4.6.

4.2. *Procedure for the publication of sea areas (Article 1.2)*

The Commission proposes a new simplified procedure for the establishment, notification and publication of a list of the sea areas A, B, C and D, which determine the specific safety requirements that apply to ships operating in each particular area. The modification is prompted by the problems encountered in the implementation of Directive 98/18/EC. It is crucial to modify this procedure to facilitate implementation by Member States and to monitor implementation at Community level.

Furthermore the Commission proposes that the notification of sea areas to the Commission, in accordance with the procedure laid down in Article 9, should be simplified.

The procedure proposed for the publication introduces more flexibility and transparency for the operators at Member State and Community level.

4.3. *Ending the derogation for Greek passenger ships (Article 2)*

Directive 98/18/EC includes a derogation for passenger vessels trading on domestic services in Greece only. Given the limited practical implication of this derogation, the Commission proposes to delete this derogation from the Directive with effect from 1.1.2005, in order to simplify the Directive.

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[1] OJ L 42, 13.2.2002, p. 1.

4.4. *Stability requirements and phasing-out age (Article 1.3)*

The Commission's proposal introduces specific stability requirements for ro-ro passenger ships engaged in international voyages to/from EU ports. This would ensure an increased level of safety of ro-ro passenger vessels operating on the above routes, by 1 October 2010 at the latest.

Taking into account that ro-ro passenger ships encounter similar sea conditions in domestic voyages as in international voyages and in order to achieve the same level of safety for ships operating in different sea areas under the same sea conditions, the Commission proposes that domestic ro-ro passenger ships should also comply with specific stability requirements. The specific stability requirements shall apply to all new ro-ro passenger ships of classes A, B and C as from 1 October 2004. For new ro-ro passenger ships of class D, the application of the specific stability requirements is not justified, due to the restricted operational conditions applying to these ships. However, taking into account the difficulties that can be encountered in upgrading existing vessels of classes A and B, the Commission proposes to introduce as an alternative the possibility of phasing out such vessels at the age of 30 years if the specific stability requirements cannot be complied with. The same phasing out possibility shall apply to existing ro-ro passenger ships of classes C and D, unless they fully comply with the stability requirements set out in paragraph II-1/B/8 of Annex I of the Directive. This means full compliance of these vessels with the SOLAS 90 stability requirements, an obligation from which they are presently exempted.

4.5. *2000 High Speed Craft Code (Article 1.4)*

Directive 98/18/EC currently applies the High Speed Craft Code(HSC Code) as contained in IMO Maritime Safety Committee Resolution MSC 36(63) of 20 May 1994 in full to all High speed craft operating on domestic services. On 5 December 2000, the 2000 HSC Code was adopted, which will apply for all new vessels whose keels are laid or which are at a similar stage of construction on or after 1 July 2002. The HSC Code 2000 does not replace the previous code for vessels constructed before that date, but applies to new vessels only.

The Commission therefore proposes to amend Article 8(a) in order to allow the HSC Code 2000 to be made applicable through Directive 98/18/EC in a similar manner to the 1994 HSC Code, through the comitology procedure. This is in full accordance with the principle included in Directive 98/18/EC as regards Annex I and definitions in Article 2 in relation to International Conventions.

4.6. *Introducing safety and access requirements for passengers with reduced mobility (Article 1.1, 1.3, 1.4, 1.5)*

The Commission proposes to introduce specific safety requirements for persons with reduced mobility, who can make up up to 30 % of the population, and hence a large proportion of potential passengers. The measures proposed relate equally to the safety of and access to passenger ships for this group of passengers. The importance of all passengers, with or without reduced mobility, being guaranteed the same level of safety is crucial.

Council Directives 1999/35/EC [1] and 98/41/EC [2] cover a rather limited area of safety and accessibility for people with reduced mobility since they concern specific services and assistance, and not necessarily general information about the ship and safety arrangements.

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[1] Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (OJ L 138, 1.6.1999, p. 1).

[2] Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community (OJ L 188, 2.7.1998, p. 35).

The mechanism proposed is that guidelines are included in a new Annex III, which shall apply to all ships and craft operating on domestic services. Because some modifications to be retrofitted to existing ships may be unreasonable costly, the guidelines shall apply to existing ships and crafts as far as reasonable and practicable. Member States shall furthermore develop national action plans for how the existing fleet of passenger vessels shall be upgraded to comply with the guidelines in Annex III. These guidelines are in line with the International Maritime Organisation's Maritime Safety Committee Circular 735 (MSC/Circ.735) of 24 June 1996 entitled 'Recommendation on the design and operation of passenger ships to respond to elderly and disabled persons needs'.

In this process, it is crucial that Member States consult organisations representative of persons with reduced mobility, to ensure that the measures taken are reasonable and acceptable, and will offer a real solution to the current problems encountered on board passenger ships.

The Member States are requested to communicate their national action plans on existing ships and report to the Commission on implementation of the article as regards new ships, new and existing high speed craft, as well as those existing ships certified to carry more than 400 passengers.

It is furthermore proposed that Annexes II and III be amended through comitology procedure in the light of experience, notably that gained by Member States in the process of implementing this Directive.

4.7. *Modifications to the mandate of the Committee for adaptations (Article 1.4)*

The Commission proposes to modify the mandate of the Committee as outlined in Article 8 of Directive 98/18/EC, for the following purposes:

— Article 8(a)(iii) is added to enable revision of the articles of the Directive relating to the HSC Code as outlined in paragraph 4.5.

— Article 8(c) is added to give the Committee the mandate to modify Annexes II and III as outlined in paragraph 4.6.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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 Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships [1] introduces a uniform level of safety of life and property on new and existing passenger ships and high speed craft, when both categories of ships and craft are engaged on domestic voyages, and lays down procedures for negotiation at international level with a view to a harmonisation of the rules for passenger ships engaged on international voyages.

(2) The definition of sea areas is crucial to determine the application of Directive 98/18/EC to different classes of passenger ships. The Directive includes a procedure for the publication of lists of sea areas that has proved difficult to implement. It is therefore necessary to establish a functional and transparent procedure, enabling effective monitoring of the implementation of the Directive.

(3) With a view to harmonising the level of safety applying to passenger ships across the Community, the derogation given to Greece in relation to the timetable for the application of the safety requirements should be deleted.

(4) Directive (. . ./EC on specific stability requirements for ro-ro passenger ships) introduces strengthened stability requirements for ro-ro passenger vessels operating on international services to and from Community ports, and this enhanced measure should also apply to such vessels operating on domestic services under the same sea conditions. Failure to apply such stability requirements should be ground for phasing out ro-ro passenger ships after certain years of operation.

[1] OJ L 144, 15.5.1998, p. 1.

(5) It is necessary to take account of changes that have been made to relevant international instruments, such as the International Maritime Organisation (IMO) conventions, protocols, codes and resolutions, and to do so in a flexible and rapid manner.

(6) By virtue of Directive 98/18/EC, the International Code for Safety of High Speed Craft contained in IMO Maritime Safety Committee Resolution MSC 36 (63) of 20 May 1994 applies to all high speed craft operating on domestic services. The IMO has adopted a new high speed craft code, the International Code for Safety of High Speed Craft, 2000 (2000 HSC Code), contained in IMO Maritime Safety Committee Resolution MSC 97 (73) of 5 December 2000, applying to all high speed craft constructed on or after 1 July 2002. It is important to ensure that Directive 98/18/EC can be updated in a flexible manner to apply such developments at the international level, also to high speed craft operating on domestic services.

(7) It is important to have regard to the level of safety and access guaranteed to persons with reduced mobility when travelling on passenger ships and high speed craft on domestic services in the Member States.

(8) Directive 98/18/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 98/18/EC is hereby amended as follows:

1. In Article 2 the following point is added:

'(w) "persons with reduced mobility" means all people who have a difficulty when using public transport, such as disabled people (including people with sensory and intellectual impairments, and wheelchair users), people with limb impairments, people of small stature, people with heavy luggage, elderly people, pregnant women, people with shopping trolleys, and people with children (including children seated in push chairs).'

2. Article 4, paragraph 2 is replaced by the following:

'2. Each Member State shall:

(a) establish and promptly update a list of sea areas under its jurisdiction, delimiting the zones for the all-year-round and, where appropriate, restricted periodical operation of the classes of ships, using the criteria for classes set out in paragraph 1;

(b) publish the list in a public database available on the Internet site of the competent maritime authority;

(c) notify to the Commission the location of such information, and when modifications are made to the list.'

3. Articles 6a and 6b are inserted:

'*Article 6a*

Stability requirements and phasing-out of ro-ro passenger ships

1. All ro-ro passenger ships of Classes A, B, and C, the keel of which is laid or which are at a similar stage of construction on or after 1 October 2004 shall comply with the specific stability requirements set out in Directive [. . ./EC].

2. All ro-ro passenger ships of Classes A and B, the keel of which is laid or which are at a similar stage of construction before 1 October 2004 shall comply with the specific stability requirements set out in Directive [. . ./EC] by 1 October 2010, unless they are phased out on that date or on a later date on which they reach the age of 30 years but in any case not later than 1 January 2015.

3. All ro-ro passenger ships of Classes C and D, the keel of which is laid or which are at a similar stage of construction before 1 October 2004 shall comply with the provisions of paragraph II-1/B/8 of Annex I by 1 October 2010, unless they are phased out on that date or on a later date on which they reach the age of 30 years but in any case not later than 1 January 2015.'

'*Article 6b*

Safety requirements for persons with reduced mobility

1. Member States shall take appropriate measures, based on the guidelines in Annex III to enable persons with reduced mobility to have safe access to all passenger ships of Classes A, B, C and D and to all high speed passenger craft, the keel of which is laid or which are at a similar stage of construction on or after 1 October 2004.

2. Member States shall co-operate with and consult organisations representing persons with reduced mobility on the implementation of the guidelines included in Annex III.

3. For the purpose of modification of passenger ships of Classes A, B C and D and high speed craft, the keel of which is laid or which are at a similar stage of construction before 1 October 2004, Member States shall apply the guidelines in Annex III as far as reasonable and practicable in economic terms.

Member States shall draw up a national action plan on how the guidelines shall be applied to such ships and craft. They shall communicate that plan to the Commission.

4. Member States shall report to the Commission on the implementation of this Article as regards all passenger ships referred to in paragraph 1, passenger ships referred to in paragraph 3 certified to carry more than 400 passengers and all high speed crafts, before 1 October 2007.'

4. Article 8, is amended as follows:

(a) in point (a) the following subpoint is inserted:

'and

(iii) the provisions relating to the High Speed Craft Code, and subsequent amendments thereto, referred to in Articles 4(3), 6(4), 10(3) and 11(3).'

(b) the following point (c) is added:

'(c) Annexes II and III may be amended to improve the technical specifications, in the light of experience.'

5. Annex III is added, as set out in the Annex.

Article 2

Point (g) of Article 6 (3) of Directive 98/18/EC is deleted with effect from 1 January 2005.

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 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 4

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

Article 5

This Directive is addressed to the Member States.

ANNEX

'*ANNEX III*

GUIDELINES FOR SAFETY REQUIREMENTS FOR PASSENGER SHIPS AND HIGH SPEED CRAFT FOR PERSONS WITH REDUCED MOBILITY

(as referred to in Article 6b)

1. **Access to the ship**

The ships should be constructed and equipped in such a way that a person with reduced mobility can embark and disembark easily and safely, either unassisted or by means of ramps, elevators or lifts. Directions to such access should be posted at the other accesses to the ship and at other appropriate locations throughout the ship.

2. **Signs**

Signs provided on a ship to aid passengers should be accessible and easy to read for persons with reduced mobility, and be positioned at key points.

3. **Means to communicate messages**

The operator should have the means onboard the vessel to visually and verbally provide announcements, such as regarding delays, schedule changes and on-board services, to persons with different forms of reduced mobility.

4. **Alarm**

Alarm/call buttons shall be available and accessible to passengers with reduced mobility.

5. **Additional requirements ensuring mobility inside the ship**

Handrails, corridors and passageways, doorways and doors shall accommodate the movement of a person in a wheelchair. Elevators, vehicle decks, passenger lounges, accommodation and washrooms shall be designed in order to be accessible in a reasonable and proportionate manner to persons with reduced mobility.'

Proposal for a Council Decision on the consequences of the expiry of the European Coal and Steel Community (ECSC) Treaty on the international agreements concluded by the ECSC

(2003/C 20 E/07)

COM(2002) 330 final — 2002/0127(ACC)

(Submitted by the Commission on 20 June 2002)

EXPLANATORY MEMORANDUM

The Treaty establishing the European Coal and Steel Community (ECSC) will expire on 23 July 2002. The ECSC has concluded a number of international bilateral agreements that do not provide for the eventuality of the expiry of the ECSC Treaty. Furthermore, the subject matter covered by the ECSC Treaty will, upon its expiry, be covered by the EC Treaty.

It is in the interest of the European Community that those agreements continue. It is therefore necessary that the rights and obligations flowing from these international agreements be transferred to the EC. The attached draft Council Decision foresees such a transfer and charges the Commission to inform all interested third countries and to undertake all necessary technical amendments. In parallel to this Council Decision, there will be a Decision taken by the Representatives of the Governments of the Member States meeting within the Council devolving on the EC all rights and obligations entered into by the ECSC in bilateral international agreements.

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 virtue of Article 97 thereof, the ECSC Treaty will expire on 23 July 2002.

(2) A number of international agreements with third countries have been concluded by the ECSC.

(3) Those agreements do not provide for the eventuality of the expiry of the ECSC Treaty.

(4) The subject matter covered by the ECSC Treaty will, upon its expiry, be covered by the EC Treaty, including Article 133 thereof.

(5) The Representatives of the Governments of the Member States, meeting within the Council, have decided that the European Community (EC) should succeed to the rights and obligations flowing from the international agreements concluded by the ECSC.

(6) It is considered that it is in the interests of the EC to continue those international treaties beyond the expiry of the ECSC Treaty and that they should devolve on the EC.

(7) Some of these treaties may require technical amendments in order to make them compatible with EC rules.

(8) It will be necessary to inform the third countries concerned accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

As from 24 July 2002, the European Community (EC) shall succeed to the rights and obligations flowing from the international agreements concluded by the European Coal and Steel Community (ECSC) with third countries.

Article 2

The Commission shall inform the third countries concerned about the succession of the EC to the ECSC's rights and obligations flowing from the agreements concerned. It shall furthermore undertake all necessary technical amendments in order to make the agreements compatible with EC rules, and shall, where appropriate, negotiate amendments to the agreements.

Article 3

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

This Decision shall apply as from 24 July 2002.

Proposal for a Council Decision on the position to be taken by the Community within the Association Committee established by the Europe Agreement between the European Communities and their Member States, of the one part, and Romania, of the other part, with regard to the adoption of a Regional aid map on the basis of which regional aid granted by Romania will be assessed

(2003/C 20 E/08)

COM(2002) 337 final — 2002/0130(ACC)

(Submitted by the Commission on 24 June 2002)

EXPLANATORY MEMORANDUM

1. This is a proposal for the adoption of a Regional aid map on the basis of which regional aid granted by Romania will be assessed.

   According to Article 64(4)(a) of the Europe Agreement, the Parties recognised that during the first five years after its entry into force, any regional aid granted by Romania shall be assessed taking into account the fact that Romania shall be regarded as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community.

   On 17 July 2000 the EU-Romania Association Council adopted decision No 2/2000 with regard to the extension for a further period of five years of Romania as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community. The decision was applied as from 1 January 1998 and expires on 31 December 2002.

   Article 2 of decision No 2/2000 obliged Romania to submit the GDP per capita figures which have been harmonised at NUTS level II to the European Commission within six months of the date of the adoption of the decision. On that basis, the Romanian Competition Council and the European Commission jointly evaluated the eligibility of the regions as well as the maximum aid intensities in relation thereto, in order to draw up the regional aid map on the basis of the Community guidelines on national regional aid ([1]).

2. The joint evaluation by the Romanian Competition Council and the European Commission demonstrates that per capita GDP/PPS in all NUTS level II regions in Romania is significantly lower than 60 % of the Community average. In view of this and in reference to Article 4(2) of the Implementing Rules for the application of the provisions on State aid of the Europe Agreement, it is considered that the duration of the Regional aid map should not be limited to 31 December 2002, the expiry date of the period for which Romania is considered as an area identical to those areas of the Community described in Article 87(3)(a) of the EC Treaty in accordance with decision No 2/2000 of the EU-Romania Association Council adopted on 17 July 2000. Instead, it is proposed to extend the duration of the regional aid map until the date of accession or until 31 December 2006, whatever comes first. The inclusion of 31 December 2006 as end date is important to maintain consistency with the maps for the current Member States, all of which (except the map for Germany) will expire on that date, as well as with programming of Structural Funds support.

3. According to the Community guidelines on national regional aid, in the case of regions falling under Article 87(3)(a) of the EC Treaty the intensity of regional aid must not exceed the rate of 50 % NGE, except in the outermost regions, where it may be as much as 65 % NGE. In the NUTS level II regions eligible under Article 87(3)(a) whose per capita GDP/PPS is greater than 60 % of the Community average, the intensity of regional aid must not exceed 40 % NGE, except in the outermost regions, where it may be as high as 50 % NGE. The GDP/PPS of each region and the Community average to be used in the analysis must relate to the average of the last three years for which statistics are available.

([1]) OJ C 74, 10.3.1998, p. 9.

All the above-mentioned ceilings may be raised by 15 percentage points gross in the case of aid granted to small and medium-sized enterprises ([1]). They nevertheless constitute upper limits which apply to the total aid whenever assistance is granted concurrently under several regional schemes, and regardless of whether it comes from local, regional, national or Community sources. Beneath these ceilings, it will be ensured that the regional aid intensity is adjusted to reflect the seriousness and intensity of the regional problems addressed.

4. The Commission hereinafter submits the joint proposal to the Council and requests the Council to adopt the attached proposal for an Association Committee Decision.

([1]) OJ L 107, 30.4.1996, p. 4.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the first sentence of Article 300(2) thereof;

Having regard to the proposal of the Commission of the European Communities;

Having regard to Article 64(4)(a) of the Europe Agreement;

Having regard to Article 4(2) of the Implementing Rules for the application of the provisions on State aid of the Europe Agreement, as adopted by Decision No 4/2000 of the EU-Roumania Association Council of 10 April 2001;

Having regard to Decision No 2/2000 of the EU-Romania Association Council of 17 July 2000 with regard to the extension for a further period of five years of Romania as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community, and in particular its article 2, third sentence;

Whereas:

(1) Article 2 of the decision No 2/2000 obliged Romania within six months of the date of the adoption of the decision to submit the GDP per capita figures which have been harmonised at NUTS level II to the European Commission.

(2) The Romanian State aid monitoring authority (the Competition Council) and the European Commission jointly evaluated the eligibility of the regions as well as the maximum aid intensities in relation thereto in order to draw up the regional aid map on the basis of the Community guidelines on national regional aid ([1]).

(3) According to Article 4(2) of the Implementing Rules, in conjunction with Article 2, third sentence of Decision 2/2000 of the EU-Roumania Association Council, a joint proposal shall be submitted to the Association Committee, which shall take a decision to this effect.

(4) According to the Community guidelines on national regional aid, in the case of regions falling under Article 87(3)(a) of the Treaty the intensity of regional aid must not exceed the rate of 50 % NGE, except in the outermost regions, where it may be as much as 65 % NGE.

(5) In the NUTS level II regions eligible under Article 87(3)(a) whose per capita GDP/PPS is greater than 60 % of the Community average, the intensity of regional aid must not exceed 40 % NGE, except in the outermost regions, where it may be as high as 50 % NGE.

(6) The GDP/PPS of each region and the Community average to be used in the analysis must relate to the average of the last three years for which statistics are available.

(7) All the above-mentioned ceilings may be raised by 15 percentage points gross in the case of aid granted to small and medium-sized enterprises ([2]), and constitute upper limits which apply to the total aid whenever assistance is granted concurrently under several regional schemes, and regardless of whether it comes from local, regional, national or Community sources.

(8) Beneath these ceilings, it will be ensured that the regional aid intensity is adjusted to reflect the seriousness and intensity of the regional problems addressed.

(9) The seriousness and intensity of the regional problems addressed must be assessed within the broader context of all the countries which have concluded Europe agreements with the European Communities.

(10) Romania consists of 8 NUTS level II regions, of which none has a per capita GDP/PPS that exceeds 60 % of the Community average, according to statistical data available for the years 1997-1999.

([1]) OJ C 74, 10.3.1998, p. 9.

([2]) OJ L 107, 30.4.1996, p. 4.

(11) The relative situation of each NUTS level II region does not justify any differentiation of the regional aid intensity ceilings.

(12) The maximum aid intensities applicable in each of the above mentioned regions, as jointly evaluated by the Romanian Competition Council and the European Commission, are in conformity with the requirements set by the Community guidelines on national regional aid,

HAS DECIDED AS FOLLOWS:

The position to be taken by the Community within the Association Committee established by the Europe Agreement between the European Communities and their Member States, of the one part, and Romania, of the other part, with regard to the adoption of the regional aid map shall be based on the draft decision of the Association Committee annexed to this Decision.

Decision No . . ./2002 of the Association Committee between the European Communities and their Member States, of the one part, and Romania, of the other part, of . . . adopting a regional aid map on the basis of which regional aid granted by Romania will be assessed

THE ASSOCIATION COMMITTEE,

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part ([1]) and in particular Article 64(4)(a) thereof,

Having regard to decision No 2/2000 of the EU-Romania Association Council of 17 July 2000 with regard to the extension for a further period of five years of Romania as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community;

Having regard to Article 4(2) of the Implementing Rules for the application of the provisions on State aid of the Europe Agreement;

Whereas:

(1) Article 2 of the decision No 2/2000 obliged Romania within six months of the date of the adoption of the decision to submit the GDP per capita figures which have been harmonised at NUTS level II to the European Commission.

(2) the Romanian State aid monitoring authority (the Competition Council) and the European Commission jointly evaluated the eligibility of the regions as well as the maximum aid intensities in relation thereto in order to draw up the regional aid map on the basis of the Community guidelines on national regional aid ([2]).

(3) according Article 4(2) of the Implementing Rules, a joint proposal shall be submitted to the Association Committee, which shall take a decision to this effect.

(4) according to the Community guidelines on national regional aid, in the case of regions falling under Article 87(3)(a) of the Treaty the intensity of regional aid must not exceed the rate of 50 % NGE, except in the outermost regions, where it may be as much as 65 % NGE.

(5) in the NUTS level II regions eligible under Article 87(3)(a) whose per capita GDP/PPS is greater than 60 % of the Community average, the intensity of regional aid must not exceed 40 % NGE, except in the outermost regions, where it may be as high as 50 % NGE.

(6) the GDP/PPS of each region and the Community average to be used in the analysis must relate to the average of the last three years for which statistics are available.

(7) all the above mentioned ceilings may be raised by 15 gross percentage points in the case of aid granted to small and medium-sized enterprises ([3]), and constitute upper limits which apply to the total aid whenever assistance is granted concurrently under several regional schemes, and regardless of whether it comes from local, regional, national or Community sources.

([1]) OJ L 357, 31.12.1994, p. 2.

([2]) OJ C 74, 10.3.1998, p. 9.

([3]) OJ L 107, 30.4.1996, p. 4.

(8) beneath these ceilings, it will be ensured that the regional aid intensity is adjusted to reflect the seriousness and intensity of the regional problems addressed.

(9) the seriousness and intensity of the regional problems addressed must be assessed within the broader context of all the countries which have concluded Europe agreements with the European Communities.

(10) Romania consists of 8 NUTS level II regions, of which none has a per capita GDP/PPS that exceeds 60 % of the Community average, according to statistical data available for the years 1997-1999.

(11) The relative situation of each NUTS level II region does not justify any differentiation of the regional aid intensity ceilings.

(12) the maximum aid intensities applicable in each of the above-mentioned regions, as jointly evaluated by the Romanian Competition Council and the European Commission, are in conformity with the requirements set by the Community guidelines on national regional aid,

HAS DECIDED AS FOLLOWS:

Article 1

The maximum aid intensity applicable in Romania shall be limited, in net grant equivalent, to 50 %. This maximum aid intensity may be raised by 15 gross percentage points in the case of aid granted to small and medium-sized enterprises [1].

Article 2

The maximum aid intensities referred to under Article 1 shall constitute upper limit which apply to the total aid whenever assistance is granted concurrently under several regional schemes, and regardless of whether it comes from local, regional, national or Community sources.

Article 3

This Decision shall enter into force on the day of its adoption. It shall expire on 31 December 2006 or the date of Romania's accession to the EU, whichever comes earlier.

Done at Brussels, [. . .]

For the Association Committee

The President

[1] OJ L 107, 30.4.1996, p. 4.

Proposal for a Decision of the European Parliament and of the Council on the mobilisation of the flexibility instrument according to point 24 of the Interinstitutional Agreement of 6 May 1999

(2003/C 20 E/09)

COM(2002) 399 final

(Submitted by the Commission on 10 July 2002)

EXPLANATORY STATEMENT

The fisheries agreement between the European Union and the Kingdom of Morocco has not been renewed, and as a result the fishing fleets covered by the agreement have been forced to stop their operations.

Following the Commission's ([1]) proposal, the Council adopted at the end of 2001 a programme ([2]) for actions aiming to supplement the actions carried out in the context of the interventions of the Structural Funds in the Member States affected by the non-renewal of the fisheries agreement with Morocco. This action therefore falls under heading 2 'structural measures', sub-heading 'Structural Funds' of the financial perspectives.

This action amounts to 197 million EUR, of which 170 million have already been entered in the 2002 budget (budget line B2-200) and were financed by the mobilisation of the flexibility instrument. A joint statement by Parliament, Council and the Commission of 21 November 2001 ([3]) stipulates that the 27 remaining million will be entered in the 2003 budget.

On 28 May 2002 the Commission proposed an ambitious reform programme for the European fisheries policy to safeguard the future of this sector ([4]). This reform of the fisheries policy will have important financial consequences since the cost of the scrapping of the vessels was estimated at 712 million EUR. Given the financial resources that Member States had already programmed under the FIFG for the scrapping of vessels and if the amounts initially planned for export or mixed companies are reprogrammed, the Commission evaluates the additional amount necessary to carry out the scrapping of vessels at 272 million EUR over the period 2003-2006. The proposal involves therefore a broad operation of reprogramming of means available within the framework of the Structural Funds, which Member States will be invited to carry out within the framework of the midterm review in 2004. Thus Member States should be able to re-deploy 240 of the 272 million EUR intended for the demolition of the vessels. In the light of the timetable for the mid-term review of the Structural Funds, which will not take place until 2004, an additional amount of 32 million EUR is necessary in 2003 to start the reform of the fisheries policy. These 32 million EUR will be used to provide additional incentives to the owners of vessels to initiate without delay the decommissioning of over-capacity of the fleets.

In accordance with the inter-institutional agreement of 6 May 1999 on budgetary discipline and the improvement of the budgetary procedure, the commitments relating to the structural measures do not leave any margin available under the ceiling of heading 2 of the financial perspectives. The 27 million EUR for the Spanish and Portuguese fleets affected by the non-renewal of the agreement with Morocco and the 32 million EUR for the supplementary measure for demolition will have therefore to be financed beyond the ceiling of the heading 2 of the financial perspectives.

([1]) Proposal for a Council Regulation aiming to promote the conversion of the vessels and the fishermen who were, up to 1999, dependent on the fisheries agreement with Morocco (Document COM(2001) 384 final of 18 July 2001).

([2]) Regulation (EC) No 2561/2001 of the Council at its meeting on 17 December 2001 aiming to promote the conversion of the vessels and the fishermen who were, up to 1999, dependent on the fisheries agreement with Morocco.

([3]) Doc. SN 4641/01 of the conciliation meeting at the time of the 2nd reading of the 2002 budget by the Council.

([4]) COM(2002) 181, 186, 187, 190 of 28 May 2002.

In addition, the PDB 2003 [1] mentioned the difficulties encountered in 2003 in the field of administrative expenditure to finance the necessary preparations to the enlargement so that all the European institutions are able to ensure as from 1 January 2004 the functioning of an enlarged European Union of 25 Member States and the application of the 'acquis communautaire'. This expenditures had not been envisaged in Berlin at the time of the discussions on the financial perspectives 2000-2006. This fact led the Commission to propose in the PDB, on the basis of the most recent estimates of all the institutions, an overshooting of the ceiling of heading 5 of the financial perspectives to the tune of 65,814 million EUR for additional administrative expenditure connected with preparations to the enlargement. These estimates were updated recently by the second report on 'the development of the heading V' [2] established by the Secretaries-General of the institutions at the request of the budgetary authority [3] and transmitted on 31 May 2002 According to these new forecasts, the ceiling of the heading 5 would be exceeded by 74,2 million EUR in 2003.

The present proposal is based on the deficit of 65,814 million EUR included as a basis of calculation in the PDB. The exact figure shall be determined taking into account all possibilities to advance expenditure from 2003 to 2002 and after having exploited all possibilities of redeployment within the heading including between institutions, as foreseen in the Inter-institutional agreement. Also, further examination of reinforced inter-institutional cooperation and the creation of offices open to other institutions will be carried out after a proposal by the Commission of an amending letter for this purpose to be presented in autumn. The budgetary authority will then have all the elements, including the implementation of the 2002 budget, to examine and decide. If still necessary the amount finally to be taken from the flexibility instrument should be confirmed. The repartition over the institutions and expenditure lines will thus be determined in the course of the budgetary procedure.

The inter-institutional Agreement envisages in its point 24 the mobilisation of the flexibility instrument to 'allow financing, for a given financial year and up to the amount indicated (the annual ceiling amounting to 200 million EUR), of clearly identified expenditure which could not be financed within the limits of the ceilings available for one or more other headings'. Although the inter-institutional Agreement also stipulates that 'the flexibility instrument should not, as a rule, be used to cover the same needs two years running', it is recommended nevertheless to make an exception for the residual 27 million EUR for the Spanish and Portuguese fishing fleets, since its financing in 2003 was agreed via joint statement in November 2001 and should be continued under heading 2 as initiated in 2002.

The Commission proposes therefore to have recourse to the flexibility instrument to finance the specific action for the conversion of the Spanish and Portuguese fleets, the Community emergency measure for the destruction of the fishing vessels as well as the overshooting of the ceiling for administrative expenditure necessary for the preparation of the institutions to the enlargement.

[1] SEC(2002) 464 of 30 April 2002.

[2] Letters from Mr O'Sullivan to Mrs. Rodríguez Herrer and Mr. Wynn of 31 May 2002, ref. D (2002) 100187 and PBDGBUDG/100188.

[3] Joint letter from Mrs. Rodríguez Herrer and of Mr. Wynn of 20 March 2002 (ref. 302878).

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure [1], and in particular point 24 thereof,

Having regard to the proposal from the Commission,

[1] OJ C 172, 18.6.1999, p. 1.

whereas:

(1) Following the non renewal of the fisheries agreement between the European Union and the Kingdom of Morocco, a specific action for the conversion of the Spanish and Portuguese fleets was decided for an amount of EUR 197 million. Of this total the budgetary authority agreed on 21 and 22 November at the conciliation meeting between the Council and a delegation of the European Parliament, with the participation of the Commission, to enter EUR 27 million in the 2003 budget.

(2) According to Commission proposals of 28 May 2002 for reform of the common European fisheries policy to safeguard the future of this sector and in particular the Community emergency measure for the scrapping of fishing vessels for 2003, a reduction in the fishing capacity by means of scrapping of vessels is required. The Financial Instrument for Fisheries Guidance will therefore be reprogrammed and it is necessary to provide for a supplementary measure for an amount of EUR 32 million for 2003 to accompany and encourage these measures.

(3) The actions for the conversion of Spanish and Portuguese fleets and for scrapping of vessels fall under heading 2 'structural measures', sub-heading 'Structural Funds' of the financial perspectives.

(4) In accordance with point 12, paragraph 2 of the Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure, the appropriations foreseen for actions covered by the heading 2 'structural measures' of the financial perspectives do not leave any margin under the ceiling. Consequently it is necessary to use the flexibility instrument to cover these expenditure.

(5) In particular, for the action of conversion of the Spanish and Portuguese fleets, it is then appropriate to make an exception to the general rule of the Interinstitutional Agreement, providing that: 'the flexibility instrument should not, as a rule, be used to cover the same needs two years running.'

(6) In 2003, Community institutions have to assume costs connected with the effective administrative preparation to the enlargement and to the application of the 'acquis communautaire' in ten new Member States in order to ensure as from 1 January 2004 the smooth operation of an enlarged European Union.

(7) These expenditures related to enlargement were not foreseen in heading 5 of the financial perspectives. Accordingly, the flexibility instrument should be used to provide such expenditures. The Community institutions intend to examine the actual needs for 2003 in autumn, taking into account the implementation in 2002, the possibilities to front-load some expenditures initially foreseen for 2003, and to explore the redeployment within and between institutions and all possibilities of inter-institutional cooperation. The budgetary authority will then conclude for which amount and budget lines to mobilise the flexibility instrument,

HAVE DECIDED AS FOLLOWS:

Article 1

For the general budget of the European Union for the financial year 2003 (hereinafter 'the 2003 budget'), the flexibility instrument shall be used to provide the sum of EUR 124,814 million in commitment appropriations.

From this amount:

(a) EUR 27 million shall be used for the financing of the targeted measure for the promotion of the conversion of vessels and of fishermen who were, until 1999, dependent on the fisheries agreement with Morocco, covered by the 'structural measures' heading of the financial perspectives, under line B2-200 heading of the 2003 budget.

(b) EUR 32 million shall be used for the financing of supplementary measures for the demolition of the fishing vessels in the framework of the reform of the common fisheries policy, to be covered by a new budget line B2-201, which is to be created by a letter of amendment in the 2003 budget.

(c) [EUR 65,814 million] shall be assigned to the administrative expenditure of the Community institutions for the preparation to enlargement, according to the distribution set out in the Annex.

Article 2

This decision shall be published in the *Official Journal of the European Communities* at the same time as the 2003 budget.

ANNEX

Distribution of the [EUR 65 814 million] for the preparation to the enlargement on the various Community institutions

Section	Institution	Budget line	Name	Amount
Section II	Council			
Section III	Commission			
Section IV	Court of justice			
Section VI	CESE			
Section VII	CdR			
	Total			

Proposal for a European Parliament and Council Regulation concerning monitoring of forests and environmental interactions in the Community (Forest Focus)

(2003/C 20 E/10)

COM(2002) 404 final — 2002/0164(COD)

(Submitted by the Commission on 15 July 2002)

EXPLANATORY MEMORANDUM

Objective of the proposal

The purpose of the present proposal for a European Parliament and Council regulation is the establishment of a new Community scheme on monitoring of forests and environmental interactions to protect the Community's forests. The scheme will be built on the achievements of two Council regulations for monitoring the impacts of atmospheric pollution [1] and of fires [2] on forest ecosystems. The present proposal provides a multi-annual framework covering initially a 6 year period from 2003 to 2008. It aims at adapting the scope of the above mentioned regulations to provide a flexible monitoring scheme to assess forest ecosystem conditions in a broader context. It also simplifies existing activities by regrouping elements of both regulations under a single framework regulation covering the protection and monitoring of forests.

Background

Legislative Background

A Community scheme to protect forests against atmospheric pollution was established by Council Regulation (EEC) No 3528/86 in order to provide increased protection for forests in the Community and thereby contribute in particular to safeguarding the productive potential of agriculture.

The action aims at setting up a long-term forest monitoring system. The Community action was implemented in close co-operation with the International Co-operative Programme on the Evaluation and Monitoring of Air Pollution Effects on Forests (ICP Forests) under the UN-ECE Convention on Long-range Trans-boundary Air Pollution (Geneva, 1979) [3], to which the European Community is a signatory party. The regulation foresees a 50 % Community co-financing of measures carried out by Member States in the context of national programmes.

Council Regulation (EEC) No 2158/92 set up an action framework mainly for the prevention of forest fires. Various measures were co-financed under this regulation, such as the creation or improvement of existing prevention systems and, in particular, the establishment of protection infrastructure (forest paths, tracks, hydrants, firebreaks, etc.), as well as the creation or improvement of systems to monitor forests or identify the causes of forest fires and determine the means for combating them. The forest fire information system is one of the elements of this regulation, which will be also covered by the proposed framework regulation.

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[1] Council Regulation (EEC) No 3528/86 of 17 November 1986 on the protection of Community's forests against air pollution (OJ L 326, 21.11.1986, p. 2).

[2] Council Regulation (EEC) No 2158/92 of 23 July 1992 on the protection of Community's forests against fire (OJ L 217, 31.7.1992, p. 3).

[3] UN/ECE, 1979, the Convention on Long-range Transboundary Air Pollution.

Council Regulation (EC) No 307/97 of 17 February 1997 [1] amending Regulation (EEC) No 3528/86 referred to Article 43 of the Treaty as the legal basis. On 30 April 1997 the European Parliament submitted an application on this subject to the Court of Justice. On 25 February 1999 the Court delivered a judgement in Joined Cases C-164/97 and C-165/97 [2], in which it noted that the Council should have taken Article 130 of the Treaty (now Article 175 of the EC Treaty) as the sole legal basis. Consequently, Regulation (EC) No 307/97 was annulled. However, the Court suspended the effects of the annulment until the Council adopts a new regulation on the same subject within a reasonable period. This new regulation (EC) 1484/2001 [3] entered into force on 21 July 2001. Council Regulation (EEC) No 3528/86 has recently been amended by Regulation (EC) No 804/2002 [4].

Protecting forests against atmospheric pollution

In co-operation with ICP Forests, Community action has been developed over the years in line with objectives formulated in Ministerial Conferences on the Protection of Forests in Europe (Strasbourg [5], Helsinki [6] and Lisbon [7]) and the United Nations Conference on Environment and Development (UNCED) (Rio de Janeiro 1992). The Community action has been implemented by Commission Regulations (EEC) Nos 526/87 [8] and 1696/87 [9], (EC) Nos 1091/94 [10] and 2278/99 [11] and has fulfilled the objectives set by the Council.

Protecting forests against forest fires

In 1994, the Commission adopted Regulation (EC) 804/94 [12] on implementing the Community forest-fire information system. This regulation introduced systematic collection of a set of data on each fire occurring, for all areas at risk of fire in the Member States participating in the system. The forest-fire information system now covers six Member States of the Union with fire-risk areas: Germany, Portugal, Spain, France, Italy and Greece. The system is an operational tool for monitoring and assessing the measures taken by the Member States and the Commission for fire prevention.

References to Environmental Policies and Integrating New Environmental Issues

This enhanced monitoring regulation is related to the overall package of environmental action areas and will follow a scientific based approach. The various monitoring elements proposed are all related to key priorities in the 6th Environmental Action Programme [13] and the Sustainable Development Strategy [14], i.e. pollution, climate change, biodiversity, natural resources and soils.

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(1) OJ L 51, 21.2.1997, p. 9.

(2) [1999] ECR I-1139.

(3) OJ L 196, 20.7.2001, p. 1.

(4) OJ L 132, 17.5.2002, p. 1.

(5) General Declaration and Resolutions Adopted. First Ministerial Conference on the Protection of Forests in Europe, Strasbourg, 1990.

(6) General Declaration and Resolutions Adopted. Second Ministerial Conference on the Protection of Forests in Europe, Helsinki 1993.

(7) General Declaration and Resolutions Adopted. Third Ministerial Conference on the Protection of Forests in Europe, Lisbon 1998.

(8) OJ L 53, 21.2.1997, p. 14.

(9) OJ L 161, 22.6.1987, p. 1.

(10) OJ L 125, 18.5.1994, p. 1.

(11) OJ L 279, 29.10.1999, p. 3.

(12) OJ L 93, 12.4.1994, p. 11.

(13) The 6th Environmental Action Programme: Our Future our Choice, 24.1.2001, COM(2001) 31 final.

(14) A Sustainable Europe for a better world: A European Union Strategy for Sustainable Development, 15.5.2001, COM(2001) 264 final.

Environmental legislation and policies at Union level, such as the Clean Air for Europe Programme ([1]), the 2000/60/EC Water Framework Directive ([2]), the 79/409/EEC Directive on the conservation of wild birds ([3]) and the 92/43/EEC Directive on the conservation of natural habitats and of wild flora and fauna ([4]), as well as the recent EU Thematic Strategy for Soil Protection ([5]), need better information to identify the nature of risks and uncertainties, so as to provide a basis for solutions and further policy decisions. A Community scheme on monitoring of forests and environmental interactions will contribute to meeting these needs.

The proposed monitoring activity could assist substantially the monitoring requirements deriving from European Climate Change Programme ([6]), the EU Biodiversity Strategy ([7]) and corresponding Biodiversity Action Plans, the Soil Strategy and the forthcoming scheduled work on the Soil Monitoring Directive and could contribute to Global Monitoring of Environment and Security (GMES) activities.

The European Union and its Member States are committed to promote sustainable development in all policies and actions. The EU and its Member States are also committed to the sustainable management and protection of forests in all relevant international and pan-European processes related to forests such as in particular the Forest Principles agreed at the 1992 UN Conference for Environment and Development in Rio de Janeiro and the subsequent work deriving from its follow-up ([8]), the ongoing process of the Ministerial Conference on the Protection of Forests in Europe and the resolutions ([9]) adopted so far in this context, as well as the Convention on Long-range Transboundary Air Pollution and the protocols under this Convention.

Evaluation of the proposed Community scheme

The proposal has not been based on an ex-ante evaluation, as the proposed scheme builds on the monitoring activity of the Council Regulations (EEC) No 3528/86 and (EEC) No 2158/92. The Commission has recently prepared a report on the application of the monitoring activity 1987-2001, which will be sent to the European Parliament and the Council.

However, the proposal has taken into consideration the results of an independent review of the monitoring activity. Centralised co-ordination by a Scientific Co-ordination Body, continuous monitoring of activities carried out by the scheme and a new organisational structure, shall help to further improve the efficiency of the scheme. The requirement in the National Programmes of the Member States to elaborate ex-ante, midterm and ex-post evaluations will enhance the transparency of the scheme's activities and its overall cost efficiency. The Commission will similarly carry out a midterm review of the scheme followed by an evaluation report at the end of the execution period of the scheme.

([1]) Communication from the Commission, The Clean Air for Europe (CAFE) Programme: Towards a Thematic Strategy for Air Quality, 4.5.2001, COM(2001) 245 final.

([2]) OJ L 327, 22.12.2000, p. 1.

([3]) OJ L 103, 25.4.1979, p. 1.

([4]) OJ L 206, 22.7.1992, p. 7.

([5]) Communication from the Commission to the Council and the European Parliament, Towards a Thematic Strategy for Soil Protection, 16.4.2002, COM(2002) 179 final.

([6]) EU policies and measures to reduce greenhouse gas emissions: Towards a European Climate Change Program, COM(2000) 88 final.

([7]) A European Community Biodiversity Strategy, 5.2.1998, COM(1998) 42 final.

([8]) UNCED, 1992, the Convention on Biological Diversity, the Convention on Climate Change, the UN Intergovernmental Panel and Forum on Forests and the UN Forum on Forests.

([9]) Ministerial Conferences on the Protection of Forests in Europe (Strasbourg, 1990, Helsinki, 1993 and Lisbon, 1998).

Outline of the proposed framework monitoring regulation

Legal Basis

According to the decision of the European Court (25 February 1999) concerning the legal basis for Council Regulation (EEC) No 3528/86 as well as for Council Regulation (EEC) No 2158/92 and with respect to the objectives of the future EU action Article 175 of the Treaty is the only legal basis. The Community policy on the environment shall contribute, under Article 174, paragraph 1, to preserve, to protect and to improve the quality of the environment and encourage prudent and rational use of natural resources, taking into account the diversity of situations in different regions of the Community.

Implementation of the scheme

The framework regulation will be implemented by Commission regulations, which will prescribe general aspects of the monitoring activities, procedures to be followed for reporting and for the national programmes. The Commission regulations will also deal with the establishment of manuals that describe the monitoring methods.

Objectives, Content and Definitions (Article 1-3)

The main objective of the proposed action is to provide a framework for a Community scheme to contribute towards the protection of forest ecosystems in the Community by monitoring the conditions of these ecosystems. The objective cannot be sufficiently achieved by the Member States acting separately. It can be better achieved by a Community action in order to ensure harmonised data collection and the provision of policy relevant information at Community level, which shall help the evaluation of ongoing Community measures to promote the conservation and sustainable management of forest ecosystems.

The following aspects have been taken into account:

— Nearly 44 % of the total land area of the EU is covered with forests and other wooded areas. Forest ecosystems fulfil various functions with economic, social and ecological significance. Furthermore forest ecosystems are also habitat for various species of plants and animals.

— Forest ecosystems are exposed to serious threats from air pollution, fires, climatic change, and attacks from parasites and diseases. Most of these threats can have cross-border effects and can seriously upset and even destroy forest ecosystems.

— The protection of forest ecosystems is therefore a major concern. The European Union and its Member States are committed to the protection of forests and to the sustainable management of forests in all relevant pan-European and international processes related to forests. The forest strategy and the sixth environmental action programme address forest related issues of concern and identify monitoring needs.

— Forest ecosystem conditions, changes of these conditions, forests ecosystems reaction to environmental stress and the effects of policies can only be traced by means of monitoring.

— Changes in forest ecosystem condition as well as the reasons for these changes may be recognised at an early stage thereby allowing the adoption of timely and appropriate measures in due time.

— A long-term monitoring programme, which is flexible in its implementation, is needed to achieve these objectives.

The future EU scheme shall be based on four pillars:

— establishment of a monitoring programme on air pollution effects on forests,

— establishment of forest fire monitoring,

— continuous evaluation of the efficiency of monitoring activities in the assessment of forest ecosystem conditions and the further development of monitoring activity,

— establishment of new monitoring activities on forest biodiversity, soils, climate change and carbon sequestration after the development of appropriate monitoring methods and provided that the necessary additional financial resources will be made available by the budgetary authority.

Monitoring and tools to improve and develop the scheme (Article 4-7)

The monitoring of air pollution effect on forests will be carried out on a systematic network of observation points, which covers the whole Community, and a network of intensive monitoring plots. The systematic network provides representative information on forest conditions and changes. Intensive monitoring in selected plots allows for in-depth monitoring activities in order to observe ecosystem processes. Thus the intensive monitoring plots and the monitoring on the systematic network of points complement each other.

Fires seriously affect forests in many parts of the Community. The forest fire monitoring will be established with a view to monitoring the extent and causes of forest fires. It will allow assessing the impacts of fires on forest ecosystem conditions and will provide an operational tool for monitoring and assessing the measures taken by the Member States and the Commission. The provisions of the Programme activities will support and complement activities related to forest fires undertaken under the provisions of civil protection ([1]), the Council Regulation (EEC) No 1257/1999 on support for rural development ([2]) and the European Forest Information and Communication System (EFICS) ([3]).

The Commission shall conduct studies, experiments and demonstration projects, which shall in particular help to develop the scheme and to further improve its efficiency. In order to make full use of the results derived from these actions, Member States will be asked to conduct studies, experiments and demonstration projects in the new monitoring areas. The determination of appropriate parameters, the elaboration of methods for data collection and a test phase to check the feasibility and practicability of the methods are therefore prerequisites for the gradual incorporation of new monitoring elements.

National Programmes, Co-ordination and Co-operation (Article 8-11)

The monitoring activities to be carried out by the Member States, in particular the collection of data as well as studies, experiments and demonstration projects shall be implemented under multi-annual national programmes (3 year period).

To achieve these objectives the Commission shall establish a Scientific Co-ordination Body, which may be within the Joint Research Centre. It shall in particular organise the collection and assessment of data and shall develop a Community data platform.

The Commission may need additional assistance from contracted decentralised thematic centres and may in addition consult and contract experts and research institutes for carrying out specific works.

([1]) OJ L 327, 21.12.1999, p. 53.

([2]) OJ L 160, 26.6.1999, p. 80.

([3]) OJ L 165, 15.6.1989, p. 12.

The European Environmental Agency shall assist the Commission in its reporting activity. In this context co-operation with pan-European and international bodies, in particular with ICP Forests in the common field of monitoring air pollution, is needed to ensure a coherent approach to monitoring.

Period of Execution and Financial Aspects (Article 12-13)

The scheme shall run for 6 years, from 1 January 2003 to 31 December 2008. The proposed framework regulation will provide co-financing up to 50 % of the eligible costs for monitoring activity and database platforms, as well as for studies, experiments and demonstration projects to be carried out by Member States in the context of their national programmes. The Commission will finance its own activities, such as co-ordination and evaluation work, as well as studies, projects and experiments. A contribution shall be made to the European Environmental Agency. Furthermore, a contribution may be provided to ICP Forests to establish a scientific interface with the Scientific Co-ordination Body of the Community, thus allowing the ICP Forests to ensure the exchange of knowledge, information and data and to allow for a coherent approach in common fields of forest monitoring.

In order to conduct monitoring of air pollution effects on forests and on forest fires, to develop new monitoring activities and to improve the scheme 52 Million EUR shall be provided for the period 2003-2006. For the years 2007 and 2008, the annual amount of 13 million EUR may be increased in order to fund new activities, provided such an increase is approved by the budgetary authority.

Execution, Reporting by Member States, Standing Forestry Committee (Article 14-17)

The Member States shall each designate one National Focal Centre to ensure efficient and clear communication structures.

The data gathered under the scheme shall be submitted by the National Focal Centres to the Commission. The environmental data gathered under the scheme shall be made available to the public and especially to experts and research institutes.

A multi-annual approach with a reporting period of three years is foreseen for the reporting of the results gained from the monitoring of forest ecosystems conditions. However, for forest fires these will be for annual reporting. The Commission will conduct a review of the scheme after three years and report on its implementation.

The Standing Forestry Committee shall assist the Commission in co-ordinating, monitoring and developing the scheme for harmonised and comprehensive monitoring of forest ecosystem conditions and related environmental impacts. It will be consulted in accordance with the procedures of Council Decision 1999/468/EC [1] of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

Reporting by the Commission, Review, Candidate Countries (Article 18-21)

The Commission shall conduct a review of the scheme after its first 3 year period and shall report during its fourth year based on this review, on this basis on the implementation of the scheme. Also before the running period referred to in the regulation expires, the Commission will report to the European Parliament and to the Council on the implementation of the regulation. The scheme shall be open to the candidate countries.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175 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 ([1]),

Whereas:

(1) Forests have an important multifunctional role for society. Apart from their significant role in the development of rural areas, forests have a major value for nature conservation, play an important role in preserving the environment, are key elements of the carbon cycle and significant carbon sinks and represent a critical controlling factor of the hydrological cycle.

(2) Forest ecosystems can be seriously affected by natural factors such as extreme weather conditions, attacks from parasites and diseases, or human influences such as climate change, fires and air pollution. Such threats can seriously distort and even destroy forest ecosystems. Most natural and anthropogenic factors affecting forest ecosystems can have cross-border effects.

(3) The Communication from the Commission to the Council and the European Parliament on a Forestry Strategy for the European Union ([2]) stressed the need to protect the natural environment and the forest heritage, to sustainably manage forests, and to support international and pan-European co-operation concerning the protection of forests making reference to forest monitoring and the promotion of forests as carbon sinks. The Council with its Resolution of 15 December 1998 on the Forestry Strategy ([3]) has called upon the Commission to evaluate and improve continuously the effectiveness of the European monitoring system of forest health and to take into account all the potential impacts on forest ecosystems. It has also called upon the Commission to pay special attention to the development of the Community Forest Fire Information System, which enables the effectiveness of the protection measures against fires to be better assessed.

(4) The sixth environmental action programme of the European Community ([4]) identifies the need to base the drawing-up, implementation and evaluation of environmental policies on a knowledge based approach and, in particular, the need for monitoring the multiple roles of forests in line with recommendations adopted by the Ministerial Conference on the Protection of Forests in Europe and the United Nations Forum on Forests and the Convention on Biodiversity and other fora.

(5) The Community and the Member States are committed to implement internationally agreed activities related to the conservation and sustainable management of forests, in particular, the Proposals for Actions of the Intergovernmental Panel and Forum on Forests, as well as the Expanded Work Programme on Forest Biological Diversity of the Convention on Biological Diversity ([5]).

(6) The Community has already addressed two of the causes adversely affecting forest ecosystems conditions by Council Regulation (EEC) No 3528/86 of 17 November 1986 on the protection of the Community's forests against atmospheric pollution ([6]) and Council Regulation (EEC) No 2158/92 of 23 July 1992 on protection of the Community's forests against fire ([7]).

(7) Both regulations expire on 31 December 2002 and it is in the general interest of the Community to continue and further develop the monitoring activities established by those Regulations by integrating them into a new scheme called 'Forest Focus'.

(8) Measures under the scheme concerning forest fire monitoring should complement those measures which are under taken, in particular, under the provisions of Council Decision 1999/847/EC of 9 December 1999 establishing a Community action programme in the field of civil protection ([8]), Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations ([9]) and Council Regulation (EEC) No 1615/89 of 29 May 1989 establishing a European Forestry Information and Communication System (EFICS) ([10]).

(9) The scheme should encourage the exchange of information on forest ecosystems conditions in the Community and enable the evaluation of the impact of Community's measures taken to protect and develop and manage forests in the Community in a sustainable way.

([1]) OJ C 340, 10.11.1997, p. 173.

([2]) A Forestry Strategy for the European Union, 3.11.1998, COM(1998) 649 final.

([3]) OJ C 56, 26.2.1999, p. 1.

([4]) The 6th Environmental Action Programme: Our Future our Choice, 24.1.2001, COM(2001) 31 final.

([5]) Decision VI/22 of the Conference of the Parties to the UN Convention on Biological Diversity, 2002, The Hague.

([6]) OJ L 326, 21.11.1986, p. 2; as last amended by Regulation (EC) No 804/2002 (OJ L 132, 17.5.2002, p. 1).

([7]) OJ L 217, 31.7.1992, p. 3; as last amended by Regulation (EC) No 805/2002 (OJ L 132, 17.5.2002, p. 3).

([8]) OJ L 327, 21.12.1999, p. 53.

([9]) OJ L 160, 26.6.1999, p. 80.

([10]) OJ L 165, 15.6.1989, p. 12; as last amended by Regulation (EC) No 1100/98 (OJ L 157, 30.5.1998, p. 10).

(10) In order to promote a comprehensive understanding of the relationship between forests and the environment, the scheme should also include monitoring of other important factors such as biodiversity, carbon sequestration, climate change and soils. That scheme should therefore comprise actions in order to provide for a broader range of objectives and a flexible implementation, while building on the achievements made under Regulations (EEC) No 3528/86 and (EEC) No 2158/92. It should provide for appropriate, cost efficient monitoring of forests and environmental interactions.

(11) The Member States should implement scheme through national programmes to be approved by the Commission following a procedure, which will be set up.

(12) The Commission should ensure the co-ordination, monitoring and development of the scheme through a Scientific Co-ordination Body and conduct it's own studies, experiments and demonstration projects.

(13) The monitoring of forests and environmental interactions can only provide reliable and comparable information to protect forests in the Community, if data are collected on the basis of harmonised methods. Such comparable information at Community level would contribute towards the establishment of a platform containing spatial data deriving from various sources of common environmental information systems. It is therefore appropriate to prepare manuals laying down the methods to be used for monitoring of forest ecosystem conditions, the format of the data and rules for data handling.

(14) The Commission should co-operate with other international bodies in the field of forest monitoring, and, in particular, the International Co-operative Programme on the Evaluation and Monitoring of Air Pollution Effects on Forests.

(15) This regulation establishes a financial framework for the entire duration of the programme which is to be the principal point of reference for the budgetary authority, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ([1]).

(16) It is appropriate to determine the volume of the Community contribution to activities financed under the scheme.

(17) The financial contribution to eligible costs of the activities under the scheme should support harmonised data collection and promote the further development of the scheme. During the initial phase, financial resources will mainly be assigned for the continuation of the monitoring activities established under Regulations (EEC) No 3528/86 and (EEC) No 2158/92. The scheme should, in the future, provide for additional necessary financial contribution for newly defined monitoring activities.

(18) Member States should designate co-ordination authorities and agencies at national level, responsible for the handling and forwarding of data, as well as for the administration of the Community contribution.

(19) Member States should also draw up reports on different monitoring activities, which should be submitted to the Commission.

(20) The data should be disseminated taking into account the Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention) ([2]).

(21) 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 to the Commission ([3]). The Standing Forestry Committee shall assist the Commission ([4]).

(22) It is important to keep the scheme under review and assess its effectiveness, in order to identify needs to be addressed. The Commission should report to the European Parliament and to the Council on the implementation of the scheme, in particular in view of it's continuation beyond the implementation period fixed in this Regulation.

(23) Since the objectives of the proposed action, namely the monitoring of forests, their ecosystems conditions and environment interactions, cannot, by their very nature, be sufficiently achieved by the Member States and can therefore, be better achieved at Community level, the Community may adopt measures, in accordance with the principle 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 regulation does not go beyond what is necessary in order to achieve those objectives.

([1]) OJ C 172, 18.6.1999, p. 1.

([2]) Convention on access to information, public participation in decision making and access to justice in environmental matters. UN/ECE, 1998.

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

([4]) OJ L 165, 15.6.1989, p. 14.

(24) The Europe Agreements between the European Union and its Member States, of the one part, and the candidate countries of Central and Eastern Europe, of the other part, provide for participation of these countries in Community programmes, in particular in the field of the environment.

(25) In the light of the expiry of Regulations (EEC) No 3528/86 and (EEC) No 2158/92 and in order to avoid any overlap or void it is appropriate for the regulation to apply from 1 January 2003,

HAVE ADOPTED THIS REGULATION:

Objectives, Content and Definitions

Article 1

A Community scheme for broad based, harmonised and comprehensive, long-term monitoring of forest ecosystems conditions, (hereinafter referred to as 'the scheme') is hereby established to encourage the implementation of monitoring activities, in particular in the following areas:

(a) monitoring and protection of forests against atmospheric pollution;

(b) monitoring and protection of forests against fires;

(c) monitoring of biodiversity, climate change, carbon sequestration and soils;

(d) continuous evaluation of the efficiency of the monitoring activities in the assessment of forest ecosystems conditions and the further development of monitoring activity.

The scheme shall provide reliable and comparable data and information on forest ecosystems conditions and harmful influences affecting the Community's forest ecosystems. It shall also help to evaluate ongoing Community measures to promote conservation and sustainable management of forests, with particular emphasis on actions taken to reduce impacts negatively affecting forest ecosystems.

Article 2

1. The scheme shall provide for actions in order to:

(a) promote harmonised collection, handling and assessment of data;

(b) improve data evaluation and promote integrated data evaluation at Community level;

(c) improve the quality of data and information gathered under the scheme;

(d) further develop the monitoring activity of the scheme;

(e) enhance the understanding of forest ecosystems and, in particular, the causes of natural and anthropogenic stresses;

(f) study the dynamics of forest fires and their impacts on forest ecosystems;

(g) develop indicators and methodologies for cumulative risk assessment.

2. The actions set out in paragraph 1 shall be complementary to Community research programmes.

Article 3

1. For the purpose of this regulation, the following definitions shall apply:

(a) 'Forest ecosystems' means 'forest' being land with tree crown cover (or equivalent stocking level) of more than 10 percent and area of more than .5 ha., the trees being able to reach a minimum of 5 m at maturity *in situ*, and 'other wooded land' being land either with a tree crown cover (or equivalent stocking level) of 5 to 10 percent of trees able to reach a height of 5 m at maturity *in situ*; or land with a crown cover (or equivalent stocking level) of more than 10 percent of trees not able to reach a height of 5 m at maturity *in situ* (e.g. dwarf or stunted trees) or shrub or bush cover;

(b) 'Ecosystem' means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

(c) 'Development of the scheme' means the elaboration and establishment of new monitoring activities;

(d) 'Improvement of the scheme' means the optimisation of monitoring activities already implemented.

2. Forest as referred to in paragraph 1(a) may consist either of closed forest formations where trees of various storeys and undergrowth cover a high proportion of the ground; or of open forest formations with a continuous vegetation cover in which tree crown cover exceeds 10 percent. Young natural stands and all plantations established for forestry purposes which have yet to reach a crown density of 10 percent or tree height of 5 m are included under forest, as are areas normally forming part of the forest area which are temporarily unstocked as a result of human intervention or natural causes, but which are expected to revert to forest.

Monitoring and tools to improve and develop the scheme

Article 4

1. Building on the achievements of Regulation (EEC) No 3528/86, the scheme shall:

(a) continue and further develop a systematic network of observation points in order to conduct periodic inventories in order to get representative information of forest ecosystems conditions;

(b) continue and further develop a network of observation plots, on which intensive and continuous monitoring of the forest ecosystems are carried out.

2. The detailed rules for the implementation of paragraph 1 shall be laid down in accordance with the procedure referred to in Article 17(2).

Article 5

1. Building on the achievements of Regulation (EEC) No 2158/92, the scheme shall continue and further develop an information system in order to collect comparable information on forest fires at Community level.

2. The scheme shall allow Member States to conduct studies on the identification of the causes and dynamics of forest fires, as well as on the response of forest ecosystems to them. Those studies shall complement activities and measures related to forest fires undertaken under the provisions of Decision 1999/847/EC, Regulation (EC) No 1257/1999 and Regulation (EEC) No 1615/89.

3. Member States may, at their request, participate in the measures and activities referred to in paragraphs 1 and 2.

4. The detailed rules for the implementation of paragraphs 1 and 2 shall be laid down in accordance with the procedure referred to in Article 17(2).

Article 6

1. For the realisation of the aims set out in Article 1(c), the Commission shall conduct studies, experiments and demonstration projects to further develop the scheme and, in particular to:

(a) enhance the knowledge of forest ecosystems conditions as well as the relationship between forest ecosystems conditions and natural and anthropogenic stresses;

(b) assess impacts of climate change on forest ecosystems, including forest biodiversity;

(c) identify key structural and functional ecosystems elements to be used as indicators for assessing status and trends of forest ecosystems biodiversity;

(d) study the interactions between forests and the environment.

2. Based on the findings of the measures set out in paragraph 1, the Commission may ask Member States to carry out studies, experiments, demonstration projects or a monitoring test phase.

3. The measures set out in paragraphs 1 and 2 shall help to define new monitoring activities, to be incorporated into the scheme after the approval of appropriate manuals. When developing the scheme, the Commission shall take account of scientific as well as financial needs and restrictions.

4. The detailed rules for the implementation of paragraphs 1, 2 and 3 shall be laid down in accordance with the procedure referred to in Article 17(2).

Article 7

1. For the realisation of the aims set out in Article 1(d) and in addition to the actions set out in Article 6, the Commission shall conduct studies, experiments and demonstration projects in order to:

(a) promote harmonised collection, handling and assessment of data at Community level;

(b) improve data evaluation at Community level;

(c) improve the quality of data and information gathered under the scheme.

2. The detailed rules for the implementation of paragraph 1 shall be laid down in accordance with the procedure referred to in Article 17(2).

National Programmes, Co-ordination and Co-operation

Article 8

1. The activities provided for in the Articles 4 and 5 and Article 6 (2 and 3) shall be implemented under national programmes, to be drawn up by the Member States for periods of 3 years.

2. The national programmes shall be submitted to the Commission within 30 days following the entry into force of this Regulation and thereafter before 1 November in the year preceding the commencement date of each 3 year period.

3. Member States shall adapt their national programmes approved by the Commission, in particular in order to allow for the extension of the monitoring activity developed in accordance with Article 6.

4. The national programmes shall be accompanied by an ex-ante evaluation when they are submitted to the Commission. The Member States shall also carry out mid-term evaluations at the end of the third year of the period set out in Article 12 and ex-post evaluations at the end of that period.

5. The Commission shall, on the basis of the national programmes submitted, or on the basis of any approved adaptations of these national programmes, decide on the financial contributions to the eligible costs.

6. Detailed rules for the implementation of paragraphs 1 to 4 shall be laid down according to the procedure referred to in Article 17(2).

Article 9

1. The Commission shall co-ordinate, monitor and develop the scheme and shall report on it.

2. The Commission shall assess data at Community level and shall ensure the evaluation of the collected data and information at Community level.

3. To fulfil the tasks laid down in paragraphs 1 and 2, the Commission shall establish a Scientific Co-ordination Body, which may be within the Joint Research Centre, which may be supported by decentralised thematic centres.

To fulfil its reporting tasks laid down in paragraph 1 the Commission shall be assisted by the European Environmental Agency.

4. The Commission may consult and contract research institutes and experts to develop the scheme and to ensure the evaluation of the data gathered, as well as the publication of results from data evaluations.

Article 10

1. To harmonise the activities referred to in Article 4 and 5 and Article 6(3) and to ensure the comparability of data, manuals shall specify mandatory parameters and lay down the monitoring methods as well as the data formats to be used for data transmission.

2. Detailed rules for the implementation of paragraph 1 shall be laid down according to the procedure referred to in Article 17(2).

Article 11

1. The Commission shall co-operate, in particular with regard to the objectives set out in Article 1, with other bodies at an international or pan-European level to meet the Community's obligations for the protection and sustainable management of forests.

2. In the context of Article 4, the Commission shall collaborate with the International Co-operative Programme on Assessment and Monitoring of Air Pollution Effects on Forests, (hereinafter referred to as 'ICP Forests'), to meet obligations set out in the framework of the Convention on Long-range Transboundary Air Pollution.

3. For the purposes of the co-operation referred to in paragraphs 1 and 2, the Community may support the following activities:

(a) establishment of a scientific interface to the Scientific Co-ordination Body;

(b) studies and data evaluations.

Period of Execution and Financial Aspects

Article 12

1. The scheme shall run for a period of 6 years from 1 January 2003 to 31 December 2008.

2. For the purposes of the scheme the maximum financial support of the Community to the eligible costs of the national programmes shall be as follows:

(a) Activities to be realised under Article 4: 50 %;

(b) Activities to be realised under Article 5: 50 %;

(c) Activities to be realised under Article 6(2) and (3): 50 %.

3. The Commission shall pay the Community contribution to the eligible costs to the Member States.

4. The Commission shall finance activities to be realised under Article 6(1), Article 7 and Article 9 (1, 2 and 4), in accordance with the applicable rules for public procurement.

5. The Community may provide a contribution to the European Environmental Agency for the fulfilment of the tasks set out in Articles 9(3) and 18.

6. The Community may provide a contribution to the ICP Forests in order to meet the Community's obligations set out in Article 11, paragraph 2.

Article 13

1. The financial resources for the implementation of the scheme for the period 2003-2006 shall be 52 million EUR. Thereafter, for the period 2007-2008, this annual amount of 13 million EUR may be increased, subject to an authorisation by the budgetary authority.

2. The financial resources fixed in paragraph 1 shall be increased in the case of accession of new Member States to the Union.

3. Annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspectives.

Execution, Reporting by Member States, Standing Forestry Committee

Article 14

1. Member States shall designate the bodies competent to manage the activities included in the approved national programmes, on the basis of the financial and operational capacity of those bodies. Those bodies can be either national administrations or other entities, subject to Commission's approval of private entities.

2. Member States shall designate one single authority or agency to co-ordinate the programme at national level, (hereinafter referred to as 'National Focal Centre').

3. Member States shall be responsible for the sound and efficient management of the Community contribution. To that end, they shall adopt the provisions necessary to:

(a) ensure that the activities financed by the Community are actually carried out and that they are carried out in the proper manner, ensuring the visibility of the contribution of the Community,

(b) prevent any irregularity,

(c) recover payments lost as a result of any irregularity or negligence,

(d) ensure that the bodies mentioned in paragraph 1 have proper internal management and control systems,

(e) in the case that the bodies mentioned in paragraph 1 are not public entities, Member States stand guarantee for them.

4. Member States shall provide the Commission with all the necessary information and shall make any arrangements, which may facilitate checks, including on-the-spot inspections by the Commission or the European Court of Auditors, which the Commission considers appropriate for the purposes of managing Community financing. Member States shall inform the Commission of the arrangements made to this end.

Article 15

1. The Member States shall annually, through the National Focal Centres, forward to the Scientific Co-ordination Body the data gathered under the scheme, together with a data accompanying report.

The data shall be geo-referenced and transmitted to the Commission by means of computer telecommunications and/or electronic technology. The Commission shall establish the format and particulars needed for the transmission.

2. The Member States shall actively disseminate the data gathered according to common formats and standards and through electronic geo-referenced databases that are easily accessible to the public.

3. The Commission's right to use and disseminate the data gathered shall not be restricted in order to promote the evaluation of the data and to obtain the highest added value from the use of the data, in accordance with the Aarhus convention.

4. The detailed rules for the implementation of paragraph 1 shall be laid down in accordance with the procedure referred to in Article 17(2).

Article 16

1. Each Member State shall draw up, in particular on the basis of the activities set out in Article 4(1), a report on the national situation regarding forest ecosystems conditions.

The report shall be transmitted to the Commission no later than 31 December every third year starting from 2005.

2. Each Member State participating in the activities set out in Article 5(1) and (2) shall draw up a report on the national situation regarding the impacts of fires on forest ecosystems.

The report shall be transmitted to the Commission no later than 31 December each year, starting from 2003.

3. Each Member State shall draw up a report on the national situation regarding matters dealt with by monitoring activities referred to in Article 6(3).

The reporting period shall be laid down in accordance with the procedure referred to in Article 17(2).

Article 17

1. The Standing Forestry Committee set up by Council Decision 89/367/EEC shall assist the Commission.

2. Where reference is made to the present paragraph, Articles 4 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 4(3) of Decision 1999/468/EC shall be set at two months.

Reporting by the Commission, Review, Candidate Countries

Article 18

Six months from the date set for the transmission of the reports referred to in Article 16(1) and taking into account all reports transmitted pursuant to Article 16, the Commission assisted by the European Environment Agency, shall submit a report on the implementation of the scheme to the European Parliament and the Council together with a review of the scheme (mid-term review).

Article 19

Before the expiry of the period referred to in Article 12(1), the Commission shall submit to the European Parliament and to the Council a report on the implementation of the scheme, taking into account the review referred to in Article 18.

Article 20

This scheme shall be open to participation of:

(a) the candidate countries of Central and Eastern Europe (CEECs), in accordance with the conditions established in the Europe Agreements, in their additional protocols, and in the decisions of the respective Association Councils;

(b) Cyprus, Malta and Turkey on the basis of bilateral agreements to be concluded with these countries.

Article 21

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

It shall apply from 1 January 2003.

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

Proposal for a Council Decision concerning the signature and provisional application of an Agreement in the form of an exchange of letters between the European Community and the former Yugoslav Republic of Macedonia concerning the system of ecopoints to be applied to transit traffic of the former Yugoslav Republic of Macedonia through Austria

(2003/C 20 E/11)

COM(2002) 418 final — 2002/0188(CNS)

(Submitted by the Commission on 23 July 2002)

EXPLANATORY MEMORANDUM

1. The Agreement between the European Community and the former Yugoslav Republic of Macedonia in the field of transport [1] establishes that a system of ecopoints, equivalent to that applicable to Community heavy goods vehicles in transit through Austria, shall apply to transit traffic of the former Yugoslav Republic of Macedonia through Austria, with effect from 1 January 1999.

   In accordance with the provisions of Article 12.3(b), the method of calculation and the detailed rules and procedures for the management and control of the ecopoints are to be agreed by means of an exchange of letters between the Contracting Parties, and will be in line with the provisions of Articles 11 and 14(2) of Protocol 9 to the Act of Accession of Austria, Finland and Sweden to the European Union regulating the ecopoints system applying in the Community.

2. The negotiations during 1998 resulted in the attached text which was initialled only on 25 January 2001. As a consequence, it was also agreed that the ecopoints system will be implemented from 1 January 2002. During the negotiations, the Commission services informed and consulted Member States.

   However, the total number of ecopoints allocated to the former Yugoslav Republic of Macedonia lorries for 1999, 2000 and 2001 is also agreed in order to ensure that the annual percentage reduction is made in line with those applied to Community lorries. On this basis, the functioning of the regime applied between the Republic of Austria and the former Yugoslav Republic of Macedonia during the period January 1999-December 2001 was examined by the Joint Transport Committee established by Article 22 of the Transport Agreement, and no discriminatory effects were identified.

3. The Agreement establishes the number of ecopoints allocated to trucks of the former Yugoslav Republic of Macedonia for the period 1999-2003 on the basis of the 'no less favourable treatment for Community heavy goods vehicles' principle. It also provides for appropriate documents, rules of procedure and methods of control for managing the system.

   The Agreement stipulates that the system of ecopoints shall be applied from 1 January 2002.

The Commission invites the Council to decide on the signature and provisional application of the Agreement and to initiate the conclusion procedure. Accordingly, it hereby submits to the Council two proposals as follows:

1. Proposal for a Council decision on the signature and provisional application of an Agreement in the form of an exchange of letters concerning the system of ecopoints to be applied to transit traffic of the former Yugoslav Republic of Macedonia through Austria.

2. Proposal for a Council decision on the conclusion of the Agreement.

[1] OJ L 348, 18.12.1997, p. 170.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) in conjunction with the first sentence of the first subparagraph of Article 300(2), thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Commission has negotiated an Agreement in the form of an exchange of letters between the European Community and the former Yugoslav Republic of Macedonia concerning the system of ecopoints to be applied to transit traffic of the former Yugoslav Republic of Macedonia through Austria.

(2) Subject to its possible conclusion at a later date, the Agreement initialled on 25 January 2001 should be signed.

(3) Provision should be made for the provisional application of the Agreement from 1 January 2002.

HAS DECIDED AS FOLLOWS:

Article 1

The President of the Council is authorised to designate the person(s) entitled to sign, on behalf of the European Community, the Agreement in the form of an exchange of letters between the European Community and the former Yugoslav Republic of Macedonia concerning the system of ecopoints to be applied to transit traffic of the former Yugoslav Republic of Macedonia through Austria, subject to its conclusion at a later date.

The text of the Agreement is attached to this Decision.

Article 2

The Agreement referred to in Article 1 shall be applied on a provisional basis from 1 January 2002.

Article 3

This Decision shall be published in the *Official Journal of the European Communities*.

Proposal for a Council Decision concerning the conclusion of an agreement in the form of an exchange of letters between the European Community and the former Yugoslav Republic of Macedonia concerning the system of ecopoints to be applied to transit traffic of the former Yugoslav Republic of Macedonia through Austria

(2003/C 20 E/12)

COM(2002) 418 final — 2002/0188(CNS)

(Submitted by the Commission on 23 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) in conjunction with Article 300(2), first subparagraph, first sentence and Article 300(3), first subparagraph thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The Agreement between the European Community and the former Yugoslav Republic of Macedonia in the field of transport [1], and in particular Article 12, paragraph 3(b) thereof, establishes that a system of ecopoints equivalent to that laid down by Article 11 of Protocol 9 to the Act of Accession of Austria, Finland and Sweden to the European Union shall apply.

(2) The Commission has negotiated on behalf of the Community an Agreement in the form of an exchange of letters between the European Community and the former Yugoslav Republic of Macedonia establishing the method of calculation and the detailed rules and procedures for the management and control of the ecopoints.

(3) This Agreement has been signed on behalf of the Community on . . ., subject to its possible conclusion at a later date in accordance with Decision. . . of the Council of . . .

(4) This Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an exchange of letters between the European Community and the former Yugoslav Republic of Macedonia concerning the system of ecopoints to be applied to transit traffic of the former Yugoslav Republic of Macedonia through Austria is hereby approved on behalf of the Community.

The text of the exchange of letters is annexed to this Decision.

Article 2

This Decision shall be published in the *Official Journal of the European Communities*.

[1] OJ L 348, 18.12.1997, p. 170.

AGREEMENT

in the form of an exchange of letters between the European Community and the former Yugoslav Republic of Macedonia concerning the system of ecopoints to be applied to transit traffic of the former Yugoslav Republic of Macedonia through Austria as from 1 January 1999

A. *Letter from the European Community*

Sir,

I have the honour to inform you that, following negotiations between the delegation of the former Yugoslav Republic of Macedonia and the delegation of the European Community, in accordance with the provisions of Article 12, paragraph 3(b) of the Agreement between the European Community and the former Yugoslav Republic of Macedonia in the field of Transport, the following has been agreed:

1. Ecopoints (Rights of Transit) for heavy goods vehicles from the former Yugoslav Republic of Macedonia transiting through Austria are allocated in the following way:

   for 1999: 57 401 ecopoints

   for 2000: 55 079 ecopoints

   for 2001: 53 641 ecopoints

   for 2002: 49 549 ecopoints

   for 2003: 44 240 ecopoints

   Additional ecopoints are allocated for users from the former Yugoslav Republic of Macedonia of the 'Rollende Landstraße' up to a maximum of 50 % of the total number of ecopoints for the year, as follows

   for 1999: 28 700 ecopoints

   for 2000: 27 540 ecopoints

   for 2001: 26 820 ecopoints

   for 2002: 24 775 ecopoints

   for 2003: 22 120 ecopoints

   Ecopoints for Rollende Landstraße users shall be allocated to the former Yugoslav Republic of Macedonian authorities, on the basis of ecopoints for two road journeys for every two round trips made on RoLa.

   The Austrian company for combined transport, Ökombi, will regularly provide each month monthly information to the Ministry of Transport and Communications of the former Yugoslav Republic of Macedonia concerning former Yugoslav Republic of Macedonia users of combined train in transit through Austria.

   The ecopoints system will be implemented from 1 January 2002.

   Transit journeys made in the circumstances listed in Annex A or under ECMT authorisations shall be exempt from the ecopoints system.

2. The driver of a heavy goods vehicle from the former Yugoslav Republic of Macedonia on the territory of Austria shall carry, and shall make available for inspection at the request of the supervisory authorities, either:

   (a) a duly completed standard form or an Austrian certificate confirming payment of the ecopoints for the journey in question, modelled on Annex B, hereinafter referred to as 'the ecocard'; or

(b) an electronic device, fitted to the motor vehicle which enables the automatic debiting of ecopoints, hereinafter referred to as 'the ecotag'; or

(c) appropriate documentation to demonstrate that an ecopoint-free transit journey, as defined in Annex A or under ECMT authorisation is being made; or

(d) appropriate documentation to demonstrate that a non-transit journey is being made, and when the vehicle is fitted with an ecotag, the ecotag is set for this purpose.

The competent Austrian authorities shall issue the ecocard against payment of the cost of production and distribution of ecopoints and ecocards.

3. Ecotags shall be manufactured, programmed and installed in accordance with the general technical specifications laid down in Annex C. The Ministry of Transport and Communications of the former Yugoslav Republic of Macedonia is authorised to approve, programme and install the ecotags.

The ecotag shall be programmed to contain information on the country of registration and the NO_x value of the motor vehicle, as stated in the conformity of production (COP) document, as defined in paragraph 4.

The ecotag shall be affixed to the windscreen of the motor vehicle. It shall be positioned in accordance with Annex D. It shall be non-transferable.

4. The driver of a heavy goods vehicle from the former Yugoslav Republic of Macedonia registered on or after 1 October 1990 shall also carry, and produce upon request, a COP document, modelled on Annex E, as evidence of the NO_x emissions of that vehicle. Heavy goods vehicles first registered before 1 October 1990 or in respect of which no document is produced shall be assumed to have a COP value of 15,8 g/kWh.

5. The Ministry of Transport and Communications of the former Yugoslav Republic of Macedonia is authorised to issue the documents and ecotags referred to in points 2 to 4.

6. Unless the vehicle is using an ecotag, the requisite number of ecopoints shall be affixed to the ecocard and cancelled. The ecopoints shall be cancelled by signing in such a way that the signature extends over both the ecopoints and the form to which they have been affixed. A rubber stamp may be used instead of a signature.

An ecocard, bearing the requisite number of ecopoints shall be handed to the supervisory authorities of Austria, who will hand back a copy with the proof of payment.

If the vehicle is fitted with an ecotag, upon confirmation of its undertaking a transit journey requiring ecopoints, a number of ecopoints, equivalent to the NO_x emission information stored in the ecotag of the vehicle, shall be deducted from the total of ecopoints allocated to the former Yugoslav Republic of Macedonia. This shall be done by infrastructure provided and operated by the Austrian authorities.

For vehicles fitted with ecotags that are making bilateral journeys they must set the ecotag to demonstrate that a non-transit journey is being made prior to entering Austrian territory.

In the case where an ecocard is used and where a tractor unit is switched during a transit journey, the proof of payment on entry shall remain valid and be retained. Where the COP value of the new tractor unit exceeds that indicated on the form, additional ecopoints, affixed to a new card, shall be cancelled on leaving the country.

7. Continuous journeys which involve crossing the Austrian frontier once by train, whether by conventional rail transport or in a combined transport operation, and crossing the frontier by road before or after crossing by rail, shall be regarded not as transit of goods by road through Austria but as bilateral journeys.

Continuous transit journeys through Austria using the following rail terminals shall be deemed as bilateral journeys:

Fürnitz, Villach Süd, Sillian, Innsbruck/Hall, Brennersee, Graz.

8. Ecopoints shall be valid between 1 January of the year for which they are attributed and 31 January of the following year.

9. Infringements of this agreement by a driver of a heavy goods vehicle from the former Yugoslav Republic of Macedonia or an undertaking shall be prosecuted in accordance with the national legislation in force.

   The Commission and the competent authorities of Austria and the former Yugoslav Republic of Macedonia shall, each within the limits of their jurisdiction, provide each other with administrative assistance in investigating and prosecuting these infringements, in particular by ensuring that ecocards and ecotags are correctly used and handled.

   Controls may be carried out at a point other than the border, at the discretion of the European Community Member State, with due regard to the principle of non-discrimination.

10. The Austrian supervisory authorities may, having due regard to the principles of proportionality, take appropriate measures if a vehicle is fitted with an ecotag and at least one of the following situations occur:

    (a) the vehicle or the operator of the vehicle has repeatedly committed infringements;

    (b) there are insufficient ecopoints remaining in the allocation of the former Yugoslav Republic of Macedonia;

    (c) the ecotag has been tampered with or has been changed by a party other than those authorised in Point 3.

    (d) the former Yugoslav Republic of Macedonia has not allocated sufficient ecopoints for the vehicle to make a transit journey;

    (e) the vehicle does not have appropriate documentation in accordance with paragraphs (c) or (d) of Point 2 to justify why the ecotag has been set to demonstrate that a non-transit journey is being made on Austrian territory;

    (f) when the ecotag specified in Annex C is not loaded with sufficient ecopoints to make a transit journey.

    The Austrian supervisory authorities may, having due regard to the principle of proportionality, take appropriate measures if a vehicle is not fitted with an ecotag and at least one of the following situations occurs:

    (a) an ecocard is not presented to the supervisory authorities in accordance with the provisions of this agreement;

    (b) an ecocard is presented which is incomplete or incorrect, or where the ecopoints are not correctly affixed;

    (c) the vehicle does not possess the appropriate documentation to justify that it does not need ecopoints.

11. The printed ecopoints which are intended for affixing to ecocards shall be made available each year before 1 November of the preceding year.

12. In the case of vehicles registered before 1 October 1990 which have had a change of engine since this date, the COP value of the new engine shall apply. In such a case the certificate issued by the appropriate authority shall mention the change of engine and give details of the new COP value for NO_x emissions.

13. A transit journey shall be exempt from the payment of ecopoints if the following three conditions are met:

    (i) the sole purpose of the journey is to delivery a brand new vehicle, or vehicle combination, from the manufacturers to a destination in another State;

    (ii) no goods are transported on the journey;

    (iii) the vehicle or vehicle combination has appropriate international registration papers and export licence plates.

14. A transit journey shall be exempt from the payment of ecopoints if it is the unladen leg of a journey exempt from ecopoints as listed in Annex A and the vehicle carries suitable documentation to demonstrate this. Such suitable documentation shall be either:

    — a bill of lading, or

    — a completed ecocard to which no ecopoints have been attached, or

    — a completed ecocard with ecopoints, which are subsequently reinstated.

15. Any problems arising from the management of this regime of ecopoints shall be submitted to the Community/the former Yugoslav Republic of Macedonia Transport Committee provided for in Article 22 of the Transport Agreement which shall assess the situation and recommend appropriate actions. Any measure to be taken shall be implemented immediately, shall be proportional and of non-discriminatory nature.

I should be obliged if you would confirm the agreement of your Government to the contents of this letter.

Please accept Sir, the assurance of my highest consideration.

On behalf of the Community

B. *Letter from the former Yugoslav Republic of Macedonia*

Sir,

I have the honour to refer to your letter of . . ., in which you inform me of the following:

'I have the honour to inform you that, following negotiations between the delegation of the former Yugoslav Republic of Macedonia and the delegation of the European Community, in accordance with the provisions of Article 12, paragraph 3(b) of the Agreement between the European Community and the former Yugoslav Republic of Macedonia in the field of Transport, the following has been agreed:

1. Ecopoints (Rights of Transit) for heavy goods vehicles from the former Yugoslav Republic of Macedonia transiting through Austria are allocated in the following way:

   for 1999: 57 401 ecopoints

   for 2000: 55 079 ecopoints

   for 2001: 53 641 ecopoints

   for 2002: 49 549 ecopoints

   for 2003: 44 240 ecopoints

   Additional ecopoints are allocated for users from the former Yugoslav Republic of Macedonia of the "Rollende Landstraße" up to a maximum of 50 % of the total number of ecopoints for the year, as follows:

   for 1999: 28 700 ecopoints

   for 2000: 27 540 ecopoints

   for 2001: 26 820 ecopoints

   for 2002: 24 775 ecopoints

   for 2003: 22 120 ecopoints

   Ecopoints for Rollende Landstraße users shall be allocated to the former Yugoslav Republic of Macedonian authorities, on the basis of ecopoints for two road journeys for every two round trips made on RoLa.

   The Austrian company for combined transport, Ökombi, will regularly provide each month monthly information to the Ministry of Transport and Communications of the former Yugoslav Republic of Macedonia concerning former Yugoslav Republic of Macedonia users of combined train in transit through Austria.

   The ecopoints system will be implemented from 1 January 2002.

   Transit journeys made in the circumstances listed in Annex A or under ECMT authorisations shall be exempt from the ecopoints system.

2. The driver of a heavy goods vehicle from the former Yugoslav Republic of Macedonia on the territory of Austria shall carry, and shall make available for inspection at the request of the supervisory authorities, either:

   (a) a duly completed standard form or an Austrian certificate confirming payment of the ecopoints for the journey in question, modelled on Annex B, hereinafter referred to as "the ecocard"; or

(b) an electronic device, fitted to the motor vehicle which enables the automatic debiting of ecopoints, hereinafter referred to as "the ecotag"; or

(c) appropriate documentation to demonstrate that an ecopoint-free transit journey, as defined in Annex A or under ECMT authorisation is being made; or

(d) appropriate documentation to demonstrate that a non-transit journey is being made, and when the vehicle is fitted with an ecotag, the ecotag is set for this purpose.

The competent Austrian authorities shall issue the ecocard against payment of the cost of production and distribution of ecopoints and ecocards.

3. Ecotags shall be manufactured, programmed and installed in accordance with the general technical specifications laid down in Annex C. The Ministry of Transport and Communications of the former Yugoslav Republic of Macedonia is authorised to approve, programme and install the ecotags.

The ecotag shall be programmed to contain information on the country of registration and the NO_x value of the motor vehicle, as stated in the conformity of production (COP) document, as defined in paragraph 4.

The ecotag shall be affixed to the windscreen of the motor vehicle. It shall be positioned in accordance with Annex D. It shall be non-transferable.

4. The driver of a heavy goods vehicle from the former Yugoslav Republic of Macedonia registered on or after 1 October 1990 shall also carry, and produce upon request, a COP document, modelled on Annex E, as evidence of the NO_x emissions of that vehicle. Heavy goods vehicles first registered before 1 October 1990 or in respect of which no document is produced shall be assumed to have a COP value of 15,8 g/kWh.

5. The Ministry of Transport and Communications of the former Yugoslav Republic of Macedonia is authorised to issue the documents and ecotags referred to in points 2 to 4.

6. Unless the vehicle is using an ecotag, the requisite number of ecopoints shall be affixed to the ecocard and cancelled. The ecopoints shall be cancelled by signing in such a way that the signature extends over both the ecopoints and the form to which they have been affixed. A rubber stamp may be used instead of a signature.

An ecocard, bearing the requisite number of ecopoints shall be handed to the supervisory authorities of Austria, who will hand back a copy with the proof of payment.

If the vehicle is fitted with an ecotag, upon confirmation of its undertaking a transit journey requiring ecopoints, a number of ecopoints, equivalent to the NO_x emission information stored in the ecotag of the vehicle, shall be deducted from the total of ecopoints allocated to the former Yugoslav Republic of Macedonia. This shall be done by infrastructure provided and operated by the Austrian authorities.

For vehicles fitted with ecotags that are making bilateral journeys they must set the ecotag to demonstrate that a non-transit journey is being made prior to entering Austrian territory.

In the case where an ecocard is used and where a tractor unit is switched during a transit journey, the proof of payment on entry shall remain valid and be retained. Where the COP value of the new tractor unit exceeds that indicated on the form, additional ecopoints, affixed to a new card, shall be cancelled on leaving the country.

7. Continuous journeys which involve crossing the Austrian frontier once by train, whether by conventional rail transport or in a combined transport operation, and crossing the frontier by road before or after crossing by rail, shall be regarded not as transit of goods by road through Austria but as bilateral journeys.

   Continuous transit journeys through Austria using the following rail terminals shall be deemed as bilateral journeys:

   Fürnitz, Villach Süd, Sillian, Innsbruck/Hall, Brennersee, Graz.

8. Ecopoints shall be valid between 1 January of the year for which they are attributed and 31 January of the following year.

9. Infringements of this agreement by a driver of a heavy goods vehicle from the former Yugoslav Republic of Macedonia or an undertaking shall be prosecuted in accordance with the national legislation in force.

   The Commission and the competent authorities of Austria and the former Yugoslav Republic of Macedonia shall, each within the limits of their jurisdiction, provide each other with administrative assistance in investigating and prosecuting these infringements, in particular by ensuring that ecocards and ecotags are correctly used and handled.

   Controls may be carried out at a point other than the border, at the discretion of the European Community Member State, with due regard to the principle of non-discrimination.

10. The Austrian supervisory authorities may, having due regard to the principles of proportionality, take appropriate measures if a vehicle is fitted with an ecotag and at least one of the following situations occur:

    (a) the vehicle or the operator of the vehicle has repeatedly committed infringements;

    (b) there are insufficient ecopoints remaining in the allocation of the former Yugoslav Republic of Macedonia;

    (c) the ecotag has been tampered with or has been changed by a party other than those authorised in Point 3;

    (d) the former Yugoslav Republic of Macedonia has not allocated sufficient ecopoints for the vehicle to make a transit journey;

    (e) the vehicle does not have appropriate documentation in accordance with paragraphs (c) or (d) of Point 2 to justify why the ecotag has been set to demonstrate that a non-transit journey is being made on Austrian territory;

    (f) when the ecotag specified in Annex C is not loaded with sufficient ecopoints to make a transit journey.

    The Austrian supervisory authorities may, having due regard to the principle of proportionality, take appropriate measures if a vehicle is not fitted with an ecotag and at least one of the following situations occurs:

    (a) an ecocard is not presented to the supervisory authorities in accordance with the provisions of this agreement;

    (b) an ecocard is presented which is incomplete or incorrect, or where the ecopoints are not correctly affixed;

    (c) the vehicle does not possess the appropriate documentation to justify that it does not need ecopoints.

11. The printed ecopoints which are intended for affixing to ecocards shall be made available each year before 1 November of the preceding year.

12. In the case of vehicles registered before 1 October 1990 which have had a change of engine since this date, the COP value of the new engine shall apply. In such a case the certificate issued by the appropriate authority shall mention the change of engine and give details of the new COP value for NO_x emissions.

13. A transit journey shall be exempt from the payment of ecopoints if the following three conditions are met:

    (i) the sole purpose of the journey is to delivery a brand new vehicle, or vehicle combination, from the manufacturers to a destination in another State;

    (ii) no goods are transported on the journey;

    (iii) the vehicle or vehicle combination has appropriate international registration papers and export licence plates.

14. A transit journey shall be exempt from the payment of ecopoints if it is the unladen leg of a journey exempt from ecopoints as listed in Annex A and the vehicle carries suitable documentation to demonstrate this. Such suitable documentation shall be either:

    — a bill of lading, or

    — a completed ecocard to which no ecopoints have been attached, or

    — a completed ecocard with ecopoints, which are subsequently reinstated.

15. Any problems arising from the management of this regime of ecopoints shall be submitted to the Community/the former Yugoslav Republic of Macedonia Transport Committee provided for in Article 22 of the Transport Agreement which shall assess the situation and recommend appropriate actions. Any measure to be taken shall be implemented immediately, shall be proportional and of non-discriminatory nature.

I should be obliged if you would confirm the agreement of your Government to the contents of this letter.'

I have the honour to confirm that my Government is in agreement with the contents of this letter.

Please accept Sir, the assurance of my highest consideration.

On behalf of the former Yugoslav Republic of Macedonia

ANNEX A

JOURNEYS FOR WHICH NO ECOPOINTS ARE REQUIRED

1. The occasional transport of goods to and from airports when flights are diverted.

2. The carriage of baggage in trailers attached to passenger vehicles, and the carriage of baggage to and from airports by vehicles of all kinds.

3. The carriage of postal consignments.

4. The carriage of damaged vehicles or vehicles in need of repair.

5. The carriage of waste and sewage.

6. The carriage of animal carcasses for disposal.

7. The carriage of bees and fish spawn.

8. The transport of corpses.

9. The carriage of works of art for exhibition or commercial purposes.

10. The occasional carriage of goods for advertising or educational purposes.

11. The carriage of goods by removal firms possessing the appropriate personnel and equipment.

12. The carriage of equipment, accessories and animals to and from theatrical, musical, cinema, sporting or circus events, exhibitions or fairs, or to and from radio, cinema or television recordings.

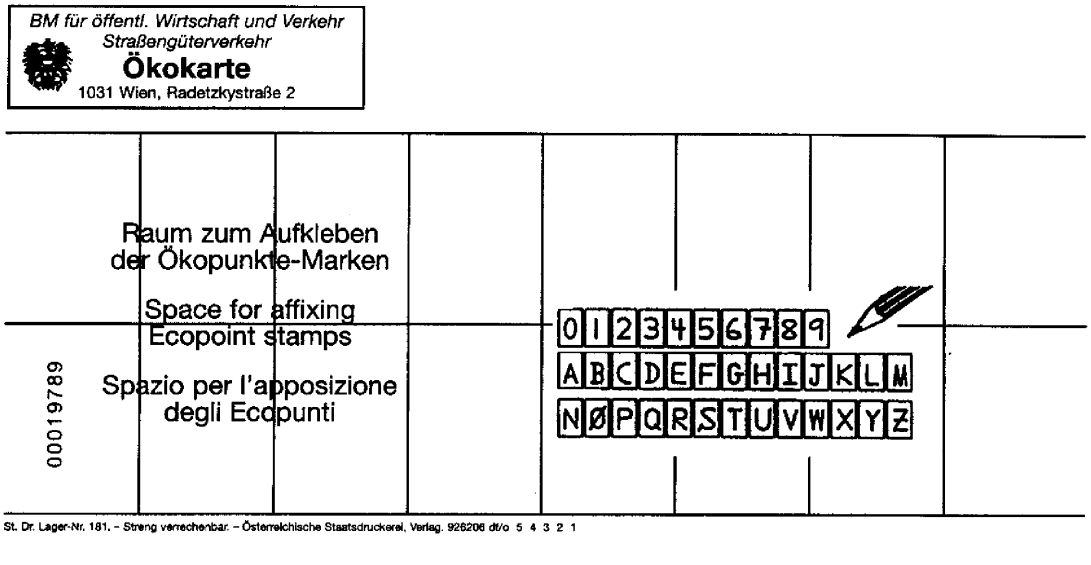
13. The carriage of spare parts for ships and aircraft.

14. The empty journey of a goods vehicle sent to replace a vehicle that has broken down in transit and the continuation of the journey by the replacement vehicle using the authorisation issued for the first vehicle.

15. The carriage of emergency medical aid (particularly in the case of natural disasters).

16. The carriage of valuable goods (e.g. precious metals) in special vehicles escorted by the police or another security service.

ANNEX B



Straßengüterverkehr

STAT **Ökokarte**

Original

1033 Wien, Hintere Zollamtsstraße 2 b

Für nationale Kennzeichnung/National identification mark/
Segno di riconoscimento nazionale

00019789

Erläuterungen siehe Rückseite der Bestätigung *Spiegazioni sul verso della conferma (Bestätigung*
For explanation see back of confirmation (Bestätigung)

③ Datum der Einreise (Tag, Monat, Jahr)

㉗ Name und Firma sowie vollständige Anschrift des Verkehrsunternehmers

A

④ Angaben zum LKW/Zugfahrzeug
⑤ Nationalität ⑥ Amtliches Kennzeichen

⑦ Monat und Jahr der 1. Zulassung

⑧ COP-Wert (mit 1 Dezimale)

⑨ Anzahl der Ökopunkte

⑩ Angaben zum Anhänger/Sattelauflieger
⑤ Nationalität ⑥ Amtliches Kennzeichen

⑪ Fuhrgewerbe [X]

⑫ Werkverkehr [X]

㉘ Ökopunkte ohne besonderen Aufdruck: [X]

Besonders gekennzeichnete österreichische Ökopunkte:

㉙ mit Aufdruck (D) [X]

㉙ mit Aufdruck (I) [X]

Angaben zum Transport (nur bei beladenem Fahrzeug)
⑭ Gewicht der Ladung in Tonnen (mit 1 Dezimale)

⑮ beladen [X]

⑯ leer [X]

⑰ (Abgangs-) Ladeland	⑱ (Abgangs-) Ladeort (Postleitzahl)	⑲ (Ziel-) Entladeland	⑳ (Ziel-) Entladeort (Postleitzahl)

㉑ Grenzübergangsstellen

㉒ beim Eintritt

㉓ beim Austritt

Beleg wird maschinell eingelesen *Machine-read information* *Ricevuto alla lettura tramite computer*

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00019789

㉖ Unterschrift und Name des Ausstellers

St. Dr. Lager-Nr. 181. – Streng verrechenbar. – Österreichische Staatsdruckerei, Verlag. 926206 dt/o 5 4 3 2 1

Straßengüterverkehr

Ökokarte

Bestätigung

Für nationale Kennzeichnung/National identification mark/
Segno di riconoscimento nazionale

Diese Bestätigung gilt für österreichische Transportunternehmen als Genehmigung für den internationalen Straßengüterverkehr mit der Bundesrepublik Deutschland einschließlich Transitverkehr, wenn das Feld Nr. 24 einen Kontrollvermerk der zuständigen österreichischen Organe enthält. Bei Verwendung als Genehmigung ist folgendes zu beachten:

1. **Gültig zwei Monate ab Datum der Einreise.**
2. **Diese Genehmigung ist im Fahrzeug mitzuführen und den zuständigen Kontrollbeamten auf Verlangen vorzuzeigen.**
3. **Sie gilt nicht für den Binnenverkehr.**
4. **Diese Genehmigung ist nicht übertragbar.**

Zollstempel

00019789	Hinfahrt	Rückfahrt

Erläuterungen siehe Rückseite *For explanation see over* *Spiegazioni sul vers*

③ Datum der Einreise (Tag, Monat, Jahr)

㉗ Name und Firma sowie vollständige Anschrift des Verkehrsunternehmers

④ Angaben zum LKW/Zugfahrzeug
⑤ Nationalität ⑥ Amtliches Kennzeichen

⑦ Monat und Jahr der 1. Zulassung

⑧ COP-Wert (mit 1 Dezimale)

⑨ Anzahl der Ökopunkte

⑩ Angaben zum Anhänger/Sattelauflieger
⑤ Nationalität ⑥ Amtliches Kennzeichen

⑪ Fuhrgewerbe [X]

⑫ Werkverkehr [X]

㉘ Ökopunkte ohne besonderen Aufdruck: [X]

Besonders gekennzeichnete österreichische Ökopunkte:

㉙ mit Aufdruck Ⓓ [X]

㉙ mit Aufdruck Ⓘ [X]

Angaben zum Transport (nur bei beladenem Fahrzeug)
⑭ Gewicht der Ladung in Tonnen (mit 1 Dezimale)

⑮ beladen [X]

⑯ leer [X]

⑰ (Abgangs-) Ladeland	⑱ (Abgangs-) Ladeort (Postleitzahl)	⑲ (Ziel-) Entladeland	⑳ (Ziel-) Entladeort (Postleitzahl)	㉑ Grenzübergangsstellen
				㉒ beim Eintritt
				㉓ beim Austritt

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Österreichische Ökopunkte mit Aufdruck Ⓓ abgegeben ㉔a

㉔ Kontrollvermerk der zuständigen Organe

00019789

Österreichische Ökopunkte mit Aufdruck Ⓘ abgegeben ㉔b

Ökopunkte ohne besonderen Aufdruck abgegeben ㉔c

㉕ Datum/Stempel/Unterschrift

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Österreichische Zollämter (Grenzübergangsstellen)		Austrian Border Customs Offices (Frontier posts)		Uffici doganali Austriachi (Uffici doganali in frontiera)	
840	Achenkirch	547	Felsenhütt	837	Leutasch
545	Achleiten	947	Gaißau	445	Loibltunnel
552	Angerhäuser	230	Gmünd	942	Lustenau
455	Arnoldstein	233	Gmünd-Neunagelberg	940	Lustenau-Schmitterbrücke
735	Bad Radkersburg	235	Gramatten	941	Lustenau-Wiesenrain
965	Balderschwang	700	Graz-Hauptbahnhof	938	Mäder
841	Bayrischzell	777	Graz-Ostbahnhof	460	Naßfeld
270	Berg	645	Großgmain	862	Nauders
435	Bleiburg-Grablach	946	Höchst	870	Nauders-Martinsbruck
355	Bonisdorf	956	Hörbranz	539	Neuhaus
533	Braunau	958	Hörbranz-Oberhochsteg	548	Neustift
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531	Burghausen	640	Hangendenstein	549	Oberkappel
532	Burghausen-Alte Brücke	350	Heiligenkreuz	536	Obernberg
341	Deutschkreutz	939	Hohenems	665	Oberndorf
260	Drasenhofen	960	Hohenweiler	963	Oberreute
635	Dürrnberg	962	Hub	542	Passau-Mariahilf
835	Ehrwald	470	Karawankentunnel/Einfuhr	543	Passau-Saming
845	Erl	471	Karawankentunnel/Ausfuhr	540	Passau-Voglau
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936	Feldkirch-Meiningen	937	Koblach	770	Radlpaß
934	Feldkirch-Nofels	255	Laa an der Thaya	345	Rattersdorf-Liebing
932	Feldkirch-Tisis	760	Langegg	849	Reit im Winkl
933	Feldkirch-Tosters	431	Lavamünd	834	Reutte/Plansee
				660	Saalbrücke
				346	Schachendorf
				538	Schärding
				838	Scharnitz
				830	Schattwald
				848	Schleching
				655	Schwarzbach
				554	Schwarzenberg
				440	Seebergsattel
				734	Sicheldorf
				856	Sillian
				534	Simbach
				745	Spielfeld
				872	Spiß
				964	Springen
				630	Steinpaß
				537	Suben
				832	Vils
				839	Vorderriß
				650	Walserberg-Autobahn
				550	Wegscheid
				961	Weienried
				558	Weigetschlag
				847	Wildbichl
				560	Wullowitz
				450	Wurzenpaß

Internationale (Europäische) Kennzeichen / International (European) distinguishing signs / Targa internazionale (Europeo)

AL	Albanien	F	Frankreich	LV	Lettland	PL	Polen	YU	Serbien
B	Belgien	GBZ	Gibraltar	FL	Liechtenstein	P	Portugal	SLØ	Slowenien
BIH	Bosnien-Herzegowina	GR	Griechenland	LT	Litauen	RØ	Rumänien	E	Spanien
BG	Bulgarien	GB	Großbritannien	LU	Luxemburg	SU	Rußland	CS	Tschechei
D	Deutschland	IRL	Irland	M	Malta	A	Österreich	TR	Türkei
DK	Dänemark	IS	Island	NL	Niederlande	S	Schweden	H	Ungarn
EW	Estland	I	Italien	N	Norwegen	CH	Schweiz	CY	Zypern
SF	Finnland	CRØ	Kroatien						

①	Ecocard	①	Ecocarta
②	Federal Ministry for public economy and transport	②	Ministero federale dell'economia pubblica e del traffico
③	Date of entry (Day, Month, Year)	③	Data d'ingresso (Giorno, Mese, Anno)
④	Details of HGV/articulated vehicle tractor unit	④	Dati sull'autocarro o sulla motrice di autoarticolato
⑤	Nationality	⑤	Nazionalità
⑥	Vehicle registration number	⑥	Targa del veicolo
⑦	Month and year of first registration	⑦	Mese e anno di prima immatricolazione
⑧	COP value (to one decimal place)	⑧	Valore COP (con una cifra decimale)
⑨	Number of Ecopoints	⑨	Numero di ecopunti
⑩	Details about trailer/semi-trailer	⑩	Dettagli di rimorchio/rimorchio di trattore
⑪	Transport for hire or reward Transport on own account	⑪	Trasporto merci in conto terzi Trasporto in conto proprio
⑫	Details of transport (for laden vehicles only)	⑫	Dati relativi al trasporto (solo per veicoli carichi)
⑬	Weight of load in tonnes (to one decimal place)	⑬	Peso lordo in tonnelate (con una cifra decimale)
⑭	laden ⑮ unladen	⑭	carico ⑮ vuoto
⑯	Country of loading	⑯	Paese di carico
⑰	Place of loading (post code)	⑰	Località di carico (codice postale)
⑱	Country of unloading	⑱	Paese di scarico
⑲	Place of unloading (post code)	⑲	Località di scarico (codice postale)
⑳	Border Customs Office	⑳	Ufficio doganale in frontiera
㉑	of entry ㉒ of exit	㉑	d'ingresso ㉒ d'uscita
㉓	Mark indicating that check has been carried out by the appropriate authority	㉓	Segno indicante che il controllo è stato fatto dalle autorità competenti
㉔	Date/Stamp/Signature	㉔	Data/Timbro/Firma
㉕	Signature and name of person filling in this form	㉕	Firma e nome del compilatore
㉖	Name, firm and complete address of the haulier	㉖	Cognome, nome della ditta e indirizzo completo dell'imprenditore di trasporti
㉗	Ecopoints without special imprint ㉘ with imprint	㉗	Ecopunti senza testo a stampa speciale ㉘ con testo a stampa

Die Ökokarte ist ausschließlich unter folgender Adresse zu beziehen:

The Ecocard is available only at the following address:

L'Ecocarta è da ricevere solamente al seguente indirizzo:

Österreichische Staatsdruckerei
Rennweg 12 a Telefon (0222) 797 89 226
Postfach 129 Telefax (0222) 797 89 419
A-1037 Wien

St. Dr. Lager-Nr. 181. — Streng verrechenbar. — Österreichische Staatsdruckerei, Verlag. 926206 df/o 5 4 3 2 1

Straßengüterverkehr
STAT **Ökokarte**
Kontrollbeleg

Für nationale Kennzeichnung/National identification mark/
Segno di riconoscimento nazionale

00019789

Erläuterungen siehe Rückseite *For explanation see over* *Spiegazioni sul verso*

③ Datum der Einreise (Tag, Monat, Jahr)	㉗ Name und Firma sowie vollständige Anschrift des Verkehrsunternehmers

④ Angaben zum LKW/Zugfahrzeug
⑤ Nationalität ⑥ Amtliches Kennzeichen ⑦ Monat und Jahr der 1. Zulassung ⑧ COP-Wert (mit 1 Dezimale) ⑨ Anzahl der Ökopunkte

⑩ Angaben zum Anhänger/Sattelauflieger
⑤ Nationalität ⑥ Amtliches Kennzeichen ⑪ Fuhrgewerbe ⑫ Werkverkehr

Angaben zum Transport (nur bei beladenem Fahrzeug)
⑭ Gewicht der Ladung in Tonnen (mit 1 Dezimale) ⑮ beladen ⑯ leer

㉘ Ökopunkte ohne besonderen Aufdruck: X

Besonders gekennzeichnete österreichische Ökopunkte:
㉙ mit Aufdruck Ⓓ X
㉙ mit Aufdruck Ⓘ X

⑰ (Abgangs-) Ladeland	⑱ (Abgangs-) Ladeort (Postleitzahl)	⑲ (Ziel-) Entladeland	⑳ (Ziel-) Entladeort (Postleitzahl)	㉑ Grenzübergangsstellen
				㉒ beim Eintritt
				㉓ beim Austritt

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00019789

it. Dr. Lager-Nr. 181. – Streng verrechenbar. – Österreichische Staatsdruckerei, Verlag. 926206 dt/o 5 4 3 2 1

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735	Bad Radkersburg	235	Grametten	941	Lustenau-Wiesenrain
965	Balderschwang	700	Graz-Hauptbahnhof	938	Mäder
841	Bayrischzell	777	Graz-Ostbahnhof	460	Naßfeld
270	Berg	645	Großgmain	862	Nauders
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936	Feldkirch-Meiningen	937	Koblach	770	Radlpaß
934	Feldkirch-Nofels	255	Laa an der Thaya	345	Rattersdorf-Liebing
932	Feldkirch-Tisis	760	Langegg	849	Reit im Winkl
933	Feldkirch-Tosters	431	Lavamünd	834	Reutte/Plansee
				660	Saalbrücke
				346	Schachendorf
				538	Schärding
				838	Scharnitz
				830	Schattwald
				848	Schleching
				655	Schwarzbach
				554	Schwarzenberg
				440	Seebergsattel
				734	Sicheldorf
				856	Sillian
				534	Simbach
				745	Spielfeld
				872	Spiß
				964	Springen
				630	Steinpaß
				537	Suben
				832	Vils
				839	Vorderriß
				650	Walserberg-Autobahn
				550	Wegscheid
				961	Welenried
				558	Weigetschlag
				847	Wildbichl
				560	Wullowitz
				450	Wurzenpaß

Internationale (Europäische) Kennzeichen / International (European) distinguishing signs / Targa internazionale (Europeo)

AL	Albanien	F	Frankreich	LV	Lettland	PL	Polen	YU	Serbien
B	Belgien	GBZ	Gibraltar	FL	Liechtenstein	P	Portugal	SLØ	Slowenien
BIH	Bosnien-Herzegowina	GR	Griechenland	LT	Litauen	RØ	Rumänien	E	Spanien
BG	Bulgarien	GB	Großbritannien	LU	Luxemburg	SU	Rußland	CS	Tschechei
D	Deutschland	IRL	Irland	M	Malta	A	Österreich	TR	Türkei
DK	Dänemark	IS	Island	NL	Niederlande	S	Schweden	H	Ungarn
EW	Estland	I	Italien	N	Norwegen	CH	Schweiz	CY	Zypern
SF	Finnland	CRØ	Kroatien						

①	Ecocard	①	Ecocarta
②	Federal Ministry for public economy and transport	②	Ministero federale dell'economia pubblica e del traffico
③	Date of entry (Day, Month, Year)	③	Data d'ingresso (Giorno, Mese, Anno)
④	Details of HGV/articulated vehicle tractor unit	④	Dati sull'autocarro o sulla motrice di autoarticolato
⑤	Nationality	⑤	Nazionalità
⑥	Vehicle registration number	⑥	Targa del veicolo
⑦	Month and year of first registration	⑦	Mese e anno di prima immatricolazione
⑧	COP value (to one decimal place)	⑧	Valore COP (con una cifra decimale)
⑨	Number of Ecopoints	⑨	Numero di ecopunti
⑩	Details about trailer/semi-trailer	⑩	Dettagli di rimorchio/rimorchio di trattore
⑪	Transport for hire or reward Transport on own account	⑪	Trasporto merci in conto terzi Trasporto in conto proprio
⑫	Details of transport (for laden vehicles only)	⑫	Dati relativi al trasporto (solo per veicoli carichi)
⑬	Weight of load in tonnes (to one decimal place)	⑬	Peso lordo in tonnelate (con una cifra decimale)
⑭	laden ⑮ unladen	⑭	carico ⑮ vuoto
⑯	Country of loading	⑯	Paese di carico
⑰	Place of loading (post code)	⑰	Località di carico (codice postale)
⑱	Country of unloading	⑱	Paese di scarico
⑲	Place of unloading (post code)	⑲	Località di scarico (codice postale)
⑳	Border Customs Office	⑳	Ufficio doganale in frontiera
㉑	of entry ㉒ of exit	㉑	d'ingresso ㉒ d'uscita
㉓	Mark indicating that check has been carried out by the appropriate authority	㉓	Segno indicante che il controllo è stato fatto dalle autorità competenti
㉔	Date/Stamp/Signature	㉔	Data/Timbro/Firma
㉕	Signature and name of person filling in this form	㉕	Firma e nome del compilatore
㉖	Name, firm and complete address of the haulier	㉖	Cognome, nome della ditta e indirizzo completo dell'imprenditore di trasporti
㉗	Ecopoints without special imprint ㉘ with imprint	㉗	Ecopunti senza testo a stampa speciale ㉘ con testo a stampa

Die Ökokarte ist ausschließlich unter folgender Adresse zu beziehen:

The Ecocard is available only at the following address:

L'Ecocarta è da ricevere solamente al seguente indirizzo:

Österreichische Staatsdruckerei
Rennweg 12 a **Telefon (0222) 797 89 226**
Postfach 129 **Telefax (0222) 797 89 419**
A-1037 Wien

St. Dr. Lager-Nr. 181. — Strang verrechenbar. — Österreichische Staatsdruckerei, Verlag. 926206 df/o 5 4 3 2 1

ANNEX C

GENERAL TECHNICAL SPECIFICATIONS OF THE ECOTAG

Short-range communication beacon — vehicle

(Pre)standards and technical reports relevant to DSRC

The following requirements provided by CEN/TC 278 with regard to short-range communication between the vehicles and the roadside infrastructure are to be met:

(a) prENV278/No 62 'DSRC physical layer using microwave at 5,8 GHz';

(b) prENV278/No 64 'DSRC data link layer';

(c) prENV278/No 65 'DSRC application layer'

Type test

The supplier of the ecotag must provide type-test certificates for the appliances from an accredited test institute conforming compliance with all the limit values specified in the current I-ETS 300674.

Operating conditions

The ecotag for the automatic ecopoint system must guarantee the required functionality under the following operating conditions:

— ambient conditions: temperature from – 25 °C to + 70 °C,

— weather conditions: all eventualities,

— traffic: several lanes, moving,

— speed range: from 'stop-and-go' to 120 km/h.

The above operating conditions are minimum requirements pending the adoption of (pre)standards relevant to DSRC.

The ecotag may react only to microwave signals specific to its own applications.

Ecotag

Identification

Each ecotag must have a unique identification number. In addition to the number of digits necessary to make it distinguishable, this number must also contain a check sum for integrity verification.

Installation

The ecotag should be designed for installation behind the windscreen of the lorry or traction unit. It shall be installed so as to be completely non-detachable from the vehicle.

Transit declaration

The ecotag must have an input facility for declaring a journey exempt from the payment of ecopoints.

The facility must be clearly visible on the ecotag for control purposes; alternatively, it must be possible to set the ecotag at a defined initial position. At all events, it must be ensured that only the status at the time of entry is taken into account for evaluation in the system.

External marking

Every ecotag must also be clearly identifiable on visual inspection. To this end, the abovementioned unique identification number must be indelibly applied to the surface of the appliance.

A non-detachable, indelible marking to the ecotag in the form of prepared stickers shall be affixed to the ecotag. This marking must show the number of ecopoints for the individual vehicle ('5', '6', . . . '16').

These special stickers must be tamper-proof; they must have mechanical strength and be light- and temperature-resistant. They must have a high adhesive strength and any attempt to remove them must result in their destruction.

Integrity

The casing must be constructed in such way that any manipulation of the internal components is excluded and any interference can subsequently be detected.

Memory

The ecotag must have sufficient memory capacity for the following data:

— identification number,

— vehicle data:

  — COP value,

— transaction data:

  — identification of the border post,

  — date/time,

  — status of journey declaration,

  — blocking (blacklisting) information,

— status data:

  — manipulation,

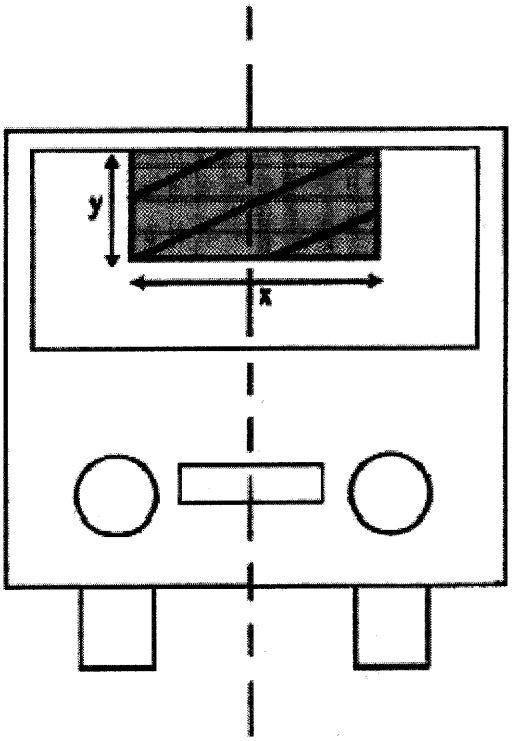
  — battery status,

  — status of latest communication.

There must be a reserve of memory of at least 30 %.

ANNEX D

INSTALLATION REQUIREMENTS FOR ECOTAG



The ecotag shall be located on the interior side of the windscreen within the marked area (illustrated above) where the dimensions are as follows:

x = 100 cm

y = 80 cm.

ANNEX E

COP DOCUMENT		1) Fortlaufende Dokumentnummer: Document serial number: Numero di serie del documento:	
2) Nationalität: Nationality: Nazionalità:		3) Amtliches Kennzeichen: Vehicle registration number: Targa del veicolo:	
4) Datum der Erstzulassung: Date of first registration: Data della prima immatricolazione:		4a) Motor wurde getauscht am: Motor was changed at: Motore cambiato il:	
5) EWG-Betriebserlaubnisnummer: Type approval number: Numero CEE della licenza per l'esercizio: oder/or/o Motorcodierungsnummer: Engine serial number: Numero di serie del motore:	(nach 88/77/EWG 91/542/EWG oder/or/o ECE R 49)		
6) Fahrzeugidentifizierungsnummer: Chassis number: Chassis numero:			
7) NO_X Emission: NO_X Emission: Emissione di NO_X:		8) COP-Wert (Tyengenehmigung + 10 %): COP Value (Type approval + 10 %): Valore COP (Omologazione + 10 %):	
9) Anzahl Ökopunkte: Number of Ecopoints: Numero di Ecopunti:			
10) Behördenstempel: Official stamp: Timbro ufficiale:			
11) Herstellerbestätigung (nach Bedarf): Manufacturer confirmation (if necessary): Attestazione del produttore (a seconda del fabbisogno):			

Der Lenker eines Lkw im Gütertransitverkehr durch Österreich hat dieses Dokument mitzuführen und den Kontrollorganen zur Kontrolle vorzuweisen. Wird das Dokument nicht vorgewiesen, sind für die Fahrt 16 Ökopunkte auf die Ökokarte aufzukleben und zu entwerten

The driver of an HGV in transit through Austria must carry this document with him/her and present it to control authorities for inspection. If the document is not presented for inspection then 16 Ecopoints are to be affixed to the Ecocard and cancelled.

Il conducente di un camion in transito attraverso l'Austria deve avere con sé questo documento e deve presentarlo alle Autorità competenti per il controllo. In caso di mancata presentazione del documento, 16 Ecopunti verrano applicati sull'Ecocarta e annullati.

Proposal for a Council Regulation implementing the Kimberley Process certification scheme for the international trade in rough diamonds

(2003/C 20 E/13)

COM(2002) 455 final — 2002/0199(ACC)

(Submitted by the Commission on 8 August 2002)

EXPLANATORY MEMORANDUM

The United Nations Security Council has imposed sanctions on the rebel movements in Sierra Leone and Angola and on the Liberian government for supporting the rebels in Sierra Leone. The sanctions include a prohibition on imports of rough diamonds from Liberia and, if they are not accompanied by a certificate of origin issued by the respective legitimate governments, from Angola and Sierra Leone.

The sanctions have failed to stop the flow of conflict diamonds into the legitimate trade or to bring the conflicts to a halt. Conflict diamonds are continuing to find a market and enter the legitimate diamond trade. There is therefore a need to complement the sanctions to reduce the role of such diamonds in fuelling conflicts.

At the initiative of African diamond producing countries in particular, producer and trading countries, industry and civil society have met in the 'Kimberley Process' to design a certification scheme for the international trade in rough diamonds.

The purpose of the scheme is to prevent 'conflict' diamonds from fuelling armed conflicts and discrediting the legitimate market for rough diamonds, which makes an important economic contribution, not least to certain developing countries in Africa.

Such a certification scheme will make a major contribution to bringing an end to these conflicts and serve the implementation of the EU programme on conflict prevention.

On 29 October 2001 the Council authorised the Commission to negotiate an agreement establishing an international certification scheme for rough diamonds and to conduct these negotiations on behalf of the European Community.

A ministerial meeting of the Kimberley Process in Gaborone on 29 November 2001 produced detailed proposals for the scheme. The ministers agreed to submit the proposals to their competent authorities with a view to implementing the scheme at the earliest possible date in the course of 2002. Participants are encouraged to start using the certificate as soon as possible, but trade restrictions will not be applied until the scheme is put into force by all participants. Provided all participants have managed to put in place the necessary internal legislation, they are expected to launch the scheme simultaneously at a Kimberley Process ministerial meeting in November 2002.

Though the Commission has largely met the major objectives of the Council's authorisation to conduct negotiations, the negotiations will not lead to the formal agreement initially envisaged.

There remain two not fully resolved issues, namely the definitions of 'participant' and 'conflict diamonds'. These issues affect neither the framework nor the individual components of the certification scheme, and broad agreement has been reached on the rest of the document. The two outstanding issues are expected to be resolved at the meeting in Geneva.

In spite of the two outstanding issues the Commission therefore considers the design of the certification scheme to be definitive. The Community can therefore proceed with the preparations for the scheme's implementation. This is necessary to enable the Community to be a founder participant, which is desirable, and will allow the Community to be a leading partner in combating conflict diamonds.

The Commission therefore invites the Council to adopt the attached proposal for a Council Regulation implementing the Kimberley Process certification scheme in the Community. The document containing the Kimberley certification scheme for rough diamonds is attached to the proposed Council Regulation as Annex I.

The proposed Regulation would enable the Community to take all the necessary preparatory steps for the implementation of the scheme by the Community. The entry into force of the proposed import and export prohibition must, however, be suspended until the participants have set the date on which they will all simultaneously apply the scheme.

The certification scheme is basically an export and import control regime.

Producer countries will control the production and transport of rough diamonds from mine to point of export. Shipments of rough diamonds will be sealed in tamper-resistant containers and a Kimberley Process certificate issued for each shipment.

Re-exporting countries will ensure that only rough diamonds exported/imported under a Kimberly Process certificate enter the chain of transactions from import to export. The diamond industry will introduce a system of self regulation to support government efforts.

Importing countries will inspect the seal and the certificate at the time of import. Imports of rough diamonds not accompanied by a certificate issued by a Kimberly Process participant will be prohibited, as will exports to non-participants.

It is expected that all countries producing and trading rough diamonds will participate.

Participants will set up a mutual system to monitor the internal controls underpinning the issue of certificates.

The United Nations General Assembly welcomed the certification scheme developed by the Kimberley Process in Resolution 56/263 of 13 March 2002.

Subjecting international trade in rough diamonds to a certification scheme of the kind described above concerns both the free movement of goods and the common commercial policy. For the purposes of such a scheme the Community is to be considered a single entity without internal borders. The Community's participation in the Kimberley Certification Scheme is based on the Community's exclusive competence in these matters.

The Community's participation in the Kimberley Process certification scheme for rough diamonds is necessary and desirable for foreign and security policy reasons and economic considerations. In Antwerp and London the Community has two of the world largest rough diamond trading centres, and these centres are vulnerable to the effects of conflict diamonds on the legitimate trade. Participation in the certification scheme will protect the economic and financial interests of those centres and the Community as a whole. Furthermore, such participation is in line with the objectives of conflict management and conflict prevention defined by the European Council [1].

[1] Conclusions of the Göteborg European Council.

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 sanctions adopted by the United Nations Security Council against the rebel movements in Sierra Leone and Angola and against the Liberian government, prohibiting under certain conditions imports of rough diamonds from Liberia, Angola and Sierra Leone have not been able to stop the flow of conflict diamonds into the legitimate trade or to bring the conflicts to a halt.

(2) The Göteborg European Council of June 2001 endorsed a programme for the prevention of violent conflicts, which states, *inter alia*, that the Member States and the Commission will tackle the illicit trade in high-value commodities, including by identifying ways of breaking the link between rough diamonds and violent conflicts and supporting the Kimberley Process.

(3) Council Regulation (EC) No 303/2002 of 18 February 2002 concerning the importation into the Community of rough diamonds from Sierra Leone [1] prohibits under certain conditions, the importation of rough diamonds into the Community.

(4) There is a need to complement the existing measures with effective controls over the international trade in rough diamonds in order to prevent the trade in conflict diamonds from financing the efforts of rebel movements and their allies to undermine legitimate governments. Effective control will help maintain international peace and security and will also protect the revenue from exports of rough diamonds, which is essential for the development of producer countries in Africa.

(5) The Kimberley Process negotiations, bringing together the Community and producer and trading countries representing practically all international trade in rough diamonds, as well as the diamond industry and representatives of civil society, were initiated with a view to developing such an effective control system. They led to the development of a certification scheme.

(6) All participants accepted the outcome of the negotiations as the basis for implementing measures within their own jurisdiction.

(7) The UN General Assembly, in its resolution 56/263, welcomed the certification scheme developed in the Kimberley Process and called on all interested parties to participate in that scheme.

(8) Implementation of the certification scheme requires that the Community's imports and exports of rough diamonds to be made subject to the certification scheme, including the issue of the relevant certificates by participants in the scheme.

(9) Each Member State should designate a competent authority to implement the relevant provisions of this Regulation within its territory.

(10) The validity of certificates for imported rough diamonds should be properly verified by the competent authorities of the Community.

(11) The issue, validation or verification of a certificate should not be construed as equivalent or an alternative to any requirement of customs control.

(12) In order to increase the effectiveness of the certification scheme, circumvention or attempts thereto should be prevented. Likewise, providers of ancillary or directly related services should exercise due diligence in establishing that the provisions of this Regulation are duly applied.

(13) Export certificates for rough diamonds should only be issued and validated where there is conclusive evidence that those diamonds have been imported under a certificate.

(14) Circumstances may justify that the competent authority of the importing participant should send the competent authority of the exporting participant confirmation of import of shipments of rough diamonds.

(15) A system of warranties and industry self-regulation of the kind proposed by the representatives of the rough diamond industry in the Kimberley Process could facilitate the provision of such conclusive evidence.

(16) Temporary provisions should be provided to allow the export of rough diamonds imported before the entry into force of this Regulation.

(17) Each Member State should determine the penalties applicable in event of breach of the provisions of this Regulation.

(18) The provisions of this Regulation concerning the import and export of rough diamonds should not apply to rough diamonds transiting the Community in the course of export to another Participant.

[1] OJ L 47, 19.2.2002, p. 8.

(19) For the purposes of the objectives of the Kimberley Process and the implementation of the certification scheme, the European Community should be a participant in the Kimberley Process. It should be represented by the European Commission at meetings of participants in the Kimberley Process certification scheme.

(20) 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 in Article 4 of that Decision.

(21) In the performance of its duties under the certification scheme the Commission should be assisted by the Committee established under Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom [2]. The Committee will also enable the Commission and Member States to build and share experience as to the practical application of this Regulation.

(22) This Regulation should enter into force on the day of its publication, but the provisions on the import and exports control should be suspended until a date has been agreed in the Kimberley Process for the simultaneous implementation of the import and export controls by all participants,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

This Regulation sets up a Community system of certification and import and export controls for rough diamonds for the purposes of implementing the Kimberley Process certification scheme.

For the purposes of the certification scheme the Community will be considered as one entity without internal borders.

The Scheme does not prejudice or substitute any provisions in force relating to customs formalities and controls.

Article 2

For the purposes of this Regulation the following definitions apply:

(a) 'Kimberley Process' refers to the forum in which the participants have designed an international certification scheme for rough diamonds;

(b) 'Kimberley Process certification scheme' (hereinafter 'KP certification scheme') refers to the international certification scheme negotiated by the Kimberley Process and set out in Annex I;

(c) 'Participants' refers to participants in the KP certification scheme listed in Annex II;

(d) 'certificate' means a document duly issued and validated by a participant's competent authority identifying a shipment of rough diamonds as being in compliance with the requirements of the KP certification scheme;

(e) 'competent authority' means the authority designated by a participant to issue, validate or verify certificates;

(f) 'Community authority' means a competent authority designated by a Member State and listed in Annex III;

(g) 'Community certificate' means a certificate corresponding to the specimen in Annex IV and issued by a Community authority;

(h) 'confirmation of imports of shipments of rough diamonds' refers to the import confirmation specified in paragraph 24 of Annex I to this Regulation;

(i) 'conflict diamonds' means rough diamonds as defined under the KP Certification Scheme;

(j) 'rough diamond' means a diamond that is unworked or simply sawn, cleaved or bruted and falls under the Harmonised Commodity Description and Coding System 7102 10, 7102 21 and 7102 31 (hereinafter HS code);

(k) 'imports' means the physical entering or bringing into any part of the geographical territory of a participant;

(l) 'export' means the physical leaving or taking out of any part of the geographical territory of a participant;

(m) 'shipment' means one or more parcels;

(n) 'parcel' means one or more diamonds that are packed together;

(o) 'parcel of mixed origin' means a parcel that contains rough diamonds from two or more countries of origin.

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

[2] OJ L 309, 29.11.1996, p. 1.

CHAPTER II

IMPORT REGIME

Article 3

1. The customs authorities shall inform the relevant Community authority of the arrival of rough diamonds from a third country as soon as they are presented to customs. Where a customs declaration has been lodged, clearance shall be suspended until the formalities or requirements provided for in paragraphs 2, 3 and 4 have been met.

2. The import of rough diamonds into the Community shall be prohibited unless all of the following conditions are fulfilled:

(a) the rough diamonds are accompanied by a certificate validated by the competent authority of a participant;

(b) the rough diamonds are contained in tamper-resistant containers properly sealed by that competent authority;

(c) the certificate is attached in an inseparable way to the container.

3. After import each sealed container of rough diamonds and the inseparably attached certificate shall be submitted at the earliest opportunity to a Community authority for verification.

4. No further movement, handling or processing shall be allowed until a Community authority has established that neither the sealing nor the attachment of the certificate has been tampered with and has confirmed the validity of the certificate on the original certificate itself and provided the importer with an authenticated copy of the confirmed certificate.

5. The confirmation procedure shall take place within 30 days of the submission of the certificate.

Article 4

Without prejudice to the controls provided for by customs legislation in force, a Community authority shall open containers with a view to verifying that their contents match the particulars provided on the certificate unless circumstances or reasonable grounds warrant otherwise.

Article 5

1. If a Community authority establishes that a certificate is not valid or that the contents of a shipment are not in conformity with the accompanying certificate, that authority shall:

(a) impound the shipment immediately, and

(b) transmit all relevant information to the Commission and to the competent authority of the participant that purportedly issued or validated the certificate for the shipment in question.

2. If a problem is found to be the result of unintentional mistakes, a Community authority may correct mistakes on a certificate after consulting the competent authority of the participant that issued or validated that certificate and proceed with verification after informing the Commission.

In all other cases the Community authority that impounded the consignment shall confiscate the shipment and return it to the competent authority of the country of origin. If that country cannot be established, the Community authority shall put the shipment up for public sale. After deduction of the costs incurred by the Community authority, the proceeds from the sale shall be made available for strengthening the effectiveness of the certification scheme.

Article 6

1. The Commission shall consult participants on the need and practical arrangements for providing confirmation of imports into the Community to the competent authority of the exporting participant that has validated a certificate.

2. On the basis of these consultations the Commission may, in accordance with the procedure referred to in Article 22(2), lay down guidelines for such confirmation.

Article 7

The Commission shall provide all Community authorities with authenticated specimens of the participants' certificates, the names and other relevant details of the participants' issuing and/or validating authorities, authenticated specimens of stamps and signatures attesting that a certificate has been legally issued or validated and any other relevant information received in respect of certificates.

Article 8

1. A Community authority shall provide the Commission with a monthly report on all certificates provided for under Article 3(2)(a) submitted for verification.

For each certificate this report shall list at least:

(a) the unique certificate number,

(b) the name of the issuing and validating authority,

(c) the date of issue and validation,

(d) the date of expiry of validity,

(e) the country of provenance,

(f) the country of origin,

(g) the HS code,

(h) the carat weight,

(i) the value,

(j) the verifying authority,

(k) the date of verification.

The Commission may, in accordance with the procedure referred to in Article 22(2), determine the format of this report in order to facilitate monitoring of the certification scheme's working.

2. A Community authority shall keep the originals of certificates provided for under Article 3(2)(a) submitted for verification for at least three years. It shall provide access to these original certificates to the Commission or to persons or bodies designated by the Commission, in particular with a view to answering questions raised within the framework of the KP certification scheme.

CHAPTER III

EXPORT REGIME

Article 9

1. The customs authorities shall inform the relevant Community authority of the intended departure of rough diamonds as soon as they are presented to customs for export to a third country Where an export declaration has been lodged, clearance shall be suspended until the formalities or requirements provided for in paragraph 2 have been met.

2. The export from the Community of rough diamonds shall be prohibited unless all of the following conditions are fulfilled:

(a) the rough diamonds are accompanied by a Community certificate issued and validated by a Community authority;

(b) the rough diamonds are contained in tamper-resistant containers properly sealed by the Community authority before validating the relevant Community certificate;

(c) the Community certificate has been attached in an inseparable way to the container;

(d) the exporter has received an authenticated copy of the validated Community certificate.

Article 10

1. A Community authority may not issue a Community certificate to an exporter until it has established:

(a) that the exporter has provided conclusive evidence that the rough diamonds for which a certificate is being requested were lawfully imported, that is in accordance with the provisions of Article 3;

(b) that the other information requested on the certificate is correct, and that the rough diamonds will be imported into the territory of a participant.

2. A Community authority shall not validate a Community certificate until it has sealed the tamper-resistant container containing the rough diamonds for which it has issued a Community certificate.

3. A Community authority shall provide the exporter with an authenticated copy of the Community certificate it has validated.

Article 11

If an exporter is a member of a diamond organisation listed in Annex V, a Community authority may accept as conclusive evidence of lawful import into the Community a signed declaration by the exporter to that effect. Such a declaration shall contain at least the information to be given in an invoice under the second indent of Article 17(2)(a).

Article 12

For a period of three months after the entry into force of this Regulation, and without prejudice to the provisions of Articles 10 and 11, a Community authority shall consider rough diamonds for export as such or as part of a parcel to have been lawfully imported within the meaning of Article 10 if the exporter provides conclusive evidence that those diamonds were imported before the entry into force of this Regulation.

Article 13

1. If a Community authority considers that there is no conclusive evidence that rough diamonds to be exported fulfil the conditions of Articles 10, 11 or 12, that authority shall:

(a) impound the shipment immediately, and

(b) notify the European Commission of all relevant information.

2. If a problem is found to be the result of unintentional mistakes, a Community authority may correct the mistakes on the certificate and proceed with the authorisation after informing the Commission.

In all other cases the Community authority that impounded the consignment shall confiscate the shipment and return it to the competent authority of the country of origin. If that country cannot be established, the shipment shall be put up for public sale. After deduction of the costs incurred by the Community authority, the proceeds from the sale shall be made available for strengthening the effectiveness of the KP certification scheme.

Article 14

Without prejudice to the controls provided for by customs legislation in force, a Community authority shall, before issuing or validating a certificate, physically inspect the rough diamonds to be exported with a view to verifying that the characteristics of the rough diamonds, and in particular their carat weight and value, match the data provided on the certificate, unless circumstances or reasonable grounds warrant otherwise.

Article 15

1. Community authorities shall provide the Commission with a monthly report on all Community certificates issued and validated by them.

For each certificate this report shall list at least the following:

(a) the unique certificate number,

(b) the name of the issuing and validating authority,

(c) the date of issue and validation,

(d) the date of expiry of validity,

(e) the country of provenance,

(f) the country of origin,

(g) the HS code,

(h) the carat weight and value.

In accordance with the procedure referred to in Article 22(2), the Commission may determine the format of the report in order to facilitate monitoring of the certification scheme's working.

2. The Community authorities shall keep for at least 3 years the authenticated copies provided for under Article 9(2)(c) as well as all information received from an exporter to justify the issue and validation of a Community certificate.

They shall provide access to those authenticated copies and this information to the Commission or to persons or bodies designated by the Commission, in particular with a view to answering questions raised within the framework of the KP certification scheme.

Article 16

1. The Commission shall consult participants on the need and practical arrangements for obtaining confirmation of imports of rough diamonds exported from the Community covered by a certificate validated by Community authority.

2. On the basis of these consultations the Commission may, in accordance with the procedure referred to in Article 22(2), lay down guidelines for such confirmation.

CHAPTER IV

INDUSTRY SELF-REGULATION

Article 17

1. Organisations representing traders in rough diamonds which have established a system of warranties and industry self-regulation for the purposes of implementing the KP Certification Scheme may apply to the Commission for listing in Annex V.

2. When applying for listing an organisation shall:

(a) provide conclusive evidence that its members, whether natural or legal persons, have undertaken:

(i) to sell only diamonds purchased from legitimate sources not involved in funding conflict and in compliance with United Nations resolutions and to guarantee in writing on the invoice accompanying each sale of rough diamonds that, on the basis of their personal knowledge and/or written warranties provided by the supplier of such diamonds, the diamonds sold are not conflict diamonds;

(ii) to accompany each sale of rough diamonds with an invoice containing the said signed guarantee unequivocally identifying the seller and buyer and their registered offices, containing the VAT identification number of the seller, where applicable, the quantity/weight and qualification of the goods sold, the value of the transaction and the date of delivery;

(iii) not to buy rough diamonds from suspect or unknown sources of supply and/or rough diamonds originating in non-participants in the KP certification scheme;

(iv) not to buy rough diamonds from any source found, after legally binding due process, to have violated government laws and regulations concerning the trade in conflict diamonds;

(v) not to buy rough diamonds in or from any region that is the subject of an advisory notice from a governmental or KP certification scheme authority to the effect that conflict diamonds are emanating from or are available for sale in that region;

(vi) not knowingly to buy, sell or assist others in buying or selling conflict diamonds;

(vii) to ensure that all employees buying or selling rough diamonds within the diamond trade are fully informed of trade resolutions and government regulations restricting the trade in conflict diamonds;

(viii) to create and maintain for at least three years records of invoices received from suppliers and issued to customers;

(ix) to instruct an independent auditor to certify that these records have been created and maintained accurately and either that it has identified no transactions which failed to comply with the above-mentioned undertakings or that any transaction which failed to comply with the above-mentioned undertakings has been duly reported to the Commission and the competent authorities of the Member State in which that transaction took place;

(x) to provide on request the European Commission and the Community authority in the Member State in which a member is resident or established with access to the relevant business records and the reports from the independent auditors.

(b) provide conclusive evidence that is has adopted rules and regulations which oblige the organisation:

(i) to expel any member found, after a due process investigation by the organisation itself, to have violated the above-mentioned undertakings; and

(ii) to publicise that member's expulsion and notify the Commission thereof;

(iii) to make known to all its members all governmental and KP certification scheme laws, regulations and guidelines regarding conflict diamonds and the names of any natural or legal person found guilty, after legally binding due process, of violating these laws and regulations.

(c) provide to the Commission a complete list of all its members, including full names, addresses, location and other information which will contribute to avoiding mistaken identities.

3. Where circumstances justify, the Commission may require additional guarantees that an organisation is able to maintain a credible system of warranties and industry self-regulation.

4. In accordance with the procedure referred to in Article 22(2), The Commission shall list in Annex V each organisation that fulfils the requirements of this Article. It shall notify all Community authorities of the names and other relevant particulars of the members of listed organisations.

5. Organisations covered by this Article shall immediately notify the Commission of all changes in their membership subsequent to the application for listing.

6. A listed organisation or a member thereof shall provide the Commission and the Community authority of a Member State, in which it is resident or established with access to any information that may be needed to assess the proper functioning of the system of warranties and industry self-regulation.

7. If an assessment leads to the conclusion that an organisation or one of its members is breaching the provisions of this Article, the Commission shall, in accordance with the procedure referred to in Article 22(2), remove that organisation from the list in Annex V.

CHAPTER V

TRANSIT

Article 18

Without prejudice to the controls provided for by customs legislation and on condition that neither the container in which rough diamonds are being transported nor the accompanying certificate issued by a Community authority or the competent authority of a participant have been tampered with and the seals on the container remain intact, Articles 3, 9 and 15 shall not apply to rough diamonds attested by the accompanying certificate to be transiting the Community in the course of export to another participant.

CHAPTER VI

GENERAL PROVISIONS

Article 19

A Community authority may ask an economic operator to pay a fee for the producing, issuing and/or validating a certificate and for a physical inspection in accordance with Articles 4 and 14. Under no circumstances shall the amount of that fee exceed the costs incurred by that competent authority for the operation concerned.

No levies or similar duties shall be charged in relation to such operations.

Article 20

1. On the basis of information from Member States showing that their designated Community authorities can reliably, timely, effectively and adequately fulfil the tasks required by this Regulation, the Commission shall maintain a list of Community authorities and the tasks entrusted to them in Annex III.

2. On the basis of the relevant information from the chair of the Kimberley Process and/or participants, the Commission may list participants and the competent authorities they have designated to issue and validate their certificates in Annex II.

Article 21

1. For the purposes of the objectives of the Kimberley Process and the implementation of the KP certification scheme, the European Community shall be a participant in the KP certification scheme.

2. The European Commission, which represents the Community in the Kimberley Process, shall aim to ensure optimal implementation of the KP certification scheme, notably through cooperation with participants. To this end the Commission shall, in particular, exchange information with participants on international trade in rough diamonds and, where appropriate, cooperate in monitoring activities and in the settlement of any disputes that may arise.

Article 22

1. In the performance of its duties under Articles 6, 8, 15, 16, 17 and 20 the Commission shall be assisted by the committee established under Article 8 of Council Regulation (EC) No 2271/96.

2. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Article 7 thereof.

3. The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at ten working days.

4. The Committee shall establish its rules of procedure.

Article 23

The Committee referred to in Article 22 may examine any question concerning the application of this Regulation. Such questions may be raised either by the chairman or by a representative of a Member State.

Article 24

1. Any natural or legal person providing services directly or indirectly related to the activities covered by Articles 3, 9, 11, 12, 17 or 18 of this Regulation shall exercise due diligence for establishing that the persons or entities involved in those activities comply with the provisions of this Regulation.

2. The participation, knowingly and intentionally, in activities, the object or effect of which is, directly or indirectly, to circumvent the provisions of this Regulation shall be prohibited.

3. The Commission shall be notified of any information suggesting that the provisions of this Regulation are being, or have been, circumvented.

Article 25

Information supplied in accordance with this Regulation shall only be used for the purposes for which it was provided.

Information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed by the Commission without the express permission of the person providing it.

Communication of such information shall be permitted where the Commission is obliged or authorised to do so, in particular in connection with legal proceedings. Such communication must take into account the legitimate interests of the person concerned that his or her business secrets should not be divulged.

This Article shall not preclude the disclosure of general information by the Commission. Such disclosure shall not be permitted if this is incompatible with the original purpose of such information.

In the event of a breach of confidentiality, the originator of the information shall be entitled to obtain that it be deleted, disregarded or rectified, as the case may be.

Article 26

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 5 of Regulation (EC) No 303/2002.

Article 27

This Regulation shall apply:

(a) within the geographical territory of the Community, including its airspace,

(b) on board any aircraft or any vessel under the jurisdiction of a Member State,

(c) to any person elsewhere who is a national of a Member State, and

(d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State.

Article 28

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

The Commission shall report annually to the Council on the implementation of this Regulation and the need for a review of the Regulation.

The application of Articles 3, 5, 9, 13 and 18 shall be suspended until the Council decides to apply these Articles on the basis of a proposal from the Commission.

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

ANNEX I

The Kimberley Process Certification Scheme

Kimberley Process Working Document No 1/2002

dd. 20 March 2002

ESSENTIAL ELEMENTS OF AN INTERNATIONAL SCHEME OF CERTIFICATION FOR ROUGH DIAMONDS, WITH A VIEW TO BREAKING THE LINK BETWEEN ARMED CONFLICT AND THE TRADE IN ROUGH DIAMONDS

PREAMBLE

PARTICIPANTS,

RECOGNISING that the trade in conflict diamonds is a matter of serious international concern, which can be directly linked to the fuelling of armed conflict, the activities of rebel movements aimed at undermining or overthrowing legitimate governments, and the illicit traffic in, and proliferation of, armaments, especially small arms and light weapons;

FURTHER RECOGNISING the devastating impact of conflicts fuelled by the trade in conflict diamonds on the peace, safety and security of people in affected countries and the systematic and gross human rights violations that have been perpetrated in such conflicts;

NOTING the negative impact of such conflicts on regional stability and the obligations placed upon states by the United Nations Charter regarding the maintenance of international peace and security;

BEARING IN MIND that urgent international action is imperative to prevent the problem of conflict diamonds from negatively affecting the trade in legitimate diamonds, which makes a critical contribution to the economies of many of the producing, processing, exporting and importing states, especially developing states;

RECALLING all of the relevant resolutions of the United Nations Security Council under Chapter VII of the United Nations Charter, including the relevant provisions of Resolutions 1173 (1998), 1295 (2000), 1306 (2000), and 1343 (2001), and determined to contribute to and support the implementation of the measures provided for in these resolutions;

HIGHLIGHTING the United Nations General Assembly Resolution 55/56 (2000) on the role of the trade in conflict diamonds in fuelling armed conflict, which called on the international community to give urgent and careful consideration to devising effective and pragmatic measures to address this problem;

FURTHER HIGHLIGHTING the recommendation in United Nations General Assembly Resolution 55/56 that the international community develop detailed proposals for a simple and workable international certification scheme for rough diamonds based primarily on national certification schemes and on internationally agreed minimum standards;

RECALLING that the Kimberley Process, which was established to find a solution to the international problem of conflict diamonds, was inclusive of concerned stake holders, namely producing, exporting and importing states, the diamond industry and civil society;

CONVINCED that the opportunity for conflict diamonds to play a role in fuelling armed conflict can be seriously reduced by introducing a certification scheme for rough diamonds designed to exclude conflict diamonds from the legitimate trade;

RECALLING that the Kimberley Process considered that an international certification scheme for rough diamonds, based on national laws and practices and meeting internationally agreed minimum standards, will be the most effective system by which the problem of conflict diamonds could be addressed;

ACKNOWLEDGING the important initiatives already taken to address this problem, in particular by the governments of Angola, the Democratic Republic of Congo, Guinea and Sierra Leone and by other key producing, exporting and importing countries, as well as by the diamond industry, in particular by the World Diamond Council, and by civil society;

WELCOMING voluntary self-regulation initiatives announced by the diamond industry and recognising that a system of such voluntary self-regulation contributes to ensuring an effective internal control system of rough diamonds based upon the international certification scheme for rough diamonds;

RECOGNISING that an international certification scheme for rough diamonds will only be credible if all Participants have established internal systems of control designed to eliminate the presence of conflict diamonds in the chain of producing, exporting and importing rough diamonds within their own territories, while taking into account that differences in production methods and trading practices as well as differences in institutional controls thereof may require different approaches to meet minimum standards;

FURTHER RECOGNISING that the international certification scheme for rough diamonds must be consistent with international law governing international trade;

ACKNOWLEDGING that state sovereignty should be fully respected and the principles of equality, mutual benefits and consensus should be adhered to;

RECOMMEND THE FOLLOWING PROVISIONS:

Section I

Definitions

For the purposes of the international certification scheme for rough diamonds (hereinafter referred to as 'the certification scheme'), the following definitions apply:

CONFLICT DIAMONDS means rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments, as described in relevant United Nations Security Council (UNSC) resolutions insofar as they remain in effect, or in other similar UNSC resolutions which may be adopted in the future, and as understood and recognised in United Nations General Assembly (UNGA) Resolution 55/56, or in other similar UNGA resolutions which may be adopted in future;

COUNTRY OF ORIGIN means the country where a shipment of rough diamonds has been mined or extracted;

COUNTRY OF PROVENANCE means the last Participant from where a shipment of rough diamonds was exported, as recorded on import documentation;

DIAMOND means a natural mineral consisting essentially of pure crystallised carbon in the isometric system, with a hardness on the Mohs (scratch) scale of 10, a specific gravity of approximately 3,52 and a refractive index of 2,42;

EXPORT means the physical leaving/taking out of any part of the geographical territory of a Participant;

EXPORTING AUTHORITY means the authority(ies) or body(ies) designated by a Participant from whose territory a shipment of rough diamonds is leaving, and which are authorised to validate the Kimberley Process Certificate;

FREE TRADE ZONE means a part of the territory of a Participant where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory;

IMPORT means the physical entering/bringing into any part of the geographical territory of a Participant;

IMPORTING AUTHORITY means the authority(ies) or body(ies) designated by a Participant into whose territory a shipment of rough diamonds is imported to conduct all import formalities and particularly the verification of accompanying Certificates;

KIMBERLEY PROCESS CERTIFICATE means a forgery resistant document with a particular format which identifies a shipment of rough diamonds as being in compliance with the requirements of the certification scheme;

OBSERVER means a representative of civil society, the diamond industry, international organisations and non-participating governments invited to take part in Plenary meetings; (Further consultations to be undertaken by the Chair.);

PARCEL means one or more diamonds that are packed together and that are not individualised;

PARCEL OF MIXED ORIGIN means a parcel that contains rough diamonds from two or more countries of origin, mixed together;

PARTICIPANT means a state or a regional economic integration organisation for whom the certification scheme is effective; (Further consultations to be undertaken by the Chair.);

REGIONAL ECONOMIC INTEGRATION ORGANISATION means an organisation comprised of sovereign states that have transferred competence to that organisation in respect of matters governed by the certification scheme;

ROUGH DIAMONDS means diamonds that are unworked or simply sawn, cleaved or bruted and fall under the Relevant Harmonised Commodity Description and Coding System 7102 10, 7102 21 and 7102 31;

SHIPMENT means one or more parcels that are physically imported or exported;

TRANSIT means the physical passage across the territory of a Participant or a non-Participant, with or without transhipment, warehousing or change in mode of transport, when such passage is only a portion of a complete journey beginning and terminating beyond the frontier of the Participant or non-Participant across whose territory a shipment passes.

Section II

The Kimberley Process Certificate

Each Participant should ensure that:

(a) a Kimberley Process Certificate (hereafter referred to as the Certificate) accompanies each shipment of rough diamonds on export;

(b) its processes for issuing Certificates meet the minimum standards of the Kimberley Process as set out in Section IV;

(c) Certificates meet the minimum requirements set out in Annex 1. As long as these requirements are met, Participants may at their discretion establish additional characteristics for their own Certificates, for example their form, additional data or security elements;

(d) it notifies all other Participants through the Chair of the features of its Certificate as specified in Annex 1, for purposes of validation.

Section III

Undertakings in respect of the international trade in rough diamonds

Each Participant should:

(a) with regard to shipments of rough diamonds exported to a Participant, require that each such shipment is accompanied by a duly validated Certificate;

(b) with regard to shipments of rough diamonds imported from a Participant:

— require a duly validated Certificate;

— ensure that confirmation of receipt is sent expeditiously to the relevant Exporting Authority. The confirmation should as a minimum refer to the Certificate number, the number of parcels, the carat weight and the details of the importer and exporter;

— require that the original of the Certificate be readily accessible for a period of no less than three years;

(c) ensure that no shipment of rough diamonds is imported from or exported to a non-Participant;

(d) recognise that Participants through whose territory shipments transit are not required to meet the requirement of paragraphs (a) and (b) above, and of Section II (a) provided that the designated authorities of the Participant through whose territory a shipment passes, ensure that the shipment leaves its territory in an identical state as it entered its territory (i.e. unopened and not tampered with).

Section IV

Internal Controls

Undertakings by Participants

Each Participant should:

(a) establish a system of internal controls designed to eliminate the presence of conflict diamonds from shipments of rough diamonds imported into and exported from its territory;

(b) designate an Importing and an Exporting Authority(ies);

(c) ensure that rough diamonds are imported and exported in tamper resistant containers;

(d) as required, amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions;

(e) collect and maintain relevant official production, import and export data, and collate and exchange such data in accordance with the provisions of Section V;

(f) when establishing a system of internal controls, take into account, where appropriate, the further options and recommendations for internal controls as elaborated in Annex 2.

Principles of Industry Self-Regulation

Participants understand that a voluntary system of industry self-regulation, as referred to in the Preamble of this Document, will provide for a system of warranties underpinned through verification by independent auditors of individual companies and supported by internal penalties set by industry, which will help to facilitate the full traceability of rough diamond transactions by government authorities.

Section V

Co-operation and Transparency

Participants should:

— provide to each other through the Chair information identifying their designated authorities or bodies responsible for implementing the provisions of this Certification Scheme. Each Participant should provide to other Participants through the Chair information, preferably in electronic format, on its relevant laws, regulations, rules, procedures and practices, and update that information as required. This should include a synopsis in English of the essential content of this information;

— compile and make available to all other Participants through the Chair statistical data in line with the principles set out in Annex 3;

— exchange on a regular basis experiences and other relevant information, including on self-assessment, in order to arrive at the best practice in given circumstances;

— consider favourably requests from other Participants for assistance to improve the functioning of the certification scheme within their territories;

— inform another Participant through the Chair if it considers that the laws, regulations, rules, procedures or practices of that other Participant do not ensure the absence of conflict diamonds in the exports of that other Participant;

— cooperate with other Participants to attempt to resolve problems which may arise from unintentional circumstances and which could lead to non-fulfilment of the minimum requirements for the issuance or acceptance of the Certificates, and inform all other Participants of the essence of the problems encountered and of solutions found;

— encourage, through their relevant authorities, closer co-operation between law enforcement agencies and between customs agencies of Participants.

Section VI

Administrative Matters

MEETINGS

1. Participants and Observers are to meet in Plenary annually, and on other occasions as Participants may deem necessary, in order to discuss the effectiveness of the certification scheme.

2. Participants should adopt Rules of Procedure for such meetings at the first Plenary meeting.

3. Meetings are to be held in the country where the Chair is located, unless a Participant or an international organisation offers to host a meeting and this offer has been accepted. The host country should facilitate entry formalities for those attending such meetings.

4. At the end of each Plenary meeting, a Chair would be elected to preside over all Plenary meetings, and any *ad hoc* working groups which might be formed, until the conclusion of the next annual Plenary meeting.

5. Participants are to reach decisions by consensus. In the event that consensus proves to be impossible, the Chair is to conduct consultations.

ADMINISTRATIVE SUPPORT

6. For the effective administration of the certification scheme, administrative support will be necessary. The modalities and functions of that support should be discussed at the first Plenary meeting, following endorsement by the UN General Assembly.

7. Administrative support could include the following functions:

   (a) to serve as a channel of communication, information sharing and consultation between the Participants with regard to matters provided for in this Document;

   (b) to maintain and make available for the use of all Participants a collection of those laws, regulations, rules, procedures, practices and statistics notified pursuant to Section V;

   (c) to prepare documents and provide administrative support for Plenary and working group meetings;

   (d) to undertake such additional responsibilities as the Plenary meetings, or any working group delegated by Plenary meetings, may instruct.

PARTICIPATION

8. Participation in the certification scheme is open on a global, non-discriminatory basis to all Applicants willing and able to fulfill the requirements of that scheme.

9. Applicants wanting to participate in the certification scheme should signify this interest by notifying the Chair through diplomatic channels. This notification should include the information set forth in Section V, paragraph (a) and be circulated to all Participants within one month.

10. Participants intend to invite representatives of civil society, the diamond industry, non-participating governments and international organizations to participate in Plenary meetings as Observers.

PARTICIPANT MEASURES

11. Participants are to prepare, and make available to other Participants, in advance of annual Plenary meetings of the Kimberley Process, information as stipulated in paragraph (a) of Section V outlining how the requirements of the international certification scheme are being implemented within their respective jurisdictions.

12. The agenda of annual Plenary meetings is to include an item where information as stipulated in paragraph (a) of Section V is reviewed and Participants can provide further details of their respective systems at the request of the Plenary.

13. Where further clarification is needed, Participants at Plenary meetings, upon recommendation by the Chair, can identify and decide on additional verification measures to be undertaken. Such measures are to be implemented in accordance with applicable national and international law. These could include, but need not be limited to measures such as:

    (a) requesting additional information and clarification from Participants;

    (b) review missions by other Participants or their representatives where there are credible indications of significant non-compliance with the international certification scheme.

14. Review missions are to be conducted in an analytical, expert and impartial manner with the consent of the Participant concerned. The size, composition, terms of reference and time-frame of these missions should be based on the circumstances and be established by the Chair with the consent of the Participant concerned and in consultation with all Participants.

15. A report on the results of compliance verification measures is to be forwarded to the Chair and to the Participant concerned within three weeks of completion of the mission. Any comments from that Participant as well as the report, are to be posted on the restricted access section of an official certification scheme website no later than three weeks after the submission of the report to the Participant concerned. Participants and Observers should make every effort to observe strict confidentiality regarding the issue and the discussions relating to any compliance matter.

COMPLIANCE AND DISPUTE PREVENTION

16. In the event that an issue regarding compliance by a Participant or any other issue regarding the implementation of the certification scheme arises, any concerned Participant may so inform the Chair, who is to inform all Participants without delay about the said concern and enter into dialogue on how to address it. Participants and Observers should make every effort to observe strict confidentiality regarding the issue and the discussions relating to any compliance matter.

MODIFICATIONS

17. This document may be modified by consensus of the Participants.

18. Modifications may be proposed by any Participant. Such proposals should be sent in writing to the Chair, at least ninety days before the next Plenary meeting, unless otherwise agreed.

19. The Chair is to circulate any proposed modification expeditiously to all Participants and Observers and place it on the agenda of the next annual Plenary meeting.

REVIEW MECHANISM

20. Participants intend that the international certification scheme should be subject to periodic review, to allow Participants to conduct a thorough analysis of all elements contained in the scheme. The review should also include consideration of the continuing requirement for such a scheme, in view of the perception of the Participants, and of international organisations, in particular the United Nations, of the continued threat posed at that time by conflict diamonds. The first such review should take place no later than three years after the effective starting date of the certification scheme. The review meeting should normally coincide with the annual Plenary meeting, unless otherwise agreed.

THE START OF THE IMPLEMENTATION OF THE SCHEME

21. The certification scheme should be established through an international understanding as soon as possible, recognizing the urgency of the situation from a humanitarian and security standpoint. Those in a position to issue the Kimberley process Certificates should do so immediately. All others are encouraged to do so by 1 June 2002. It is the intention of Participants to start the full implementation simultaneously by the end of 2002. For Applicants that decide to join the scheme after this date, it becomes effective upon notification to the Chair pursuant to the provision in Section VI, Paragraph 9.

Annex 1

CERTIFICATES

A. **Minimum requirements for Certificates**

A Certificate is to meet the following minimum requirements:

— Each Certificate should bear the title 'Kimberley Process Certificate', the Kimberley Process logo and the following statement: 'The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process international certification scheme for rough diamonds'

— Country of origin for shipment of parcels of unmixed (i.e. from the same) origin

— Certificates may be issued in any language, provided that an English translation is incorporated

— Unique numbering with the Alpha 2 country code, according to ISO 3166-1

— Tamper and forgery resistant

— Date of issuance

— Date of expiry

— Issuing authority

— Identification of exporter and importer

— Carat weight/mass

— Value in USD

— Number of parcels in shipment

— Relevant Harmonised Commodity Description and Coding System

— Validation of Certificate by the Exporting Authority

B. **Optional Certificate Elements**

A Certificate may include the following optional features:

— Characteristics of a Certificate (for example as to form, additional data or security elements)

— Quality characteristics of the rough diamonds in the shipment

— A recommended import confirmation part should have the following elements:

Country of destination

Identification of importer

Carat/weight and value in USD

Relevant Harmonised Commodity Description and Coding System

Date of receipt by Importing Authority

Authentication by Importing Authority

C. **Optional Procedures**

— Rough diamonds may be shipped in transparent security bags.

— The unique Certificate number may be replicated on the container.

Annex 2

RECOMMENDATIONS AS PROVIDED FOR IN SECTION IV, PARAGRAPH (f)

General Recommendations

1. Participants may appoint an official co-ordinator(s) to deal with the implementation of the certification scheme.

2. Participants may consider the utility of complementing and/or enhancing the collection and publication of the statistics identified in Annex 3 based on the contents of Kimberley Process Certificates.

3. Participants are encouraged to maintain the information and data required by Section V on a computerised database.

4. Participants are encouraged to transmit and receive electronic messages in order to support the certification scheme.

5. Participants that produce diamonds and that have rebel groups suspected of mining diamonds within their territories are encouraged to identify the areas of rebel diamond mining activity and provide this information to all other Participants. This information should be updated on a regular basis.

6. Participants are encouraged to make known the names of individuals or companies convicted of activities relevant to the purposes of the certification scheme to all other Participants through the Chair.

7. Participants are encouraged to ensure that all cash purchases of rough diamonds are routed through official banking channels, supported by verifiable documentation.

8. Participants that produce diamonds should analyse their diamond production under the following headings:

   — Characteristics of diamonds produced

   — Actual production

Recommendations for Control over Diamond Mines

9. Participants are encouraged to ensure that all diamond mines are licensed and to allow only those mines so licensed to mine diamonds.

10. Participants are encouraged to ensure that prospecting and mining companies maintain effective security standards to ensure that conflict diamonds do not contaminate legitimate production.

Recommendations for Participants with Small-scale Diamond Mining

11. All artisinal and informal diamond miners should be licensed and only those persons so licensed should be allowed to mine diamonds.

12. Licensing records should contain the following minimum information: name, address, nationality and/or residence status and the area of authorised diamond mining activity.

Recommendations for Rough Diamond Buyers, Sellers and Exporters

13. All diamond buyers, sellers, exporters, agents and courier companies involved in carrying rough diamonds should be registered and licensed by each Participant's relevant authorities.

14. Licensing records should contain the following minimum information: name, address and nationality and/or residence status.

15. All rough diamond buyers, sellers and exporters should be required by law to keep for a period of five years daily buying, selling or exporting records listing the names of buying or selling clients, their license number and the amount and value of diamonds sold, exported or purchased.

16. The information in paragraph 14 above should be entered into a computerised database, to facilitate the presentation of detailed information relating to the activities of individual rough diamond buyers and sellers.

Recommendations for Export Processes

17. A exporter should submit a rough diamond shipment to the relevant Exporting Authority.

18. The Exporting Authority is encouraged, prior to validating a Certificate, to require an exporter to provide a declaration that the rough diamonds being exported are not conflict diamonds.

19. Rough diamonds should be sealed in a tamper proof container together with the Certificate or a duly authenticated copy. The Exporting Authority should then transmit a detailed e-mail message to the relevant Importing Authority containing information on the carat weight, value, country of origin or provenance, importer and the serial number of the Certificate.

20. The Exporting Authority should record all details of rough diamond shipments on a computerised database.

Recommendations for Import Processes

21. The Importing Authority should receive an e-mail message either before or upon arrival of a rough diamond shipment. The message should contain details such as the carat weight, value, country of origin or provenance, exporter and the serial number of the Certificate.

22. The Importing Authority should inspect the shipment of rough diamonds to verify that the seals and the container have not been tampered with and that the export was performed in accordance with the certification scheme.

23. The Importing Authority should open and inspect the contents of the shipment to verify the details declared on the Certificate.

24. Where applicable and when requested, the Importing Authority should send the return slip or import confirmation coupon to the relevant Exporting Authority.

25. The Importing Authority should record all details of rough diamond shipments on a computerised database.

Recommendations on Shipments to and from Free Trade Zones

26. Shipments of rough diamonds to and from free trade zones should be processed by the designated authorities.

Annex 3

STATISTICS

Recognising that reliable and comparable data on the production and the international trade in rough diamonds are an essential tool for the effective implementation of the certification scheme, and particularly for identifying any irregularities or anomalies which could indicate that conflict diamonds are entering the legitimate trade, Participants strongly support the following principles, taking into account the need to protect commercially sensitive information:

(a) to keep and publish within two months of the reference period and in a standardised format, quarterly aggregate statistics on rough diamond exports and imports, as well as the numbers of certificates validated for export, and of imported shipments accompanied by certificates;

(b) to keep and publish statistics on exports and imports, by origin and provenance wherever possible; by carat weight and value; and under the relevant Harmonised Commodity Description and Coding System (HS) classifications 7102 10; 7102 21; 7102 31;

(c) to keep and publish on a semi-annual basis and within two months of the reference period statistics on rough diamond production by carat weight and by value. In the event that a Participant is unable to publish these statistics it should notify the Chair immediately;

(d) to collect and publish these statistics by relying in the first instance on existing national processes and methodologies;

(e) to make these statistics available to an intergovernmental body or to another appropriate mechanism identified by the Participants for (1) compilation and publication on a quarterly basis in respect of exports and imports, and (2) on a semi-annual basis in respect of production. These statistics are to be made available for analysis by interested parties and by the Participants, individually or collectively, according to such terms of reference as may be established by the Participants;

(f) to consider statistical information pertaining to the international trade in and production of rough diamonds at annual Plenary meetings, with a view to addressing related issues, and to supporting effective implementation of the international certification scheme.

ANNEX II

List of participants in the Kimberley Process certification scheme and their duly appointed competent authorities as referred to in Articles 1, 3, 18 and 21(2)

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ANNEX III

List of Member States' competent authorities and their tasks as referred to in Articles 1 and 20(1)

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ANNEX IV

Community certificate as referred to in Article 2

1. The Community certificate referred to in Article 2 shall be:

   (a) be printed on watermarked security paper with an intaglio border,

   (b) measure 21 cm by 15 cm,

   (c) contain red and green UV inks,

   (d) have a unique number with the alpha-2 country code prescribed by ISO 3166-1,

   (e) be tamper and forgery resistant,

   (f) be printed in English and, where relevant, the language(s) of the Member State concerned.

2. Member States shall be responsible for having the forms printed. The forms may also be printed by printers appointed by the Member State in which they are established. In the latter case, reference to the appointment by the Member State must appear on each form. Each form shall bear an indication of the printer's name and address or a mark enabling the printer to be identified.

Specimen Community Kimberley Process Certificate

THE EUROPEAN COMMUNITY

KIMBERLEY PROCESS CERTIFICATE

Unique Number:
Alpha-2 country code, ISO 3166-1

Issuing Community authority:
The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process international certification scheme for rough diamonds.

Country of Origin: ..... Number of Parcels: .....

Exporter. Name: .....

Address: .....

Importer. Name: .....

Address: .....

	Carat	Value (USD)
7102 10		
7102 21		
7102 31		

Issued on: ..... Expires on: .....

.....
Signature/Stamp of Community authority

It is hereby verified that the content of the container accompanying Kimberley Process Certificate of the Community no ..... corresponds with said certificate.

Importing authority: ..... Date: .....

IMPORT CONFIRMATION

This is to certify that the rough diamonds accompanied by Community certificate No ..... were imported into ..... and verified in compliance with the Kimberley Certification Scheme for Rough Diamonds. Copy of certificate to accompany Confirmation.

Date of receipt by importing authority: .....

Importing authority: ..... Date: .....

.....
Signature

ANNEX V

List of diamond organisations implementing the system of warranties and industry self-regulation referred to in Articles 11 and 17

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Amended proposal for a Directive of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC [1]

(2003/C 20 E/14)

(Text with EEA relevance)

COM(2002) 460 final — 2001/0117(COD)

(Submitted by the Commission on 9 August 2002)

EXPLANATORY MEMORANDUM

1. GENERAL COMMENTS

In the context of an integrated European capital market, the Commission attaches great importance to improving the framework for investing and raising capital on an EU wide basis. A single financial market will promote the competitiveness of the European economy, lowering the cost of raising capital for all types of companies. It will bring major benefits for consumers and investors.

This objective also satisfies the Lisbon European Council's request to introduce a single passport for issuers in the European Union.

Facilitating the widest possible access to capital markets, including for SMEs, requires a complete overhaul of the Community provisions on prospectuses, the first of which are 20 years old (Directive 80/390/EEC of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing [2] and Directive 89/298/EEC of 17 April 1989 coordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public).

The need to upgrade these Directives has been listed as a top priority in the Financial Services Action Plan and the Risk Capital Action Plan.

In May 2000, FESCO (the Forum of European Securities Commissions) published for public consultation the paper European Public Offer. Following that consultation, and as a result of the process, on 17 January 2001 it published a new paper A European Passport for Issuers — A report to the EU Commission, calling also for an urgent overhaul of the existing rules and suggesting possible new approaches.

A proposal for a Directive on prospectuses was adopted by the Commission on 30 May 2001. This legislative initiative was given a first reading by Parliament, which on 14 March 2002 amended the text adopted by the Commission. At the same time, the Council Working Party on Financial Services (Prospectus) met on several occasions to try and reach agreement on the proposal.

To speed up the legislative process and meet the expectations expressed at the Barcelona Council on the early adoption of a directive on prospectuses, the Commission wishes to put forward an amended proposal for a Directive that takes account of many of Parliament's and the Council's wishes and concerns. The presentation of the proposal has been changed as regards form to make the text more understandable and readable.

The amended proposal also includes new, flexible arrangements for firms that were not in the proposal adopted by the Commission on 30 May 2001 while remaining consistent with the principles of protection and sound information for investors.

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[1] OJ C 240 E, 28.8.2001, p. 272.

[2] Directive repealed and since replaced by the consolidated Directive 2001/34/EC.

The indications that the current Community instruments on prospectuses are not suited to the operation of capital markets have not changed. There are currently many different practices and differing interpretations based on distinct traditions within the European Union regarding the content and the layout of prospectuses. The methods used and the time required for checking the information given therein are also different. Unless reform is undertaken, inconsistencies will continue and the European financial market will remain fragmented. Cross-border capital raising will therefore remain the exception, rather than the rule — the antithesis of the logic of the single currency.

The current complex and partial mutual recognition mechanism is unable to ensure the objective of providing a single passport for issuers. There is a need for modernisation and more flexibility. To achieve this objective, harmonisation of the information contained in each prospectus, including those relating to markets specially intended for professional investors, is necessary in order to provide equivalent protection for investors at Community level.

The European passport for issuers is also a unique opportunity to simplify regulatory compliance for issuers without their having to produce duplicative sets of documentation or respond to numerous additional national requirements.

The main changes compared with the Commission's original proposal are:

— introduction of enhanced disclosure standards in line with international standards for the public offer of securities and admission to trading;

— introduction of special Community rules for securities designed to be traded by professionals;

— introduction of new prospectus formats for frequent issuers, and the duty on firms whose securities are listed on a regulated market to update the information on issuers at least once a year;

— possibility to offer or admit securities to trading on the basis of a simple notification of the prospectus approved by the home competent authority;

— concentration of the responsibilities in the home administrative competent authority;

— extensive use of the committee system, following the Stockholm European Council's broad endorsement of the Lamfalussy Report in the resolution adopted by Heads of State or Government on more effective securities markets regulation in the European Union.

The need for enhanced European disclosure standards for publicly offered securities

Adequate and equivalent disclosure standards should be in place in all European Member States when securities are offered to the public or traded on regulated markets.

This implies that the existing disclosure standards need to be aligned in order to introduce the same standards for the public offer of securities and admission to trading throughout the Union, in accordance with the principle of maximum harmonisation.

Clear and common definitions have to be agreed to clarify the scope of the Directive and ensure necessary harmonisation at Community level. As recognised by the Preliminary Report of the Wise Men (15 November 2000), the introduction of a definition of public offer is a prerequisite for attaining the objective and encouraging firms to raise capital on a European basis under similar rules. It aims at avoiding loopholes at Community level and disparity in the treatment accorded to retail investors due to the fact that the same operation is considered as a private placement in some Members States (for which no prospectus has to be published) but not in others. A common definition of a public offer of securities automatically entails harmonising the concept of private placement in the European Union.

It is accompanied by new rules on exemptions, which will also assist the introduction of uniform standards in all Member States.

The amended proposal extends the scope of the existing measures to ensure that harmonised disclosure requirements are available for equity and debt securities traded on regulated markets. Directive 2001/34/EC applies only to securities that have been admitted to an official stock exchange, i.e. one which was known at the time the Directive was adopted. It is worth noting that start-ups and high tech companies are mainly traded on regulated markets outside the official listing segment. At present, it is up to each Member State to decide what information relating to these markets is required, and this has implications for the cross-border offering of these securities.

Need to introduce special Community rules for securities, especially those intended to be traded between professionals

The operation of the wholesale capital markets at European level needs to be made more efficient in order to improve the integration of the European financial market. It is therefore planned to establish Community rules for these markets and no longer automatically leave them outside the Community's scope as in the current Directives. It is planned to introduce special rules for those securities specially intended to be traded between professionals, while still applying the common arrangements in the European passport.

The basis of these arrangements is that there is no need for a prospectus in the case of an offer to qualified investors in the form of a private placing, the rules on advertising do not apply to this type of offer, and the content of the prospectus in the event of admission to trading is adapted to trading for this type of investor: in particular there is no obligation to provide a summary. Such issues are also not caught by the traditional rule of determining the competent authority by reference to the issuer's registered office.

European regulated markets are distinguished by their lack of barriers to entry, which is consistent with the functioning of the single market. Since wholesale and retail investors have free access to these stock-markets, an objective criterion based on a high nominal value for the securities to be traded has been introduced, in order to create an effective distinction between markets for professionals and the general public. Thus the more flexible arrangements envisaged cannot be put into effect to the detriment of retail investors.

A simple, effective notification system that will make it possible to use a single prospectus for a public offer or admission to trading in two or more Member States

The introduction of a true single passport for issuers requires the replacement of the existing mutual recognition system by a simple notification system, similar to the one present in the financial inter-mediaries Directives for the cross border provision of services.

Under the new system, host Member States will be deprived of the possibility of asking for additional information to be included in the prospectus.

The operation of such a system requires a great degree of trust among competent authorities in charge of approving the prospectus and supervising the information disseminated by issuers. The proposal therefore specifies that the competent administrative authority in the home Member State is responsible for providing supervision that will ensure equivalent treatment of all investors as regards access to information and the on-going disclosure of material information by the issuer.

Independent administrative authorities, i.e. authorities in charge of ensuring general good objectives, are necessary for ensuring market and investor protection. The delegation of resources, but not of responsi-bilities, to private bodies may be entertained, subject to an organisation being set up that has no conflict of interest and does not impede competition between stockmarkets.

Other measures are foreseen in order to improve the functioning of the existing Community legislation. The requirement to fully translate the content of the prospectus does not encourage multinational offerings or admission to trading in more than one country. The proposal provides for a new language regime: host Member States' competent authorities may now require, if they so wish, only a translation of the summary of the prospectus, provided that the full prospectus is drafted in a language which is customary in the sphere of finance (normally English). These arrangements should facilitate cross-border arrangements, while guaranteeing adequate protection for retail investors: the latter will always receive the key information in summary form in their own domestic language. The purpose of the summary is to provide, in particular to retail investors, immediate, succinct information on the most relevant aspects relating to the issuer and the proposed operation.

The need for best practice concerning the content of financial disclosure

The disclosure requirements provided for by Directive 2001/34/EC are no longer sufficient to meet the needs of investors in modern global financial markets. Increasingly, investors want to make decisions on the basis of a continuum of standardised company financial and non-financial information. The current requirements need to be replaced by new European disclosure standards. Fostering best practice will enhance market confidence and attract capital. The upgrade of EU disclosure standards shall be in accordance with the International Disclosure Standards approved in 1998 by IOSCO (International Organisation of Securities Commissions). This new approach is designed to provide key information on certain topics such as risk factors, related-party transactions, corporate governance or management's discussion and analysis that are not currently dealt with at EU level.

To hasten the completion of the single market in securities and improve the comparability of information, the Commission has updated the Community accounting rules by adopting a new regulation: all companies in the European Union whose securities are traded on a regulated market will have to prepare their consolidated accounts in accordance with a single set of accounting rules, namely the International Accounting Standards (IAS). This requirement should enter into effect in 2005 at the latest. Thus it will be possible to trade the securities of the companies concerned on EU and international financial markets on the basis of a single set of accounting standards.

Need to improve the ways of presenting the prospectus and ensure that information is easily available and regularly updated

The proposal introduces several new formats for the Community prospectus, leaving each issuer to choose which is most suitable. The issuer implements the policy described above, aiming at increasing the quality and the quantity of the information to be put at the disposal of investors and markets. It is the Commission's firm belief that increasing investor confidence will deliver significant benefits, lowering the cost of raising capital and ultimately improving job creation and the overall dynamism of the European economy.

The prospectus may consist of one or more documents. In all cases, a summary of the documentation is required. For frequent issuers such as credit institutions that issue in a continuous or repeated manner, the system proposed is a basic document plus supplements. A similar system is planned for issuers that programme their offers.

Another new format is also proposed, in which the prospectus consists of two parts: the registration document, containing information about the issuer, and the securities note, containing information about the securities (as explained in detail below). A summary of the two parts is provided in an ad hoc summary note. This system introduces a fast-track procedure for new issues, under which only the information related to the securities offered or admitted to trading has to be given, plus any updating of the information in the registration document. The competent supervisory authority will be required to approve only the securities note, and therefore the time for approval will be reduced. The introduction of the new system therefore meets an increasing demand from multinational issuers (i.e. issuers frequently raising capital on European and world markets).

In addition, incorporation by reference will be allowed. This means that information to be disclosed in a prospectus may be incorporated into that document by reference to another document, previously filed and approved by the home competent authority. This will save time and money for companies frequently raising capital on the market. The issuer will be allowed to use a document or prospectus that have already been approved, and red tape will therefore be reduced.

To ensure the long-term protection of, and reliable information for, holders of securities, it is planned that information about issuers whose securities are traded on regulated markets should be updated at least annually. The updating may be based on all the current disclosure requirements in other Community legislation, such as the Company Law Directives, the Directive on information to be published on a regular basis by listed companies (see. Directive 2001/34/EC), and the Regulation on International Accounting Standards. In order not to overload certain companies, the updating system is not compulsory for those that have offered securities which are not being traded on a regulated market. For small and medium-sized enterprises, the minimum requirement of an annual updating is limited to the filing of their financial statements.

The rapid development of information and communication technology is changing the way financial information is disseminated. To facilitate the circulation of prospectuses (and the various documents composing a prospectus) the use of electronic means such as the Internet is encouraged. This will be less costly for companies than current requirements but may also have a number of advantages. Investors would have effective and free access to information on a real-time basis, as the issuer is now able to publish the prospectus in electronic format.

Need for an extensive use of committee procedures (comitology) to keep up with developments in the financial sphere

Member States' securities markets are facing dramatic changes and increasing consolidation, driven by new technologies, globalisation and the effect of the euro. Standard setting is also evolving rapidly. Competition between securities markets calls for best practice taking new financial techniques and new products into account. On the other hand, consumer protection and confidence has to be maintained at Community level. It is important to ensure that any new measures adopted do not leave consumers wishing to invest in innovative products without proper protection and remedies or vulnerable to differentiated treatment depending on each Member State's interpretation.

To meet the challenge of regulating modern financial markets, new legislative techniques have to be introduced. On 17 July 2000, the Council set up the Committee of Wise Men on the Regulation of European Securities Markets. In its final report, the Committee called for each Directive to be a split between framework principles and 'non-essential' technical implementing measures to be adopted by the Commission under the Union's committee procedures. In its resolution on more effective securities markets regulation in the European Union, the Stockholm European Council welcomed the Commission's intention to establish a Securities Committee. The Securities Committee, acting in its advisory capacity, should be consulted on policy issues, in particular for the kind of measures the Commission might propose at the level of framework principles. In its resolution, the European Council added that, subject to specific legislative acts proposed by the Commission and adopted by the European Parliament and the Council, the Securities Committee should function as a regulatory committee in accordance with the 1999 Decision on comitology to assist the Commission when it takes decisions on implementing measures under Article 202 of the EC Treaty. This Directive follows the guidelines laid down by the Stockholm European Council and the European Parliament.

The amended proposal identifies the second-tier implementing arrangements that will have to be decided by the Commission by the committee procedure — for example, adaptation and clarification of the definitions and exemptions set out in the Directive in order to ensure uniform application and compatibility with developments on financial markets. Adaptation of disclosure standards and deadlines, and clarification of the rules on publication of the prospectus and the technical arrangements for advertisements of a promotional and marketing nature will also be dealt with by the Commission under committee procedure. The areas have been selected in order to ensure a prompt response to fast-changing reality and to ensure the proper functioning of the internal market (in accordance with the home country principle) and adequate protection for retail investors.

2. **DESCRIPTION OF ARTICLES**

The main formal changes made to the proposal for a Directive adopted by the Commission on 30 May 2001 are as follows:

Paragraphs 1 and 2 of Article 1 of the original proposal have been merged for the sake of clarity and simplicity.

Article 3 has been replaced by a description of the situations where there is an obligation to publish a prospectus, the original paragraph 2 having been incorporated in the definition of a public offer of securities in Article 2, while the original paragraph 3 has been moved to Article 4 — Exemptions from the obligation to publish a prospectus.

Article 4 now deals with the conditions for exemption from the obligation to publish a prospectus.

The amended proposal includes a new Article 6, which deals with responsibility for the content of a prospectus.

Article 7 corresponds to the former Article 6 on the information to be included in a prospectus.

The amended proposal includes a new Article 8, which deals with the omission of information from a prospectus and in particular incorporates paragraph 3 of the former Article 6.

The amended proposal includes a new Article 9, which deals with the period of validity of the various types of prospectus.

The amended proposal includes a new Article 10, which deals with the obligation to update all the information on issuers whose securities are admitted to trading on a regulated market and replaces Article 9 on the annual update of the registration document.

The arrangement of the articles in Chapter III has not been changed. The former Chapter IV, however, has been split into two, so as to deal separately with the practical arrangements for the 'European passport' for issuers, while a new Chapter V concerns the language regime and the arrangements for prospectuses drawn up under the rules in force in third countries.

Lastly, the articles containing the transitional and final provisions have been rearranged.

The main substantive changes are as follows:

In Article 1, issues of securities by non-profit-making organisations and certificates of deposit issued by credit institutions have been withdrawn from the scope of the Directive. Sovereign issuers may fall within the scope of the Directive and thus qualify for the European passport.

In Article 2, the definition of securities has been aligned on that in the Investment Services Directive and clarified with regard to the rules for money market instruments with a fixed maturity. The definition of qualified investors has been expanded to include more legal persons and, subject to certain conditions, natural persons. A definition of small and medium-sized enterprises (SMEs) has been included, as has a definition of credit institutions. Definitions of 'offering programme', 'securities issued in a continuous or repeated manner' and the 'approval' of a prospectus have been added. The definition of 'offer of securities to the public' has been supplemented and clarified. It is at once a positive and a negative definition, so that private placings may be accurately identified. Small-scale issues (less than EUR 2 500 000) are not treated as public offers. A new system, based on the principle of a high nominal value, has been introduced in order to allow an objective distinction to be made between wholesale and retail regulated markets. The definition of home Member State has been adapted in order to allow certain issuers of securities with a high nominal value a free choice as to their competent authority.

In Article 4, which concerns exemptions from the obligation to publish a prospectus, certain clarifications have been added, e.g. the payment of dividends in the form of shares, while the rules on offers of securities, including in the form of stock options, to employees or directors have been relaxed in order to exempt such offers from the said obligation.

In Article 5, the obligation to draw up a prospectus in the form of a registration document plus a securities note and a summary note has been dropped in favour of leaving the issuer with a choice. The article also contains provisions aimed at regulating the content of the summary. A new prospectus format for certain types of issue, namely offering programmes and issues of mortgage bonds, has also been introduced.

The new Article 6 establishes the principle of the responsibility of the issuer for the content of the prospectus, and the obligation on Member States to ensure that, where appropriate, the issuer is liable towards third parties. In the case of the summary, such liability is limited.

Article 7 describes explicitly the type of adjustments needed when implementing measures for the different models of prospectus are adopted and establishes the reference standards for the information to be supplied.

Article 8 gives competent authorities a new right, which is not to require certain information normally requested, subject to certain conditions. It is also possible to adapt certain required items, where they are not suited to the issuer's situation.

Article 9, which is new, grants the right to use the same prospectus for a maximum period of twelve months, subject to updating where appropriate.

Article 10, which is also new, concerns the obligation to update all the information on issuers admitted to trading on a regulated market; it has been reworked and made more flexible. There is no obligation to monitor updated information. The format is left open, and the reference to other documents required by other Community instruments is a wide-ranging one.

Article 11, which concerns the incorporation of information by reference, has been supplemented in order to clarify the types of document that may be used when drawing up a prospectus. The summary may not refer to other documents.

Article 12 makes clear that the registration document does not have to be approved, if it is not used for drawing up a prospectus.

The time limits set for the approval of a prospectus have been shortened in Article 13, and failure by a competent authority to comment is now regarded as approval. Failure by a competent authority to act will allow the issuer to change competent authority. A competent authority may also transfer approval of a prospectus to an authority in another Member State, if that authority agrees. Concerning the liability of competent authorities, the law applicable has been clarified, as has the power of a Member State to exonerate from any liability a competent authority which it has appointed.

In Article 14, the deadline by which a prospectus must be published has been made more flexible to take account of the constraints on the issuer and the placing of the prospectus by the competent authority on its website.

There is no longer any obligation to presubmit advertisements of issues and admission to trading. However, a competent authority must have the power to monitor such advertising. Lastly, the principle of equal treatment for investors regarding oral information at investors' meetings is confined to important and sensitive information.

The scope of Article 16 has been extended to include substantive errors and other inaccurate information.

As regards the automatic mutual recognition procedure in Article 17, the three-month time limit has been abolished, as has any opportunity for the host competent authority to intervene in the procedure.

A time limit of three days between applying for and obtaining a certificate of approval has been attached to the notification procedure in Article 18.

In Article 19, the language regime has been spelt out to cover all scenarios.

The procedure for allowing the conditional use of prospectuses drawn up under third-country rules has been relaxed and at the same time expanded to include action by the Commission on the harmonisation of practices.

Article 21, which concerns the powers of the competent authorities, has been supplemented to make it possible for several authorities in one Member State to be involved and to allow tasks to be delegated to other bodies. The power to conduct on-the-spot inspections has been withdrawn.

Article 22 on professional secrecy has been supplemented with detailed rules on inter-authority cooperation.

Article 23 on precautionary measures has been amended by withdrawing from the Commission the power to ask a Member State to amend or abolish such measures.

Article 24, which deals with the operation of the European Securities Committee, has been supplemented by a provision terminating the Committee's regulatory power after a period of four years from the entry into force of the Directive.

Article 25 on sanctions has been aligned with the relevant provisions in the Market Abuse Directive.

The time limit on transposition has been extended in Article 29, and the references to the repealed Community provisions have been updated following the entry into force of Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities.

Article 30, which deals with transitional provisions, has been revised, so that it no longer refers to the first time the annual update obligation is performed; on the contrary, it now contains a provision governing the initial declaration by third-country issuers of their home country and competent authority.

Article 1 — Subject matter and scope

The purpose of the Directive is to harmonise requirements for the drawing up, scrutiny and distribution of the prospectus to be published when securities are offered to the public or admitted to trading.

The Directive is applicable to the securities which are offered to the public or are admitted to trading on a regulated market as defined in the Investment Services Directive (93/22/EEC — ISD). This represents a major change from the previous system based on the consolidated Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities and Directive 89/298/EEC coordinating the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public.

The wording 'admission to trading' has been selected in order to avoid possible loopholes in the implementation of the Directive. 'Admission to the official list' is not defined in Community legislation. In many cases it has been interpreted as admission to the official segment of the national stock exchange (in certain cases even if trading does not take place). This implies that disclosure requirements for other types of 'regulated markets' (definition introduced by the ISD) are not fully harmonised at EU level and in several cases mutual recognition is not allowed. In other Member States, implementation of the ISD has resulted in the replacement of the term 'official listing' by 'first-tier market', 'second-tier market', etc. Nevertheless, the ISD definition requires that rules should be adopted to ensure that certain requirements are met before securities can be traded on a regulated market (such requirements being either imposed by the consolidated Directive 2001/34/EEC or left to the national legislator to decide). The aim of the new Directive is to ensure that initial disclosure requirements are as set forth in the Directive.

As called for by European securities regulators, the two Directives are now merged and the disclosure standards required are the same. In addition, certain types of securities which were left outside the old system because they were traded on regulated markets without being admitted to the official list are now included and can benefit from the single passport.

At the same time the system increases the information and the guarantee provided to investors in the European Union.

Traditional exemptions have been kept for securities of specific types (such as UCITS units, covered by different harmonisation provisions) or issued by Member States or international bodies. However, sovereign issuers may draw up prospectuses in accordance with the Directive in order to qualify for the provisions concerning the European passport for issuers.

Article 2 — Definitions

The definitions listed in Article 2 are partly drafted by reference to existing Directives but also contain new elements. Thus the definition of 'securities' is little different from that in Directive 89/298/EEC (it has simply been updated and aligned with the operation of the secondary market in securities as provided for in Directive 93/22/EC on investment services); on the other hand, the introduction of the concept of a 'public offer' is a major innovation. When Directive 89/298/EEC was adopted it proved impossible to reach an agreement on a common definition (see recital 7 of the said Directive). However, as recognised in the Wise Men's report, it is important to ensure a common approach to this subject in order to avoid disparities in investor protection in an era when, through electronic communication networks, investors can be reached throughout Europe (and elsewhere). Different interpretations of the 'public offer' requirement in the Member States may have the effect that in certain cases securities can be sold without any disclosure requirement (and this behaviour can affect the entire European capital market).

To complement this definition, a new harmonised scheme for exemptions is envisaged: this includes offers targeted only at certain 'qualified' investors (i.e. who have specific professional qualifications or characteristics) or at investors who are able to acquire securities for an overall amount of at least EUR 50 000 or securities with a nominal value of at least EUR 50 000. Offers that are addressed to a limited number of investors or are less than EUR 2 500 000 are exonerated from the prospectus.

The new system is based on the approval of the prospectus by the competent authority in the home Member State; the concepts of 'home Member State' and 'host Member State' have therefore been defined. A definition is also provided for the case where the issuer is incorporated outside the EU and its securities are offered or admitted to trading in the EU.

Clarifications and adaptations of definitions, if necessary, can be adopted by using the procedure foreseen in Article 24 in accordance to the suggestion to delegate to the Commission detailed technical regulations. This means that the Commission, assisted by the Securities Committee, will be able for example to determine whether new securities fall within the Directive's scope, thereby ensuring that the Directive reflects developments on the financial markets.

Article 3 — Conditions for the offer of securities to the public and their admission to trading

Article 3 specifies that no securities may be offered to the public or admitted to trading on a regulated market in the European Union, unless the initial information required (the prospectus) has been made available to the market and investors.

Article 4 — Exemptions from the obligation to publish a prospectus

As already explained with regard to the definition of 'public offer', a harmonised approach is required in order to avoid loopholes and ensure uniform treatment and protection of investors throughout the EU. It is therefore important to introduce common exemption arrangements.

This objective has been achieved by revising the existing provisions and eliminating the flexibility that allows Member States to decide whether or not the exemptions have to be incorporated into national law.

One series of exemptions relates to the fact that certain types of securities are offered in exchange for already existing securities or result from specific operations for which equivalent information is or has already been made available to the public or the shareholders.

A second series concerns admission to trading in the case of specific transactions that do not require special information in order to ensure investor protection and hence do not entail the burden of drawing up a prospectus.

Clarifications and adaptations of definitions and/or exemptions, if necessary, may be adopted under the procedure provided for in Article 24, in accordance with the proposal to delegate to the Commission the adoption of the detailed technical provisions. This should avoid differentiated implementation by the Member States undermining the Commission's objective of ensuring adequate investor protection.

Article 5 — Prospectus

Article 5 broadly reflects principles, on the function and the format of the prospectus, already present in Directives 2001/34/EC and 89/298/EEC. These principles, the aim of which is to ensure that all material information is disclosed to investors, are also consistent with the international principles adopted by IOSCO (see also the IOSCO report 'Objectives and Principles for Securities Regulation'). In line with best international practice, the Article also requires that the information should be presented in easily understandable and analysable form.

Paragraph 1 clearly states that all necessary information should be disclosed in the prospectus, while paragraph 2 describes the operation of the summary attached to the prospectus.

Paragraph 3 explains that the prospectus may be drawn up as a single document or as separate documents consisting of a registration document, a securities note and a summary note. The registration document contains general information on the issuer as well as its financial statements. The securities note contains details on the securities offered to the public or admitted to trading and the modalities of this operation. The summary is a résumé of the main items included in the prospectus (or the registration document and the securities note if this is the case).

A different prospectus format is proposed for facilitating the task and reducing the amount of work of frequent issuers, in particular those which programme their offers or which issue mortgage bonds in a continuous or frequent manner.

Article 6 — Responsibility for the prospectus

As in the present system, responsibility for ensuring that all material information is disclosed in the prospectus lies with the administrative, management or supervisory bodies of the issuer, the offeror and the guarantor as the case may be. Member States are also required to ensure that this obligation is backed by civil liability measures, but with different arrangements for responsibility for the summary of the prospectus.

Article 7 — Minimum information to be included in the prospectus

The specific items of information to be included in the prospectus, whether in the form of a single document or a set of documents, are detailed implementing measures and should be adopted in accordance with the procedure proposed in the report by the Committee of Wise Men (i.e. at level 2) with reference being made to the Annexes to the Directive. The Community's detailed disclosure standards should be in line with those adopted by IOSCO for multinational offerings and listings and with the indicative Annexes to the Directive. Annex I lists the items of information to be included in the prospectus when drawn up as a single document. Annexes II, III and IV refer to the registration document, the securities note and the summary note respectively.

The decision to base the Community system on the IOSCO Disclosure Standards also means that the European prospectus will be in line with internationally accepted best practice and should also be acceptable for public offers or admission to trading outside Europe, in IOSCO member jurisdictions. This will provide benefits to EU issuers, which will not be obliged to duplicate disclosure documents.

IOSCO's basic requirements will nevertheless have to be adapted to the various categories of security offered to the public or admitted to trading, especially those in-between equities and other securities, but also securities specially intended for professionals (as determined by the nominal value). The content of the prospectus will also have to be adapted in the case of programmed offers and continuous or repeat issues. Lastly, there is a requirement to take the size of firms and the nature of their activities into account. Such adaptation will have to be made by the Commission in accordance with the committee procedures.

Since the above measures are necessary for the single passport system to become effective, a deadline for the approval (180 days after the entry into force of the Directive) has been set. This means that the Commission, assisted by the Securities Committee, will have to issue detailed technical rules about the specific information which must be included in the actual prospectuses in the form of models for the different types of securities and issuers.

Article 8 — Omission of information from the prospectus

This Article clarifies the treatment of items of information that cannot be included in the prospectus because they are not available at the time when the prospectus is drafted — i.e. the final offering price and the number of shares that will be allotted to the public. In this case the prospectus should contain the objective criteria according to which the final decision will be taken and the requirement that these items will be published in a supplement to the prospectus to be made available to the public according to the same arrangements as the original prospectus.

The Article also lays down the treatment for derogations that a competent authority may grant an issuer in respect of certain sensitive information and for non-essential information required by the detailed plans adopted under the committee procedure.

In this case too, detailed rules will be adopted under a level 2 procedure.

Article 9 — Period of validity of a prospectus

Article 9 specifies the period of validity of a prospectus and of the various documents that make up a prospectus. The period of validity is limited to twelve months except for prospectuses for the issue and admission to trading of mortgage bonds, which remain valid until the maturity of the securities in question.

Article 10 — Investor protection

To ensure an appropriate level of information for, and protection of, investors once securities are traded on a regulated market, an issuer will have to update at least once a year the information that a prospectus or registration document must contain about the company. The updated information must be sent to and filed with the issuer's competent authority, although there is no Community obligation to approve such information. To lighten the administrative burden and reduce costs, the Directive allows the issuer to use documents required by other Community directives on company law and securities.

Lastly, this updating obligation does not apply to securities more particularly intended for professionals (as determined by the par value) and arrangements limited to the production of financial statements for small and medium-sized enterprises.

Article 11 — Incorporation of information by reference

The Directive introduces another measure in order to make life easier for the issuer and to reduce costs: the incorporation of information by reference.

Article 11 states that the prospectus may incorporate the relevant information by reference to one or more documents. Such information should result from the application of Community requirements on company law and on securities admitted to trading on a regulated market. Filed in advance, it must have been approved by the competent authority and must be made available to the public under the same arrangements as for the prospectus.

The detailed rules concerning the documents that can be incorporated by reference and the relevant arrangements will be adopted under a level 2 committee procedure.

Since these measures are necessary for the single passport system to become effective, a deadline for the approval (180 days after the entry into force of the Directive) has been set.

Article 12 — Use of registration document, securities note and summary note

This Article states that an issuer that has already filed a registration document, in the case of a new issue (or admission to trading), is required to produce a summary and a securities note only if it wishes to draw up a prospectus. This means that a full new prospectus is not required.

If the registration document has been approved by the competent authority, any updating of the securities note and the summary note will have to be approved separately.

If the registration document has simply been filed without being approved, all the documentation will have to be checked.

Article 13 — Approval of the prospectus

The prospectus must be approved by the home competent authority before being published. The previous system already required prior approval for the listing particulars and, in any case, mutual recognition was available only for prospectuses that had been pre-vetted. To ensure the smooth operation of the system, however, the Directive sets clear deadlines for approval which differentiate between issuers already known to the market and subject to supervision and issuers raising capital for the first time.

A maximum deadline of 15 days (which can be interrupted if new information is needed or the documentation is incomplete) is set. However, it is extended to 30 days in the case of a first-time offer.

Failure by a competent authority to act will allow the issuer to change competent authority. A competent authority may also transfer approval of a prospectus to an authority in another Member State, if that authority agrees.

The legal rules governing the liability of the competent authority when approving a prospectus will continue to be determined by the national law of each Member State.

The level 2 committee procedure may be implemented in order to reduce the maximum time limits for approval, if this should prove necessary in the light of developments on the financial markets.

Article 14 — Publication of the prospectus

Article 14 updates the rules already existing in the listing particulars and the public offer Directives. It allows the use of modern communication technology in addition to conventional, print-based methods of publication. In particular, an issuer may choose to put its prospectus on its web site. The Commission will have to adopt detailed rules on this subject to ensure the common implementation of the Directive. This means that it could issue rules concerning the arrangements for delivering, free of charge, a copy of the prospectus to prospective investors asking for it.

To set up a central information point and enable investors, especially in third countries, to obtain the relevant information, the Directive requires that the approved prospectus (whether in the form of a single document or a set of separate documents) should be filed with the competent authority and made available to the public on the latter's web site or via a link to the issuer's own site.

Article 15 — Advertising

The Directive updates the Community rules on advertising in the context of public offerings of securities and admissions to trading on a regulated market.

To ensure proper investor protection and consistency with the information which is or will be included in the prospectus (which is deemed to be the document on the basis of which investment decisions have to be taken), advertising must state that a prospectus is or will be available and how it may be obtained.

The Directive also establishes the principle that advertising should be clearly recognisable as such and the information contained in an advertisement must be fair, accurate and in any case consistent with that contained in the prospectus.

Detailed rules to ensure common implementation and investor protection should be adopted by the Commission in this respect under a level 2 committee procedure. This means that the Commission may establish guidelines about how to advertise the performance of the securities offered to the investor to avoid giving retail investors misleading information about future gains.

Since these measures are necessary for the single passport system to become effective, a deadline for their adoption (180 days after the entry into force of the Directive) has been set.

The Directive states that information addressed by the issuer or the offeror to qualified or special categories of investors should also be disclosed to the public.

Article 16 — Supplement to the prospectus

Article 16 borrows a rule from the two existing Directives on prospectuses, namely that a supplement is required where significant new factors capable of affecting assessment of the securities arise after the prospectus has been published and before the offer is closed or trading has started. For consistency's sake, the supplement is submitted to the same rules applicable to the prospectus in terms of prior approval and availability to the public.

Article 17 — Community scope of an approval of a prospectus

Article 17 replaces the existing mutual recognition system. The aim of the provision is to ensure that in the case of multinational offerings or multiple trading (i.e. offer or admission to trading in Member States other than the home Member State) the prospectus approved by the home competent authority is accepted in all Member States concerned without the need to provide additional information or obtain fresh approval.

Article 18 — Notification to the host competent authority

To ensure proper investor protection, and in line with the requirements applicable in the Directives providing for a European passport (the Investment Services Directive and the Second Banking Directive), the competent authority in the home Member State must send the competent authorities of the other Member States a certificate of approval stating that the provisions of this Directive have been complied with, and any translation of the summary made by the issuer.

Article 19 — Language regime

Article 19 lays down new language rules for the operation of the European passport. The system is already part of the *acquis communautaire* in the field of securities, in particular Directive 2001/34/EC, but has been updated. The competent authority in the host Member State may accept a prospectus in any language which it considers appropriate, though not necessarily a language of that Member State. It may not require a translation of the full prospectus into its national language(s), but it may, if it wishes, require a translation of the summary only, and ask for the prospectus to be written in a language generally accepted in the sphere of international finance.

Article 20 — Issuers incorporated in third countries

In the case of issuers incorporated in a third country, the prospectus shall be approved by the EU 'home country' authority, designated in accordance with the Directive. This authority may recognise the prospectus drawn up in accordance with the rules applicable to the issuer in the third country, provided that the information requirements are generally equivalent to those required by the Directive, most notably compliance with the international standards established by the international securities commissions. Once approved by the home competent authority, the prospectus may be used in other Member States.

To ensure a consistent approach at European level, the Commission should determine under a level 2 committee procedure which third countries have rules that can be regarded as generally equivalent to those in the Directive.

Article 21 — Rights of the competent authorities

The introduction of a notification system requires mutual trust among competent authorities and similarities in performing regulatory and supervisory functions. At present the Directives simply require Member States to notify who the competent authorities are.

The designation of an administrative competent authority in each Member State meets the need for efficiency and clarity, and is designed to enhance cooperation between the different national competent authorities. A Member State may, however, designate several competent administrative authorities, but only one authority per Member State will have the necessary powers of approval and notification in the case of a public offer or admission to trading on a regulated market in other Member States.

The administrative nature of these single competent authorities is necessary to ensure their independence from the markets and to avoid conflicts of interest. Nevertheless, an administrative authority may delegate tasks to other bodies, subject to strict conditions aimed at preventing any conflict of interest and any restrictive practice.

Article 21 lists the minimum rights that each should have in order to fulfil its duties. The provision will also ensure greater consistency and clarity in the application of the Directive.

Article 22 — Professional secrecy

As is customary in all Community financial legislation, rules are required in order to ensure the confidentiality of information collected by the competent authorities in performing their tasks.

However, such confidentiality must not constitute a barrier to mutual assistance and cooperation between the competent authorities of the Member States and, subject to certain guarantees, between these and the competent authorities of third countries.

Article 22 sets forth these rules in accordance with the principles already embodied in existing legislation (in particular the Insider Dealing and the Investment Services Directives).

Article 23 — Precautionary measures

Article 23 applies a principle enshrined in the Treaty and common to all Community financial legislation: where the competent authority in the host Member State ascertains irregularities committed by the issuer or by the financial institutions in charge of the public offer procedures or violations of the obligations deriving for the issuer from the fact that the securities are admitted to trading, it must inform the competent authority in the home Member State. In an emergency, however, it is authorised to take any necessary steps to protect investors. They must also be notified to the Commission.

Article 24 — Committee

Article 24 refers to the Securities Committee ('the Committee'). The Committee's purpose is to assist the Commission in the exercise of its level 2 powers (committee procedure).

Article 25 — Sanctions

Article 25 provides for an adequate sanctioning mechanism to be put in place in each Member State. It states that such sanctions, including administrative ones, must be effective, proportionate and dissuasive.

Article 26 — Right of action

To ensure proper protection for all affected parties, Article 26 lays down that all decisions taken under laws, regulations and administrative provisions adopted in accordance with this Directive are subject to judicial remedy.

Article 27 — Amendments

Article 27 sets out which articles and paragraphs of Directive 2001/34/EC are deleted.

Article 28 — Repeal

The provisions of Directive 89/298/EEC are repealed on the date of entry into force of this Directive, as provided for in Article 29 above.

Article 29 — Transposition

Article 29 sets the time limit for transposition of the Directive.

Article 30 — Transitional provisions

Article 30 specifies the cut-off date by which third country issuers whose securities have already been admitted to trading on a regulated market must choose their home country in the Community.

Article 31 — Entry into force

Article 31 specifies when the Directive will enter into force.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 44 and 95 thereof,

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

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

Having regard to the opinion of the European Central Bank [3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [4],

Whereas:

(1) Council Directive 80/390/EEC of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and distribution for the listing particulars to be published for the admission of securities to official stock exchange listing [5] and Council Directive 89/298/EEC of 17 April 1989 coordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public [6] have been adopted several years ago introducing a partial and complex mutual recognition mechanism which is unable to ensure the objective of the single passport. Those Directives should be upgraded, updated and grouped together into a single text.

(2) Meanwhile Directive 80/390/EEC was integrated into Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities [7] which codifies several Directives in the field of listed securities.

(3) For reasons of coherence in the subject matter, however, it is appropriate to regroup the provisions of Directive 2001/34/EC which stem from Directive 80/390/EEC together with Directive 89/298/EEC and to amend Directive 2001/34/EC accordingly.

(4) This Directive constitutes an instrument essential to the achievement of the internal market as set out in a timetable form in the Communication from the Commission — Risk Capital Action Plan [8] and the Communication from the Commission — Implementing the framework for financial market: action Plan [9] facilitating the widest possible access to investment capital on an Community-wide basis, including for small and medium size enterprises (SMEs) and start ups, by means of a 'single passport' for issuers.

(5) On 17 July 2000, the Council (Ecofin) set up the Committee of Wise Men on the regulation of European securities markets. In its initial report of 9 November 2000 the Committee stresses the lack of an agreed definition of public offer of securities, with the results that the same operation is analysed as a private placement in some Member States and not in others; the current system discourages firms from raising capital on an European wide basis and therefore from having real access to a large, liquid and integrated financial market.

(6) In its final report the Committee of Wise Men proposed the introduction of new legislative techniques based on a four level approach, namely framework principles, implementing measures, cooperation and enforcement. Level 1, the Directive, should confine itself to broad general 'framework' principles while Level 2 should contain technical implementing measures to be adopted by the Commission with the assistance of a committee.

(7) The European Council at its meeting in Stockholm on 23-24 March 2001 endorsed the final report of the Committee of Wise Men and the proposed four level approach to make the regulatory process for Community securities legislation more efficient and transparent.

(8) The resolution of the European Parliament of 5 February 2002 on the implementation of financial services legislation also endorsed the Committee of Wise Men's report, on the basis of the solemn declaration made before Parliament before the same day by the Commission and the letter of 2 October 2001 addressed by the Internal Market Commissioner to the chair of Parliament's Committee on Economic and Monetary Affairs with regard to the safeguards for the European Parliament's role in this process.

(9) According to the Stockholm European Council Level 2 implementing measures should be used more frequently, to ensure that technical provisions can be kept up to date with market and supervisory developments and deadlines should be set for all stages of Level 2 work.

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[1] OJ C 240 E, 28.8.2001, p. 272.

[2] OJ C 80, 3.4.2002, p. 52.

[3] OJ C 344, 6.12.2001, p. 8.

[4] Opinion of the European Parliament of . . .

[5] OJ L 100, 17.4.1980, p. 1. Directive as last amended by European Parliament and Council Directive 94/18/EC (OJ L 135, 31.5.1994, p. 1).

[6] OJ L 124, 5.5.1989, p. 8.

[7] OJ L 184, 6.7.2001, p. 1.

[8] SEC(1998) 552 final.

[9] COM(1999) 232 final.

(10) Implementing measures adopted pursuant to this Directive should aim to ensure investor protection and market integrity, in accordance with high regulatory standards adopted in the relevant international fora.

(11) Full coverage of equity and debt securities admitted to trading on regulated markets as defined by Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field [1] and not only securities which have been admitted to the official list of stock exchanges is also needed to ensure the protection of investors. The wide definition of securities in this Directive is valid only for this Directive and consequently in no way affects the various definitions of financial instruments used in national legislation for other purposes such as taxation. It covers only negotiable instruments that are or could possibly be traded on regulated markets. In particular, equity securities issued by housing companies or joint-stock property companies in order to own real estate or by companies for the sole purpose to provide goods and services to holders of their securities are not covered by this definition if they are not fungible.

(12) The grant of a single passport to the issuer valid throughout the Community and the application of the principles of home Member State supervision requires the identification of the home Member State as the one best placed to regulate the issuer for the purposes of this Directive.

(13) One of the objective of this Directive is to protect investors. It is therefore appropriate to take account of the different requirements for protection of the various categories of investors and their level of expertise. Disclosure provided by the prospectus is not required for offers limited to the same categories as far as securities have been bought for one's own account. Any resale to the public or public trading through admission to trading on a regulated market requires the publication of a prospectus.

(14) The provision of full, appropriate information concerning securities and issuers of such securities promotes, together with rules on the conduct of business, the protection of investors. Moreover, such information is an effective mean of increasing confidence in securities and thus of contributing to the proper functioning and development of securities markets. The form in which this information is required is the publication of the prospectus.

(15) Investment in securities, like any other form of investment, involves risk. Safeguards for the protection of the interests of the actual and potential investors are required in all Member States in order to put them in a position to make a correct assessment of such risks so as to be able to take investment decisions in full knowledge of the facts.

(16) Such information, which needs to be sufficient and as objective as possible concerning the financial circumstances of the issuer and the right attaching to the securities, should be provided in an easily analysable and comprehensible form. The harmonisation of the information contained in the prospectus should provide equivalent protection for investors at Community level.

(17) Best practices have been adopted at international level in order to allow multinational offerings of equities to be made using a single set of disclosure standards by the International Organisation Securities Commissions (IOSCO); the IOSCO disclosure standards [2] will upgrade information available for the markets and investors and, at the same time will simplify the procedure for European issuers wishing to raise capital in third countries. The Directive also calls for tailored disclosure standards to be adopted for others types of securities and issuers.

(18) Fast track procedures for issuers admitted to trading on a regulated market and frequently raising capital on the markets require the introduction at Community level of a new format of prospectuses for offering programmes or mortgage bonds and a new registration document system. Issuers may choose not to use those formats and therefore to draft the prospectus as a single document.

(19) Omission of sensitive information to be included in a prospectus should be allowed through a derogation granted by the competent authority in order to avoid detrimental situations for an issuer. Non appropriate or applicable information items required in a prospectus should also be adapted to the particular situation of an issuer or type of securities.

(20) A clear time limit should be set for the validity of a prospectus to avoid outdated information. This validity should be extended to the maturity of a mortgage bond because of the lower risk profile of such securities.

[1] OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).

[2] International Disclosure Standards for cross-border offering and initial listings by foreign issuers, Part I International Organisation of Securities Commissions, September 1998.

(21) Investors should be protected by ensuring publication of reliable information. The companies admitted to trading on a regulated market are subject to an ongoing disclosure obligation but not to publish updated information regularly. To supplement this, issuers should at least update the information related to them and contained in a prospectus. This should be a way to ensure the publication of consistent and easily understandable information on a regular basis. To avoid excessive burden for certain issuers, SMEs and issuers of securities with high minimum denomination should not be required to meet this obligation. Issuers should be allowed to use all the different reporting requirements laid down in other Community legislative texts to fulfil the update obligation.

(22) The opportunity of allowing issuers to incorporate by reference documents containing the information to be disclosed under prospectus provided that the documents incorporated by reference have been previously filed and accepted by the competent authority should facilitate the procedure of drawing a prospectus and lower the costs for the issuers without endangering investor protection.

(23) Differences regarding the efficacy, methods and timing of the check of the information given therein are not only to make it more difficult for undertakings to raise capital or to obtain admission to trading in several Member States but also to hinder the acquisition by investors residing in one Member State of securities offered by an issuer established in another Member State or traded in another Member State. These differences should be eliminated by harmonising the rules and regulations in order to achieve an adequate degree of equivalence of the safeguards required in each Member States to ensure the provision of information which is sufficient and as objective as possible for actual or potential securities holders.

(24) To facilitate the circulation of the various documents composing the prospectus, the use of electronic communication facilities such as internet should be encouraged. The prospectus should be always delivered in paper form free of charge to investors on request.

(25) It is also necessary, in order to avoid loopholes in Community legislation which would undermine public confidence and therefore prejudice the proper functioning of financial markets, to harmonise procedures under which advertising can take place.

(26) Any new fact liable to influence the assessment of the investment intervened after the publication of the prospectus but before the closing of the offer or the starting of the trading on a regulated market should be properly evaluated by investors and therefore requires the approval and dissemination of a supplement of information.

(27) The obligation for an issuer to translate the full prospectus into all the relevant national languages discourages cross border offerings or multiple trading. To facilitate cross borders offers, where the prospectus is drawn up in a language that is customary in the sphere of international finance, the host country should only be entitled to require a summary in its domestic language.

(28) The competent authority of the host Member State should be entitled to receive a certificate from the competent authority of the home Member State which states that the prospectus has been drafted in accordance with this Directive. In order to ensure that the purposes of this Directive will be fully achieved, it is also necessary to include within its scope securities issued by issuers governed by the laws of third countries.

(29) A variety of competent authorities in Member States, having different responsibilities, may create unnecessary costs and overlapping of responsibilities without providing any additional benefit. In each Member State a competent authority should be designated to approve prospectuses and to assume responsibility for supervising compliance with the provisions adopted for the implementation of this Directive. Under strict conditions, a Member State should be allowed to designate other administrative authorities but only one will assume the duties for international collaboration. Such an authority or authorities should be established as an administrative authority and in such a form that its independence from economic actors is guaranteed and conflicts of interests are avoided. The designation of a competent authority for prospectus approval does not exclude forms of collaboration and even delegation of tasks between that authority and other entities, with a view to guaranteeing efficient scrutiny and approval of prospectuses in the interest of issuers, investors, markets participants, and markets alike.

(30) A common minimum set of powers for the competent authorities will guarantee the effectiveness of their supervision. Flow of information to the markets required by Directive 2001/34/EC of 28 May 2001 has to be ensured and action against breaches taken by competent authorities.

(31) For the purposes of carrying out their duties, cooperation between competent authorities is required.

(32) Technical guidance and implementing measures to the rules laid down in this Directive may from time to time be necessary to take into account of new developments on financial markets. The Commission should accordingly be empowered to adopt implementing measures, provided that these do not modify the essential elements of this Directive and that the Commission acts according to the principles set out in this Directive, after consulting the European Securities Committee established by Commission Decision 2001/528/EC [1]. 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 [2], they should be adopted by use of the regulatory procedures provided for in Article 5 of that Decision.

(33) In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles:

— the need to ensure confidence in financial markets among households and SMEs by promoting high standards of transparency in financial markets;

— the need to provide investors with a wide range of competing investments and a level of disclosure and protection tailored to their circumstances;

— the need to ensure that independent regulatory authorities enforce the rules consistently, especially as regards the fight against white-collar crime;

— the need for a high level of transparency and consultation with all market participants and with the European Parliament and Council;

— the need to encourage innovation in financial markets if they are to be dynamic and efficient;

— the need to ensure systemic stability of the financial system by a close and reactive monitoring of financial innovation;

— the importance of reducing the cost of, and increasing access to, capital;

— the need to balance the costs and benefits to market participants on a long-term basis (including small and medium-sized businesses and small investors) of any implementing measures;

— the need to foster the international competitiveness of the Community's financial markets without prejudice to a much-needed extension of international cooperation;

— the need to achieve a level playing field for all market participants by establishing Community-wide regulations every time it is appropriate;

— the need to respect differences in national markets where these do not unduly impinge on the coherence of the single market;

— the need to ensure coherence with other Community legislation in this area, as imbalances in information and a lack of transparency may jeopardise the operation of the markets and above all harm consumers and small investors.

(34) The European Parliament will be given a period of three months from the first transmission of draft implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, this period may be shortened. If, within that period, a resolution is passed by the European Parliament, the Commission will re-examine the draft measures.

(35) The Member States should lay down rules on sanctions, including administrative sanctions, applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those sanctions must be effective, proportionate and dissuasive.

(36) Provision should be made for the right to apply to the Courts against decisions by the competent national authorities in respect of the application of this Directive.

(37) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring the completion of a single securities market to lay down rules on a single passport for issuers. This Directive confines itself to what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.

(38) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. The purpose of this Directive is to harmonise requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State.

[1] OJ L 191, 13.7.2001, p. 45.

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

2. This Directive shall not apply to:

(a) units issued by collective investment undertakings other than the closed-end type,

(b) non-equity securities issued by a Member State or by one of a Member State's regional or local authorities, by public international bodies of which one or more Member States are members, by the European Central Bank or by the central banks of the Member States,

(c) securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities,

(d) securities issued, with a view to their obtaining the means necessary to achieve their non commercial objectives, by associations with legal status or non-profit making bodies recognised by the State,

(e) non-equity securities issued in a continuous or repeated manner by credit institutions provided that these securities:

(i) are not subordinated, convertible or exchangeable;

(ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative;

(iii) materialise reception of repayable deposits;

(iv) are covered by a deposit guarantee scheme under Directive 94/19/EC [1].

3. Notwithstanding Paragraph 2(b), a Member State or one of a Member State's regional or local authorities, a public international body of which one or more Member States are members, the European Central Bank or the central banks of the Member States shall have the possibility to draw up a prospectus in accordance with this Directive when securities are offered to the public or admitted to trading on a regulated market.

Article 2

Definitions

1. For the purposes of this Directive, the following definitions shall apply:

(a) 'securities' mean transferable securities as defined by Article 1(4) of Directive 93/22/EEC with the exception of bonds or other debt securities, having a maturity of less than one year, and which are not subordinated, convertible or exchangeable and do not give a right to subscribe to or acquire other types of securities and that are not linked to a derivative;

(b) 'equity securities' mean shares and other transferable securities equivalent to shares in companies as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities, as a consequence of them being converted or the rights conferred by them being exercised, provided that the latter type of securities are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer;

(c) 'non-equity securities' mean all securities that are not equity securities;

(d) 'offer of securities to the public' means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, that might enable an investor to decide to purchase or subscribe to these securities. This definition shall also be applicable to the placing of securities through financial intermediaries;

(e) 'qualified investors' mean:

(i) legal entities which are authorised or regulated to operate in the financial markets, including: credit institutions, investment firms, other authorised or regulated financial institutions, insurance companies, collective investment schemes and their management companies, pension funds and their management companies, commodity dealers as well as entities not authorised or regulated whose corporate purpose is solely to invest in securities;

(ii) national and regional governments, central banks, international and supranational institutions such as the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations;

(iii) other legal entities which are not small or medium-sized enterprises;

(iv) natural persons if they expressly ask to be considered as qualified investors and meet at least two of the criteria set out in paragraph 3;

(f) 'small and medium-sized enterprise' means a company, which according to its last annual or consolidated accounts, meets at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding EUR 43 000 000 and an annual net turnover not exceeding EUR 50 000 000;

(g) 'credit institution' means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant loans for its own accounts;

(h) 'issuer' means a legal entity which issues or proposes to issue securities;

[1] OJ L 135, 31.5.1994, p. 5.

(i) 'person making an offer' (or 'offeror') means a legal entity or individual which offers securities to the public;

(j) 'regulated market' means a market as defined by Article 1(13) of Directive 93/22/EEC;

(k) 'offering programme' means an issuer's plan for the issuance of non-equity securities having a similar type and/or class, in a continuous or repeated manner during a specified issuing period;

(l) 'securities issued in a continuous or repeated manner' means issues on tap with at least two separate issues of securities of a similar type and/or class over a period of twelve months;

(m) 'home Member State' means:

(i) for non-equity securities whose denomination per unit amounts to at least EUR 50 000, the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public at the choice of the issuer, the offeror or the person asking for admission, as the case may be;

(ii) for all EU issuers of securities whose denomination per unit amounts to less than EUR 50 000, the Member State where the issuer has its registered office;

(iii) for all issuers of securities incorporated in a third country and whose denomination per unit amounts to less than EUR 50 000, the Member State where the securities are intended to be offered for the first time after the entry into force of this Directive or where the first application for admission to trading is made on a regulated market, at the choice of the issuer, the offeror or the person asking for admission, as the case may be.

(n) 'host Member State' means the State where an offer to the public is made or admission to trading is sought when different from the home Member State;

(o) 'collective investment undertaking other than the closed-end type' means unit trusts and investment companies:

(i) the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk spreading, and

(ii) the units of which are, at the holder's request, repurchased or redeemed, directly or indirectly, out of the assets of these undertakings;

(p) 'units of a collective investment undertaking' mean securities issued by a collective investment undertaking as representing the rights of the participants in such an undertaking over its assets;

(q) 'approval' means prior scrutiny of the completeness of the prospectus by the home competent authority including the coherence of the information given and its comprehensibility.

2. For the purposes of paragraph 1(d) the following types of offer shall not be considered as an offer of securities to the public:

(a) an offer of securities addressed to qualified investors;

(b) an offer of securities addressed to less than 100 natural or legal persons per Member State, other than qualified investors;

(c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 50 000 per investor, for each discreet offer;

(d) an offer of securities whose denomination per unit amounts to at least EUR 50 000;

(e) an offer of securities with a total consideration of less than EUR 2 500 000 which limit shall be calculated over a period of twelve months.

However, any subsequent resale of securities shall be regarded as a separate offer and the definition set out to in paragraph 1(d) shall apply to decide whether it is an offer of securities to the public. Transactions solely executed upon customers' orders, whether on or off exchange, shall not be considered as an offer of securities to the public.

3. For the purposes of paragraph 1(e)(iv) the following criteria shall apply:

(a) the investor has carried out, transactions, in significant size, on securities market at an average frequency of 10 per quarter over the previous four quarter;

(b) the size of the investor's securities portfolio exceeds EUR 0,5 million;

(c) the investor works or has worked in the financial sector for at least one year in a professional position which requires knowledge of securities investment.

Each competent authority shall ensure that appropriate mechanisms are in place for a register of qualified investors, taking into account the need to ensure an adequate level of data protection. The register shall be available to all issuers. Each natural person wishing to be considered as qualified investor shall register and such registered investor may decide whenever to opt out.

4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall in accordance with the procedure set out in Article 24(2), adopt implementing measures concerning the definitions referred to in paragraph 1, including the possible increase of the figures used for the definition of SMEs taking into account the evolution of the economic trend and disclosure measures related to the registration of individual qualified investors.

Article 3

Obligation to publish a prospectus

1. Member States shall ensure that any offer of securities to the public within their territories is subject to the publication of a prospectus.

2. Member States shall ensure that any admission of securities to trading on a regulated market situated or operating within their territories is subject to the publication of a prospectus.

Article 4

Exemptions from the obligation to publish a prospectus

1. The obligation to publish a prospectus set out in Article 3 shall not apply to the offer of the following types of securities:

(a) shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital;

(b) securities offered in connection with a take over by means of an exchange offer, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus;

(c) securities offered, allotted or to be allotted in connection with a merger, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus;

(d) shares offered, allotted or to be allotted free of charge to existing shareholders and dividends paid out in the form of shares of the same class as the shares in respect of which the dividend is paid, provided that a document is published containing information on the number and nature of the shares and the reasons for and detail of the operation;

(e) securities offered, allotted or to be allotted to existing or former directors or employees by the issuer or an affiliated undertaking provided that a document is published containing information on the number and nature of the securities and the reasons for and detail of the operation.

2. The obligation to publish a prospectus shall not apply to the admission to trading on a regulated market of the following types of securities:

(a) shares representing, over a period of twelve months, less than 10 per cent of the number of shares of the same class already admitted to trading on the same regulated market;

(b) shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, if the issuing of such shares does not involve any increase in the issued capital;

(c) securities offered in connection with a take over by means of an exchange offer, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus;

(d) securities offered, allotted or to be allotted in connection with a merger provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus;

(e) shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividend is paid, provided that said securities are of the same class as the securities already admitted to trading on the same regulated market and that a document is published containing information on the number and nature of the shares and the reasons for and detail of the operation;

(f) securities offered, allotted or to be allotted to existing or former directors or employees by the issuer or an affiliated undertaking, provided that the said securities are of the same class as the securities already admitted to trading on the same regulated market;

(g) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, provided that said securities are of the same class as the securities already admitted to trading on the same regulated market.

3. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the terminology and exemptions provided for in paragraphs 1 and 2 of this article.

CHAPTER II

DRAWING UP OF THE PROSPECTUS

Article 5

The prospectus

1. The prospectus shall contain all the information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and any guarantor of the rights attaching to such securities. This information shall be presented in an easily analysable and comprehensible form.

2. The prospectus shall contain information concerning the issuer and the securities offered to the public or to be admitted to trading on a regulated market. It shall also include a summary. The summary shall not be more than 2 500 words in the language in which the prospectus was first written, be written in non-technical language, convey the essential characteristics and risks associated with the issuer, any guarantor and the securities offered to the public or admitted to trading and contain a warning that:

(a) it should be read as an introduction to the prospectus, and

(b) any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor.

Where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 50 000, there shall be no requirement to provide a summary.

3. The issuer, offeror or person asking for the admission to trading on a regulated market may decide to draw up the prospectus as a single or as separate documents. The prospectus composed of separate documents shall include a registration document, a securities note and a summary note. The registration document shall contain the information related to the issuer. The securities note shall contain the information concerning the securities offered or to be admitted to trading on a regulated market.

4. For the following types of securities, the prospectus shall be defined as a base prospectus with all relevant information concerning the issuer and the securities to be offered to the public or admitted to trading:

(a) non-equity securities issued under an offering programme;

(b) non-equity securities issued in a continuous or repeated manner by credit institutions,

(i) where the sums deriving from the issue of the said securities, according to national legal provisions, are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date, and

(ii) where, in the event of the bankruptcy of the related credit institution, the said sums are intended, as a priority, to repay the capital and interest becoming due, without prejudice to the provisions of Directive 2001/24/EC [1].

The information given in the base prospectus shall be supplemented, if necessary, with updated information on the issuer and on the securities to be offered to the public or admitted to trading in accordance with Article 16. If the final terms of the offer are not included in either the base prospectus or a supplement, the final terms shall be provided to investors and filed with the competent authority when each public offering is made as soon as practicable but not necessarily in advance of the beginning of the offer.

5. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the format of the prospectus or base prospectus and supplements.

Article 6

Responsibility attached to the prospectus

1. Member States shall ensure that the responsibility for the information given in a prospectus is incumbent upon the administrative, management or supervisory bodies of the issuer, the offeror, the person asking for the admission to trading on a regulated market or the guarantor as the case may be. The persons responsible shall be clearly identified in the prospectus with their names and functions as well as declarations by them that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import.

2. Member States shall ensure that their laws, regulation and administrative provisions on civil liability applies to those persons responsible for the information given in a prospectus.

[1] OJ L 125, 5.5.2001, p. 15.

However, Member States shall ensure that no civil liability shall attach to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

Article 7

Minimum information

1. Detailed implementing measures regarding the specific information which must be included in the prospectus and avoiding duplication of information when a prospectus is composed of separate documents shall be adopted by the Commission in accordance with the procedure referred to in Article 24(2). The first set of implementing measures shall be adopted within 180 days after the entry into force of this Directive.

In particular, while developing the different models of prospectuses, account shall be taken of the following:

(a) the different types of information needed by investors relating to equity securities as compared to non equity-securities while taking a consistent approach with regard to information required in a prospectus for securities which have a similar economic rationale, notably derivative securities;

(b) the different types and nature of offers and admissions to trading of non-equity securities. The information items required in a prospectus being appropriate from the point of view of the investors concerned for non-equity securities having a denomination per unit of at least EUR 50 000;

(c) the format used and the information required in prospectuses relating to securities issued under an offering programme;

(d) the format used and the information required in prospectuses relating to non-equity securities, insofar as these securities are not subordinated, convertible, exchangeable, subject to subscription or acquisition rights or linked to derivatives products, issued on a continuous or repeated manner by entities authorised or regulated to operate in the financial markets within the European Economic Area;

(e) the different activities and size of the issuer, in particular small and medium-sized enterprises. For such companies the information shall be adapted to their size and, where appropriate, to their shorter track record.

2. The implementing rules referred to in paragraph 1 shall be based on the standards in the field of financial and non financial information set out by international securities commission organisations, and in particular by the International Organisation of Securities Commissions (IOSCO) and on the indicative Annexes to this Directive.

Article 8

Omission of information

1. Member States shall ensure that where the final offering price and amount of securities which will be sold to the public cannot be included in the prospectus:

(a) the criteria, and/or the conditions according to which, the above elements will be determined or, in the case of price, the maximum price should be disclosed in the prospectus, or

(b) the acceptances of the purchase or subscription of securities may be withdrawn for not less than 48 hours after the final offering price and amount of securities which are offered to the public have been filed.

The final terms shall be filed with the competent authority of the home Member State and published according to the arrangements provided for in Article 14(2).

2. The competent authority of the home Member State may authorise the omission from the prospectus of certain information provided for in this Directive or in the implementing rules referred to in Article 7(1), if it considers that:

(a) disclosure of such information would be contrary to the public interest; or

(b) disclosure of such information would be seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, offeror or guarantor, if any, and of the rights attached to the securities to which the prospectus relates.

3. Without prejudice to the adequate information of investors, where, exceptionally, certain information required in implementing measures referred to in Article 7(1) to be included in a prospectus are inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates, the prospectus shall contain information equivalent to the required information. If there is no such equivalent information, the requirement shall not apply.

4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraph 1, 2 and 3.

Article 9

Validity of a prospectus, base prospectus and registration document

1. A prospectus shall be valid during twelve months after its publication for offers to the public or admissions to trading on a regulated market in a Member State, provided that the prospectus is completed with any supplements required pursuant to Article 16.

2. In the case of an offering programme, the base prospectus, previously filed, shall be valid for a period of up to twelve months.

3. In the case of non-equity securities issued in a continuous or repeated manner by credit institutions, the base prospectus shall be valid until maturity of the securities issued:

(a) where the sums deriving from the issue of the said securities, according to national legal provisions, are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date, and

(b) where, in the event of the bankruptcy of the related credit institution, the sums referred to in point (a) are intended, as a priority, to repay the capital and interest becoming due, without prejudice to the provisions of Directive 2001/24/EC.

4. A registration document, as referred to in Article 5(3), previously filed, shall be valid for a period of up to twelve months provided that it has been updated according to Article 10(1). The registration document accompanied with the securities note, updated if applicable according Article 12(2), and the summary note shall be considered as a valid prospectus.

Article 10

Investor protection

1. Issuers whose securities are admitted to trading on a regulated market shall at least update the information related to the issuer and contained in a prospectus or in a registration document every year after the approval of the financial statements, according to the requirements applicable to the issuer in the home Member State.

2. The obligation set out in paragraph 1 shall not apply to issuers of non-equity securities whose denomination per unit amounts to at least EUR 50 000. Where the issuer is a small or medium-sized enterprise, the updating requirement laid down in paragraph 1 shall be restricted to the annual financial statements.

3. The updated information of the registration document or part of the prospectus shall be filed with the competent authority of the home Member State.

4. Issuers may refer to the information and documents required pursuant to Company Law Directives, Directive 2001/34/EC and Regulation (EC) No . . . [on the adoption of International Accounting Standards] for the purpose of complying with the requirement laid down in paragraph 1, provided that those information and documents comply with the information requirements set out in this Directive and in its implementing measures.

5. Issuers whose securities have already been admitted to trading on a regulated market shall file with the competent authority of their home Member State the first update of information at the latest at the same time as the first presentation of the annual accounts and reports after the 1 January 2006.

6. In order to take account of technical developments on financial markets and to ensure uniform application in the Community of this Directive, the Commission may, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the annual update. The first set of implementing measures shall be adopted within 180 days after the entry into force of this Directive.

Article 11

Incorporation by reference

1. Member States shall allow information to be incorporated in the prospectus by referring to one or more previously published documents, which have been approved or filed in accordance with this Directive, in particular pursuant to Article 10, or with Titles IV and V of Directive 2001/34/EC. This information shall be the latest available to the issuer. The summary referred to in article 5(3) shall contain no information incorporated by a reference.

2. When information is incorporated by reference, a cross-reference list must be provided in order to enable investors to easily identify specific items of information.

3. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the information to be incorporated by reference. The first set of implementing rules shall be adopted within 180 days after the entry into force of this Directive.

Article 12

Use of a registration document, securities note and summary note

An issuer who already has a registration document approved by the competent authority shall only be required to draw up the securities note and the summary note when securities are publicly offered or admitted to trading.

In this case the securities note shall provide information that would normally be provided in the registration document if there has been a material change or recent development since the latest updated registration document was approved. The securities and summary notes shall be subject to a separate approval.

Where, an issuer has only filed a registration document without approval, updated information according to Article 10 shall be provided for all the documents. The whole documentation shall be subject to approval.

CHAPTER III

ARRANGEMENTS FOR THE APPROVAL AND PUBLICATION OF THE PROSPECTUS

Article 13

Approval of the prospectus

1. No prospectus shall be published until it has been approved by the competent authority of the home Member State.

2. The competent authority of the home Member State shall notify the issuer, the offeror or the person asking for admission, as the case may be, of its decision regarding the approval of the prospectus within 15 working days of the submission of the draft prospectus. If the competent authority fails to give a decision within this maximum time limit, the issuer, the offeror or the person asking for admission shall be free to withdraw its application and apply for approval of the prospectus from a competent authority in another Member State as defined in Article 2(1)(m)(i). A withdrawal and new application shall be notified to both competent authorities.

3. The time limit referred to in paragraph 2 shall be extended to 30 working days if the public offer involves securities issued by an issuer who does not have any securities admitted to trading on a regulated market or who has not yet offered securities to the public.

4. If the competent authority finds, on reasonable grounds, that the documents submitted to it are incomplete or that complementary information is needed, the time limits referred to in paragraphs 2 and 3 shall only apply from the date such complementary information is provided by the issuer, the offeror or the person asking for admission.

5. If the competent authority of the home Member State fails to comment on the prospectus within the time limit laid down in paragraphs 2 and 3, this shall be deemed to be an approval of the application.

6. The competent authority of the home Member State may decide to transfer the approval of a prospectus to the competent authority of another Member State, subject to the agreement of that competent authority. This transfer shall be notified to the issuer, the offeror or the person asking for admission within 5 working days from the date of the decision taken by the competent authority of the home Member State. The time limit in paragraph 2 shall apply from this date.

7. This Directive shall not affect the competent authority's liability, which shall continue to be governed solely by national law. Each Member State shall ensure that their national provisions on competent authority's liability are only applicable to approval of prospectuses given by their competent authority or authorities. Nothing in this Directive shall prevent a Member State from exonerating a competent authority from any liability resulting from the approval of a prospectus.

8. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission may, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the conditions according to which deadlines may be reduced.

Article 14

Publication of the prospectus

1. The prospectus shall be filed once approved with the competent authority of the home Member State and shall be made available to the public by the issuer, offeror or person asking for the admission as soon as practicable and in any case, at a reasonable time in advance of the beginning of the offer or the admission to trading on a regulated market of the securities involved.

2. The prospectus shall be deemed available to the public when published either:

(a) by insertion in one or more newspapers circulated throughout the Member States in which the offer is made or the admission to trading is sought, or widely circulated therein, or

(b) in the form of a brochure to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, or at the registered offices of the issuer and at the offices of the financial intermediaries placing or selling the securities, including paying agents, or

(c) in electronic form on the issuer's web-site and, if applicable, on the web-site of the financial intermediaries placing or selling the securities, including paying agents.

3. The competent authority shall publish on its web-site over a period of twelve months, at its choice, all the prospectuses approved or, at least the list of prospectuses approved in accordance with Article 13, including, if applicable, a hyperlink to the prospectus published on the website of the issuer.

4. In the case of a prospectus drawn up with several documents and/or with information incorporated by reference, the documents and information composing the prospectus may be published and circulated separately as long as the said documents are made available, free of charge, to the public, according to the arrangements established in paragraph 2, with a link between those documents.

5. The text and the format of the prospectus, and/or the supplements to the prospectus, published or made available to the public, should at any time be identical to the original version approved by the competent authority.

6. Where the prospectus is made available by publication in electronic form, a paper copy must nevertheless, be delivered to the investor, upon his request and free of charge, by the issuer, the offeror, the person asking for admission to trading or the financial intermediaries placing or selling the securities.

7. In order to take account of technical developments on financial markets and to ensure uniform application in the Community, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraphs 1, 2 and 3. The first set of implementing measures shall be adopted within 180 days after the entry into force of this Directive.

Article 15

Advertising

1. Any type of advertisements relating either to a public offer of securities or to an admission to trading on a regulated market, shall respect the principles contained in paragraphs 2 to 5.

2. Advertisements shall state that a prospectus will be or has been published and indicate where investors will be able to obtain it.

3. Advertisements shall be clearly recognisable as such. The information contained in an advertisement shall not be inaccurate, misleading or inconsistent with that contained in the prospectus.

4. In any case, the information concerning the offer or the admission to trading divulged in an oral form, even if not for advertising purposes, shall be consistent with that contained in the prospectus.

5. Material information addressed to qualified investors or special categories of investors, including information disclosed in the context of meetings, shall also be disclosed to the public through an appropriate and relevant range of media, including the issuer's web-site.

6. The competent authority of the home Member State shall have the power to exercise control over the compliance of the advertising activity, relating to a public offer of securities or an admission to trading, with the principles referred to in paragraphs 2 to 5.

7. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the dissemination of advertisements, notices, posters announcing the intention to offer securities to the public or the admission to trading, before the prospectus has been made available to the public or before the opening of the subscription and concerning paragraph 4. The first set of implementing measures shall be adopted by the Commission within 180 days after the entry into force of this Directive.

Article 16

Supplement to the prospectus

Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus, which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the definitive closure of the offer or, if applicable, the time when trading begins, shall be mentioned in a supplement to the prospectus. Such a supplement shall be approved in the same way and published in accordance with at least the same arrangements as were applied when the original prospectus was disseminated.

CHAPTER IV

MULTINATIONAL OFFERINGS AND ADMISSION TO TRADING

Article 17

Community scope of an approval of a prospectus

1. Without prejudice to Article 23, where an offer to the public or admission to trading on a regulated market is foreseen in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State, as well as any supplements, shall be valid for public offer or admission to trading in any number of host Member States, provided that the competent authority of each host Member State is notified in accordance with Article 18. Competent authorities of host Member States shall undertake no approval or administrative procedures related to prospectuses.

2. If there are significant new factors, as referred to in Article 16, since the approval of the prospectus, the competent authority of the home Member State shall require the publication of a supplementary document to be approved as provided for in Article 13(1). The competent authority of the host Member State may draw the attention of the competent authority of the home Member State to the need for any new information.

Article 18

Notification

1. The competent authority of the home Member State shall, at the request of the issuer, within three working days from that request provide the competent authority of the host Member States with a certificate of approval attesting that the prospectus has been drawn up in accordance with this Directive. If applicable, this notification is accompanied by the translation of the summary produced under the responsibility of the issuer. The same procedure shall be followed for any supplement to the prospectus.

2. The application of the provisions referred to in Article 8(2) and (3) shall be stated in the certificate, as well as its justification.

CHAPTER V

LANGUAGE REGIME AND ISSUERS INCORPORATED IN THIRD COUNTRIES

Article 19

Language regime

1. Where an offer to the public is made or admission to trading is sought only in the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority in the home Member State.

2. Where an offer to the public is made or admission to trading on a regulated market is sought in one or more Member States excluding the home Member State, the prospectus shall be drawn up either in a language accepted by the competent authorities in those Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission, as the case may be. The competent authority of each host Member State may only require that the summary be translated into its language(s).

3. Where an offer to the public is made or admission to trading on a regulated market is sought in more than one Member State including the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority in the home Member State and shall also be made available either in a language accepted by the competent authorities in the host Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror, or person asking for admission as the case may be. The competent authority of each host Member State may only require that the summary referred to in Article 5(2) be translated into its language(s).

4. Where an offer to the public is made or admission to trading on a regulated market of securities whose denomination per unit amounts to at least EUR 50 000 is sought in one or more Member States, the prospectus shall be drawn up either in a language accepted by the competent authorities in the home and host Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror, or person asking for admission as the case may be.

Article 20

Issuers incorporated in third countries

1. The competent authority of the home Member State of issuers having their registered office in a third country may approve a prospectus for an offer to the public or for an admission to trading on a regulated market, drawn up according to the legislation of a third country, provided that:

(a) this prospectus has been drawn up according to international standards set out by international securities commission organisations, including the IOSCO Disclosure Standards and

(b) the information requirements, including information of a financial nature, are broadly equivalent to the requirements under this Directive.

2. In the case of offer to the public or admission to trading of securities issued by an issuer incorporated in a third country in a Member State other than the home Member State, the requirements set out in Articles 17, 18 and 19 shall apply.

3. In order to ensure uniform application of this Directive, the Commission may decide, in accordance with the procedure referred to in Article 24(2), that a third country ensures the broad equivalence of prospectuses drawn up in that country with this Directive, by reason of its domestic law, or of the practices or procedures based on international standards set out by international organisations, including the IOSCO Disclosure Standards. The Member States shall take the measures necessary to comply with the Commission's decision.

CHAPTER VI

COMPETENT AUTHORITIES

Article 21

Rights

1. Each Member State shall designate a central competent administrative authority responsible for carrying out the obligations provided for in this Directive and for ensuring that the provisions adopted pursuant to this Directive are applied.

However, this Member State may designate other administrative authorities to apply Chapter III.

These competent authorities shall be completely independent from all market participants.

If a multinational offering or admission to trading in more than one Member State is sought, only the central competent authority designated by each Member State shall be entitled to approve the prospectus.

Member States shall inform the Commission of the list of administrative authorities they have designated.

2. Member States may allow their competent authority or authorities to delegate tasks. Any delegation of tasks to other entities than the authorities referred to in paragraph 1, in particular in distinguishing risk capital regulated markets, shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they should be carried out.

These conditions shall include a clause obliging the entity in question to be organised in a manner so as to avoid conflict of interest and so that information obtained from carrying out the delegated tasks is not used unfairly or to prevent competition. In any case, the final responsibility for supervising compliance with the provisions of this Directive and implementing measures adopted shall lie with the competent authority/ies designated in accordance with paragraph 1.

Member States shall inform the Commission and competent authorities of other Member States of any arrangements entered with regard to delegation of tasks.

3. Each competent authority shall have all the rights necessary for the performance of its functions. A competent authority that has received an application for approving a prospectus shall at least be empowered to:

(a) require issuers, offerors or persons asking for admission to trading to include in the prospectus supplementary information if necessary for investor protection;

(b) require issuers, offerors or persons asking for admission to trading, and the persons that control them or are controlled by them to provide information and documents;

(c) require auditors and managers of the issuer, offeror or person asking for admission, as well as financial intermediaries commissioned to carry out the offer or admission to trading, to provide information;

(d) suspend a public offer or admission to trading for a maximum of 10 days at one time if it has reasonable grounds for suspecting that the provisions of this Directive have been infringed;

(e) prohibit or suspend advertising for a maximum of 10 days if it has reasonable grounds for believing that the provisions of this Directive have been infringed;

(f) prohibit a public offer if it finds that the provisions of this Directive have been infringed or if it has reasonable grounds for suspecting that they would be infringed;

(g) suspend, or ask the relevant regulated markets to suspend, the trading on a regulated market for a maximum of 10 days if it has reasonable grounds for believing that the provisions of this Directive have been infringed;

(h) prohibit trading on a regulated market if it finds that the provisions of this Directive have been infringed;

(i) make public the fact that an issuer is failing to comply with its obligations.

Where necessary, the competent authority may request to the relevant judicial authority for permission to enforce the rights referred to in points (d) to (h) of the first sub-paragraph.

4. The competent authority/ies shall, once the securities have been admitted to trading on a regulated market, have the right to:

(a) require the issuer to disclose all material information which may have an effect on the assessment of the securities offered to the public or admitted to trading on regulated markets in order to ensure investor protection or the smooth operation of the market;

(b) suspend or ask the relevant regulated market to suspend the securities from trading if, in its opinion, the issuer's situation is such that trading would be detrimental to investors' interests;

(c) ensure that the issuers whose securities are traded on regulated markets, comply with the obligations provided for in Articles 102 and 103 of Directive 2001/34/EC and that equivalent information is provided to investors and equivalent treatment is granted by the issuer to all securities holders who are in the same position, in all Member States where the offer is made or the securities are traded.

5. Paragraphs 1 to 4 shall be without prejudice to the possibility for a Member State to make separate legal and administrative arrangements for overseas European territories for whose external relations that Member State is responsible.

Article 22

Professional secrecy and cooperation between authorities

1. The obligation of professional secrecy shall apply to all persons who work or who have worked for the competent authority and for entities to whom competent authorities may have delegated certain tasks. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by law.

2. Competent authorities of Member States shall cooperate with each other, whenever necessary, for the purpose of carrying out their duties and making use of their powers. Competent authorities shall render assistance to competent authorities of other Member States. In particular, they shall exchange information and cooperate in their activities when an issuer has more than one home competent authority because of its various classes of securities. Where appropriate, the competent authority of the host Member State may request assistance of the competent authority of the home Member State from the stage at which the case is scrutinised, in particular as regards new type or rare forms of securities. The competent authority of the home Member State may ask for information to the competent authority of the host Member State on any items specific to the relevant market.

3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information. Information thus exchanged shall be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

Article 23

Precautionary measures

1. Where the competent authority of the host Member State finds that irregularities have been committed by the issuer or by the financial institutions in charge of the public offer procedures or breaches of the issuer's obligations, resulting from the fact that the securities are admitted to trading, it shall refer these findings to the competent authority of the home Member State.

2. If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the issuer or the financial institution in charge of the public offer procedures persists in violating the relevant legal or regulatory provisions, the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures in order to protect investors. The Commission shall be informed of such measures at the earliest opportunity.

CHAPTER VII

IMPLEMENTING MEASURES

Article 24

Committee

1. The Commission shall be assisted by the European Securities Committee, instituted by Decision 2001/528/EC.

2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof, provided that the implementing measures adopted according to this procedure do not modify the essential provisions of this Directive.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

4. Without prejudice to the implementing measures already adopted, on the expiry of a four-year period following its entry into force, the application of the provisions of this Directive stipulating the adoption of technical rules and decisions in accordance with the procedure referred to in paragraph 2 shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, shall review them prior to the expiry of the four-year period.

Article 25

Sanctions

1. Without prejudice to the right of Member States to impose criminal sanctions, Member States shall ensure that the appropriate administrative measures can be taken or sanctions be imposed against the persons responsible, where the provisions adopted pursuant to this Directive have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive.

2. Member States shall provide that the competent authority may disclose to the public every measure or sanction that will be imposed for infringement of the provisions adopted pursuant to this Directive, unless the disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Article 26

Right of appeal

Member States shall ensure that decisions taken under laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right to apply to the courts.

CHAPTER VIII

TRANSITIONAL AND FINAL PROVISIONS

Article 27

Amendements

With effect from the date set out in Article 29, Directive 2001/34/EC is amended as follows:

1. Article 3 is deleted,

2. Articles 20 to 41 are deleted,

3. Articles 98 to 101 are deleted,

4. Article 104 is deleted,

5. Article 107(3) the first sub-paragraph is deleted,

6. In Article 108(2)(a), 'conditions of establishment, the control and circulation of listing particulars to be published for admission' are deleted,

7. Article 108(2)(c)(ii) is deleted,

8. Annex I is deleted.

Article 28

Repeal

Directive 89/298/EEC shall be repealed from the date specified in Article 29. References to the repealed Directive shall be construed as references to this Directive.

Article 29

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2004, at the latest. 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 30

Transitional provision

Issuers of securities incorporated in a third country and whose securities have already been admitted to trading on a regulated market shall choose their competent authority in accordance with Article 2(1)(m)(iii) and notify their decision to the competent authority of their chosen home Member State at the latest by 31 December 2005.

Article 31

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 32

Addressees

This Directive is addressed to the Member States.

ANNEX I

PROSPECTUS

I. SUMMARY

The summary shall give in a few pages the most important information included in the prospectus, at least covering the following items:

— identity of directors, senior management, advisors and auditors

— offer statistics and expected timetable

— key information concerning selected financial data; capitalisation and indebtedness; reasons for the offer and use of proceeds; risk factors

— information concerning the issuer:

  — history and development of the issuer

  — business overview

— operating and financial review and prospects:

  — research and development, patents and licences, etc.

  — trend information

— directors, senior management and employees

— major shareholders and related party transactions

— financial information:

  — consolidated statement and other financial information

  — significant changes

— the offer and admission to trading details:

  — offer and admission to trading details

  — plan of distribution

  — markets

  — selling shareholders

  — dilution (shares)

  — expenses of the issue

— additional information:

  — share capital

  — memorandum and articles of incorporation

  — documents on display

II. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS AND AUDITORS

The purpose is to identify the company representatives and other individuals involved in the company's offering or admission to trading; these are the persons responsible for drafting the prospectus as required by Article 6 of the Directive and those responsible for auditing the financial statements.

III. OFFER STATISTICS AND EXPECTED TIMETABLE

The purpose is to provide key information regarding the conduct of any offering and the identification of important dates relating to that offering.

A. Offer Statistics

B. Method and Expected Timetable

IV. KEY INFORMATION

The purpose is to summarise key information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated.

A. Selected Financial Data

B. Capitalisation and Indebtedness

C. Reasons for the offer and use of proceeds

D. Risk Factors

V. INFORMATION ON THE COMPANY

The purpose is to provide information about the company's business operations, the products it makes or the services it provides, and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plant and equipment, as well as its plans for future increases or decreases in such capacity.

A. History and Development of the Company

B. Business Overview

C. Organisational Structure

D. Property, Plant and Equipment

VI. OPERATING AND FINANCIAL REVIEW AND PROSPECTS

The purpose is to provide management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are anticipated to have a material effect on the company's financial condition and results of operations in future periods.

A. Operating Results

B. Liquidity and Capital Resources

C. Research and Development, Patents and Licences, etc.

D. Trend Information

VII. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES

The purpose is to provide information concerning the company's directors and managers that will allow investors to assess such individuals' experience, qualifications and levels of compensation, as well as their relationship with the company.

A. Directors and Senior Management

B. Compensation

C. Board Practices

D. Employees

E. Share Ownership

VIII. MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

The purpose is to provide information regarding the major shareholders and others that control or may control the company. It also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

A. Major Shareholders

B. Related Party Transactions

C. Interests of Experts and Counsel

IX. FINANCIAL INFORMATION

The purpose is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature.

A. Consolidated Statements and Other Financial Information

B. Significant Changes

X. THE OFFER AND ADMISSION TO TRADING DETAILS

The purpose is to provide information regarding the offer and the admission to trading of securities, the plan for distribution of the securities and related matters.

A. Offer and Admission to Trading

B. Plan of Distribution

C. Markets

D. Selling Securities Holders

E. Dilution (for equity securities only)

F. Expenses of the Issue

XI. ADDITIONAL INFORMATION

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

A. Share Capital

B. Memorandum and Articles of Association

C. Material Contracts

D. Exchange Controls

E. Taxation

F. Dividends and Paying Agents

G. Statement by Experts

H. Documents on Display

I. Subsidiary Information

ANNEX II

REGISTRATION DOCUMENT

I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS AND AUDITORS

The purpose is to identify the company representatives and other individuals involved in the company's offering or admission to trading; these are the persons responsible for drafting the prospectus as required by Article 6 of the Directive and those responsible for auditing the financial statements.

II. KEY INFORMATION ABOUT THE ISSUER

The purpose is to summarise key information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data also must be restated.

A. Selected Financial Data

B. Capitalisation and Indebtedness

C. Risk Factors

III. INFORMATION ON THE COMPANY

The purpose is to provide information about the company's business operations, the products it makes or the services it provides, and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plants and equipment, as well as its plans for future increases or decreases in such capacity.

A. History and Development of the Company

B. Business Overview

C. Organisational Structure

D. Property, Plant and Equipment

IV. OPERATING AND FINANCIAL REVIEW AND PROSPECTS

The purpose is to provide management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are anticipated to have a material effect on the company's financial condition and results of operations in future periods.

A. Operating Results

B. Liquidity and Capital Resources

C. Research and Development, Patents and Licenses, etc.

D. Trend Information

V. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES

The purpose is to provide information concerning the company's directors and managers that will allow investors to assess such individuals' experience, qualifications and levels of compensation, as well as their relationship with the company.

A. Directors and Senior Management

B. Compensation

C. Board Practices

D. Employees

E. Share Ownership

VI. MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

The purpose is to provide information regarding the major shareholders and others that control or may control the company. It also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

A. Major Shareholders

B. Related Party Transactions

C. Interests of Experts and Counsel

VII. FINANCIAL INFORMATION

The purpose is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature.

A. Consolidated Statements and Other Financial Information

B. Significant Changes

VIII. ADDITIONAL INFORMATION

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

A. Share Capital

B. Memorandum and Articles of Association

C. Material Contracts

D. Statement by Experts

E. Documents on Display

F. Subsidiary Information

ANNEX III

SECURITIES NOTE

I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS AND AUDITORS

The purpose is to identify the company representatives and other individuals involved in the company's offering or admission to trading; these are the persons responsible for drafting the prospectus as required by Article 6 of the Directive and those responsible for auditing the financial statements.

II. OFFER STATISTICS AND EXPECTED TIMETABLE

The purpose is to provide key information regarding the conduct of any offering and the identification of important dates relating to that offering.

A. Offer Statistics

B. Method and Expected Timetable

III. KEY INFORMATION ABOUT THE ISSUER

The purpose is to summarise key information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data also must be restated.

A. Capitalisation and Indebtedness

B. Reasons for the offer and use of proceeds

C. Risk Factors

IV. INTERESTS OF EXPERTS

The purpose is to provide information regarding transactions the company has entered into with experts or counsellors employed on a contingent basis.

V. THE OFFER AND ADMISSION TO TRADING DETAILS

The purpose is to provide information regarding the offer and the admission to trading of securities, the plan for distribution of the securities and related matters.

A. Offer and Admission to Trading

B. Plan of Distribution

C. Markets

D. Selling Securities Holders

E. Dilution (for equity securities only)

F. Expenses of the Issue

VI. ADDITIONAL INFORMATION

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

A. Exchange Controls

B. Taxation

C. Dividends and Paying Agents

D. Statement by Experts

E. Documents on Display

ANNEX IV

SUMMARY NOTE

The summary should give in a few pages the most important information included in the prospectus, at least coming from the following items:

— identity of directors, senior management, advisors and auditors

— offer statistics and expected timetable

— key information concerning selected financial data; capitalisation and indebtedness; reasons for the offer and use of proceeds; risk factors

— information concerning the issuer:

  — history and development of the issuer

  — business overview

— operating and financial review and prospects:

  — research and developments, patents and licences, etc.

  — trend information

— directors, senior management and employees

— major shareholders and related party transactions

— financial information:

  — consolidated statement and other financial information

  — significant changes

— the offer and admission to trading details:

  — offer and admission to trading details

  — plan of distribution

  — markets

  — selling shareholders

  — dilution (shares)

  — expenses of the issue

  — Additional information

  — share capital

  — memorandum and articles of incorporation

  — documents on display

Proposal for a Regulation of the European Parliament and of the Council on drug precursors

(2003/C 20 E/15)

(Text with EEA relevance)

COM(2002) 494 final — 2002/0217(COD)

(Submitted by the Commission on 10 September 2002)

EXPLANATORY MEMORANDUM

1. Introduction

An effective control of the chemicals used in the illegal production of narcotic drugs and psychotropic substances has proved to be one of the most efficient weapons against drug trafficking. As is very often said: there are no drugs without precursors. However, in the majority of cases, precursors are chemical products that also have legal and legitimate uses. Legitimate trade of these substances should therefore be recognised and protected.

In this context, the European Community has adopted two legal instruments laying down the measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances. Council Regulation (EEC) No 3677/90 ([1]) aims at surveillance of the trade in precursors between the Member States and third countries while Directive 92/109/EEC ([2]) does the same regarding the internal market.

In January 1998 the Commission adopted a proposal for the amendment ([3]) of Directive 92/109/EEC, hereinafter referred to as 'the Directive'. In its first reading, Parliament supported the Commission initiative and proposed five amendments ([4]). The Commission reacted to the Parliament's opinion (first reading) by adopting an amended proposal ([5]). The Council has not yet taken any decision on the proposal.

2. Objectives of the Commission proposal

Article 12 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) provides for control measures for trade in twenty-three substances which, while also having numerous licit uses, are frequently diverted for use in the clandestine manufacture of narcotic drugs and psychotropic substances. In accordance with the Convention, the manufacture and placing on the Community market of such substances are subject to strict surveillance, in particular pursuant to Directive 92/109/EEC.

By transforming the current Directive into a Regulation the Commission aims mainly at simplifying the legislation and thus making it more user-friendly. This becomes especially important in the context of the on-going process of enlargement of the European Union where each modification of the Directive and its annexes would have triggered national implementation measures in some twenty-five Member States.

([1]) OJ L 357, 20.12.1990, p. 1, as last amended by Council Regulation (EC) No 1116/2001 (OJ L 153, 8.6.2001, p. 4).

([2]) OJ L 370, 19.12.1992, p. 76.

([3]) Document COM(1998) 22 final (OJ C 108, 7.4.1998, p. 41).

([4]) Document PE 273.796/1.

([5]) Document COM(1999) 202 final (OJ C 162, 9.6.1999, p. 9).

Furthermore, it should be stressed that the above-mentioned Regulation (EEC) No 3677/90 has the same basic objectives as the Directive. Whereas the Regulation concerns the trade of substances between the European Community and third countries, the Directive deals with drug precursors in the Internal Market. This results in an uneven application of the two instruments because a modification of the Regulation's annexes will be applicable simultaneously in all Member States within a few days from publication ([1]), while the corresponding modification of the Directive's annexes is subject to a transposition period that most Member States are unable to meet ([2]). In practice, delays of up to forty-two months have occurred in the past before the modifying directives were fully transposed into national law. The result is that the controls on newly identified drug precursors in the Internal Market lacked efficiency. A continuation of this situation cannot be justified and a uniform application of Community law in this area is needed to avoid any diversion of drug precursors into the production of illegal drugs.

The Commission has therefore decided to withdraw the proposal for an amendment of Directive 92/109/EEC. The Regulation now proposed would better ensure that the provisions are directly applied by economic operators and that harmonised measures are implemented in all Member States at the same time. It would permit the legitimate use of the affected chemical substances to be monitored and would avoid their diversion to the manufacture of illegal drugs. It will also ensure that the implementation of this new instrument is as rapid as that of Regulation 3677/90.

3. **Content of the Commission proposal**

The aim of the new Regulation is to establish harmonised measures of control and monitoring of certain chemical substances frequently used in the manufacture of illegal narcotic drugs. The new Regulation will prevent barriers to the free trade of these substances between Member States. In order to achieve this aim, the proposed Regulation contains rules on licensing, customer declarations, labelling and a monitoring procedure.

In addition, the Commission proposes that the new Regulation should take account of the changeable nature of the illicit manufacture of narcotic drugs and to align it with the already published amendments to Regulation (EEC) No 3677/90.

A further improvement to the current situation will be to oblige the Member States to distribute to economic operators information on how to recognise and notify suspect transactions so that economic operators inform the competent authorities of suspect transactions involving substances not currently mentioned in the Directive but which are nevertheless frequently used to manufacture synthetic drugs. This co-operative approach has already been tried and tested in a number of Member States (France, Germany, Austria, United Kingdom, The Netherlands). The Commission, assisted by the Committee referred to in Article 15 of the new Regulation, will be responsible for drawing up and constantly updating the lists of products which are to be subject to such surveillance. These lists will be distributed to economic operators by the Member States.

The Commission takes this opportunity to define more clearly what it means by a 'scheduled substance', since the measures applicable to Sassafras Oil are currently interpreted in different ways in the Community. In some Member States it is regarded as a mixture containing Safrole, and is therefore controlled, while other Member States regard it as a natural product not subject to controls. Inserting a reference to natural products in the definition of 'scheduled substance' resolves this discrepancy and therefore allows controls to be applied to Sassafras Oil; only natural products from which scheduled substances can be easily extracted are covered by the definition.

([1]) See Commission Regulation (EC) No 260/2001 (OJ L 39, 9.2.2001, p. 11) which entered into force nineteen days after the publication in the Official Journal, on 1 March 2001.

([2]) See Commission Directive 2001/8/EC (OJ L 39, 9.2.2001, p. 31) whose transposition has not yet been completed in all Member States.

The Commission also proposes to define 'non-scheduled substances' in conformity with Article 12(12)(b) of the United Nations Convention.

As a final point, the Commission considers this a good opportunity to take into account the revision of the classification for Potassium Permanganate. The Committee referred to in Article 15 of the new Regulation, has considered that this chemical gives rise to particular concern. The Committee has recommended the classification of Potassium Permanganate in category 2 of Annex I. Thresholds have been set up for Potassium Permanganate as well as for Acetic Anhydride to ensure that internal trade of these products will not be negatively affected.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988, hereinafter referred to as the 'United Nations Convention', was approved by the Community, with respect to matters within its competence, by Council Decision 90/611/EEC of 22 October 1990 [1].

(2) The requirements of Article 12 of the United Nations Convention, in respect of trade in precursors, (i.e. substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances), are implemented as far as trade between the Community and third countries is concerned by Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances [2].

(3) Article 12 of the United Nations Convention envisages adoption of appropriate measures to monitor manufacture and distribution of precursors. This requires the adoption of measures relating to the trade of precursors among Member States. Such measures were introduced by Council Directive 92/109/EEC of 14 December 1992 on the manufacture and placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances. To better ensure that harmonised rules are applied at the same time in all Member States a Regulation is deemed to be more adequate than the current Directive.

(4) By decisions taken at its thirty-fifth session, 1992, the United Nations Commission on Narcotic Drugs included additional substances in the tables of the Annex to the Convention. Corresponding provisions should be laid down in this Regulation in order to detect possible cases of illicit diversion of drugs in the Community and to ensure that common monitoring rules are applied in the Community market.

(5) The provisions of Article 12 of the United Nations Convention are based on a system of monitoring trade in the substances in question. Most trade in these substances is entirely lawful. The documentation of consignments and labelling of these substances must be sufficiently explicit. It is furthermore important, whilst providing competent authorities with the necessary means of action, to develop within the spirit of the United Nations Convention mechanisms based on close co-operation with the operators concerned and on the development of intelligence gathering.

(6) The measures applicable to Sassafras Oil are currently interpreted in different ways in the Community, since it is regarded as a mixture containing Safrole and is therefore controlled in some Member States, while other Member States regard it as a natural product not subject to controls. Inserting a reference to natural products in the definition of 'scheduled substance' resolves this discrepancy and therefore allows controls to be applied to Sassafras Oil; only natural products from which scheduled substances can be easily extracted are covered by the definition.

[1] OJ L 326, 24.11.1990, p. 56, Council Decision 90/611/EEC of 22 October 1990 concerning the conclusion, on behalf of the European Economic Community, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

[2] OJ L 357, 20.12.1990, p. 1, as last amended by Council Regulation (EC) No 1116/2001 (OJ L 153, 8.6.2001, p. 4).

(7) Substances commonly used in the illicit manufacture of narcotic drugs and psychotropic substances should be listed in an Annex.

(8) It should be ensured that the manufacture or use of certain scheduled substances listed in the Annex is subject to possession of a licence. The supply of such substances should in addition be permitted only where the persons to whom they are to be supplied are either holders of a licence or have signed a customer declaration. The detailed rules concerning the customer declaration should be laid down in Annex III.

(9) Measures should be adopted to encourage operators to notify suspicious transactions involving substances listed in Annex I to the competent authorities.

(10) Measures should be adopted in order to guarantee better control of intra-community trade of scheduled substances listed in Annex I.

(11) All transactions leading to the placing on the market of scheduled substances in categories 1 and 2 of Annex I should be properly documented. Operators shall notify the Competent Authorities of any suspect transactions involving the substances listed in Annex I. However, exemptions should apply to transactions concerning substances in category 2 of Annex I where the quantities involved do not exceed those indicated in Annex II.

(12) A significant number of other substances, many of them traded legally in large quantities, have been identified as precursors to the illicit manufacture of synthetic drugs. To subject these substances to the same strict controls as those listed in the Annex would present an unnecessary obstacle to trade involving licences to operate and documentation of transactions. Therefore, a more flexible mechanism at Community level should be established whereby the competent authorities in the Member States are notified of such transactions.

(13) The introduction of a cooperation procedure is provided for in the European Union Action Plan against drugs approved by the European Council of Santa Maria da Feira on 19 and 20 June 2000. In order to support co-operation between the Member State administrations and the chemicals industry, in particularly with regard to substances which, though not referred to in this regulation, may be used in the illicit manufacture of synthetic drugs, guidelines should be drawn up aimed at helping this industry.

(14) 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 [1].

(15) Since the objectives of the proposed action, the harmonised monitoring of the trade in drug precursors and the avoidance of its diversion to the illegal production of narcotic drugs, cannot be sufficiently achieved by the Member States, and can therefore, by reason of its international and changeable nature, be better achieved at Community level, the Community may adopt measures, in accordance with the principle 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 Regulation does not go beyond what is necessary in order to achieve those objectives.

(16) Council Directive 92/109/EEC of 14 December 1992 [2], Commission Directives 93/46/EEC of 22 June 1993 [3] and 2001/8/EC of 8 February 2001 [4], and Commission Regulations (EC) No 1485/96 of 26 July 1996 [5] and (EC) No 1533/2000 of 13 July 2000 [6] should be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

Scope and objectives

This Regulation establishes harmonised measures for the control and monitoring of certain substances frequently used for the illicit manufacture of narcotic drugs and psychotropic substances with a view to preventing the diversion of such substances.

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

[2] OJ L 370, 19.12.1992, p. 76, Council Directive 92/109/EEC of 14 December 1992 on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances.

[3] OJ L 159, 1.7.1993, p. 134, Directive 93/46/EEC of 22 June 1993 replacing and modifying the Annexes to Council Directive 92/109/EEC on the manufacture and placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances.

[4] OJ L 39, 9.2.2001, p. 31, Directive 2001/8/EC of 8 February 2001 replacing Annex I to Council Directive 92/109/EEC on the manufacture and placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances.

[5] OJ L 188, 27.7.1996, p. 28, Regulation (EC) No 1485/96 of 26 July 1996 laying down detailed rules for the application of Council Directive 92/109/EEC, as regards customer declarations of specific use relating to certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances.

[6] OJ L 175, 14.7.2000, p. 75, Commission Regulation (EC) No 1533/2000 of 13 July 2000 amending Regulation (EC) No 1485/96 laying down detailed rules for the application of Council Directive 92/109/EEC, as regards customer declarations of specific use relating to certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances.

Article 2

Definitions

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

(a) scheduled substance means any substance listed in Annex I, including mixtures and natural products containing such substances. This excludes medicinal products (as defined by Directive 2001/83/EC [1]), pharmaceutical preparations, mixtures, natural products and other preparations containing scheduled substances that are compounded in such a way that such substances cannot be easily used or extracted by readily applicable or economically viable means;

(b) non scheduled substance means any substance not included in Annex I but which is identified as having been used in illicit manufacture of narcotic drugs or psychotropic substances;

(c) placing on the market means any supply, whether in return of payment or free of charge, of scheduled substances; or the storage, manufacture, production, trade, distribution or brokering of these substances for the purpose of supply;

(d) operator means any natural or legal person engaged in the placing on the market of scheduled substances in the Community;

(e) International Narcotics Control Board means the Board established by the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol.

Article 3

Requirements for the manufacture and placing on the market of scheduled substances

1. Operators shall possess a licence issued by the competent authorities before they place on the market in the Community scheduled substances in category 1 of Annex I.

2. In considering whether to grant a licence, the competent authorities shall take into account in particular the competence and integrity of the applicant. The licence may be suspended or revoked by the competent authorities whenever there are reasonable grounds for belief that the holder is no longer a fit and proper person to hold a licence, or that the conditions under which the licence was issued are no longer fulfilled.

3. Operators engaged in the placing on the market of scheduled substances in category 2 of Annex I shall be required to register and update with the competent authorities the addresses of the premises from which they manufacture or trade in these substances.

[1] OJ L 311, 28.11.2001, p. 67.

Article 4

Customer declaration and authorization

1. Any operator established within the Community who supplies a customer with a scheduled substance in categories 1 or 2 of Annex I to this Regulation shall obtain a declaration from the customer which shows the specific use or uses of the scheduled substances. A separate declaration shall be required for each scheduled substance. This declaration shall conform to the model set out in point 1 of Annex III to this Regulation. In the case of legal persons, the declaration shall be made on headed notepaper.

2. As an alternative to the above declaration for an individual transaction, an operator who regularly supplies a customer with a scheduled substance in category 2 of Annex I to this Regulation may accept a single declaration in respect of a number of transactions over a period of one year maximum provided that the operator is satisfied the following criteria have been met:

(a) the customer is one to whom he has supplied the substance on at least three occasions in the preceding twelve months;

(b) the operator has no reason to suppose that the substance will be used for illicit purposes;

(c) the quantities ordered are consistent with the usual consumption for that customer.

This declaration shall conform to the model set out in point 2 of Annex III to this Regulation. In the case of legal persons, the declaration shall be made on headed notepaper.

3. Any operator holding the licence referred to in Article 3 shall supply scheduled substances specified in category 1 of Annex I only to persons holding a licence in the sense of Article 3 or having signed a customer declaration in the sense of paragraphs 1 and 2 above.

4. An operator supplying substances specified in category 1 of Annex I shall stamp and date a copy of the customer declaration, thereby certifying that it corresponds to the original. This document must always accompany category 1 substances being moved within the Community and must be presented on request to the authorities responsible for checking vehicle contents during transport operations.

Article 5

Documentation

1. Operators shall ensure that all transactions leading to the placing on the market of scheduled substances in categories 1 and 2 of Annex I are properly documented in accordance with paragraphs 2 to 5.

2. Commercial documents such as invoices, cargo manifests, administrative documents, transport and other shipping documents shall contain sufficient information to identify positively:

(a) the name of the scheduled substance as given in categories 1 and 2 of Annex I;

(b) the quantity and weight of the scheduled substance and, where a mixture is concerned, the quantity and weight, if available, of the mixture as well as the quantity and weight, or the percentage by weight, of any substance or substances specified in categories 1 and 2 of Annex I which are contained in the mixture;

(c) the name and address of the supplier, distributor and of the consignee.

3. The documentation must furthermore contain a customer declaration as referred to in Article 4.

4. Operators shall keep detailed records of their activities as are required to comply with their obligations under paragraph 1.

5. The documentation and records referred to in paragraphs 1 to 4 above shall be kept for a period of not less than three years from the end of the calendar year in which the transaction referred to in paragraph 1 took place, and must be readily available for inspection by the competent authorities upon request.

Article 6

Exemptions

The obligations under Articles 3, 4 and 5 shall not apply to transactions concerning scheduled substances in category 2 of Annex I where the quantities involved do not exceed those indicated in Annex II.

Article 7

Labelling

Operators shall ensure that labels are affixed to scheduled substances in categories 1 and 2 of Annex I before they are placed on the market. Such labels must show the names of the substances as given in Annex I. Operators may in addition affix their customary labels.

Article 8

Notification of the Competent Authorities regarding scheduled substances

1. Operators shall notify the competent authorities immediately of any circumstances, such as unusual orders or transactions involving scheduled substances, which suggest that such substances to be placed on the market or manufactured, as the case may be, may be diverted for the illicit manufacture of narcotic drugs or psychotropic substances.

2. Operators shall provide the competent authorities in summary form with such information about their transactions involving scheduled substances as the competent authorities may require.

Article 9

Guidelines

1. In order to facilitate cooperation between the competent authorities of the Member States, the operators, and the chemical industry, in particular as regards non-scheduled substances commonly used in the illicit manufacture of narcotic drugs or psychotropic substances, the Commission shall, in accordance with the procedure referred to in Article 15(2), draw up and update guidelines to assist the chemical industry.

2. The guidelines shall provide in particular:

(a) information on how to recognise and notify suspect transactions;

(b) a regularly updated list of non-scheduled substances commonly used in the illicit manufacture of narcotic drugs and psychotropic substances to enable industry to monitor on a voluntary basis the trade in such substances;

(c) other information which may be deemed useful.

3. The competent authorities shall ensure that the guidelines and the list referred to in paragraph 2(b) are regularly disseminated in a manner deemed appropriate by the competent authorities in accordance with the objectives of the guidelines.

Article 10

Powers and obligations of Competent Authorities

In order to ensure the correct application of Articles 3 to 7, each Member State shall adopt, the measures necessary to enable the competent authorities:

(a) to obtain information on any orders for scheduled substances or operations involving scheduled substances;

(b) to enter operators' business premises in order to obtain evidence of irregularities;

(c) to respect confidential business information.

Article 11

Cooperation between the Member States and the Commission

1. Each Member State shall designate the competent authority or authorities responsible for ensuring the application of this Regulation and inform the Commission thereof.

2. For the purposes of applying this Regulation and without prejudice to Article 15, the provisions of Council Regulation (EEC) No 515/97 [1], and in particular those on confidentiality shall apply *mutatis mutandis*. The competent authorities designated under point 1 shall act as competent authorities within the meaning of Article 2(2) of Regulation (EEC) No 515/97.

Article 12

Penalties

The Member State shall lay down the rules on penalties applicable for infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be sufficient, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by [eighteen months] at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 13

Communications from Member States

1. To permit any necessary adjustments to the arrangements for monitoring trade in scheduled substances and non scheduled substances, the competent authorities in each Member State shall each year communicate to the Commission all relevant information on the implementation of the monitoring measures laid down in this Regulation, in particular as regards substances used for the illicit manufacture of narcotic drugs or psychotropic substances and methods of diversion and illicit manufacture.

2. A summary of the communications made pursuant to paragraph 1, in accordance with Article 12(12) of the United Nations Convention and in consultation with the Member States, shall be submitted by the Commission's services to the International Narcotics Control Board.

Article 14

Implementation procedure

The following measures necessary for the implementation of this Regulation shall be adopted in accordance with the procedure referred to in Article 15(2).

1. The determination whenever necessary of the conditions which shall apply to the documentation and labelling of mixtures and preparations containing substances listed in category 2 of Annex I, as provided for in Articles 5 and 6.

2. The amendment to the Annexes of the present Regulation, in the event that the tables in the Annex to the United Nations Convention should themselves be amended.

3. The amendments to the thresholds set in Annex II.

4. The customer declaration form referred to in points 1 and 2 of Article 4, as well as the detailed rules concerning its use.

Article 15

Committee

1. The Commission shall be assisted by the committee set up by Article 10 of Regulation (EEC) No 3677/90.

2. Where reference is made to this paragraph Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. The period referred to in Article 4(3) of Decision 1999/468/CE shall be three months.

3. The Committee shall adopt its rules of procedure.

Article 16

Information about measures taken by Member States

Each Member State shall inform the Commission of the measures it takes pursuant to this Regulation.

The Commission shall communicate this information to the other Member States.

Article 17

Repeal

1. Council Directive 92/109/EEC, Commission Directives 93/46/EEC and 2001/8/EC, and Commission Regulations (EC) No 1485/96 and (EC) No 1533/2000 are hereby repealed.

2. References to the repealed Directives or Regulations shall be construed as references to the present Regulation.

3. The validity of any licenses granted and any customer declarations issued under the above Directives or Regulations shall not be affected by the fact that these are replaced by the present Regulation.

Article 18

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.

[1] OJ L 82, 22.3.1997, p. 1.

ANNEX I

Category 1

Substance	CN designation (if different)	CN code (*)	CAS No
1-Phenyl-2-propanone	Phenylacetone	2914 31 00	103-79-7
N-acetylanthranilic acid	2-Acetamidobenzoic acid	2924 23 00	89-52-1
Isosafrol (cis + trans)		2932 91 00	120-58-1
3,4-Methylenedioxyphenylpropane-2-one	1-(1,3-Benzodioxol-5-yl)propan-2-one	2932 92 00	4676-39-5
Piperonal		2932 93 00	120-57-0
Safrole		2932 94 00	94-59-7
Ephedrine		2939 41 00	299-42-3
Pseudoephedrine		2939 42 00	90-82-4
Norephedrine		2939 49 00	154-41-6
Ergometrine		2939 61 00	60-79-7
Ergotamine		2939 62 00	113-15-5
Lysergic acid		2939 63 00	82-58-6

(*) OJ L 278, 28.10.1999, p. 1.
The salts of the substances listed in this category whenever the existence of such salts is possible.

Category 2

Substance	CN designation (if different)	CN code (*)	CAS No
Acetic anhydride		2915 24 00	108-24-7
Phenylacetic acid		2916 34 00	103-82-2
Anthranilic acid		2922 43 00	118-92-3
Piperidine		2933 32 00	110-89-4
Potassium permanganate		2841 61 00	7722-64-7

(*) OJ L 278, 28.10.1999, p. 1.
The salts of the substances listed in this category whenever the existence of such salts is possible.

Category 3

Substance	CN designation (if different)	CN code (*)	CAS No
Hydrochloric acid	Hydrogen chloride	2806 10 00	7647-01-0
Sulphuric acid		2807 00 10	7664-93-9
Toluene (**)		2902 30 00	108-88-3
Ethyl ether (**)	Diethyl ether	2909 11 00	60-29-7
Acetone (**)		2914 11 00	67-64-1
Methylethylketone (**)	Butanone	2914 12 00	78-93-3

(*) OJ L 278, 28.10.1999, p. 1.
(**) The salts of these substances whenever the existence of such salts is possible.

ANNEX II

Substance	Threshold
Acetic anhydride	100 l
Potassium Permanganate	100 kg
Anthranilic acid and its salts	1 kg
Phenylacetic acid and its salts	1 kg
Piperidine and its salts	0,5 kg

ANNEX III

1. **Model declaration relating to individual transactions (category 1 or 2)**

CUSTOMER DECLARATION OF SPECIFIC USE(S) OF THE SCHEDULED CATEGORY 1 or 2 SUBSTANCE
(individual transactions)

I/We,

Name: .....

Address: .....

.....

Authorisation/Licence/Registration number of reference: .....
(delete as appropriate)

issued on ..... by .....

.....
(name and address of the authority)

and without time limit/valid until .....
(delete as appropriate)

have ordered from

Name: .....

Address: .....

.....

the following substance

Description: .....

.....

Combined nomenclature code: ..... Quantity: .....

The substance will be used solely for .....

.....

II/We confirm that the substance referred to above will only be re-sold or otherwise supplied to a customer on the condition that the customer will furnish a declaration of use in accordance with this model or, for category 2 substances, a declaration relating to multiple transactions.

Signature: ..... Name: .....
(in block capitals)

Position: ..... Date: .....

2. **Model declaration relating to multiple transactions (category 2)**

CUSTOMER DECLARATION OF SPECIFIC USE(S) OF THE SCHEDULED CATEGORY 2 SUBSTANCE
(multiple transactions)

I/We,

Name: .....

Address: .....

.....

Registration number of reference: .....

issued on by.....by.....

.....
(name and address of the authority)

and without time limit/valid until.....
(delete as appropriate)

intend to order from

Name: .....

Address: .....

.....

the following substance

Description: .....

.....

Combined nomenclature code: ..... Quantity: .....

The substance will be used exclusively for .....

.....

and represents a quantity that is normally considered sufficient for..... months (up to a maximum of twelve months)

I/We hereby certify that the substance referred to above will only be sold on or transferred to another customer subject to the proviso that the latter submits a similar declaration of use or a declaration relating to individual transactions.

Signature: ..... Name: .....
(in block capitals)

Position: ..... Date: .....

Proposal for a Council Decision establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 and Annex II of Directive 1999/31/EC on the landfill of waste

(2003/C 20 E/16)

COM(2002) 512 final

(Submitted by the Commission on 20 September 2002)

EXPLANATORY MEMORANDUM

1. Directive 1999/31/EC on the landfill of waste distinguishes between three classes of landfills:

   — landfills for hazardous waste

   — landfills for non-hazardous waste

   — landfills for inert waste

2. Pursuant to Article 6 of the Directive:

   Only hazardous waste that fulfils the relevant criteria set out in Annex II may be assigned to landfills for hazardous waste.

   Landfills for non-hazardous waste may be used for municipal waste, for other non-hazardous waste that fulfils the relevant criteria set out in Annex II and for stable, non-reactive hazardous waste that fulfils the relevant criteria set out in Annex II.

   Landfills for inert waste shall be used only for inert waste.

3. Annex II of the Directive lays down the principles for waste acceptance criteria and procedures, as well as preliminary criteria and procedures to be applied before Community criteria and procedures are established.

4. Pursuant to Article 16 of the Directive, the Commission shall set specific criteria and/or test methods and associated limit values for each landfill class, including if necessary specific types of landfills within each class, including underground storage. The Commission will be assisted by the Committee established by Article 18 of Directive 75/442/EEC on waste. In this work the general principles and the general procedures for testing and acceptance criteria set out in Annex II shall be taken into account. The work shall be completed at the latest by 16 July 2002.

5. The Commission has drawn up a draft of the measures to be taken.

   This draft decision lays down:

   — the procedures for characterising waste, checking compliance of the waste with the acceptance criteria and the on-site verification that the waste arriving at the landfill is identical to the waste described in the documents,

   — acceptance criteria for inert waste, for certain non-hazardous wastes (only those that are landfilled together with stable, non reactive hazardous waste), for stable non-reactive hazardous waste accepted at landfills for non-hazardous waste, for hazardous waste and for underground storage,

   — the test methods to be used.

6. The draft decision was submitted to vote in the Committee established under Article 18 of Directive 75/442/EEC on waste on 23 July 2002. There was no qualified majority in favour of the draft decision.

Thus, in accordance with the procedure set out in Article 18 of Directive 75/442/EEC a Proposal for a Council Decision is submitted to Council. If Council has not acted within three months from the date of referral of the proposal, the proposed measures shall be adopted by the Commission.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 1999/31/EC on the landfill of waste [1], and in particular Article 16 and Annex II thereof,

Whereas:

(1) Pursuant to Article 16 of Directive 1999/31/EC the Commission shall adopt specific criteria and/or test methods and associated limit values for each class of landfill.

(2) A procedure should be laid down to determine the acceptability of waste at landfills.

(3) Limit values and other criteria should be set for waste acceptable at the different classes of landfills.

(4) The test methods to be used for determining the acceptability of waste at landfills should be determined.

(5) It is appropriate from a technical point of view to exempt from the criteria and procedures set out in the Annex to this Decision those wastes generated by the extractive industry that are deposited on-site.

(6) A suitably short transition period should be granted to Member States to develop the necessary system to apply this decision and a further brief transition period may be necessary for Member States to ensure the application of the limit values.

(7) The measures provided for in this Decision are not in accordance with the opinion of the Committee established by Article 18 of Directive 75/442/EEC on waste [2]. They must therefore be adopted by the Council in accordance with Article 18, paragraph 4 of Directive 75/442/EEC,

HAS ADOPTED THIS DECISION:

Article 1

This Decision establishes the criteria and procedures for the acceptance of waste at landfills in accordance with the principles set out in Directive 1999/31/EC and in particular its Annex II.

Article 2

Member States shall apply the procedure as set out in section 1 of the Annex to this Decision to determine the acceptability of waste at landfills.

Article 3

Member States shall ensure that waste is only accepted at a landfill, if it fulfils the acceptance criteria of the relevant landfill class as set out in section 2 of the Annex to this Decision.

Article 4

The sampling and testing methods listed in section 3 of the Annex to this Decision shall be used for determining the acceptability of waste at landfills.

Article 5

Without prejudice to existing Community legislation, the criteria and procedures as set out in the Annex to this Decision will not apply to waste resulting from prospecting, extraction, treatment and storage of mineral resources and from the working of quarries, when they are deposited on-site. In the absence of specific Community legislation, Member States shall apply national criteria and procedures.

Article 6

1. This Decision will enter into force on 16 July 2004.

2. Member States shall apply the criteria set out in section 2 of the Annex to this Decision at the latest by 16 July 2005.

Article 7

This Decision is addressed to the Member States.

[1] OJ L 182, 16.7.1999, p. 1.

[2] OJ L 78, 26.3.1991, p. 32.

ANNEX

CRITERIA AND PROCEDURES FOR THE ACCEPTANCE OF WASTE AT LANDFILLS

INTRODUCTION

This annex lays down the uniform waste classification and acceptance procedure according to Annex II of Directive 1999/31/EC on the landfill of waste.

In accordance with Article 176 of the Treaty, Member States are not prevented from maintaining or introducing more stringent protective measures than those established in this Annex, provided that such measures are compatible with the Treaty. Such measures shall be notified to the Commission. This could be of particular relevance with reference to the limit values for Cadmium and Mercury in Section 2.

Section 1 of this annex lays down the procedure to determine the acceptability of waste at landfills. This procedure consists of the basic characterisation, compliance testing and on-site verification.

Section 2 of this annex lays down the acceptance criteria for each landfill class. Waste may only be accepted at a landfill if it fulfils the acceptance criteria of the relevant landfill class as laid down in section 2 of this annex.

Section 3 of this annex lists the methods to be used for the sampling and testing of waste.

Annex A defines the safety assessment to be carried out for underground storage.

Annex B is an informative annex providing an overview of the landfill options available within the Directive and examples of possible sub-categorisation of landfills non-hazardous waste.

1. PROCEDURE FOR THE ACCEPTANCE OF WASTE AT LANDFILLS

1.1. **Basic characterisation**

Basic characterisation is the first step in the acceptance procedure and constitutes a full characterisation of the waste by gathering all the necessary information for a safe disposal of the waste in the long term. Basic characterisation is required for each type of waste.

1.1.1. *The functions of basic characterisation are the following*

(a) Basic information on the waste (type and origin, composition, consistency, leachability and other characteristic properties).

(b) Basic information for understanding the behaviour of waste in landfills and options for treatment for Article 6 (a).

(c) Assessing waste against limit values.

(d) Detection of key variables (critical parameters) for compliance testing and options for simplification of compliance testing (leading to a significant decrease of constituents to be measured, but only after demonstration of relevant information). Characterization may deliver ratios between basic characterisation and results of simplified test procedures as well as frequency for compliance testing.

If the basic characterisation of a waste shows that the waste fulfils the criteria for a landfill class as laid down in section 2 of this annex, the waste is deemed to be acceptable at this landfill class. If this is not the case, the waste is not acceptable at this landfill class.

The producer of the waste, or in default the person responsible for its management, is responsible for ensuring that the characterisation information is correct.

The operator shall keep records of the required information for a period that will be defined by the Member State.

1.1.2. *The basic requirements for basic characterisation of the waste are the following*

(a) Source and origin of the waste

(b) Information on the process producing the waste (description and characteristics of raw materials and products)

(c) Description of the waste treatment applied in compliance with Article 6(a), or a statement of reasons why such treatment is not considered necessary

(d) Data on the composition of the waste and the leaching behaviour, where relevant (as a general rule the mandatory parameters in section 2 have to be tested; testing of other parameters has to be decided on a case by case basis)

(e) Appearance of the waste (smell, colour, physical form)

(f) Code according to the European Waste List (Decision 2001/118/EC)

(g) For hazardous waste in case of mirror entries: the relevant hazard properties according to Annex III of Directive 91/689/EC

(h) Information to prove that the waste does not fall under the exclusions of Article 5.3 of Directive 1999/31/EC

(i) The landfill class at which the waste may be accepted

(j) Additional precautions to be taken at the landfill

(k) Check if the waste can be recycled or recovered.

1.1.3. *Testing*

As a general rule a waste must be tested to obtain the above information. In addition to the leaching behaviour, the composition of the waste must be known or determined by testing. The tests used for basic characterisation must always include those to be used for compliance testing.

The content of the characterisation, the extent of laboratory testing required and the relationship between basic characterisation and compliance checking depends on the type of waste. A differentiation can be made between:

(a) wastes that are regularly generated in the same process,

(b) wastes that are not regularly generated.

The characterisations outlined in (a) and (b) will provide information that can be directly compared with acceptance criteria for the relevant class of landfill and, in addition, descriptive information can be supplied (e.g. the consequences of depositing with municipal waste).

(a) Wastes regularly generated in the same process.

These are individual and consistent wastes regularly generated in the same process, where:

— the installation and the process generating the waste are well known and the input materials to the process and the process itself are well defined;

— the operator of the installation provides all necessary information and informs the operator of the landfill of changes to the process (especially changes to the input material).

The process will often be at a single installation. The waste can also be from different installations, if it can be identified as single stream with common characteristics within known boundaries (e.g. bottom ash from the incineration of municipal waste).

For these wastes the basic characterisation will comprise the basic requirements of basic characterisation and especially the following:

— compositional range for the individual wastes;

— range and variability of characteristic properties;

— if required, the leachability of the wastes determined by a batch leaching test and/or a percolation test and/or a pH dependence test;

— key variables to be tested on a regular basis.

If the waste is produced in the same process in different installations, information must be given on the scope of the evaluation, i.e. whether the whole waste stream is of concern or only part, and if so how is that part characterised/identified.

For such wastes, sufficient measurements must be carried out to demonstrate consistency of the waste.

For wastes from the same process in the same installation, the results of the measurements may show only slight variations of the properties of the waste at a level significant in comparison with the appropriate limit values. The waste can then be considered characterised and further deliveries are subject to compliance checking only, unless significant changes in the generation processes occur.

For wastes from the same process in different installations, a more detailed evaluation is necessary. This means that more measurements are needed. The results of the measurements must show the range and variability of the characteristic properties. The waste can then be considered characterised and further deliveries are subject to compliance checking only, unless significant changes in the generation processes occur.

Waste from facilities for the bulking or mixing of waste, from waste transfer stations or mixed waste streams from waste collectors, can vary considerably in their properties. This must be taken into consideration in the basic characterisation. Such wastes may fall under case (b).

(b) Wastes that are not regularly generated.

These wastes are not regularly generated in the same process in the same installation and are not part of a well-characterised waste stream. Each batch produced of such waste will need to be characterised. The basic characterisation shall include the basic requirements for basic characterisation. As each batch produced has to be characterised, no compliance testing is needed.

1.1.4. *Cases where testing is not required*

Testing for basic characterisation can be dispensed with in the following cases:

(a) The waste is on a list of wastes not requiring testing as laid down in point 2 of this annex.

(b) All the necessary information, for the basic characterisation, is known and duly justified to the full satisfaction of the competent authority.

(c) Certain waste types where testing is impractical or where appropriate testing procedures and acceptance criteria are unavailable. This must be justified and documented, including the reasons why the waste is deemed acceptable at this landfill class.

1.2. **Compliance testing**

When a waste has been deemed acceptable for a landfill class on the basis of a basic characterisation pursuant to section 1 of this document, following deliveries of the waste shall be subject to compliance testing to determine if the waste complies with the results of the basic characterisation and the relevant acceptance criteria as laid down in section 2.

The function of compliance testing is to periodically check regularly arising waste streams.

The relevant parameters to be tested are determined in the basic characterisation. Parameters should be related to basic characterisation information; only a check on critical parameters (key variables), as determined in the basic characterisation, is necessary. The check has to show that the waste meets the limit values for the critical parameters.

The tests used for compliance testing shall be one or more of those used in the basic characterisation. The testing shall consist at least of a batch leaching test. For this purpose the methods listed under section 3 shall be used.

Wastes that are exempted from the testing requirements for basic characterisation, are also exempted from compliance testing. They will, however, need checking for compliance with level 1 information.

Compliance testing shall be carried out at least once a year and the operator must, anyway, ensure that compliance testing is carried out in the scope and frequency determined by basic characterisation.

Records of the test results shall be kept for a period that will be determined by the Member State.

1.3. **On-site verification**

Each load of waste delivered to a landfill shall be visually inspected before and after unloading. The required documentation shall be checked.

For wastes deposited by the waste producer at a landfill in his control, this verification may be made at the point of dispatch.

The waste may be accepted at the landfill, if it is the same as that which has been subjected to basic characterisation and compliance testing and which is described in the accompanying documents. If this is not the case, the waste must not be accepted.

Member States shall determine the testing requirements for on-site verification, including where appropriate rapid test methods.

The samples taken shall be kept after acceptance of the waste for a period that will be determined by the Member State.

2. WASTE ACCEPTANCE CRITERIA

This section sets out the criteria for the acceptance of waste at each landfill class, including criteria for underground storage.

Higher limit values for specific parameters listed in this section are acceptable, if

— a risk assessment shows that there is no risk for the environment,

— the competent authority gives a permit in a cases by case decision for the landfill and

— the permitted limit values do not exceed the limit values set out in this section by more than three times.

Member States shall define criteria for compliance with the limit values set out in this section.

2.1. **Criteria for landfills for inert waste**

2.1.1. *List of wastes acceptable at landfills for inert waste without testing*

Wastes on the following short list are assumed to fulfil the criteria as set out in the definition of inert waste in Article 2(e) and the criteria listed in 2.1.2. The wastes can be admitted without testing at a landfill for inert waste.

The waste must be a single stream and single source material. Different wastes contained in the list may be accepted together, provided they are from the same source.

In case of suspicion of contamination (either from visual inspection or from knowledge of the origin of the waste) testing should be applied or the waste refused. If the listed wastes are contaminated or contain other material or substances such as metals, asbestos, plastics, chemicals, etc. to an extent which increases the risk associated with the waste sufficiently to justify their disposal in other classes of landfills, they may not be accepted in a landfill for inert waste.

If there is a doubt that the waste fulfils the definition of inert waste according to Article 2(e) and the criteria listed in 2.1.2 or about the lack of contamination of the waste, testing must be applied. For this purpose the methods listed under section 3 shall be used.

EWC Code	Description	Restrictions
10 11 03	Waste glass based fibrous materials	Only without organic binders
15 01 07	Glass packaging	
17 01 01	Concrete	Selected C&D waste only (1)
17 01 02	Bricks	Selected C&D waste only (1)
17 01 03	Tiles and ceramics	Selected C&D waste only (1)
17 01 07	Mixtures of concrete, bricks, tiles and ceramics	Selected C&D waste only (1)
17 02 02	Glass	
17 05 04	Soil and stones	Excluding topsoil, peat; excluding soil and stones from contaminated sites
19 12 05	Glass	
20 01 02	Glass	Separately collected glass only
20 02 02	Soil and stones	Only from garden and parks waste; Excluding top soil, peat

(1) Selected construction and demolition waste (C&D waste): with low contents of other types of materials (like metals, plastic, soil, organics, wood, rubber, etc). The origin of the waste must be known.
No C&D waste from constructions, polluted with inorganic or organic dangerous substances, e.g. because of production processes in the construction, soil pollution, storage and usage of pesticides or other dangerous substances, etc, unless it is made clear that the demolished construction was not significantly polluted
No C&D waste from constructions, treated, covered or painted with materials, containing dangerous substances in significant amounts

Waste not appearing on this list must be subject to testing as laid down under section 1 of this document to determine if it fulfils the criteria for waste acceptable at landfills for inert waste as set out in section 2.1.2.

2.1.2. *Limit values for waste acceptable at landfills for inert waste*

2.1.2.1. Leaching limit values

The following leaching limit values apply for waste acceptable at landfills for inert waste, calculated at liquid to solid ratios (L/S) of 2 l/kg and 10 l/kg for total release and directly expressed in mg/l for C_0 (the first eluate of percolation test at L/S = 0,1 l/kg). Member States shall determine which of the test methods and corresponding limit values in the table should be used.

Component	L/S = 2 l/kg mg/kg dry substance	L/S = 10 l/kg mg/kg dry substance	C_0 (percolation test) mg/l
As	0,1	0,5	0,06
Ba	7	20	4
Cd	0,03	0,04	0,02
Cr	0,2	0,5	0,1
Cu	0,9	2	0,6
Hg	0,003	0,01	0,002
Mo	0,3	0,5	0,2
Ni	0,2	0,4	0,12
Pb	0,2	0,5	0,15
Sb	0,02	0,06	0,1
Se	0,06	0,1	0,04
Zn	2	4	1,2
Chloride	550	800	450
Fluoride	4	10	2,5
Sulphate	560 (1)	1 000 (1)	1 500 (1)
Phenol index	0,5	1	0,3
DOC (2)	240	500	160
TDS (3)	2 500	4 000	

(1) If the waste does not meet these values for sulphate, it may still be considered as complying with the acceptance criteria if the leaching does not exceed either of the following values: 1 500 mg/l as C_0 at L/S = 0,1 l/kg and 6 000 mg/kg at L/S = 10 l/kg. It will be necessary to use a percolation test to determine the limit value at L/S = 0,1 l/kg under initial equilibrium conditions, whereas the value at L/S = 10 l/kg may be determined either by a batch leaching test or by a percolation test under conditions approaching local equilibrium.

(2) If the waste does not meet these values for dissolved organic carbon (DOC) at its own pH value, it may alternatively be tested at L/S = 10 l/kg and a pH between 7.5 and 8.0. The waste may be considered as complying with the acceptance criteria for DOC, if the result of this determination does not exceed 500 mg/kg (A draft method based on prEN 14429 is available).

(3) The values for TDS (Total Dissolved Solids) can be used alternatively to the values for Sulphate and Chloride.

2.1.2.2. Limit values for total content of organic parameters

In addition to the leaching limit values under section 2.1.2.1, inert wastes must meet the following additional limit values:

Parameter	Value mg/kg
TOC	30 000 (1)
BTEX	6
PCBs (7 congeners)	1
Mineral oil (C10 to C40)	500
PAHs	Member States to set limit value

(1) In the case of soils a higher limit value may be admitted by the competent authority, provided the Dissolved Organic Carbon at pH 7 (DOC7) value of 500 mg/kg is achieved.

2.2. **Criteria for landfills for non-hazardous waste**

Member States may create subcategories of landfills for non-hazardous waste.

In this annex limit values are only laid down for non-hazardous waste, which is landfilled in the same cell with stable, non-reactive hazardous waste.

2.2.1. *Wastes acceptable at landfills for non-hazardous waste without testing*

Municipal waste as defined in Article 2(b) of Directive 1999/31/EC that is classified as non-hazardous in Chapter 20 of the European Waste List, separately collected non-hazardous fractions of household wastes and the same non-hazardous materials from other origins can be admitted without testing at landfills for non-hazardous waste.

The wastes may not be admitted if they have not been subjected to prior treatment according to Article 6(a) of Directive 1999/31/EG, or if they are contaminated to an extent which increases the risk associated with the waste sufficiently to justify their disposal in other facilities.

They may not be accepted in cells, where stable, non-reactive hazardous waste is accepted pursuant to Article 6(c) iii) of Directive 1999/31/EC.

2.2.2. *Limit values for non-hazardous waste*

The following limit values apply to granular non-hazardous waste accepted in the same cell as stable, non-reactive hazardous waste, calculated at L/S = 2 and 10 l/kg for total release and directly expressed in mg/l for C_0 (in the first eluate of percolation test at L/S = 0,1 l/kg). Granular wastes include all wastes that are not monolithic. Member States shall determine which of the test methods and corresponding limit values in the table should be used.

Components	L/S = 2 l/kg mg/kg dry substance	L/S = 10 l/kg mg/kg dry substance	C_0 (percolation test) mg/l
As	0,4	2	0,3
Ba	30	100	20
Cd	0,6	1	0,3
Cr total	4	10	2,5
Cu	25	50	30
Hg	0,05	0,2	0,03
Mo	5	10	3,5
Ni	5	10	3
Pb	5	10	3
Sb	0,2	0,7	0,15
Se	0,3	0,5	0,2
Zn	25	50	15
Chloride	10 000	15 000	8 500
Fluoride	60	150	40
Sulphate	10 000	20 000	7 000
DOC ([1])	380	800	250
TDS ([2])	40 000	60 000	

([1]) If the waste does not meet these values for dissolved organic carbon (DOC) at its own pH, it may alternatively be tested at L/S = 10 l/kg and a pH of 7.5 — 8.0. The waste may be considered as complying with the acceptance criteria for DOC, if the result of this determination does not exceed 800 mg/kg (A draft method based on prEN 14429 is available).

([2]) The values for TDS (Total Dissolved Solids) can be used alternatively to the values for Sulphate and Chloride.

2.2.3. *Gypsum Waste*

Non-hazardous gypsum-based materials should only be disposed of in landfills for non-hazardous waste in cells where no biodegradable waste is accepted. The limit values for Total Organic Carbon (TOC) and Dissolved Organic Carbon at pH 7 (DOC7) given in section 2.3.2 shall apply to wastes landfilled together with gypsum-based materials.

2.3. **Criteria for hazardous waste acceptable at landfills for non-hazardous waste pursuant to Article 6(c)(iii)**

Stable, non-reactive means that the leaching behaviour of the waste will not change adversely in the long-term, under landfill design conditions or foreseeable accidents:

— in the waste alone (for example, by biodegradation);

— under the impact of long-term ambient conditions (for example, water, air, temperature, mechanical constraints);

— by the impact of other wastes (including waste products such as leachate and gas).

2.3.1. *Leaching limit values*

The following leaching limit values apply to granular hazardous waste acceptable at landfills for non-hazardous waste, calculated at L/S = 2 and 10 l/kg for total release and directly expressed in mg/l for C_0 (the first eluate of percolation test at L/S = 0,1 l/kg). Granular wastes include all wastes that are not monolithic. Member States shall determine which of the test methods and corresponding limit values should be used.

Components	L/S = 2 l/kg mg/kg dry substance	L/S = 10 l/kg mg/kg dry substance	C_0 (percolation test) mg/l
As	0,4	2	0,3
Ba	30	100	20
Cd	0,6	1	0,3
Cr total	4	10	2,5
Cu	25	50	30
Hg	0,05	0,2	0,03
Mo	5	10	3,5
Ni	5	10	3
Pb	5	10	3
Sb	0,2	0,7	0,15
Se	0,3	0,5	0,2
Zn	25	50	15
Chloride	10 000	15 000	8 500
Fluoride	60	150	40
Sulphate	10 000	20 000	7 000
DOC ([1])	380	800	250
TDS ([2])	40 000	60 000	

([1]) If the waste does not meet these values for dissolved organic carbon (DOC) at its own pH, it may alternatively be tested at L/S = 10 l/kg and a pH of 7.5 — 8.0. The waste may be considered as complying with the acceptance criteria for DOC, if the result of this determination does not exceed 800 mg/kg (A draft method based on prEN 14429 is available).

([2]) The values for TDS (Total Dissolved Solids) can be used alternatively to the values for Sulphate and Chloride.

Member States must set criteria for monolithic waste to provide the same level of environmental protection given by the above limit values.

2.3.2. *Other criteria*

In addition to the leaching limit values under section 2.3.1, granular wastes must meet the following additional criteria:

Parameter	Value
TOC	5 % [1]
PH	minimum 6
ANC	Must be evaluated

[1] If this value is not achieved, a higher limit value may be admitted by the competent authority, provided that the Dissolved Organic Carbon (DOC) value at pH7 of 800 mg/kg is achieved.

Member States must set criteria to ensure that the waste will have sufficient physical stability and bearing capacity.

Member States must set criteria to ensure that hazardous monolithic wastes are stable and non-reactive before acceptance in landfills for non-hazardous waste.

2.3.3. *Asbestos waste*

Construction materials containing asbestos and other suitable asbestos waste may be landfilled at landfills for non-hazardous waste in accordance with Article 6(c)(iii) of Directive 1999/31/EC without testing.

For landfills receiving construction materials containing asbestos and other suitable asbestos waste the following requirements must be fulfilled:

— The waste contains no other hazardous substances than bound asbestos, including fibres bound by a binding agent or packed in plastic.

— The landfill accepts only construction material containing asbestos and other suitable asbestos waste. These wastes may also be landfilled in a separate cell of a landfill for non-hazardous waste, if the cell is sufficiently self-contained.

— In order to avoid dispersion of fibres, the zone of deposit is covered daily and before each compacting operation with appropriate material and, if the waste is not packed, it is regularly sprinkled.

— A final top cover is put on the landfill/cell in order to avoid the dispersion of fibres.

— No works are carried out on the landfill/cell that could lead to a release of fibres (e.g. drilling of holes).

— After closure a plan is kept of the location of the landfill/cell indicating that asbestos wastes have been deposited.

— Appropriate measures are taken to limit the possible uses of the land after closure of the landfill in order to avoid human contact with the waste.

For landfills receiving only construction material containing asbestos, the requirements set out in Annex I, point 3.2 and 3.3 of Directive 1999/31/EC can be reduced, if the above requirements are fulfilled.

2.4. **Criteria for waste acceptable at landfills for hazardous waste**

2.4.1. *Leaching limit values*

The following leaching limit values apply for granular waste acceptable at landfills for hazardous waste, calculated at L/S = 2 and 10 l/kg for total release and directly expressed in mg/l for C_0 (in the first eluate of percolation test at L/S = 0,1 l/kg) Granular wastes include all wastes that are not monolithic. Member States shall determine which of the test methods and corresponding limit values in the table should be used.

Components	L/S = 2 l/kg mg/kg dry substance	L/S = 10 l/kg mg/kg dry substance	C_0 (percolation test) mg/l
As	6	25	3
Ba	100	300	60
Cd	3	5	1,7
Cr total	25	70	15
Cu	50	100	60
Hg	0,5	2	0,3
Mo	20	30	10
Ni	20	40	12
Pb	25	50	15
Sb	2	5	1
Se	4	7	3
Zn	90	200	60
Chloride	17 000	25 000	15 000
Fluoride	200	500	120
Sulphate	25 000	50 000	17 000
DOC (1)	480	1 000	320
TDS (2)	70 000	100 000	

(1) If the waste does not meet these values for dissolved organic carbon (DOC) at its own pH, it may alternatively be tested at L/S = 10 l/kg and a pH of 7.5 — 8.0. The waste may be considered as complying with the acceptance criteria for DOC, if the result of this determination does not exceed 800 mg/kg (A draft method based on prEN 14429 is available).

(2) The values for TDS (Total Dissolved Solids) can be used alternatively to the values for Sulphate and Chloride.

Member States shall set criteria for monolithic waste to provide the same level of environmental protection given by the above limit values.

2.4.2. *Other criteria*

In addition to the leaching limit values under section 2.4.1, hazardous wastes must meet the following additional criteria:

Parameter	Values
LOI (Loss on Ignition) (1)	10 %
TOC (Total Organic Carbon) (1)	6 % (2)
ANC (Acid Neutralisation Capacity)	Must be evaluated

(1) Either LOI or TOC must be used.

(2) If this value is not achieved, a higher limit value may be admitted by the competent authority, provided that the DOC pH7 value of 1 000 mg/kg is achieved.

2.5. **Criteria for underground storage**

For the acceptance of waste in underground storage sites a site specific safety assessment as defined in Annex A to this document must be carried out. Waste may only be accepted, if it is compatible with the site-specific safety assessment.

At underground storage sites for inert waste only waste that fulfils the criteria set out in section 2.1 may be accepted.

At underground storage sites for non-hazardous waste only waste that fulfils the criteria set out in section 2.2 or in section 2.3 may be accepted.

At underground storage sites for hazardous waste, waste may only be accepted, if it is compatible with the site-specific safety assessment. In this case the criteria set out in section 2.4 do not apply. However, the waste must be subject to the acceptance procedure as set out in section.

3. SAMPLING AND TEST METHODS

Sampling and testing shall be carried out by independent and qualified persons and institutions. Laboratories shall have proven experience in waste testing and analysis an an efficient quality assurance system.

The following methods shall be used:

Sampling

For the sampling of waste — for basic characterisation, compliance testing and on-site verification testing- a sampling plan shall be developed according to part 1 of the sampling standard currently developed by CEN. As long as the CEN standard is not available as formal EN, Member States will use either national standards or the draft CEN standard, when it has reached the prEN stage.

General waste properties

EN 13137	Determination of Total Organic Carbon (TOC) in waste, sludge and sediments
prEN 14346	Calculation of dry matter by determination of dry residue or water content

Leaching tests

prEN 14405	Leaching behaviour test — Up-flow percolation test (Up-flow percolation test for inorganic constituents)
EN 12457/1-4	Leaching- Compliance test for leaching of granular waste materials and sludges (Compliance leaching test for granular waste L/S 2, 4 mm; L/S 10, 4 mm; L/S 2 and 8, 4 mm; L/S 10, 10 mm)

Digestion of raw waste

EN 13657	Digestion for subsequent determination of aqua regia soluble portion of elements (Partial digestion of the solid waste prior to elementary analysis, leaving the silicate matrix intact)
EN 13656	Microwave assisted digestion with hydrofluoric (HF), nitric (HNO_3) and hydrochloric (HCl) acid mixture for subsequent determination of elements (Total digestion of the solid waste prior to elementary analysis)

Analysis

ENV 12506	Analysis of eluates — Determination of pH, As, Ba, Cd, Cl, Co, Cr, CrVI, Cu, Mo, Ni, No_2, Pb, total S, SO_4, V and Zn (Analysis of inorganic constituents of solid waste and/or its eluate;major, minor and trace elements)
ENV 13370	Analysis of eluates — Determination of Ammonium, AOX, conductivity, Hg, phenol index, TOC, easily liberatable CN, F (Analysis of inorganic constituents of solid waste and/or its eluate (anions))
prEN 14039	Determination of hydrocarbon content in the range of C10-C40 by gas chromatography

This list will be amended when more CEN standards are available.

For tests and analyses, for which CEN methods are not (yet) available, the methods used must be approved by the competent authorities.

Annex A

SAFETY ASSESSMENT FOR ACCEPTANCE OF WASTE IN UNDERGROUND STORAGE

1. SAFETY PHILOSOPHY FOR UNDERGROUND STORAGE: ALL TYPES

1.1. **The Importance of the Geological Barrier**

Isolation of wastes from the biosphere is the ultimate objective for the final disposal of wastes in underground storage. The wastes, the geological barrier and the cavities, including any engineered structures constitute a system that together with all other technical aspects must fulfil the corresponding requirements.

The requirements of the Water Framework Directive (2000/60/EC) can only be fulfilled by demonstrating the long term safety of the installation (see section 2.2.5 below). Article 11 para 3 (j) of Directive 2000/60/EC generally prohibits the direct discharge of pollutants into groundwater. Article 4 para 1 (b) (i) of Directive 2000/60/EC requires Member States to take measures to prevent the deterioration of the status of all bodies of groundwater.

1.2. **Site Specific Risk Assessment**

The Assessment of risk requires the identification of:

— the hazard (in this case the deposited wastes),

— the receptors (in this case the biosphere and possibly groundwater),

— the pathways by which substances from the wastes may reach the biosphere, and

— the assessment of impact of substances that may reach the biosphere.

Acceptance criteria for underground storage are to be derived from, inter alia, the analysis of the host rock, so it must be confirmed that no site-related conditions specified in Annex I of the Landfill Directive (with an exemption of Annex I paragraph 2, 3, 4 and 5) have relevance.

The acceptance criteria for underground storage can only be obtained by referring to the local conditions. This requires a demonstration of the suitability of the strata for establishing a storage, i.e. an assessment of the risks to containment, taking into account the overall system of the waste, engineered structures and cavities and the host rock body.

The site specific risk assessment of the installation must be carried out for both the operational and post operational phases. From these assessments, the required control and safety measures can be derived and the acceptance criteria can be developed.

An integrated performance assessment analysis shall be prepared, including the following components:

1. geological assessment

2. geomechanical assessment

3. hydrogeological assessment

4. geochemical assessment

5. biosphere impact assessment

6. assessment of the operational phase

7. long-term assessment

8. assessment of the impact of all the surface facilities at the site

1.2.1. *Geological Assessment*

A thorough investigation or knowledge of the geological setting of a site is required. This includes investigations and analyses of kind of rocks, soils and the topography. The geological assessment should demonstrate the suitability of the site for underground storage. The location, frequency and structure of any faulting or fracturing in surrounding geological strata and the potential impact of seismic activity on these structures should be included. Alternative site locations should be considered.

1.2.2. *Geomechanical assessment*

The stability of the cavities must be demonstrated by appropriate investigations and predictions. The deposited waste must be part of this assessment. The processes should be analysed and documented in a systematic way.

The following should be demonstrated:

1. that during and after the formation of the cavities, no major deformation is to be expected either in the cavity itself or at the earth surface which could impair the operability of the underground storage or provide a pathway to the biosphere,

2. that the load bearing capacity of the cavity is sufficient to prevent its collapse during operation,

3. that the deposited material must have the necessary stability compatible with the geo- mechanical properties of the host rock.

1.2.3. *Hydrogeological Assessment*

A thorough investigation of the hydraulic properties is required to assess the groundwater flow pattern in the surrounding strata based on information on the hydraulic conductivity of the rock mass, fractures and the hydraulic gradients.

1.2.4. *Geochemical Assessment*

A thorough investigation of the rock and the groundwater composition is required to assess the present groundwater composition and its potential evolution over time, the nature and abundance of fracture filling minerals, as well as a quantitative mineralogical description of the host rock. The impact of variability on the geochemical system should be assessed.

1.2.5. *Biosphere Impact Assessment*

An investigation of the biosphere that could be impacted by the underground storage is required. Baseline studies should be performed to define local natural background levels of relevant substances.

1.2.6. *Assessment of the Operational Phase*

For the operational phase the analysis should demonstrate the following:

1. the stability of the cavities as in 1.2.2 above;

2. there is no unacceptable risk of a pathway developing between the wastes and the biosphere;

3. there are no unacceptable risks affecting the operation of the facility.

When demonstrating operational safety, a systematic analysis of the operation of the facility must be made on the basis of specific data on the waste inventory, facility management and the scheme of operation. It is to be shown that the waste will not react with the rock in any chemical or physical way, which could impair the strength and tightness of the rock and endanger the storage itself. For these reasons, in addition to wastes that are banned by Article 5.3 of the Directive, wastes that are liable to spontaneous combustion under the storage conditions (temperature, humidity), gaseous products, volatile wastes, wastes coming from collections in the form of unidentified mixtures should not be accepted.

Particular incidents that might lead to the development of a pathway between the wastes and the biosphere in the operational phase should be identified. The different types of potential operational risks should be summarized in specific categories. Their possible effects should be evaluated. It should be shown that there is no unacceptable risk that the containment of the operation will be breached. Contingency measures should be provided.

1.2.7. *Long-term Assessment*

In order to comply with the objectives of sustainable landfilling, risk assessment should cover the long-term. It must be ascertained that no pathways to the biosphere will be generated during the long-term post-operation of the underground storage.

The barriers of the underground storage site (e.g. the waste quality, engineered structures, back filling and sealing of shafts and drillings), the performance of the host rock, the surrounding strata and the overburden should be quantitatively assessed over the long-term and evaluated on the basis of site-specific data or sufficiently conservative assumptions. The geochemical and geohydrological conditions such as groundwater flow (see section 1.2.3 and 1.2.4 above), barrier efficiency, natural attenuation as well as leaching of the deposited wastes should be taken into consideration.

The long-term safety of an underground storage should be demonstrated by a safety assessment comprising a description of the initial status at a specified time (e.g. time of closure) followed by a scenario outlining important changes that are expected over geological time. Finally the consequences of the release of relevant substances from the underground storage should be assessed for different scenarios reflecting the possible long-term evolution of the biosphere, geosphere and the underground storage.

Containers and cavity lining should not be taken into account when assessing the long-term risks of waste deposits because of their limited lifetime.

1.2.8. *Impact Assessment of the Surface Reception Facilities*

Although the wastes taken at the site may be destined for subsurface disposal, wastes will be unloaded, tested and possibly stored on the surface, before reaching their final destination. The reception facilities must be designed and operated in a manner that will prevent harm to human health and the local environment. They must fulfil the same requirements as any other waste reception facility.

1.2.9. *Assessment of other Risks*

For reasons of protection of labourers, wastes should only be deposited in an underground storage securely separated from mining activities. Waste should not be accepted if it contains or could generate hazardous substances which might harm human health, e.g. pathogenic germs of communicable diseases.

2. ACCEPTANCE CRITERIA FOR UNDERGROUND STORAGE: ALL TYPES

2.1. **Excluded wastes**

In the light of sections 1.2.1-1.2.8 above, wastes that may undergo undesired physical, chemical or biological transformation after they have been deposited must not be disposed of in underground storage. This includes the following:

(a) Wastes listed in Article 5.3 of the Directive

(b) Wastes and their containers which might react with water or with the host rock under the storage conditions and lead to:

— a change in the volume;

— generation of auto-flammable or toxic or explosive substances or gases; or

— any other reactions which could endanger the operational safety and/or the integrity of the barrier.

Waste which might react with each other must be defined and classified in groups of compatibility; the different groups of compatibility must be physically separated in the storage.

(c) Wastes that are biodegradable.

(d) Wastes that have a pungent smell.

(e) Waste that can generate a gas-air mixture which is toxic or explosive. This particularly refers to wastes that:

— cause toxic gas concentrations due to the partial pressures of their components;

— form concentrations when saturated within a container, which are higher than 10 % of the concentration which corresponds to the lower explosive limit.

(f) Wastes with insufficient stability to correspond to the geomechanical conditions.

(g) Wastes that are auto-flammable or liable to spontaneous combustion under the storage conditions, gaseous products, volatile wastes, wastes coming from collections in the form of unidentified mixtures.

(h) Wastes that contain or could generate pathogenic germs of communicable diseases (already provided for by Article 5(3)(c) of the Directive).

2.2. **Lists of waste suitable for underground storage**

Inert wastes, hazardous and non-hazardous wastes, not excluded by 2.1 and 2.2 above may be suitable for underground storage.

Member States may produce lists of wastes acceptable at underground storage facilities in accordance with the classes given in Article 4 of the Directive.

2.3. **Site specific risk assessment**

Acceptance of waste at a specific site must be subject to site-specific risk assessment.

The site-specific assessments outlined in section 1.2 above for the wastes to be accepted at an underground storage should demonstrate that the level of isolation from the biosphere is acceptable. The criteria have to be fulfilled under storage conditions.

2.4. **Acceptance conditions**

Wastes can only be deposited in an underground storage securely separated from mining activities.

Wastes that might react with each other must be defined and classified in groups of compatibility; the different groups of compatibility must be physically separated in the storage.

3. ADDITIONAL CONSIDERATIONS: SALT MINES

3.1. **Importance of the Geological Barrier**

In the safety philosophy for salt mines, the rock surrounding the waste has a two-fold role:

— It acts as host rock in which the wastes are encapsulated.

— Together with the over and underlying impermeable rock strata (e.g. anhydrite), it acts as a geological barrier intended to prevent groundwater entering the landfill and, where necessary, to effectively stop liquids or gases escaping from the disposal area. Where this geological barrier is pierced by shafts and boreholes, these must be sealed during operation to secure against ingress of water, and must be hermetically closed after the underground landfill ceases to operate. If mineral extraction continues longer than the landfill operation, the disposal area must, after the landfill has ceased operating, be sealed with a hydraulically impermeable dam which is constructed according to the calculated hydraulically operative pressure corresponding to the depth, so that water which may seep into the still operating mine cannot penetrate through to the landfill area.

— In salt mines, the salt is considered to provide total containment. The wastes will only make contact with the biosphere in the case of an accident or an event in geological time such as earth movement or erosion (for example, associated with sea-level rise). The waste is unlikely to change in storage, and the consequences of such failure scenarios must be considered.

3.2. **Long term assessment**

The demonstration of long-term safety of underground disposal in a salt rock should be principally undertaken by designating the salt rock as the barrier rock. Salt rock fulfils the requirement to be impermeable to gases and liquids, to be able to encase the waste because of its convergent behaviour and to confine it entirely at the end of the transformation process. The convergent behaviour of the salt rock thus does not contradict the requirement to have stable cavities in the operation phase. The stability is important, in order to guarantee the operational safety and in order to maintain the integrity of the geological barrier over unlimited time, so that there is continued protection of the biosphere. The wastes should be isolated permanently from the biosphere. Controlled subsidence of the overburden or other defects over long time are only acceptable if it can be shown, that only rupture-free transformations will occur, the integrity of the geological barrier is maintained and no pathways are formed by which water would be able to contact the wastes or the wastes or components of the waste migrate to the biosphere.

4. ADDITIONAL CONSIDERATIONS: HARD-ROCK

Deep storage in hard rock is here defined as an underground storage at several hundred meters depth, where hard rock includes various igneous rocks, e.g. granite or gneiss, it may also include sedimentary rocks, e.g. limestone and sandstone.

4.1. **Safety philosophy**

A deep storage in hard rock is a feasible way to avoid burdening future generations with the responsibility of the wastes since it should be constructed to be passive and with no need for maintenance. Furthermore, the construction should not obstruct recovery of the wastes or the ability to undertake future corrective measures. It should also be designed to ensure that negative environmental effects or liabilities resulting from the activities of present generations would not fall upon future generations.

In the safety philosophy of underground disposal of wastes the main concept is isolation of the waste from the biosphere, as well as natural attenuation of any pollutants leaking from the waste. For certain types of hazardous substances and waste a need has been identified to protect the society and the environment against sustained exposure over extended periods of time. An extended period of time implies several thousands of years. Such levels of protection can be achieved by deep storage in hard rock. A deep storage for waste in hard rock can be located either in a former mine, where the mining activities have come to an end, or in a new storage facility.

In the case of hard-rock storage, total containment is not possible. In this case, an underground storage needs to be constructed so that natural attenuation of the surrounding strata mediates the effect of pollutants to the extent that they have no irreversible negative effects on the environment. This means that the capacity of the near environment to attenuate and degrade pollutants will determine the acceptability of a release from such a facility.

The requirements of the EU Water Framework Directive (2000/60/EC) can only be fulfilled by demonstrating the long-term safety of the installation (see 1.2.7 above). The performance of a deep storage system must be assessed in a holistic way, accounting for the coherent function of different components of the system. In a deep storage in hard rock the storage will reside below the groundwater table. Article 11 paragraph 3 (j) of the Directive generally prohibits the direct discharge of pollutants into groundwater. Article 4 paragraph 1 (b) (i) of the Directive requires Member States to take measures to prevent the deterioration of the status of all bodies of groundwater. For a deep storage in the hard rock this requirement is respected in that any discharges of hazardous substances from the storage will not reach the biosphere, including the upper parts of the groundwater system accessible for the biosphere, in amounts or concentrations that will cause adverse effects. Therefore the water flow paths to and in the biosphere should be evaluated. The impact of variability on the geohydraulic system should assessed.

Gas formation may occur in deep storage in hard rock due to long-term deterioration of waste, packaging and engineered structures. Therefore, this must be considered in the design of premises for a deep storage in hard rock.

Annex B

OVERVIEW OF LANDFILLING OPTIONS PROVIDED BY THE LANDFILL DIRECTIVE

Introduction

Figure 1 gives an overview of the landfilling possibilities for waste provided by the Landfill Directive (LFD) together with some examples of sub-categories of the main classes of landfills. The starting point (upper left corner) is a waste, which should be landfilled. In accordance with article 6(a), some treatment is required prior to landfilling for most wastes. The general definition of 'treatment' is relatively broad and to a large extent left to the competent authorities in the Member States. It is assumed that the waste does not belong to any of the categories listed in article 5.3 of the Directive.

Inert waste landfill

The first question to ask could be whether or not the waste is classified as hazardous. If the waste is not hazardous (according to the Hazardous Waste Directive and the current Waste List), the next question could be whether or not the waste is inert. If it meets the criteria for waste to be landfilled at an inert landfill (class A, see figure 1 and table 1), the waste may be placed at an inert landfill.

Inert waste may alternatively be placed in landfills for non-hazardous waste provided it fulfils the appropriate criteria (which it generally should).

Non-hazardous waste landfill, including sub-categories

If the waste is neither hazardous nor inert, then it must be non-hazardous, and it should go to a landfill for non-hazardous waste. Member States may define sub-categories of landfills for non-hazardous waste in accordance with their national waste management strategies as long as the requirements of the LFD are met. Three major sub-categories of non-hazardous waste landfills are shown in figure 1: landfill for inorganic waste with low organic/biodegradable content (B1), landfill for organic waste (B2), and landfill for mixed non-hazardous waste with substantial contents of both organic/biodegradable and inorganic materials. Category B1 sites can be subdivided further into sites for wastes that do not meet the criteria set out in section 2.2.2 of this decision document for inorganic non-hazardous wastes that may be co-disposed with stable, non reactive hazardous wastes (B1a) and sites for wastes that do meet those criteria (B1b). Category B2 sites may e.g. be further subdivided into bioreactor landfills and landfills for less reactive, biologically treated waste. Further sub-classification of non-hazardous landfills may be desired by some Member States, and monofills and landfills for solidified/monolithic waste may be defined within each subcategory (see the footnote below table 1). National acceptance criteria may be developed by the Member States to ensure proper allocation of non-hazardous waste to the various sub-categories of non-hazardous waste landfills. If sub-classification of non-hazardous waste landfills is not desired, all non-hazardous waste (subject of course to the provisions of articles 3 and 5 of the Landfill Directive) may go to a landfill for mixed non-hazardous waste (class B3).

Placement of stable, non-reactive hazardous waste in landfill for non-hazardous waste

If the waste is hazardous (according to the Hazardous Waste Directive and the current Waste List), the treatment may have enabled the waste to meet the criteria for placement of stable, non-reactive hazardous waste in non-hazardous waste landfills within cells for inorganic waste with low organic/biodegradable content that meet the criteria in Section 2.2.2 of this decision document (class B1b). The waste may be granular (rendered chemically stable) or solidified/monolithic.

Hazardous waste landfill

If the hazardous waste does not meet the criteria for placement in a class B1b landfill or cell for non-hazardous waste, the next question could be whether or not it meets the criteria for acceptance at a landfill for hazardous waste (class C, see below). If the criteria are met, then the waste may be placed at a hazardous waste landfill.

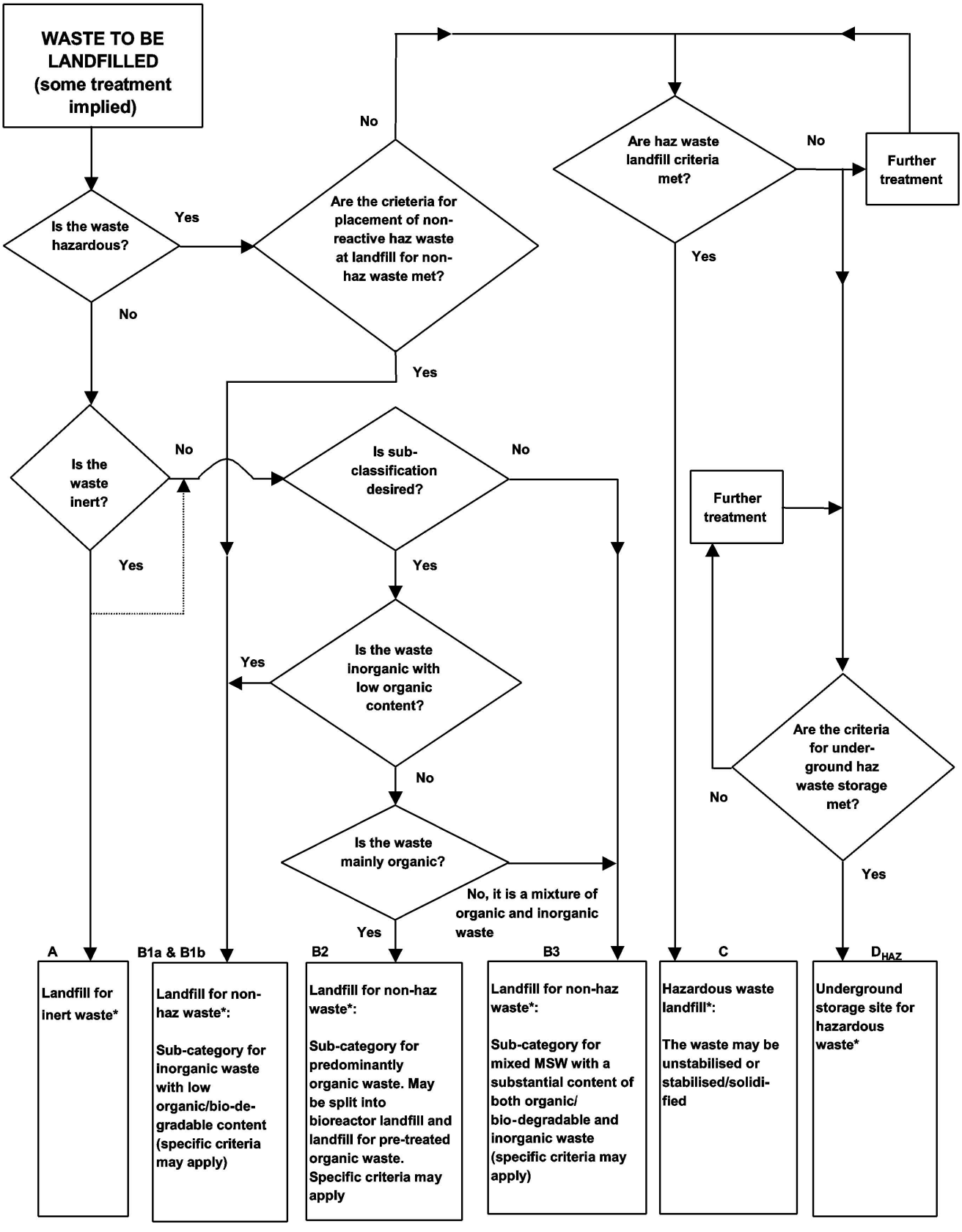
If the criteria for acceptance at a hazardous waste landfill are not met, then the waste may be subjected to further treatment and tested again against the criteria, until they are met.

Underground storage

Alternatively, the waste may be tested against the criteria for underground storage. If the criteria are met, the waste may go to an underground storage facility for hazardous waste (landfill class D_{HAZ}). If the underground storage criteria are not met, the waste may be subjected to further treatment and tested again.

Although underground storage is likely to be reserved for special hazardous wastes, this sub-category may in principle be used also for inert waste (class D_{INERT}) and non-hazardous waste (class $D_{NON-HAZ}$).

Figure 1: Diagram showing the landfilling options provided by the Landfill Directive.



*** In principle, underground storage is also possible for inert and non-hazardous waste.**

Table 1

Overview of landfill classes and examples of sub-categories

Landfill Class	Major sub-categories	ID	Acceptance criteria
	(underground storage facilities, monofills and landfills for solidified, monolithic (*) waste possible for all landfill classes)		
Landfill for inert waste	Landfill accepting inert waste	A	Criteria for leaching and for content of organic components are set at EU level (2.1.2 of this document) Criteria for content of inorganic components may be set at MS level
Landfill for non-hazardous waste	Landfill for inorganic non-hazardous waste with a low content of organic/bio-degradable matter, where the wastes do not meet the criteria set out in section 2.2.2 for those inorganic non-hazardous wastes that may be landfilled together with stable, non-reactive hazardous waste	B1a	Criteria for leaching and total content are not set at EU level
	Landfill for inorganic non-hazardous waste with a low content of organic/bio-degradable matter	B1b	Criteria for leaching and content of organics (TOC) and other properties are set at EU level, common for granular non-hazardous waste and for stable, non-reactive hazardous waste (section 2.2). Additional stability criteria for the latter are to be set at MS level. Criteria for monolithic waste must be set at MS level
	Landfill for organic non-hazardous waste	B2	Criteria for leaching and total content are not set at EU level
	Landfill for mixed non-hazardous waste with substantial contents of both organic/biodegradable waste and inorganic waste	B3	Criteria for leaching and total content are not set at EU level
Landfill for hazardous waste	Surface landfill for hazardous waste	C	Criteria for leaching for granular hazardous waste and total content of certain components have been laid down at EU level (section 2.4). Criteria for monolithic waste must be set at MS level. Additional criteria on content of contaminants can be set at MS level
	Underground storage site	D_{HAZ}	Special requirements at EU level are listed in Annex A

(*) Monolithic waste subcategories are only relevant for B1, C and D_{HAZ} and possibly A. MS = EU Member States.

Proposal for a Regulation of the European Parliament and of the Council on insurance requirements for air carriers and aircraft operators

(2003/C 20 E/17)

COM(2002) 521 final — 2002/0234(COD)

(Submitted by the Commission on 24 September 2002)

EXPLANATORY MEMORANDUM

Background

1. The Commission adopted on 10 October 2001 a Communication concerning the repercussions of the terrorist attacks in the United States on the air transport industry [1]. With regard to the specific problem of insurance, it recognised that the terrorist attacks have exposed the vulnerability of the air transport sector with damage exceeding all rational estimates. As insurers withdrew a few days after the events cover for actions of war and terrorism, the question if air carriers operating in the Community had sufficient cover became a serious concern.

2. In this Communication, the Commission undertook to examine the revision of the amounts and conditions of insurance required for the issuance of operating licences in order to ensure a harmonised approach. Also, it considered that Member States should verify whether third country air carriers produce proof of minimum risk cover on the basis of the European Civil Aviation Conference (ECAC) recommendations in absence of a Community rule. It undertook to examine the issue of insurance coverage provided by third country air carriers flying into and within the Community, in order to maintain equal conditions of competition with third country airlines and to avoid diverging responses by Member States. In the absence of such cover, Member States would be obliged to take appropriate, coordinated action, i.e. to withdraw traffic rights and prohibit overflight in accordance with the Community's international obligations.

3. In a second Communication adopted on 2 July 2002 on insurance in the Air Transport sector following the terrorist attacks of 11 September 2001 in the United States [2], the Commission concluded that it would continue monitoring the developments of the aviation insurance market with regard to the revision of the amounts and conditions of insurance required for the issuance of operating licences. In that respect, it was recognised that 'should the Commission consider that it is appropriate to further address the issues, [. . .] it will examine whether any legislative proposals are necessary and appropriate'.

4. The Commission considers it necessary that a legal framework be established setting out the conditions of insurance and minimum amounts that both Community and third country air carriers and aircraft operators have to observe at all times in respect to their liability vis-à-vis passengers, baggage, cargo, mail and third parties. This framework should provide for legal certainty vis-à-vis Community and non-Community air carriers and aircraft operators flying into or within the Community as well as to ensure the transparent, non-discriminatory and harmonised application of minimum insurance requirements.

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[1] COM(2001) 574 final of 10.10.2001.

[2] COM(2002) 320 final of 2.7.2002.

5. Currently, Community rules in the field of air carrier licensing ([3]) merely require that air carriers 'be insured to cover liability in case of accidents, in particular in respect of passengers, luggage, cargo, mail and third parties', without, however, setting any criteria, conditions or amounts to be observed by the licensing authorities of Member States. At the same time, the Community, considering that it is important to ensure a proper level of compensation for passengers involved in accidents, decided on 5 April 2001 to conclude and ratify ([4]) the Montreal Convention on the Unification of Certain Rules for International Carriage by Air, replacing the Warsaw Convention of 1929 relating to the same subject and to modify the Community rules on air carrier liability ([5]).

6. As far as insurance to cover third party liability is concerned, there is currently no Community rule setting limits for such liability, the only obligations for compensation derive from public international law i.e. the Rome Convention of 1933 on the Unification of Certain Rules Relating to Damage Caused by Foreign Aircraft to Third Parties on the Surface, as firstly amended in 1952 and later by a Protocol signed in Montreal on 23 September 1978. This Convention has led the European Civil Aviation Conference to undertake further work on the subject with a view to adjusting the levels for minimum insurance requirements for air carriers operating into and within ECAC countries ([6]). Their work has resulted in December 2000 in a Resolution (ECAC/25-1) which provides for minimum insurance levels to cover liability vis-à-vis passengers as well as third parties.

7. Examination of the above-mentioned legal instruments indicates that they provide for a reasonable system, which could form the basis for the proposed Community rules. Particular attention should be paid to the structure of the insurance levels covering third party liability. Moreover, given the crisis that has been caused by the events of 11 September 2001, the proposed rules should provide for a regular monitoring of developments in the insurance market, so as to review the minimum requirements and adjust them in due course.

Elements of the proposal

(a) *The scope of application*

8. The rules are designed to apply to all air carriers, including Community and third country, as well as to aircraft operators not disposing of an operating licence. Equally, they should apply to state aircraft. The Commission considers that the insurance requirements should cover all damage, including accidental caused of damage, as well as damage caused by war or terrorist acts.

9. It is also considered necessary for all flights to subject to the rules, namely scheduled and non-scheduled, commercial and non-commercial to ensure a harmonised approach with regard to third party liability.

10. Given that damage may be caused not only where an aircraft lands at or takes-off from a Community airport, but also during the flight over the territory of a Member State, the Regulation is applicable to flights into and out of Community airports and to overflight of Community territory.

([3]) Council Regulation (EEC) No 2407/92 of 23 July 1992 (OJ L 240, 24.8.1992, p. 1).

([4]) Council Decision of 5 April 2001 on the ratification of the Montreal Convention (OJ L 194, 18.7.2001).

([5]) Council Regulation (EEC) 2027/97 on air carrier liability (OJ L 285, 17.10.1997, p. 1).

([6]) The following 38 States are members of ECAC: Albania, Armenia, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine and the United Kingdom.

11. In order to ensure a maximum of compatibility with existing air transport rules and in particular the 3rd Package legislation on market access and air carrier licensing, the Community rights and obligations resulting from the Montreal Convention and the regulation amending the Community rules on air carrier liability, but also with work undertaken to date by ECAC, the terminology used in the proposed Regulation follows these instruments.

(b) *The principles of insurance*

12. The proposed Regulation aims at establishing a clear link between what the insurance for passengers, baggage, cargo, mail and third parties should cover and their liability. As far as passenger, baggage, mail and cargo liability are concerned, insurance should cover liability as this has been defined in the following instruments:

1. The 1999 Montreal Convention applicable to Community air carriers and air carriers from third countries which have ratified and apply this Convention; the 1929 Warsaw Convention which continues to exist alongside the Montreal Convention for an indefinite period, applicable to air carriers from third countries which are bound by that Convention. It should be noted that neither Convention limits liability of air carriers.

2. Council Regulation 2027/97 on air carrier liability as recently amended by the European Parliament and Council Regulation (EC) No 889/2002 of 13 May 2002 [7] applicable to Community air carriers;

In the light of the events that took place on 11 September 2001 and the developments on the insurance market thereafter, it is considered necessary to clearly state that insurance regarding passenger, baggage, cargo and mail liability shall also cover acts of war and/or terrorism.

13. As far as third party liability is concerned, there are no Community rules defining what such liability should be based on. At international level, the 1933 Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface as amended in 1952 and 1978, introduces minimum insurance amounts for third party liability which follows the principle of strict liability for damage sustained on the ground. The Convention excludes from the scope of its application nuclear damage as well as damage caused by acts of war (armed conflicts) and terrorism.

14. This Convention is not applicable in all Member States as not all are signatories to this Convention or have not ratified it [8]. To date, generally Member States provide that air carrier's liability vis-à-vis third parties is based on proven tort arising from negligence or any other wrongful acts (wilful misconduct), as opposed to strict liability. However, some Member States have followed the principle of strict liability as introduced by the Rome Convention — France, Sweden and the United Kingdom provide for unlimited third party liability, while Germany has limited liability to certain levels.

15. The Commission is of the opinion that there are no sufficient grounds demonstrating the need for the introduction of strict liability of air carriers vis-à-vis third parties for risks linked to war and terrorist acts. As far as third party liability of air carriers and aircraft operators in case of incidents is concerned, the Commission is of the opinion that liability has been already sufficiently defined in the Member States.

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[7] OJ L 140, 30.5.2002, p. 2.

[8] By July 2002 the following Member States have signed the Convention: Belgium, Denmark, France, Greece, Italy, Luxembourg, The Netherlands, Portugal, Spain and the United Kingdom. Only Belgium, Italy, Luxembourg and Spain have ratified the Convention.

In the light of the above, at this stage, it is considered necessary to provide for minimum insurance requirements to cover third party liability for damage sustained on the ground and in the air caused accidentally or by acts of war and/or terrorism by providing for a single combined limit. This requirement should ensure that air carriers would now have the obligation to buy such cover on the market or elsewhere as opposed to what was very often the case before the events of 11 September 2001.

16. As not all air carriers and aircraft operators flying into and within the Community may be in a position to observe the financial fitness requirements that are laid down in the Community rules relating to the issuance of operating licences ([9]), it is important to allow for some flexibility so that other instruments such as state or bank guarantees are accepted in lieu of insurance policies.

(c) *Monitoring and sanctions*

17. However, such flexibility calls for increased monitoring obligations for Member States to ensure that air carriers licensed in the Community and elsewhere are capable of providing adequate cover for liability to cover any damage to passengers, baggage, cargo mail and third parties. Therefore, it is proposed that Member States have the obligation to ensure that insurance requirements are met at all times by performing regular inspections and where they have reasonable ground for doubting the existence of insurance, that they require additional evidence from air carriers and aircraft operators. Should such cover not exist air carriers should not be allowed either to take-off, if they have already landed at a Community airport, or not to enter the airspace or to land.

18. This places a particular obligation on the Commission to ensure that the minimum requirements reflect the situation in the market and to ensure that such requirements are adequate to provide coverage for liability in case there is an increase in incidents in terms of accidents and war and terrorist actions. Therefore, there should be a reporting obligation on the Commission on the developments in the insurance market taking into account any incidents which may significantly affect the conditions of insurance and a review clause in the proposed rules to enable any necessary adjustments of the required levels. Also, it should be taken into consideration that there might be considerable changes at the level of international law (possible future modification of the Rome Convention) affecting third party liability.

19. In order to reflect possible changes and developments in the proposed rules, it is foreseen that such decisions should be taken in accordance with the regulatory 'comitology' procedure provided for in Article 5 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission ([10]). In the context of the liberalisation rules for air transport already contain provisions for such a commitee (article 11 of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community routes (OJ L 240 24.8.1992). Therefore, it is proposed to use this Committee for the revision of the minimum insurance requirements.

(d) *The minimum insurance requirements*

20. There are clear provisions for each and every case of liability: passengers, baggage, cargo, mail and third parties.

1. Passenger liability: minimum insurance requirement of 250 000 SDRs.

The minimum insurance requirements reflect the amounts currently applicable at ECAC level.

([9]) See footnote 2.

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

In line with the provisions of the 1999 Montreal Convention and Council Regulation (EEC) No 2027/97 on air carrier liability, as amended by European Parliament and Council Regulation (EC) No 889/2002 of 13 May 2002 ([11]), passenger liability is based on the notion of strict liability, irrespective of tort found on the account of the air carrier concerned, for claims up to 100 000 SDRs (Special Drawing Rights) as these are defined by the International Monetary Fund).

Beyond that amount (up to the minimum requirement of 250 000 SDRs and above) insurance vis-à-vis passengers and their baggage covers legal liability based on tort.

For air carriers bound by the 1929 Warsaw Convention, passenger liability is unlimited and based on the presumption of liability on the part of the carrier for injury or death, subject to certain defences, and concomitant limitation of liability, subject to certain exceptions (wilful misconduct).

2. Baggage: is dealt with under the same limits as passenger liability, with the proviso that baggage was checked and in the charge of the air carrier and had not an inherent defect or vice.

3. Cargo liability minimum insurance 17 000 SDRs per ton (17 SDRs per kg).

   This type of liability is covered by the Montreal Convention, which limits the liability of the air carrier, *inter alia* in cases of acts of war or armed conflicts. The minimum insurance requirements reflect the amounts currently provided in that Convention.

   For air carriers bound by the Warsaw Convention, cargo is subject to liability is unlimited and subject to certain exceptions (diligence during care, negligence and wilful misconduct).

   In order to take account of the international environment within which Community and non-Community carriers are currently operating, the present Regulation proposes to treat cargo on the basis of legal liability.

4. Mail liability minimum insurance to be set by national administrations reflecting national laws for the carriage of mail.

5. Third party liability minimum insurance according to aircraft type.

   As explained earlier, there are currently no harmonised requirements among Member States. Currently, the minimum insurance requirements for leased aircraft indicate a sharp increase compared to the levels provided in the Rome Convention ([12]) or those provided in the ECAC resolution ([13]). The proposed minimum requirements reflect this situation.

   The particularity of third party liability is that insurance requirements correspond to the Maximum Take-Off Weight (MTOW) of aircraft specified in the certificate of airworthiness, which reflect the potential danger that can be caused by each type of aircraft. Therefore, for reasons of consistency with current insurance practice, it appears appropriate to undertake a clear classification of aircraft to fit specific categories according to their MTOW. For ease of reference, a table summarising the main types of aircraft used in civil aviation is presented in the annex.

([11]) See footnote 6.

([12]) Article 11 of the Rome Convention as modified by the Montreal Protocol of 1978 provides for:
a) For aircraft with MTOW < 2 000 kg: 300 000 SDRs.
b) For aircraft with MTOW < 6 000 kg: 300 000 SDRs plus 175 SDRs per kg.
c) For aircraft with MTOW > 6 000-30 000 kg: 1 000 000 SDRs plus 62,5 SDRs per kg for aircraft over 6 000-30 000 kg.
d) For aircraft with MTOW > 30 000 kg: 1 000 000 SDRs plus 65 SDRs per kg.

([13]) The minimum insurance requirements provided by ECAC 25/1 are the following:
Category 1: Aircraft with MTOW < 2 000 kg: 1 500 000 SDRs.
Category 2: Aircraft with MTOW < 6 000 kg: 4 500 000 SDRs.
Category 3: Aircraft with MTOW < 25 000 kg: 12 500 000 SDRs.
Category 4: Aircraft with MTOW < 100 000 kg: 50 000 000 SDRs.
Category 5: Aircraft with MTOW > 100 000 kg: 90 000 000 SDRs.

ANNEX

MAIN AIRCRAFT TYPES USED IN CIVIL AVIATION

Aircraft Mainfraim	Aircraft Type	Variant description	Maximum seats	Mtow (lb)
A.S.T.A. (GAF)	NMAD	N22-24	12-17	8 500
ATR	AT42	100-500	42-50	32 849-41 005
ATR	AT72	100-500	68-74	48 501
Aero Commander	1121	A/B	8	16 800-17 500
Aerospatiale	CARV	10A-11R	99-140	95 901-123 459
Aerospatiale	N262	A/B/C/D/E	29	22 708-23 810
Airbus Industrie	A300	B1-600 (GE)	295-361	291 010-375 888
Airbus Industrie	A310	200-320 (GE)	280	291 005-361 558
Airbus Industrie	A318	110 (CFM)-120 (P & W)	130	131 000
Airbus Industrie	A319	100-130 (CFM)/(IAE)	124-154	145 505-166 300
Airbus Industrie	A320	110 (CFM)/230 (IAE)	180	145 505-166 449
Airbus Industrie	A321	100/230 (IAE)	220	181 198-196 211
Airbus Industrie	A330	200-340 (GE)	405-440	467 379-507 000
Airbus Industrie	A340	210 (CFM)-640 (RR)	361-185	566 587-804 686
Airbus Industrie	A380	800 F(GP)/(RR)	555	1 208 000-1 285 000
Antonov	A124	100		864 200
Antonov	A140		52	42 218
Antonov	A225			1 322 750
Antonov	AN10	A	84-130	112 436-121 475
Antonov	AN12-22			134 482-551 155
Antonov	AN24	RT/RV	42-52	42 990-48 061
Antonov	AN26	B-D		48 061-52 911
Antonov	AN30-32	B-P	45-50	50 706-66 390
Antonov	AN38	100/200	26	19 400
Antonov	AN70/72	P	8	82 670-286 600
Antonov	AN74	T-200 D	52	76 720-80 468
Antonov	AN8			88 185
Ayres Corporation	LM20	LM200		19 000
BAE SYSTEMS (Avro)	AVRJ	RJ100-RJ70	94-112	84 000-97 500
BAE SYSTEMS (Avro)	AVRJ	RJ85/RJX100	112	93 000-101 500
BAE SYSTEMS (BAC)	BRIT	100/252/310F	92-99	155 000-185 000
BAE SYSTEMS (BAC)	VANG	950		135 000-146 500
BAE SYSTEMS (BAC)	VC10		150	312 000-335 000
BAE SYSTEMS (BAC)	VISC	700/800	63-74	60 000-72 500
BAE SYSTEMS (HS)	AGSY	100/200	85-89	88 000-93 000

Aircraft Mainfraim	Aircraft Type	Variant description	Maximum seats	Mtow (lb)
BAE SYSTEMS (HS)	AGSY	C.1/E.1/T.2		105 000
BAE SYSTEMS (HS)	AGSY	Variant Unannounced		
BAE SYSTEMS (HS)	ATP	PAX/Freighter	72	50 550-52 200
BAE SYSTEMS (HS)	ATP	Jetstream 61	70	52 200
BAE SYSTEMS (HS)	B146	100	94-146	76 000-97 500
BAE SYSTEMS (HS)	COMT	1-4C	36-102	105 000-162 000
BAE SYSTEMS (HS)	TRID	1C-3B	103-170	115 000-159 000
BAE SYSTEMS (Jetstream)	J31		19	15 212
BAE SYSTEMS (Jetstream)	J31	F (SCD)		15 212
BAE SYSTEMS (Jetstream)	J31	Super	19	16 204
BAE SYSTEMS (Jetstream)	J41		29	24 000
Boeing	B707	420	179-189	247 000-332 500
Boeing	B717	200ER	100	114 000-121 000
Boeing	B720	20	165	229 300
Boeing	B727	100QC 200C (M) Advanced	131-187	160 000-209 500
Boeing	B73N	T-43A-BBJ2	78-189	115 500-174 200
Boeing	B747	100B/SR (P & W)	550	600 000-750 000
Boeing	B747	100B/SR (SUD) (P & W)	624	600 000
Boeing	B747	200B Combi (SUD) (RR)	660	785 000-833 000
Boeing	B747	200C (SCD) (P & W)	584	775 000-833 000
Boeing	B747	300 Combi 400D (P & W)	563/568	520 000-610 000-833 000
Boeing	B747	400F (RR)		833 000-875 000
Boeing	B747	SP (RR)	331	630 000-696 000
Boeing	B747	SR-100	490	520 000-733 600
Boeing	B767	200 EROPS (GE)	290	345 000
Boeing	B767	200ER (P & W)	255	282 000-387 000
Boeing	B767	200ERM (P & W)	290	320 000-345 000
Boeing	B767	300 (RR)	309	345 000-350 000
Boeing	B767	300ER (RR)	309	387 000-407 000
Boeing	B767	400ER (GE)	375	400 000
Boeing	B777	300 (RR)	440/550	515 000-660 000
Boeing	B777	300ER (GE)	390	750 000
Boeing (McDonnell-Douglas)	DC10	40I	380	444 000-580 000
Boeing (McDonnell-Douglas)	DC8	20/51 (Stage 2 Hushkits)	176-189	276 000
Boeing (McDonnell-Douglas)	DC8	30F (M)/54CF (Stage 3 Hushkits)	176-189	300 000-315 000
Boeing (McDonnell-Douglas)	DC8	73CF	189-258	335 000-355 000

Aircraft Mainfraim	Aircraft Type	Variant description	Maximum seats	Mtow (lb)
Boeing (McDonnell-Douglas)	DC9	14-21 (Stage 3 Hushkits)	109	85 700-100 000
Boeing (McDonnell-Douglas)	DC9	31-51 (Stage 3 Hushkits)	127-139	98 000-122 200
Boeing (McDonnell-Douglas)	MD11	Freighter (P & W)		602 500-625 500
Boeing (McDonnell-Douglas)	MD11	Passenger (RR)/ER (GE)	405	618 000-630 500
Boeing (McDonnell-Douglas)	MD80	87	139	125 000-149 500
Boeing (McDonnell-Douglas)	MD80	88	172	149 500-160 000
Boeing (McDonnell-Douglas)	MD90	10	139	139 000
Boeing (McDonnell-Douglas)	MD90	30/30T (SAIC)	172	156 000
Boeing (McDonnell-Douglas)	MD90	40	217	163 500
Bombardier (Canadair)	BCJT		10	37 500
Bombardier (Canadair)	CGXP		19	93 500
Bombardier (Canadair)	CGXP	ASTOR	5	93 500
Bombardier (Canadair)	CL44	J	178-214	205 000-210 000
Bombardier (Canadair)	CL60	604	19	45 100-47 600
Bombardier (Canadair)	CRJ7		70	72 750
Bombardier (Canadair)	CRJ9		86	80 500
Bombardier (Canadair)	CRJT	200LR	50	47 450-53 000
Bombardier (Learjet)	LJ24/25/35/36	TF	6-8	12 499-18 000
Bombardier (Learjet)	LJ55/60	Learjet 60	8	19 500-22 750
Bombardier (Shorts)	S330	200	30	22 900
Bombardier (Shorts)	S360	Advanced	39	26 453-27 100
Bombardier (de Havilland)	DHC5	A	41-44	41 000
Bombardier (de Havilland)	DHC6	300 Vista Liner	19-20	11 579-12 500
Bombardier (de Havilland)	DHC7	150	59	43 500-47 000
Bombardier (de Havilland)	DHC8	200	40	33 000-36 300
Bombardier (de Havilland)	DHC8	320C/400	56-80	41 100-63 750
Bombardier (de Havilland)	DHC8	8M		34 500
CASA	C295		78	46 297
Century Aerospace	CENT		5	7 000
Cessna	C525	1	7	10 600
Cessna	C670/750		9/10	22 450-35 700
Cessna	CEXL/CIT2	551	8-10	12 500-18 700
Chichester Miles	LPRD		4	2 550-4 000
Dassault Aviation	2000/DA50		12-19	35 000-40 780
Dassault Aviation	DA90	B	19	45 500
Dassault Aviation	DA90	EX		45 000-48 300

Aircraft Mainfraim	Aircraft Type	Variant description	Maximum seats	Mtow (lb)
Dassault Aviation	MERC	100	179	124 560
Embraer	E110	P2	9-22	9 921-15 432
Embraer	E120	ER	30	26 437
Embraer	E120	ER Advanced		
Embraer	E135		37	41 887-48 943
Embraer	E140		0	46 517
Embraer	E145		50	42 328-48 500
Embraer	E170		70	78 153
Embraer	E190	100	98	106 922
Embraer	E190	200	110	106 922
Fairchild	FH27	D (LCD)	40-52	36 225-45 500
Fairchild (Swearingen)	MTRO	Merlin IVC	14-20	12 500-17 000
Fairchild/Dornier	D328	100	33	27 558-30 847
Fairchild/Dornier	D328	100	33	
Fairchild/Dornier	D428		44	43 650
Fairchild/Dornier	D728		70	79 343-83 753
Fairchild/Dornier	D928			109 568
Fairchild/Dornier	DJET		34	33 510
Fokker	FK10		122	95 000
Fokker	FK27	600RF	48-60	40 500-45 000
Fokker	FK28	1000	70	63 000-71 000
Fokker	FK28	4000	85	71 000-73 000
Fokker	FK28	6000	79	70 800
Fokker	FK50		68	42 990-45 900
Fokker	FK70		79	81 000-84 000
General Dynamics (Convair)	C600/640		52-56	45 000-55 000
General Dynamics (Convair)	C880		110	184 500-193 000
General Dynamics (Convair)	C990		121	246 200-253 000
Gulfstream Aerospace	GLF1	Commuter	24-38	36 000
Gulfstream Aerospace	GLF1	Freighter		36 000
Gulfstream Aerospace	GLF4		19	73 200-90 500
Handley Page	HRLD	100	48-60	40 000-45 000
Ilyushin	I114		60	50 045
Ilyushin	IL18	B/D	111-122	135 584-141 096
Ilyushin	IL18	D Freighter		141 096
Ilyushin	IL18	E/V	122	134 923

Aircraft Mainfraim	Aircraft Type	Variant description	Maximum seats	Mtow (lb)
Ilyushin	IL18	V Freighter		134 923
Ilyushin	IL62		186	357 148-368 172
Ilyushin	IL86		350	458 650
Ilyushin	IL96	300	300	476 198
Indonesian Aerospace	N250		54-68	48 501-54 674
Israel Aircraft Industries	1125/ARVA		4-30	23 500-40 780
Lockheed	1011	1 (Group 1)/Freighter	315-400	430 000-510 000
Lockheed	1329	6/6A	10	40 921-44 500
Lockheed	HERC	L-100		155 000
Lockheed	L188	A	99	113 000-127 500
Raytheon	1300/1900/ BE99/B400	T-1A Jayhawk	7-19	12 500-16 950
Raytheon	HRZN		13	36 000
Raytheon	PREM		8	12 500
Saab	S200-340		37-58	28 000-50 265
Tupolev	T104		50-100	154 325-167 550
Tupolev	T114	AWACS	220	268 800-413 917
Tupolev	T124		56-68	83 776
Tupolev	T134		72-84	98 106-108 026
Tupolev	T144	Prototype		330 693-396 832
Tupolev	T154	100	167-180	198 416-220 462
Tupolev	T204	120F (RR)	214	209 555-244 155
Tupolev	T234	120 (BMW RR)	166	87 082-186 950
WSK-PZL Mielec	AN28	B1T/R-M28 Skytruck (P & W)	17	14 330
Xian	YUN7	200	52	46 295-52 911
Yakovlev	YK40/42	D-100 (Yak-142)	34-168	30 203-145 505

Source: AIRCLAIMS Database (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 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) In the framework of the common transport policy, it is important to ensure a proper minimum level of insurance to cover liability of air carriers concerned by accidents in particular in respect of passengers, baggage, cargo, mail and third parties;

(2) In the Community aviation market, the distinction between national and international air transport has been eliminated and it is, therefore, appropriate to have the same minimum level and nature of insurance requirements for Community air carriers;

(3) Common action is necessary to ensure that minimum levels of insurance also apply to air carriers from third countries so that to ensure a level playing field with Community air carriers and foster consumer protection;

(4) The Commission has stated in its Communication of 10 October 2001 regarding the repercussions of the terrorist attacks in the United States on the air transport industry, its intention to examine the amounts and conditions of insurance required for the issue of operating licences in order to ensure a harmonised approach; also, the Commission stated in its Communication of 2 July 2002 regarding insurance in the Air Transport sector following the terrorist attacks of 11 September 2001 in the United States, that it would continue monitoring the developments on the aviation insurance market with regard to the revision of the amounts and conditions of insurance required for the issuance of operating licences;

(5) The Community has concluded the Montreal Convention for the Unification of Certain Rules Relating to International Carriage by Air agreed on 28 May 1999 [1] setting new global rules on liability in the event of accidents for international air transport of persons, baggage and cargo replacing those in the Warsaw Convention of 1929 and its subsequent amendments;

(6) Article 50 of the Montreal Convention requires parties to ensure that air carriers are adequately insured to cover liability under that Convention; whereas the Warsaw Convention of 1929 and its subsequent amendments will continue to exist alongside the Montreal convention for an indefinite period; whereas both Conventions foresee the possibility of unlimited liability;

(7) Article 7 of Council Regulation (EEC) 2407/92 of 23 July 1992 on licensing of air carriers, requires air carriers to be insured to cover liability in case of accidents, in particular in respect of passengers, baggage, cargo, mail and third parties, albeit without specifying minimum amounts and conditions of insurance;

(8) It is appropriate to take into account that the European Civil Aviation Conference has adopted on 13 December 2000 a Resolution (ECAC/25-1) on minimum levels of insurance cover for passenger and third party liability;

(9) It is necessary to define non-discriminatory minimum insurance requirements to cover passenger, baggage, cargo, mail and third parties for both Community air carriers and other air carriers flying to and from an airport situated in the Community as well as flying over the territory of a Member State;

(10) It is necessary to require air carriers to provide evidence on request that they respect at all times the minimum insurance requirements to cover liability as provided for in the present Regulation;

(11) The minimum insurance requirements should be reviewed after a period of time;

(12) Procedures for monitoring the application of the minimum insurance requirements should be transparent and non-discriminatory and should not impede in any way the free movement of goods, persons, services and capital;

(13) Since any measures necessary for the implementation of this Regulation with regard to the adjustment of the minimum insurance requirements are of a general scope and they concern the adaptation of certain non-essential provisions of the Regulation 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 to the Commission [2], they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision;

(14) The Regulation is in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty. The introduction of minimum insurance requirements can contribute to the objectives of the internal aviation market by eliminating distortions of competition. The objectives can therefore be more effectively achieved by the Community by means of harmonised rules. The Regulation confines itself to the minimum required in order to achieve these objectives and does not go beyond what is necessary for that purpose.

HAVE ADOPTED THIS REGULATION:

Article 1

Objective

The objective of this Regulation is to define minimum insurance requirements in respect of insurance regarding passengers, baggage, mail, cargo and third parties, that air carriers and aircraft operators have to respect to be allowed to operate services within, into or out of the Community or to fly over the territory of Member States to which the Treaty applies.

[1] OJ L 194, 18.07.2001, p. 38.

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

Article 2

Scope

This Regulation shall apply

(a) to all air carriers flying to or from an airport situated in the Community as well as flying over the territory of a Member State operating a scheduled or non-scheduled flight;

(b) to all aircraft operators flying to or from an airport situated in the Community as well as flying over the territory of a Member State carrying passengers and their baggage, mail and/or cargo without remuneration or hire;

(c) to carriage by air of passengers and their baggage, mail or cargo performed by a state aircraft of a Member State or any other country.

This Regulation shall not apply to carriage by air of passengers, mail and/or cargo, performed by non-power driven aircraft and/or ultra-light power driven aircraft, nor to local flights not involving carriage between different airports. In respect of these operations, national law concerning insurance requirements in the event of accidents shall apply.

Article 3

Definitions

For the purposes of this Regulation:

(a) 'air carrier' shall mean an air transport undertaking with a valid operating licence;

(b) 'Community air carrier' shall mean an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) 2407/92 of 23 July 1992 of licensing of air carriers;

(c) 'aircraft operator' shall mean a natural person residing in a Member State or a legal person established in a Member State using one or more aircraft in accordance with the regulations applicable in that Member State, as provided for in Council Regulation (EEC) No 3922/91 [1], or a natural person residing outside the Community or a legal person established outside the Community using one or more aircraft in accordance with the regulations of the country of residence or establishment;

(d) 'insurer' shall mean an undertaking, which has received official authorisation in accordance with Article 6 of Council Directive 73/239/EEC [2], or a non-member-country undertaking, which would require authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC if it had its registered office in the Community;

(e) 'insurance' shall mean the policy contract setting the conditions whereby the insurer agrees to indemnify the insured for all insured loss up to the limit of liability for all insured perils, in respect of incidents which occur during the policy period; insurance shall also mean the policy contract where the insured perils are acts of war, terrorism, hijacking, act of sabotage, unlawful seizure of aircraft, civil commotion or labour disturbances;

(f) 'insurer's principal place of business' shall mean the location of the insurer's headquarters or, alternatively, the place from which the majority of the undertaking's operations are managed on a day to day basis;

(g) 'incident' shall mean the occurrence or series of occurrences having the same origin, in which an aircraft causes damage to passengers, baggage, cargo, mail and/or third parties on the surface and/or in the air. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence. Incidents shall be understood to cause accidentally damage to passengers, baggage, cargo, mail and/or third parties on the surface and/or in the air, or because of acts of war, terrorism, hijacking, act of sabotage, unlawful seizure of aircraft, civil commotion or labour disturbances;

(h) 'flight' shall mean the beginning of the operations of departure until the end of the operations of arrival and where the aircraft has come to a complete stop;

(i) 'air service' shall mean a flight or a series of flights carrying passengers, cargo, and/or mail irrespective of remuneration and/or hire;

(j) 'scheduling period' shall mean either the summer or the winter season as used in the schedules of air carriers;

[1] Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation (OJ L 373, 31.12.1991, p. 4-8).

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

(k) 'SDR' shall mean a Special Drawing Right as defined by the International Monetary Fund in 1969, as an international reserve asset, to supplement members' existing reserve assets (official holdings of gold, foreign exchange, and reserve positions in the International Monetary Fund) ([1]);

(l) 'MTOW' shall mean the Maximum Take Off Weight, which corresponds to a certified amount specific to all aircraft types as stated in the certificate of airworthiness of the aircraft.

Article 4

Principles of insurance

Community air carriers registered in the Community and aircraft operators operating aircraft registered in the Community, as well as other air carriers and aircraft operators operating air services into the Community and/or flying over Community territory, shall be insured in respect to their liability for damage sustained on the territory of a Member State and for which a right to compensation exists.

Article 5

Compliance

1. The insurance shall be effected by an insurer authorised to effect such insurance under Community law or the laws of:

— the country which has delivered an operating licence to the air carrier concerned, or

— the country where the aircraft is registered, or

— the country where the insurer has its residence or principal place of business.

This paragraph shall not affect the rights of Member States to define the prudential conditions under which an insurer non-authorised according to Article 6 of Council Directive 73/239/EEC may conduct business in its territory.

2. Air carriers and aircraft operators registered in a third country, shall provide alternatively to the insurance requirements referred to in paragraph 1, any of the following securities:

— A cash deposit in a depository maintained in the country having granted a valid operating licence to the air carrier concerned, or having delivered the air operator's certificate to the aircraft operator concerned;

— A guarantee issued by a bank authorised to do so by the country of registration of the aircraft and whose financial responsibility has been verified by that country;

— A guarantee issued by a bank authorised to do so by the country of registration of the aircraft, if that country undertakes that it will not claim immunity from suit in respect of that guarantee.

3. Air carriers and aircraft operators shall deposit an insurance certificate issued in accordance with paragraph 1 or any of the securities provided for in paragraph 2 with the competent authorities of Member State(s) concerned at the beginning of each scheduling period.

For the purpose of application of the present paragraph, Member State concerned shall mean the Member State(s) which has issued an operating licence to an air carrier or the Member State where an aircraft has been registered and the Member State responsible for the airport to and from an air service is operated.

Member States overflown may also require that air carriers and aircraft operators produce evidence that insurance has been effected in accordance with the present Regulation.

4. Where an air service consists of series of flights, all air carriers or aircraft operators concerned shall meet the requirements stipulated in the present Regulation.

5. Where the insurance or the guarantee or the security expires during a flight, air carriers shall ensure that it shall continue to be in force until the next safe landing of the aircraft specified in the flight plan.

Article 6

Passenger, baggage, mail and cargo liability

1. Where passengers are carried by air, all air carriers shall be insured to cover their liability for death, wounding or any other bodily injury sustained by a passenger for the minimum amount of 250 000 SDRs per passenger. Such insurance shall be understood to also cover damage sustained in the case of destruction or loss of, or damage to checked baggage of a passenger, upon condition only that the event causing the damage took place in the period during which the checked baggage was in the charge of the carrier, or its servants or agents.

This provision shall apply *mutatis mutandis* to aircraft operators.

2. In case of aircraft operated under short term lease agreements with or without crew minimum insurance requirements have to be met by the air carrier actually performing the flight.

([1]) SDRs are determined daily by the International Monetary Fund. The SDR rate on 5 September 2002 was set at: SDR/Euro 0,747385 — Euro/SDR 1,338000.

3. Where cargo is carried by air, air carriers and aircraft operators shall be insured to cover their liability for damage sustained in the event of the destruction or loss of, or damage to cargo carried for the minimum amount of 17 SDRs per kilogram upon condition that the event, which caused the damage so sustained, took place during the flight.

4. Where mail is carried by air Member States shall set the minimum insurance requirements in value for the carriage of mail by air carriers and/or aircraft operators without discrimination on grounds of nationality or identity of the air carrier or the aircraft operator.

5. The values referred to in this Article may be amended as appropriate including where changes in international law indicate the necessity of such decision, in accordance with the procedure laid down in Article 9 (2).

Article 7

Third Party Liability

1. Insurance to cover liability vis-à-vis third parties shall be understood to cover any damage caused by an aircraft in flight or on the ground or by any person or thing falling therefrom to third parties, for each aircraft and incident, only if the damage is a direct consequence of the incident giving rise thereto, and

a) for which the air carrier or aircraft operator concerned is held liable according to national laws of the Member State where the incident has occurred, or

b) was due to an act of war, or hijacking, or sabotage, or terrorism, or civil commotion or social disturbance intended to affect the operation of the aircraft and was due to the negligence or other wrongful act or omission of the air carrier or its servants or agents or the aircraft operator.

This provision shall apply *mutatis mutandis* to aircraft operators, where the aircraft is registered in a third country.

2. All air carriers shall be insured for damages sustained by third parties in the event of accidents as well as acts of war and acts of terrorism. The minimum insurance requirements shall be understood to cover the following categories of aircraft:

Category 1: aircraft with a MTOW < 25 000 kg: 80 million SDRs

Category 2: aircraft with a MTOW < 50 000 kg: 270 million SDRs

Category 3: aircraft with a MTOW < 200 000 kg: 400 million SDRs

Category 4: aircraft with a MTOW > 200 000 kg: 600 million SDRs

This provision shall apply *mutatis mutandis* to aircraft operators, where the aircraft is registered in the Community.

3. Air carriers operating flights to and from any airport situated on the territory of a Member State or flying over the territory of a Member State shall produce evidence that they observe at all times the minimum insurance requirements referred to in paragraph 2.

This provision shall apply *mutatis mutandis* to all aircraft operators.

4. In case of aircraft operated under short term lease agreement with or without crew, minimum insurance requirements have to be met by the air carrier bearing the operating risk of the flight.

5. The values referred to in this Article may be amended as appropriate including where changes in international law indicate the necessity of such decision, in accordance with the procedure laid down in Article 9 (2).

Article 8

Enforcement

1. Member States shall perform regular inspections to verify that air carriers using airports in their territory, or Community air carriers to which they have delivered an operating licence, or aircraft operators to which they have issued an aircraft operator's certificate according to Council Regulation (EEC) No 2407/92 comply with the provisions of the present Regulation.

This provision shall apply *mutatis mutandis* to aircraft operators whichever the place of registration of the aircraft.

2. Where appropriate Member States concerned may request additional evidence from the air carrier, the aircraft operator or the insurer concerned.

3. Where Member States concerned are not satisfied that the conditions of the present Regulation are met, they shall refuse the air carrier or aircraft operator access to routes into or within the Community or the right to overfly their territory.

4. Where Member States concerned are not satisfied that the conditions of the present Regulation are met after an aircraft has landed at an airport in their territory, they shall not allow the aircraft to take-off, before the air carrier or aircraft operator concerned has produced a valid insurance certificate according to the present Regulation.

Article 9

Committee

1. The Commission shall be assisted by the committee instituted by Article 11 of Regulation (EEC) No 2408/92.

2. Where reference is made to decisions taken pursuant to paragraph 1, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

4. The committee referred to in this Article may furthermore be consulted by the Commission on any other matter concerning the application of this Regulation.

Article 10

Report and cooperation

1. The Commission shall submit a report to the European Parliament and the Council on the operation of this Regulation at least three years after its entry into force. The report shall address in particular the functioning of articles 5, 6, 7 and 8.

2. Member States shall upon request submit information on the application of this Regulation to the Commission.

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*.

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

Proposal for a Council Directive amending Directives 66/401/EEC on the marketing of fodder plant seed, 66/402/EEC on the marketing of cereal seed, 68/193/EEC on the marketing of material for the vegetative propagation of the vine, 92/33/EEC on the marketing of vegetable propagating and planting material, other than seed, 92/34/EEC on the marketing of propagating and planting material of fruit plants, 98/56/EC on the marketing of propagating material of ornamental plants, 2002/54/EC on the marketing of beet seed, 2002/55/EC on the marketing of vegetable seed, 2002/56/EC on the marketing of seed potatoes and 2002/57/EC on the marketing of seed of oil and fibre plants as regards Community comparative tests and trials

(2003/C 20 E/18)

COM(2002) 523 final — 2002/0232(CNS)

(Submitted by the Commission on 25 September 2002)

EXPLANATORY MEMORANDUM

In the past 25 years Community comparative tests and trials have been carried out on agricultural crops such as cereals, potatoes, fodder and oil and fibre plants on the basis of the relevant legislation. In the last years new legislation on the marketing of propagating material of fruit, vegetables and ornamental plants laying down, *inter alia*, detailed rules for Community comparative tests and trials, increased the size of the exercise. This post control system on seed and propagating material marketed in the Community is recognised as a very important tool for the harmonisation of marketing by Member States.

The above tests and trials were executed thanks to a Community financial contribution.

In the interest of transparency a clear legal basis for this financial contribution is needed and provisions for Community financial measures for carrying out the Community comparative tests and trials, which involve compulsory Community budget expenditure should therefore be made.

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) The Commission is required to ensure that, in appropriate cases, arrangements for co-ordinating, carrying out and inspecting the Community comparative tests and trials are made in accordance with the procedures laid down in the following provisions:

Directive 66/401/EEC on the marketing of fodder plant seed [1], as last amended by Directive 2001/64/EC [2], and in particular Article 20(3) thereof,

Directive 66/402/EEC on the marketing of cereal seed [3], as last amended by Directive 2001/64/EC [4], and in particular Article 20(3) thereof,

Directive 68/193/EEC on the marketing of material for the vegetative propagation of the vine [5], as last amended by Directive 2002/11/EC [6], and in particular Article 16(3) thereof,

Directive 92/33/EEC on the marketing of vegetable propagating and planting material, other than seed [7], as last amended by Decision 2002/111/EC [8] and in particular Article 20(4) thereof,

Directive 92/34/EEC on the marketing of propagating and planting material of fruit plants [9], as last amended by Decision 2002/112/EC [10] and in particular Article 20(4) thereof,

[1] OJ 125, 11.7.1966, p. 2298/66.
[2] OJ L 234, 1.9.2001, p. 60.
[3] OJ 125, 11.7.1966, p. 2039/66.
[4] OJ L 234, 1.9.2001, p. 60.
[5] OJ L 93, 17.4.1968, p. 15.
[6] OJ L 53, 23.2.2002, p. 20.
[7] OJ L 157, 10.6.1992, p. 1.
[8] OJ L 41, 13.2.2002, p. 44.
[9] OJ L 157, 10.6.1992, p. 10.
[10] OJ L 41, 13.2.2002, p. 44.

Directive 98/56/EC on the marketing of propagating material of ornamental plants [1] in particular Article 14(4) thereof,

Directive 2002/54/EC on the marketing of beet seed [2], and in particular Article 26(3) thereof,

Directive 2002/55/EC on the marketing of vegetable seed [3], and in particular Article 43(3) thereof,

Directive 2002/56/EC on the marketing of seed potatoes [4], and in particular Article 20(3) thereof and

Directive 2002/57/EC on the marketing of seed of oil and fibre plants [5], and in particular Article 23(3) thereof.

(2) These necessary arrangements implied in the past years that a Community contribution for the execution of the above Community comparative tests and trials had been decided.

(3) In the interest of transparency a clear legal basis for the Community financial contribution is needed.

(4) Provisions for Community financial measures for carrying out the Community comparative tests and trials which involve compulsory Community budget expenditure should therefore be made,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Directive 66/401/EEC is hereby amended as follows:

In Article 20, after paragraph 3 the following paragraphs are added:

'3a. The Community may make a financial contribution to the performance of the tests foreseen in paragraphs 1 and 2.

The financial contribution shall not exceed the annual appropriations decided by the budgetary authority.

3b. The tests which may benefit from a Community financial contribution, and detailed rules for the provision of the financial contribution, shall be established in accordance with the procedure laid down in Article 21.

3c. Only state authorities, or legal persons, acting under the responsibility of the State, may be the beneficiaries of this contribution.'

2. Directive 66/402/EEC is hereby amended as follows:

In Article 20, after paragraph 3 the following paragraphs are added:

'3a. The Community may make a financial contribution to the performance of the tests foreseen in paragraphs 1 and 2.

The financial contribution shall not exceed the annual appropriations decided by the budgetary authority.

3b. The tests which may benefit from a Community financial contribution, and detailed rules for the provision of the financial contribution, shall be established in accordance with the procedure laid down in Article 21.

3c. Only state authorities, or legal persons, acting under the responsibility of the State, may be the beneficiaries of this contribution.'

3. Directive 68/193/EEC is hereby amended as follows:

In Article 16, after paragraph 3 the following paragraphs are added:

'3a. The Community may make a financial contribution to the performance of the tests foreseen in paragraphs 1 and 2.

The financial contribution shall not exceed the annual appropriations decided by the budgetary authority.

3b. The tests which may benefit from a Community financial contribution, and detailed rules for the provision of the financial contribution, shall be established in accordance with the procedure laid down in Article 17(1).

3c. Only state authorities, or legal persons, acting under the responsibility of the State, may be the beneficiaries of this contribution.'

4. Directive 92/33/EEC is hereby amended as follows:

In Article 20, after paragraph 4 the following paragraphs are added:

'4a. The Community may make a financial contribution to the performance of the trials and tests foreseen in paragraph 2.

The financial contribution shall not exceed the annual appropriations decided by the budgetary authority.

4b. The trials and tests which may benefit from a Community financial contribution, and detailed rules for the provision of the financial contribution, shall be established in accordance with the procedure laid down in Article 21.

4c. Only state authorities, or legal persons, acting under the responsibility of the State, may be the beneficiaries of this contribution.'

[1] OJ L 226, 13.8.1998, p. 16.
[2] OJ L 193, 20.7.2002, p. 12.
[3] OJ L 193, 20.7.2002, p. 33.
[4] OJ L 193, 20.7.2002, p. 60.
[5] OJ L 193, 20.7.2002, p. 74.

5. Directive 92/34/EEC is hereby amended as follows:

In Article 20, after paragraph 4 the following paragraphs are added:

'4a. The Community may make a financial contribution to the performance of the trials and tests foreseen in paragraph 2.

The financial contribution shall not exceed the annual appropriations decided by the budgetary authority.

4b. The trials and tests which may benefit from a Community financial contribution, and detailed rules for the provision of the financial contribution, shall be established in accordance with the procedure laid down in Article 21.

4c. Only state authorities, or legal persons, acting under the responsibility of the State, may be the beneficiaries of this contribution.'

6. Council Directive 98/56/EC is hereby amended as follows:

In Article 14, after paragraph 4 the following paragraphs are added:

'4a. The Community may make a financial contribution to the performance of the trials and tests foreseen in paragraph 2.

The financial contribution shall not exceed the annual appropriations decided by the budgetary authority.

4b. The trials and tests which may benefit from a Community financial contribution, and detailed rules for the provision of the financial contribution, shall be established in accordance with the procedure laid down in Article 17.

4c. Only state authorities, or legal persons, acting under the responsibility of the State, may be the beneficiaries of this contribution.'

7. Directive 2002/54/EC is hereby amended as follows:

In Article 26, after paragraph 3 the following paragraphs are added:

'3a. The Community may make a financial contribution to the performance of the tests foreseen in paragraphs 1 and 2.

The financial contribution shall not exceed the annual appropriations decided by the budgetary authority.

3b. The tests which may benefit from a Community financial contribution, and detailed rules for the provision of the financial contribution, shall be established in accordance with the procedure laid down in Article 28(2).

3c. Only state authorities, or legal persons, acting under the responsibility of the State, may be the beneficiaries of this contribution.'

8. Directive 2002/55/EC is hereby amended as follows:

In Article 43, after paragraph 3 the following paragraphs are added:

'3a. The Community may make a financial contribution to the performance of the tests foreseen in paragraphs 1 and 2.

The financial contribution shall not exceed the annual appropriations decided by the budgetary authority.

3b. The tests which may benefit from a Community financial contribution, and detailed rules for the provision of the financial contribution, shall be established in accordance with the procedure laid down in Article 46(2).

3c. Only state authorities, or legal persons, acting under the responsibility of the State, may be the beneficiaries of this contribution.'

9. Directive 2002/56/EC is hereby amended as follows:

In Article 20, after paragraph 3 the following paragraphs are added:

'3a. The Community may make a financial contribution to the performance of the tests foreseen in paragraphs 1 and 2.

The financial contribution shall not exceed the annual appropriations decided by the budgetary authority.

3b. The tests which may benefit from a Community financial contribution, and detailed rules for the provision of the financial contribution, shall be established in accordance with the procedure laid down in Article 25(2).

3c. Only state authorities, or legal persons, acting under the responsibility of the State, may be the beneficiaries of this contribution.'

10. Directive 2002/57/EC is hereby amended as follows:

In Article 23, after paragraph 3 the following paragraphs are added:

'3a. The Community may make a financial contribution to the performance of the tests foreseen in paragraphs 1 and 2.

The financial contribution shall not exceed the annual appropriations decided by the budgetary authority.

3b. The tests which may benefit from a Community financial contribution, and detailed rules for the provision of the financial contribution, shall be established in accordance with the procedure laid down in Article 25(2).

3c. Only state authorities, or legal persons, acting under the responsibility of the State, may be the beneficiaries of this contribution.'

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2003 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 3

This Directive shall enter into force on the 7th 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 Directive amending Directive 77/388/EEC to extend the facility allowing Member States to apply reduced rates of VAT to certain labour-intensive services

(2003/C 20 E/19)

COM(2002) 525 final — 2002/0230(CNS)

(Submitted by the Commission on 25 September 2002)

EXPLANATORY MEMORANDUM

On 22 October 1999, as part of its implementation of the recommendations of the European Council of 11 and 12 December 1998, and in particular the 'Vienna Strategy for Europe', the Council adopted Directive 1999/85/EC [1] amending Directive 77/388/EEC [2] (the 6th VAT Directive) as regards the possibility of applying on an experimental basis a reduced VAT rate on labour-intensive services. Its purpose is to allow Member States that so wish to test the impact, in terms of job creation and a reduction of the underground economy, of a targeted reduction of VAT on these services.

Member States wishing to introduce the measure had to inform the Commission before 1 November 1999 [3].

Article 28(6) of the 6th VAT Directive authorises the experimental application of a reduced rate of VAT on labour-intensive services up to 31 December 2002. It requires Member States that have applied such reduced rates to draw up a detailed report by 1 October 2002 assessing the measures' effectiveness in terms of job-creation and efficiency.

Based on these reports the Commission is required to submit a global evaluation report to the Council and the European Parliament by 31 December 2002, accompanied if necessary by a proposal for a final decision on the VAT rate to be applied to labour-intensive services.

The evaluation must also take account of the Commission Communication on A strategy to improve the operation of the VAT system within the context of the internal market [4], which advocates revising and rationalising the rules and derogations to be applied to reduced VAT rates in the medium term, and considering how reduced rates of VAT can be used to further various Community policies, particularly job creation.

Since no assessment reports have yet been submitted to the Commission by the Member States, and in view of the time needed to evaluate such reports thoroughly in accordance with the guidelines of Directive 1999/85/EC, it is essential to alter the period set in Article 28(6) of the 6th VAT Directive.

Under these circumstances the Commission considers that the first subparagraph of Article 28(6) of Directive 77/388/EEC and the first paragraph of Article 1 of Decision 2000/185/EC should be amended to extend the period of validity of the authorisation to 31 December 2003 at the latest. This would allow the nine Member States currently applying a reduced rate of VAT to labour-intensive services to continue to do so for another year under the same conditions, without changing or extending the scope of the experiment.

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[1] OJ L 277, 28.10.1999, p. 34.

[2] OJ L 145, 13.6.1977, p. 1; Directive last amended by Directive 2002/38/EC (OJ L 128, 15.5.2002, p. 41).

[3] The applications made were the subject of Council Decision 2001/185/EC of 28 February 2000 (OJ L 59, 4.3.2000, p. 10).

[4] COM(2000) 348 final, 7.6.2000.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas:

(1) Article 28(6) of Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment [1], allows the reduced rates provided for in the third subparagraph of Article 12(3)(a) also to be applied to the labour-intensive services listed in the categories set out in Annex K to that Directive for a maximum period of three years from 1 January 2000 to 31 December 2002.

(2) Council Decision 2000/185/EC of 28 February 2000 authorising Member States to apply a reduced rate of VAT to certain labour-intensive services in accordance with the procedure provided for in Article 28(6) of Directive 77/388/EEC [2] authorised certain Member States to apply a reduced rate of VAT to those labour-intensive services for which they had submitted an application up to 31 December 2002.

(3) Based on the reports to be drawn up by 1 October 2002 by the Member States that have applied such reduced rates, the Commission is required to submit a global evaluation report to the Council and the European Parliament by 31 December 2002, accompanied if necessary by a proposal for a final decision on the VAT rate to be applied to labour-intensive services.

(4) Since the Member States have not yet submitted any assessments to the Commission, it is necessary in view of the time needed to produce a thorough global evaluation of such reports to extend the maximum period of application set for this measure in Directive 77/388/EEC.

(5) Decision 77/388/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In the first paragraph of Article 28(6) of Directive 77/388/EEC the words 'three years between 1 January 2000 and 31 December 2002' are replaced by the words 'four years between 1 January 2000 and 31 December 2003'.

Article 2

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.

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

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.

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[1] OJ L 145, 13.6.1977; Directive as last amended by Directive 2002/38/EC (OJ L 128, 15.5.2002, p. 41).

[2] OJ L 59, 4.3.2000, p. 10.

Proposal for a Council Decision extending the period of application of Council Decision 2000/185/EC authorising Member States to apply a reduced rate of VAT to certain labour-intensive services in accordance with the procedure provided for in Article 28(6) of Directive 77/388/EEC

(2003/C 20 E/20)

COM(2002) 525 final

(Submitted by the Commission on 25 September 2002)

EXPLANATORY MEMORANDUM

On 22 October 1999, as part of its implementation of the recommendations of the European Council of 11 and 12 December 1998, and in particular the 'Vienna Strategy for Europe', the Council adopted Directive 1999/85/EC ([1]) amending Directive 77/388/EEC ([2]) (the 6th VAT Directive) as regards the possibility of applying on an experimental basis a reduced VAT rate on labour-intensive services. Its purpose is to allow Member States that so wish to test the impact, in terms of job creation and a reduction of the underground economy, of a targeted reduction of VAT on these services.

Under Article 28(6) of the 6th VAT Directive as amended by Directive 1999/85/EC, any Member State that wished to introduce this measure was required to inform the Commission before 1 November 1999. Nine Member States did so. Their applications were the subject of Council Decision 2000/185/EC of 28 February 2000 ([3]).

Based on the assessment reports to be drawn up by 1 October 2002 by the Member States that have applied such reduced rates, the Commission is required to submit a global evaluation report to the Council and the European Parliament by 31 December 2002, accompanied if necessary by a proposal for a final decision on the VAT rate to be applied to labour-intensive services.

This is to be done as part of the rationalisation of rules and derogations applicable to reduced VAT rates announced in the Commission Communication on 'A strategy to improve the operation of the VAT system within the context of the internal market' ([4]), which advocates considering how reduced rates of VAT can be used in the interests of various Community policies, particularly job creation.

In view of the time needed to carry out a thorough global review of the national reports, the Commission is presenting a proposal for an amendment of Article 28(6) of the 6th VAT Directive extending the period of application of reduced VAT rates on labour-intensive services by one year.

Council Decision 2000/185/EC authorising the nine Member States to apply a reduced rate of VAT to certain labour-intensive services must, therefore, also be amended in the same way to allow those Member States to continue applying the reduced rates for another year under the same conditions, without altering or extending the scope of the experiment.

([1]) OJ L 277, 28.10.1999, p. 34.

([2]) OJ L 145, 13.6.1977, p. 1. (Directive last amended by Directive 2002/38/EC: OJ L 128, 15.5.2002, p. 41).

([3]) OJ L 59, 4.3.2000, p. 10.

([4]) COM(2000) 348 final, 7.6.2000.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value-added tax: uniform basis of assessment [1], and in particular Article 28(6) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Under Council Decision 2000/185/EC [2], Belgium, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom are authorised to apply, up to 31 December 2002, a reduced rate of VAT on the labour-intensive services for which they submitted an application.

(2) Based on the reports to be drawn up by 1 October 2002 by the Member States that have applied such reduced rates, the Commission is required to submit a global evaluation report to the Council and the European Parliament by 31 December 2002, accompanied if necessary by a proposal for a final decision on the VAT rate to be applied to labour-intensive services.

(3) Since the Member States have not yet submitted any assessments to the Commission and in view of the time needed to produce a thorough global evaluation of the national reports, the maximum period of application set for this measure in Directive 77/388/EEC has been extended.

(4) The period of application of Decision 2000/185/EC should also be extended,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2000/185/EC is amended as follows:

1. In the first paragraph of Article 1 'three years running from 1 January 2000 to 31 December 2002' is replaced by 'four years running from 1 January 2000 to 31 December 2003'.

2. In the second paragraph of Article 3, '31 December 2002' is replaced by '31 December 2003'.

Article 2

This Decision is addressed to the Kingdom of Belgium, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland.

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[1] OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive [. . .].

[2] OJ L 59, 4.3.2000, p. 10.

Proposal for a Council Decision on the signing, on behalf of the European Community, of an Agreement in the form of a Memorandum of Understanding between the European Community and the Federative Republic of Brazil on arrangements in the area of market access for textile and clothing products, and authorising its provisional application

(2003/C 20 E/21)

COM(2002) 526 final — 2002/0235(ACC)

(Submitted by the Commission on 25 September 2002)

EXPLANATORY MEMORANDUM

In accordance with the Council negotiating directives of 9 November 2000, the Commission has negotiated a Memorandum of Understanding concerning market access in the textiles and clothing sector with Brazil, which has been initialled on 8 August 2002.

The agreement provides for the following:

— Brazil commits not to exceed the maximum levels of tariffs at the rates shown in Annex 1 for the whole textile and clothing sector (maximum 14 % for yarns, 16-18 % for fabrics, and 20 % for clothing). An additional tax of 1,5 % is also expected to be eliminated upon its expiry planned for the end of 2002 (provisions in an additional agreed minute allow for re-stating of quota on category 2A or 9, in case of non-compliance by Brazil on 1 June 2003 at the latest).

— The European Community will suspend the application of the quantitative restrictions currently in force for categories 1, 2, 2A, 3, 4, 6, 9, 20, 22 and 39, following Brazil's confirmation, by means of adopted and published legislation made available by Brazil to the Community, that the provisions of sub-paragraph 1 of paragraph 2 have been implemented by Brazil. Those categories will be covered by a double checking system (surveillance). Moreover, the EU will closely co-operate with Brazil to ensure authenticity of origin of its exports to Brazil, through re-inforced administrative co-operation.

— Both Parties retain the right to suspend the application of its commitments on Paragraphs 2 and 5 should the other Party fail to fulfil its obligations. The European Community retains the right to reapply the quota regime at the level applicable for the year in question in the event that Brazil fails to fulfil any of the obligations contained in Paragraphs 2 (tariffs standstill) and 5 (non-tariff barriers) of this Agreement. Brazil retains the right to suspend its commitments should the European Community reapply quotas in a manner inconsistent with its obligations under this agreement or fail to fulfil any of the obligations contained in Paragraph 5. The Parties agree to consult with each other before exercising this right.

— Both Parties undertake not to introduce or apply any non-tariff barriers for trade in the textile and clothing sector. This will address in particular a problem concerning customs valuation in Brazil raised by EU industry.

— Both Parties also agreed to a best endeavours clause to seek, in the context of the EU-Mercosur negotiations, an early elimination of the customs duties applied to textile and clothing products, either upon entry into force or at the latest in the first stage of the industrial tariff dismantling schedule.

The agreement provides for periodic consultations and for consultations on request on any of its provisions.

The Council is invited to approve this proposal for a Council Decision on the signing, on behalf of the European Community, of a Memorandum of Understanding on Market Access in textile products between the European Community and the Federative Republic of Brazil and authorising its provisional application pending the formal conclusion of that Agreement.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof, in conjunction with the first and second subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Commission has negotiated on behalf of the Community a bilateral Agreement in the form of a Memorandum of Understanding on trade in textile products with Brazil.

(2) The Agreement in the form of a Memorandum of Understanding was initialled on 8 August 2002.

(3) The Agreement in form of a Memorandum of Understanding should be signed on behalf of the Community.

(4) In order to allow its benefits to accrue to both Parties immediately following the relevant notifications, it is appropriate to apply this Agreement on a provisional basis as from 16 October 2002 pending completion of the relevant procedures for its formal conclusion, subject to reciprocity,

HAS DECIDED AS FOLLOWS:

Article 1

Subject to its possible conclusion at a later date the President of the Council is hereby authorised to designate the persons empowered to sign, on behalf of the European Community, the Agreement in the form of a Memorandum of Understanding on trade in textile products with Brazil.

The text of the Agreement is annexed to this Decision.

Article 2

Subject to reciprocity, the Agreement in the form of a Memorandum of Understanding shall be applied on a provisional basis from 16 October 2002 pending the completion of the procedures for its formal conclusion.

Article 3

1. The Commission, in accordance with the procedure referred to in Article 17 of Council Regulation (EEC) No 3030/93 on common rules for imports of certain textile products from third countries [1] may modify the application of the double-checking regime for certain products, after consultations with Brazil under Paragraph 6 of the Memorandum of Understanding.

2. The Commission shall re-apply the quota regime in the event of the failure on the part of Brazil to fulfil the obligations covered by Paragraphs 2 and 5 of the Memorandum of Understanding in accordance with the procedure referred to in Article 17 of Council Regulation (EEC) No 3030/93 on common rules for imports of certain textile products from third countries.

[1] OJ L 275, 8.11.1993, as last amended by Council Regulation (EC) No 391/2001 (OJ L 58, 28.2.2001, p. 3) and by Commission Regulation (EC) No 27/2002 (OJ L 9, 11.1.2002, p. 1).

MEMORANDUM OF UNDERSTANDING

between the European Community and the Federative Republic of Brazil on arrangements in the area of market access for textile and clothing products initialled in Brasilia on 8 August 2002

1. Delegations of the European Community and the Federative Republic of Brazil met on 8 August 2002 with a view to discuss improvements in access to the respective markets of both Parties for textile and clothing products.

2.1. The Federative Republic of Brazil shall not apply tariffs on textiles and clothing at rates higher than those shown in Annex 1.

2.2. The European Community will suspend the application of the quantitative restrictions currently in force in respect of imports of textile and clothing products from Brazil, affecting product categories 1, 2, 2A, 3, 4, 6, 6C, 9, 20, 22 and 39.

2.3. The Parties will exchange the necessary documents proving the implementation of their commitments.

3. The Parties agree that the European Community retains the right to reapply the quota regime at the level applicable for the year in question, at the levels corresponding to their bilateral understanding notified under the present Agreement on Textiles and Clothing (ATC) and for a maximum period not extending beyond the duration of the ATC, in the event that Brazil fails to fulfil any of the obligations contained in Paragraphs 2 and 5 of this Agreement. The Parties agree that Brazil retains the right to suspend the application of its commitments on Paragraphs 2 and 5 should the European Community reapply quotas in a manner inconsistent with its obligations under this agreement or fail to fulfil any of the obligations contained in Paragraph 5. The Parties agree to consult with each other pursuant to Paragraph 6 before exercising this right.

4. Without prejudice to Paragraph 3 and of the administrative co-operation as foreseen in the bilateral textile agreement initialled on 12 September 1986 and its subsequent amendments, and with the purpose of exchanging information on trade in textiles and clothing in view of combating fraud, the Parties agree the following:

   (a) The products set out in Paragraph 2.2 will be subject to the procedures foreseen in the double-checking system set out in Articles 18 to 24 of Annex III to Council Regulation (EEC) No 3030/93. The double checking system will be introduced by the European Community as soon as the latter has suspended the quotas in accordance with paragraph 2. The Parties agree to keep the products set out in Paragraph 2.2 subject to the double-checking system under review and may propose changes to it following consultations pursuant to Paragraph 6. The European Community agrees that the products subject to the procedures foreseen in the above mentioned double-checking system will not, as a consequence of this system, suffer any trade restriction.

   (b) The European Union shall closely co-operate with Brazil to ensure the originating status of the textiles and clothing products covered by this Agreement.

   These procedures are subject to the provisions contained in Annex 2.

5. The Parties agree to refrain from adopting any non-tariff measures that could hinder trade in textile and clothing products, of the kind indicated in the Agreed Minute. In this context the Parties agree that quantitative limits will not be introduced on the products referred to in Paragraph 2 except in the event the European Community exercises the right to reapply the quota regime pursuant to Paragraph 3.

6. The Parties agree that the balance of the present agreement, forming a package of mutual concessions freely extended between the Parties, depends on the full and faithful implementation of all the terms of this Memorandum of Understanding. As a result the Parties agree to consult periodically in order to ensure the proper implementation of this Memorandum of Understanding. In addition, the Parties agree to promptly consult following the request of either Party concerning any aspect of this Memorandum of Understanding.

   In the event that one Party seeks to exercise the right contained in Paragraph 3, it will provide the other with details of any alleged failure in writing. Consultations with a view to remedying the failure in question will be held within 60 days of such a written request unless the Parties agree otherwise. In the event the Parties cannot agree on appropriate remedial action within 60 days from the start of the consultations, the first Party will have the right to proceed under Paragraph 3.

7. The Parties agree to co-operate fully in respect of obligations inherent to the WTO or any of its Bodies.

8. The Parties agree that this Memorandum of Understanding is without prejudice to the possibility of seeking mutual concessions concerning market access from other trading partners in the sector.

9. The Parties agree that this Memorandum of Understanding is without prejudice to their rights to invoke the WTO Dispute Settlement Understanding.

10. All Agreed Minutes and Declarations annexed to this Memorandum of Understanding shall form an integral part of it.

11. The Parties agree that this Agreement in the form of a Memorandum of Understanding shall enter into force on the first day of the month following the day on which the Parties have notified each other that the internal procedures necessary to this end have been completed. In the meantime, it shall be applied provisionally on conditions of reciprocity.

ANNEX 1

Maximum import duties to be applied by Brazil

HS 6 digit code/Brazilian tariff	Product description according to Brazilian nomenclature	Maximum import duties	Additional tax
(1)	(2)	(3)	(4)
5004 00		14,0 %	1,5 %
5005 00		14,0 %	1,5 %
5006 00		16,0 %	1,5 %
5007 10		18,0 %	1,5 %
5007 20		18,0 %	1,5 %
5007 90		18,0 %	1,5 %
5104 00		6,0 %	1,5 %
5105 10		10,0 %	1,5 %
5105 21		10,0 %	1,5 %
5105 29		10,0 %	1,5 %
5105 31		10,0 %	1,5 %
5105 39		10,0 %	1,5 %
5105 40		10,0 %	1,5 %
5106 10		14,0 %	1,5 %
5106 20		14,0 %	1,5 %
5107 10		14,0 %	1,5 %
5107 20		14,0 %	1,5 %
5108 10		14,0 %	1,5 %
5108 20		14,0 %	1,5 %
5109 10		16,0 %	1,5 %
5109 90		16,0 %	1,5 %
5110 00		14,0 %	1,5 %
5111 11		18,0 %	1,5 %
5111 19		18,0 %	1,5 %
5111 20		18,0 %	1,5 %
5111 30 10	Woven fabrics of carded wool or of carded fine animal hair, other than those containing 85 % or more by weight of wool or of fine animal hair and other than those mixed mainly or solely with man-made filaments, with weft of wool, felted, mixed solely with synthetic fibres and warp solely of synthetic cotton weighing 600 g/m^2 or more, suitable for the manufacture of tennis balls	2,0 %	1,5 %
5111 30 90	Woven fabrics of carded wool or of carded fine animal hair, mixed mainly or solely with man-made staple fibres, other than those containing 85 % or more by weight of wool or of fine animal hair and other than those mixed mainly or solely with man-made filaments, other than those with weft of wool, felted, mixed solely with synthetic fibres and warp solely of synthetic cotton, weighing 600 g/m^2 or more, suitable for the manufacture of tennis balls	18,0 %	1,5 %
5111 90		18,0 %	1,5 %
5112 11		18,0 %	1,5 %
5112 19		18,0 %	1,5 %
5112 20		18,0 %	1,5 %
5112 30		18,0 %	1,5 %
5112 90		18,0 %	1,5 %

(1)	(2)	(3)	(4)
5113 00		18,0 %	1,5 %
5204 11		14,0 %	1,5 %
5204 19		14,0 %	1,5 %
5204 20		16,0 %	1,5 %
5205 11		14,0 %	1,5 %
5205 12		14,0 %	1,5 %
5205 13		14,0 %	1,5 %
5205 14		14,0 %	1,5 %
5205 15		14,0 %	1,5 %
5205 21		14,0 %	1,5 %
5205 22		14,0 %	1,5 %
5205 23		14,0 %	1,5 %
5205 24		14,0 %	1,5 %
5205 26		14,0 %	1,5 %
5205 27		14,0 %	1,5 %
5205 28		14,0 %	1,5 %
5205 31		14,0 %	1,5 %
5205 32		14,0 %	1,5 %
5205 33		14,0 %	1,5 %
5205 34		14,0 %	1,5 %
5205 35		14,0 %	1,5 %
5205 41		14,0 %	1,5 %
5205 42		14,0 %	1,5 %
5205 43		14,0 %	1,5 %
5205 44		14,0 %	1,5 %
5205 46		14,0 %	1,5 %
5205 47		14,0 %	1,5 %
5205 48		14,0 %	1,5 %
5206 11		14,0 %	1,5 %
5206 12		14,0 %	1,5 %
5206 13		14,0 %	1,5 %
5206 14		14,0 %	1,5 %
5206 15		14,0 %	1,5 %
5206 21		14,0 %	1,5 %
5206 22		14,0 %	1,5 %
5206 23		14,0 %	1,5 %
5206 24		14,0 %	1,5 %
5206 25		14,0 %	1,5 %
5206 31		14,0 %	1,5 %
5206 32		14,0 %	1,5 %
5206 33		14,0 %	1,5 %
5206 34		14,0 %	1,5 %
5206 35		14,0 %	1,5 %
5206 41		14,0 %	1,5 %
5206 42		14,0 %	1,5 %

(1)	(2)	(3)	(4)
5206 43		14,0 %	1,5 %
5206 44		14,0 %	1,5 %
5206 45		14,0 %	1,5 %
5207 10		16,0 %	1,5 %
5207 90		16,0 %	1,5 %
5208 11		18,0 %	1,5 %
5208 12		18,0 %	1,5 %
5208 13		18,0 %	1,5 %
5208 19		18,0 %	1,5 %
5208 21		18,0 %	1,5 %
5208 22		18,0 %	1,5 %
5208 23		18,0 %	1,5 %
5208 29		18,0 %	1,5 %
5208 31		18,0 %	1,5 %
5208 32		18,0 %	1,5 %
5208 33		18,0 %	1,5 %
5208 39		18,0 %	1,5 %
5208 41		18,0 %	1,5 %
5208 42		18,0 %	1,5 %
5208 43		18,0 %	1,5 %
5208 49		18,0 %	1,5 %
5208 51		18,0 %	1,5 %
5208 52		18,0 %	1,5 %
5208 53		18,0 %	1,5 %
5208 59		18,0 %	1,5 %
5209 11		18,0 %	1,5 %
5209 12		18,0 %	1,5 %
5209 19		18,0 %	1,5 %
5209 21		18,0 %	1,5 %
5209 22		18,0 %	1,5 %
5209 29		18,0 %	1,5 %
5209 31		18,0 %	1,5 %
5209 32		18,0 %	1,5 %
5209 39		18,0 %	1,5 %
5209 41		18,0 %	1,5 %
5209 42		18,0 %	1,5 %
5209 43		18,0 %	1,5 %
5209 49		18,0 %	1,5 %
5209 51		18,0 %	1,5 %
5209 52		18,0 %	1,5 %
5209 59		18,0 %	1,5 %
5210 11		18,0 %	1,5 %
5210 12		18,0 %	1,5 %
5210 19		18,0 %	1,5 %
5210 21		18,0 %	1,5 %

(1)	(2)	(3)	(4)
5210 22		18,0 %	1,5 %
5210 29		18,0 %	1,5 %
5210 31		18,0 %	1,5 %
5210 32		18,0 %	1,5 %
5210 39		18,0 %	1,5 %
5210 41		18,0 %	1,5 %
5210 42		18,0 %	1,5 %
5210 49		18,0 %	1,5 %
5210 51		18,0 %	1,5 %
5210 52		18,0 %	1,5 %
5210 59		18,0 %	1,5 %
5211 11		18,0 %	1,5 %
5211 12		18,0 %	1,5 %
5211 19		18,0 %	1,5 %
5211 21		18,0 %	1,5 %
5211 22		18,0 %	1,5 %
5211 29		18,0 %	1,5 %
5211 31		18,0 %	1,5 %
5211 32		18,0 %	1,5 %
5211 39		18,0 %	1,5 %
5211 41		18,0 %	1,5 %
5211 42		18,0 %	1,5 %
5211 43		18,0 %	1,5 %
5211 49		18,0 %	1,5 %
5211 51		18,0 %	1,5 %
5211 52		18,0 %	1,5 %
5211 59		18,0 %	1,5 %
5212 11		18,0 %	1,5 %
5212 12		18,0 %	1,5 %
5212 13		18,0 %	1,5 %
5212 14		18,0 %	1,5 %
5212 15		18,0 %	1,5 %
5212 21		18,0 %	1,5 %
5212 22		18,0 %	1,5 %
5212 23		18,0 %	1,5 %
5212 24		18,0 %	1,5 %
5212 25		18,0 %	1,5 %
5303 10		8,0 %	1,5 %
5303 90		8,0 %	1,5 %
5304 10		6,0 %	1,5 %
5304 90		6,0 %	1,5 %
5305 11		6,0 %	1,5 %
5305 19		6,0 %	1,5 %
5305 21		6,0 %	1,5 %
5305 29		6,0 %	1,5 %

(1)	(2)	(3)	(4)
5305 90		6,0 %	1,5 %
5306 10		14,0 %	1,5 %
5306 20		14,0 %	1,5 %
5307 10		14,0 %	1,5 %
5307 20		14,0 %	1,5 %
5308 10		14,0 %	1,5 %
5308 20		14,0 %	1,5 %
5308 90		14,0 %	1,5 %
5309 11		18,0 %	1,5 %
5309 19		18,0 %	1,5 %
5309 21		18,0 %	1,5 %
5309 29		18,0 %	1,5 %
5310 10 10	Woven fabrics of burlap of jute, unbleached	14,0 %	1,5 %
5310 10 90	Woven fabrics of textile bast fibres of heading 5303, other than those of burlap of jute, unbleached	16,0 %	1,5 %
5310 90		16,0 %	1,5 %
5311 00		18,0 %	1,5 %
5401 10 11	Sewing threads of polyester filaments, not put up for retail sale	16,0 %	1,5 %
5401 10 12	Sewing threads of polyester filaments, put up for retail sale	18,0 %	1,5 %
5401 10 90	Sewing threads of of synthetic filaments, other than those of polyester, whether or not put up for retail sale,	16,0 %	1,5 %
5401 20 11	Sewing threads of high tenacity viscose rayon filaments, not put up for retail sale	16,0 %	1,5 %
5401 20 12	Sewing threads of high tenacity viscose rayon filaments, put up for retail sale	18,0 %	1,5 %
5401 20 90	Sewing threads of artificial filaments, other than those of high tenacity viscose rayon, whether or not put up for retail sale,	16,0 %	1,5 %
5402 10 10	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex, of high tenacity yarn of nylon (aliphatic polyamide)	16,0 %	1,5 %
5402 10 20	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex, of high tenacity yarn of aramid (aromatic polyamide), other than of nylon (aliphatic polyamide)	2,0 %	1,5 %
5402 10 90	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex, of high tenacity yarn of polyamides other than nylon (aliphatic polyamide) or aramid (aromatic polyamide)	16,0 %	1,5 %
5402 20		16,0 %	1,5 %
5402 31		16,0 %	1,5 %
5402 32		16,0 %	1,5 %
5402 33		16,0 %	1,5 %
5402 39		16,0 %	1,5 %
5402 41 10	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex, single, untwisted or with a twist not exceeding 50 turns per meter, of nylon (aliphatic polyamide), other than high tenacity yarn and other than textured yarn	16,0 %	1,5 %

(1)	(2)	(3)	(4)
5402 41 20	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex, single, untwisted or with a twist not exceeding 50 turns per meter, of aramid (aromatic polyamide), other than nylon (aliphatic polyamide), other than high tenacity yarn and other than textured yarn	2,0 %	1,5 %
5402 41 90	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex, single, untwisted or with a twist not exceeding 50 turns per meter, of polyamides other than nylon or aramid, other than high tenacity yarn and other than textured yarn	16,0 %	1,5 %
5402 42		16,0 %	1,5 %
5402 43		16,0 %	1,5 %
5402 49		16,0 %	1,5 %
5402 51 10	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex, single, with a twist exceeding 50 turns per meter, of aramid (aromatic polyamide), other than high tenacity yarn and other than textured yarn	2,0 %	1,5 %
5402 51 90	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex, single, with a twist exceeding 50 turns per meter, of polyamides other than aramid (aromatic polyamide), other than high tenacity yarn and other than textured yarn	16,0 %	1,5 %
5402 52		16,0 %	1,5 %
5402 59		16,0 %	1,5 %
5402 61 10	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex, multiple (folded) or cabled, other than high tenacity yarn and other than textured yarn, of aramid (aromatic polyamide)	2,0 %	1,5 %
5402 61 90	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex, multiple (folded) or cabled, other than high tenacity yarn and other than textured yarn, of polyamides other than aramid (aromatic polyamide)	16,0 %	1,5 %
5402 62		16,0 %	1,5 %
5402 69		16,0 %	1,5 %
5403 10		16,0 %	1,5 %
5403 20		16,0 %	1,5 %
5403 31		16,0 %	1,5 %
5403 32		16,0 %	1,5 %
5403 33		16,0 %	1,5 %
5403 39		16,0 %	1,5 %
5403 41		16,0 %	1,5 %
5403 42		16,0 %	1,5 %
5403 49		16,0 %	1,5 %
5404 10 11	Synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm, artificial catgut, absorbent	2,0 %	1,5 %
5404 10 19	Synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm, artificial catgut, not absorbent	16,0 %	1,5 %
5404 10 90	Synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; other than artificial catgut	16,0 %	1,5 %
5404 90		16,0 %	1,5 %
5405 00		12,0 %	1,5 %
5406 10		18,0 %	1,5 %

(1)	(2)	(3)	(4)
5406 20		18,0 %	1,5 %
5407 10 11	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404, obtained from high tenacity yarn of aramid (aromatic polyamide), not containing yarn of rubber	2,0 %	1,5 %
5407 10 19	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404, obtained from high tenacity yarn of polyamides other than aramid or from high tenacity yarn of polyesters, not containing yarn of rubber	18,0 %	1,5 %
5407 10 21	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404, obtained from high tenacity yarn of aramid (aromatic polyamide), containing yarn of rubber	2,0 %	1,5 %
5407 10 29	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404, obtained from high tenacity yarn of polyamides other than of aramid (aromatic polyamide) or of polyesters, containing yarn of rubber	18,0 %	1,5 %
5407 20		18,0 %	1,5 %
5407 30		18,0 %	1,5 %
5407 41		18,0 %	1,5 %
5407 42		18,0 %	1,5 %
5407 43		18,0 %	1,5 %
5407 44		18,0 %	1,5 %
5407 51		18,0 %	1,5 %
5407 52		18,0 %	1,5 %
5407 53		18,0 %	1,5 %
5407 54		18,0 %	1,5 %
5407 61		18,0 %	1,5 %
5407 69		18,0 %	1,5 %
5407 71		18,0 %	1,5 %
5407 72		18,0 %	1,5 %
5407 73		18,0 %	1,5 %
5407 74		18,0 %	1,5 %
5407 81		18,0 %	1,5 %
5407 82		18,0 %	1,5 %
5407 83		18,0 %	1,5 %
5407 84		18,0 %	1,5 %
5407 91		18,0 %	1,5 %
5407 92		18,0 %	1,5 %
5407 93		18,0 %	1,5 %
5407 94		18,0 %	1,5 %
5408 10		18,0 %	1,5 %
5408 21		18,0 %	1,5 %
5408 22		18,0 %	1,5 %
5408 23		18,0 %	1,5 %
5408 24		18,0 %	1,5 %
5408 31		18,0 %	1,5 %
5408 32		18,0 %	1,5 %
5408 33		18,0 %	1,5 %
5408 34		18,0 %	1,5 %

(1)	(2)	(3)	(4)
5501 10		16,0 %	1,5 %
5501 20		16,0 %	1,5 %
5501 30		16,0 %	1,5 %
5501 90		16,0 %	1,5 %
5502 00 10	Artificial filament tow, of cellulose acetate	12,0 %	1,5 %
5502 00 20	Artificial filament tow, of viscose rayon	2,0 %	1,5 %
5502 00 90	Artificial filament tow, other than those of cellulose acetate and other than those of viscose rayon	12,0 %	1,5 %
5503 10 10	Synthetic staple fibres, not carded, combed or otherwise processed for spinning, of aramid (aromatic polyamide)	2,0 %	1,5 %
5503 10 91	Synthetic staple fibres, not carded, combed or otherwise processed for spinning, of other polyamides than aramid, bicomponent fibres, fused at different locations	2,0 %	1,5 %
5503 10 99	Synthetic staple fibres, not carded, combed or otherwise processed for spinning, of other polyamides than aramid, other than bicomponent fibres fused at different locations	16,0 %	1,5 %
5503 20		16,0 %	1,5 %
5503 30		16,0 %	1,5 %
5503 40		16,0 %	1,5 %
5503 90 10	Synthetic staple fibres, not carded, combed or otherwise processed for spinning, bicomponent fibres, fused at different locations, other than those of polyamides, polyesters, acrylic, modacrylic or polypropylene	2,0 %	1,5 %
5503 90 90	Synthetic staple fibres, not carded, combed or otherwise processed for spinning, other than bicomponent fibres, fused at different locations, other than those of polyamides, polyesters, acrylic, modacrylic or polypropylene	16,0 %	1,5 %
5504 10		12,0 %	1,5 %
5504 90 10	Artificial staple fibres, not carded, combed or otherwise processed for spinning, cellulosic, obtained through extrusion with N-methyl-morpholine oxide	2,0 %	1,5 %
5504 90 90	Artificial staple fibres, not carded, combed or otherwise processed for spinning, other than those of viscose rayon and other than cellulosic staple fibres, obtained through extrusion with N-methyl-morpholine oxide	12,0 %	1,5 %
5505 10		16,0 %	1,5 %
5505 20		12,0 %	1,5 %
5506 10		16,0 %	1,5 %
5506 20		16,0 %	1,5 %
5506 30		16,0 %	1,5 %
5506 90		16,0 %	1,5 %
5507 00		12,0 %	1,5 %
5508 10		16,0 %	1,5 %
5508 20		12,0 %	1,5 %
5509 11		16,0 %	1,5 %
5509 12 10	Yarn (other than sewing thread) of synthetic staple fibres, not put up for retail sale, containing 85 % or more by weight of staple fibres of aramid (aromatic polyamide), multiple (folded) or cabled	2,0 %	1,5 %
5509 12< >90	Yarn (other than sewing thread) of synthetic staple fibres, not put up for retail sale, containing 85 % or more by weight of staple fibres of polyamides other than of aramid, multiple (folded) or cabled	16,0 %	1,5 %
5509 21		16,0 %	1,5 %
5509 22		16,0 %	1,5 %

(1)	(2)	(3)	(4)
5509 31		16,0 %	1,5 %
5509 32		16,0 %	1,5 %
5509 41		16,0 %	1,5 %
5509 42		16,0 %	1,5 %
5509 51		16,0 %	1,5 %
5509 52		16,0 %	1,5 %
5509 53		16,0 %	1,5 %
5509 59		16,0 %	1,5 %
5509 61		16,0 %	1,5 %
5509 62		16,0 %	1,5 %
5509 69		16,0 %	1,5 %
5509 91		16,0 %	1,5 %
5509 92		16,0 %	1,5 %
5509 99		16,0 %	1,5 %
5510 11		16,0 %	1,5 %
5510 12		16,0 %	1,5 %
5510 20		16,0 %	1,5 %
5510 30		16,0 %	1,5 %
5510 90		16,0 %	1,5 %
5511 10		18,0 %	1,5 %
5511 20		18,0 %	1,5 %
5511 30		18,0 %	1,5 %
5512 11		18,0 %	1,5 %
5512 19		18,0 %	1,5 %
5512 21		18,0 %	1,5 %
5512 29		18,0 %	1,5 %
5512 91 10	Woven fabrics of synthetic staple fibers, containing 85 % or more by weight of aramid staple fibres, unbleached or bleached	2,0 %	1,5 %
5512 91 90	Woven fabrics of synthetic staple fibers, other than those containing 85 % or more by weight of polyester, acrylic, modacrylic or aramid staple fibres, unbleached or bleached	18,0 %	1,5 %
5512 99 10	Woven fabrics of synthetic staple fibres, containing 85 % or more by weight of aramid staple fibres, other than unbleached or bleached	2,0 %	1,5 %
5512 99 90	Woven fabrics of synthetic staple fibres, other than those containing 85 % or more by weight of polyester, acrylic, modacrylic or aramid staple fibres, other than unbleached or bleached	18,0 %	1,5 %
5513 11		18,0 %	1,5 %
5513 12		18,0 %	1,5 %
5513 13		18,0 %	1,5 %
5513 19		18,0 %	1,5 %
5513 21		18,0 %	1,5 %
5513 22		18,0 %	1,5 %
5513 23		18,0 %	1,5 %
5513 29		18,0 %	1,5 %
5513 31		18,0 %	1,5 %

(1)	(2)	(3)	(4)
5513 32		18,0 %	1,5 %
5513 33		18,0 %	1,5 %
5513 39		18,0 %	1,5 %
5513 41		18,0 %	1,5 %
5513 42		18,0 %	1,5 %
5513 43		18,0 %	1,5 %
5513 49		18,0 %	1,5 %
5514 11		18,0 %	1,5 %
5514 12		18,0 %	1,5 %
5514 13		18,0 %	1,5 %
5514 19		18,0 %	1,5 %
5514 21		18,0 %	1,5 %
5514 22		18,0 %	1,5 %
5514 23		18,0 %	1,5 %
5514 29		18,0 %	1,5 %
5514 31		18,0 %	1,5 %
5514 32		18,0 %	1,5 %
5514 33		18,0 %	1,5 %
5514 39		18,0 %	1,5 %
5514 41		18,0 %	1,5 %
5514 42		18,0 %	1,5 %
5514 43		18,0 %	1,5 %
5514 49		18,0 %	1,5 %
5515 11		18,0 %	1,5 %
5515 12		18,0 %	1,5 %
5515 13		18,0 %	1,5 %
5515 19		18,0 %	1,5 %
5515 21		18,0 %	1,5 %
5515 22		18,0 %	1,5 %
5515 29		18,0 %	1,5 %
5515 91		18,0 %	1,5 %
5515 92		18,0 %	1,5 %
5515 99		18,0 %	1,5 %
5516 11		18,0 %	1,5 %
5516 12		18,0 %	1,5 %
5516 13		18,0 %	1,5 %
5516 14		18,0 %	1,5 %
5516 21		18,0 %	1,5 %
5516 22		18,0 %	1,5 %
5516 23		18,0 %	1,5 %
5516 24		18,0 %	1,5 %
5516 31		18,0 %	1,5 %
5516 32		18,0 %	1,5 %
5516 33		18,0 %	1,5 %
5516 34		18,0 %	1,5 %

(1)	(2)	(3)	(4)
5516 41		18,0 %	1,5 %
5516 42		18,0 %	1,5 %
5516 43		18,0 %	1,5 %
5516 44		18,0 %	1,5 %
5516 91		18,0 %	1,5 %
5516 92		18,0 %	1,5 %
5516 93		18,0 %	1,5 %
5516 94		18,0 %	1,5 %
5601 10		18,0 %	1,5 %
5601 21		18,0 %	1,5 %
5601 22 11	Wadding of textiles, of aramid (aromatic polyamide)	2,0 %	1,5 %
5601 22 19	Wadding of textiles, of man-made fibres other than aramid (aromatic polyamide)	18,0 %	1,5 %
5601 22 91	Cylinders for cigarette filters of wadding of man-made fibres	18,0 %	1,5 %
5601 22 99	Articles of wadding other than cylinders for cigarette filters, of man-made fibres	18,0 %	1,5 %
5601 29		18,0 %	1,5 %
5601 30 10	Textile fibres, not exceeding 5 mm in length (flock), textile dust and mill neps, of aramid (aromatic polyamide)	2,0 %	1,5 %
5601 30 90	Textile fibres, not exceeding 5 mm in length (flock), textile dust and mill neps, other than those of aramid (aromatic polyamide)	18,0 %	1,5 %
5602 10		18,0 %	1,5 %
5602 21		18,0 %	1,5 %
5602 29		18,0 %	1,5 %
5602 90		18,0 %	1,5 %
5603 11 10	Nonwovens, whether or not impregnated, coated, covered or laminated, of a weight not exceeding 25 g/m^2, of aramid (aromatic polyamide)	2,0 %	1,5 %
5603 11 90	Nonwovens, whether or not impregnated, coated, covered or laminated, of man-made filaments other than those of aramid (aromatic polyamide), of a weight not exceeding 25 g/m^2	18,0 %	1,5 %
5603 12 10	Nonwovens, whether or not impregnated, coated, covered or laminated, of a weight exceeding 25 g/m^2 but not exceeding 70 g/m^2, of high density polyethylene	18,0 %	1,5 %
5603 12 20	Nonwovens, whether or not impregnated, coated, covered or laminated, of a weight exceeding 25 g/m^2 but not exceeding 70 g/m^2, of aramid (aromatic polyamide)	2,0 %	1,5 %
5603 12 90	Nonwovens, whether or not impregnated, coated, covered or laminated, of man-made filaments other than high density polyethylene or aramid (aromatic polyamide), of a weight exceeding 25 g/m^2 but not exceeding 70 g/m^2	18,0 %	1,5 %
5603 13 10	Nonwovens, whether or not impregnated, coated, covered or laminated, of a weight exceeding 70 g/m^2 but not exceeding 150 g/m^2, of high density polyethylene	18,0 %	1,5 %
5603 13 20	Nonwovens, whether or not impregnated, coated, covered or laminated, of a weight exceeding 70 g/m^2 but not exceeding 150 g/m^2, of aramid (aromatic polyamide)	2,0 %	1,5 %
5603 13 90	Nonwovens, whether or not impregnated, coated, covered or laminated, of man-made filaments other than high density polyethylene or aramid (aromatic polyamide), of a weight exceeding 70 g/m^2 but not exceeding 150 g/m^2	18,0 %	1,5 %

(1)	(2)	(3)	(4)
5603 14 10	Nonwovens, whether or not impregnated, coated, covered or laminated, of a weight exceeding 150 g/m^2, of aramid (aromatic polyamide)	2,0 %	1,5 %
5603 14 90	Nonwovens, whether or not impregnated, coated, covered or laminated, of man-made filaments other than aramid (aromatic polyamide), of a weight exceeding 150 g/m^2	18,0 %	1,5 %
5603 91		18,0 %	1,5 %
5603 92		18,0 %	1,5 %
5603 93		18,0 %	1,5 %
5603 94		18,0 %	1,5 %
5604 10		18,0 %	1,5 %
5604 20		18,0 %	1,5 %
5604 90 10	Textile yarn, and strip and the like of heading No 5404 or 5405, impregnated, coated, covered or sheathed with rubber or plastics, imitation catgut made of silk yarn	2,0 %	1,5 %
5604 90 90	Textile yarn, and strip and the like of heading No 5404 or 5405, impregnated, coated, covered or sheathed with rubber or plastics, other than high tenacity yarn of polyesters, of polyamides or of viscose rayon, impregnated or coated, other than imitation catgut made of silk yarn	18,0 %	1,5 %
5605 00		18,0 %	1,5 %
5606 00		18,0 %	1,5 %
5607 10 11	Twine, cordage, rope and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber or plastics, of jute, measuring less than 0.75 metric number per single yarn	2,0 %	1,5 %
5607 10 19	Twine, cordage, rope and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber or plastics, of jute, other than those measuring less than 0.75 metric number per single yarn	18,0 %	1,5 %
5607 10 90	Twine, cordage, rope and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber or plastics, of textile bast fibres of heading 5303 other than jute	18,0 %	1,5 %
5607 21		18,0 %	1,5 %
5607 29		18,0 %	1,5 %
5607 41		18,0 %	1,5 %
5607 49		18,0 %	1,5 %
5607 50		18,0 %	1,5 %
5607 90		18,0 %	1,5 %
5608 11		18,0 %	1,5 %
5608 19		18,0 %	1,5 %
5608 90		18,0 %	1,5 %
5609 00		18,0 %	1,5 %
5701 10		20,0 %	1,5 %
5701 90		20,0 %	1,5 %
5702 10		20,0 %	1,5 %
5702 20		20,0 %	1,5 %
5702 31		20,0 %	1,5 %
5702 32		20,0 %	1,5 %
5702 39		20,0 %	1,5 %
5702 41		20,0 %	1,5 %
5702 42		20,0 %	1,5 %
5702 49		20,0 %	1,5 %

(1)	(2)	(3)	(4)
5702 51		20,0 %	1,5 %
5702 52		20,0 %	1,5 %
5702 59		20,0 %	1,5 %
5702 91		20,0 %	1,5 %
5702 92		20,0 %	1,5 %
5702 99		20,0 %	1,5 %
5703 10		20,0 %	1,5 %
5703 20		20,0 %	1,5 %
5703 30		20,0 %	1,5 %
5703 90		20,0 %	1,5 %
5704 10		20,0 %	1,5 %
5704 90		20,0 %	1,5 %
5705 00		20,0 %	1,5 %
5801 10		18,0 %	1,5 %
5801 21		18,0 %	1,5 %
5801 22		18,0 %	1,5 %
5801 23		18,0 %	1,5 %
5801 24		18,0 %	1,5 %
5801 25		18,0 %	1,5 %
5801 26		18,0 %	1,5 %
5801 31		18,0 %	1,5 %
5801 32		18,0 %	1,5 %
5801 33		18,0 %	1,5 %
5801 34		18,0 %	1,5 %
5801 35		18,0 %	1,5 %
5801 36		18,0 %	1,5 %
5801 90		18,0 %	1,5 %
5802 11		18,0 %	1,5 %
5802 19		18,0 %	1,5 %
5802 20		18,0 %	1,5 %
5802 30		18,0 %	1,5 %
5803 10		18,0 %	1,5 %
5803 90		18,0 %	1,5 %
5804 10		18,0 %	1,5 %
5804 21		18,0 %	1,5 %
5804 29		18,0 %	1,5 %
5804 30		18,0 %	1,5 %
5805 00		18,0 %	1,5 %
5806 10		18,0 %	1,5 %
5806 20		18,0 %	1,5 %
5806 31		18,0 %	1,5 %
5806 32		18,0 %	1,5 %
5806 39		18,0 %	1,5 %
5806 40		18,0 %	1,5 %
5807 10		18,0 %	1,5 %

(1)	(2)	(3)	(4)
5807 90		18,0 %	1,5 %
5808 10		18,0 %	1,5 %
5808 90		18,0 %	1,5 %
5809 00		18,0 %	1,5 %
5810 10		18,0 %	1,5 %
5810 91		18,0 %	1,5 %
5810 92		18,0 %	1,5 %
5810 99		18,0 %	1,5 %
5811 00		18,0 %	1,5 %
5901 10		16,0 %	1,5 %
5901 90		16,0 %	1,5 %
5902 10 10	Tire cord fabric of high tenacity yarn of nylon or other polyamides, impregnated, coated or covered with rubber	16,0 %	1,5 %
5902 10 90	Tire cord fabric of high tenacity yarn of nylon or other polyamides, other than impregnated, coated or covered with rubber	14,0 %	1,5 %
5902 20		16,0 %	1,5 %
5902 90		14,0 %	1,5 %
5903 10		16,0 %	1,5 %
5903 20		16,0 %	1,5 %
5903 90		16,0 %	1,5 %
5904 10		16,0 %	1,5 %
5904 90		16,0 %	1,5 %
5905 00		16,0 %	1,5 %
5906 10		16,0 %	1,5 %
5906 91		16,0 %	1,5 %
5906 99		16,0 %	1,5 %
5907 00		16,0 %	1,5 %
5908 00		16,0 %	1,5 %
5909 00		16,0 %	1,5 %
5910 00		16,0 %	1,5 %
5911 10		16,0 %	1,5 %
5911 20		16,0 %	1,5 %
5911 31		16,0 %	1,5 %
5911 32		16,0 %	1,5 %
5911 40		16,0 %	1,5 %
5911 90		16,0 %	1,5 %
6001 10		18,0 %	1,5 %
6001 21		18,0 %	1,5 %
6001 22		18,0 %	1,5 %
6001 29		18,0 %	1,5 %
6001 91		18,0 %	1,5 %
6001 92		18,0 %	1,5 %
6001 99		18,0 %	1,5 %
6002 40		18,0 %	1,5 %

(1)	(2)	(3)	(4)
6002 90		18,0 %	1,5 %
6003 10		18,0 %	1,5 %
6003 20		18,0 %	1,5 %
6003 30		18,0 %	1,5 %
6003 40		18,0 %	1,5 %
6003 90		18,0 %	1,5 %
6004 10		18,0 %	1,5 %
6004 90		18,0 %	1,5 %
6005 10		18,0 %	1,5 %
6005 21		18,0 %	1,5 %
6005 22		18,0 %	1,5 %
6005 23		18,0 %	1,5 %
6005 24		18,0 %	1,5 %
6005 31		18,0 %	1,5 %
6005 32		18,0 %	1,5 %
6005 33		18,0 %	1,5 %
6005 34		18,0 %	1,5 %
6005 41		18,0 %	1,5 %
6005 42		18,0 %	1,5 %
6005 43		18,0 %	1,5 %
6005 44		18,0 %	1,5 %
6005 90		18,0 %	1,5 %
6006 10		18,0 %	1,5 %
6006 21		18,0 %	1,5 %
6006 22		18,0 %	1,5 %
6006 23		18,0 %	1,5 %
6006 24		18,0 %	1,5 %
6006 31		18,0 %	1,5 %
6006 32		18,0 %	1,5 %
6006 33		18,0 %	1,5 %
6006 34		18,0 %	1,5 %
6006 41		18,0 %	1,5 %
6006 42		18,0 %	1,5 %
6006 43		18,0 %	1,5 %
6006 44		18,0 %	1,5 %
6006 90		18,0 %	1,5 %
6101 10		20,0 %	1,5 %
6101 20		20,0 %	1,5 %
6101 30		20,0 %	1,5 %
6101 90		20,0 %	1,5 %
6102 10		20,0 %	1,5 %
6102 20		20,0 %	1,5 %
6102 30		20,0 %	1,5 %
6102 90		20,0 %	1,5 %
6103 11		20,0 %	1,5 %

(1)	(2)	(3)	(4)
6103 12		20,0 %	1,5 %
6103 19		20,0 %	1,5 %
6103 21		20,0 %	1,5 %
6103 22		20,0 %	1,5 %
6103 23		20,0 %	1,5 %
6103 29		20,0 %	1,5 %
6103 31		20,0 %	1,5 %
6103 32		20,0 %	1,5 %
6103 33		20,0 %	1,5 %
6103 39		20,0 %	1,5 %
6103 41		20,0 %	1,5 %
6103 42		20,0 %	1,5 %
6103 43		20,0 %	1,5 %
6103 49		20,0 %	1,5 %
6104 11		20,0 %	1,5 %
6104 12		20,0 %	1,5 %
6104 13		20,0 %	1,5 %
6104 19		20,0 %	1,5 %
6104 21		20,0 %	1,5 %
6104 22		20,0 %	1,5 %
6104 23		20,0 %	1,5 %
6104 29		20,0 %	1,5 %
6104 31		20,0 %	1,5 %
6104 32		20,0 %	1,5 %
6104 33		20,0 %	1,5 %
6104 39		20,0 %	1,5 %
6104 41		20,0 %	1,5 %
6104 42		20,0 %	1,5 %
6104 43		20,0 %	1,5 %
6104 44		20,0 %	1,5 %
6104 49		20,0 %	1,5 %
6104 51		20,0 %	1,5 %
6104 52		20,0 %	1,5 %
6104 53		20,0 %	1,5 %
6104 59		20,0 %	1,5 %
6104 61		20,0 %	1,5 %
6104 62		20,0 %	1,5 %
6104 63		20,0 %	1,5 %
6104 69		20,0 %	1,5 %
6105 10		20,0 %	1,5 %
6105 20		20,0 %	1,5 %
6105 90		20,0 %	1,5 %
6106 10		20,0 %	1,5 %
6106 20		20,0 %	1,5 %
6106 90		20,0 %	1,5 %

(1)	(2)	(3)	(4)
6107 11		20,0 %	1,5 %
6107 12		20,0 %	1,5 %
6107 19		20,0 %	1,5 %
6107 21		20,0 %	1,5 %
6107 22		20,0 %	1,5 %
6107 29		20,0 %	1,5 %
6107 91		20,0 %	1,5 %
6107 92		20,0 %	1,5 %
6107 99		20,0 %	1,5 %
6108 11		20,0 %	1,5 %
6108 19		20,0 %	1,5 %
6108 21		20,0 %	1,5 %
6108 22		20,0 %	1,5 %
6108 29		20,0 %	1,5 %
6108 31		20,0 %	1,5 %
6108 32		20,0 %	1,5 %
6108 39		20,0 %	1,5 %
6108 91		20,0 %	1,5 %
6108 92		20,0 %	1,5 %
6108 99		20,0 %	1,5 %
6109 10		20,0 %	1,5 %
6109 90		20,0 %	1,5 %
6110 11		20,0 %	1,5 %
6110 12		20,0 %	1,5 %
6110 19		20,0 %	1,5 %
6110 20		20,0 %	1,5 %
6110 30		20,0 %	1,5 %
6110 90		20,0 %	1,5 %
6111 10		20,0 %	1,5 %
6111 20		20,0 %	1,5 %
6111 30		20,0 %	1,5 %
6111 90		20,0 %	1,5 %
6112 11		20,0 %	1,5 %
6112 12		20,0 %	1,5 %
6112 19		20,0 %	1,5 %
6112 20		20,0 %	1,5 %
6112 31		20,0 %	1,5 %
6112 39		20,0 %	1,5 %
6112 41		20,0 %	1,5 %
6112 49		20,0 %	1,5 %
6113 00		20,0 %	1,5 %
6114 10		20,0 %	1,5 %
6114 20		20,0 %	1,5 %
6114 30		20,0 %	1,5 %
6114 90		20,0 %	1,5 %

(1)	(2)	(3)	(4)
6115 11		20,0 %	1,5 %
6115 12		20,0 %	1,5 %
6115 19		20,0 %	1,5 %
6115 20		20,0 %	1,5 %
6115 91		20,0 %	1,5 %
6115 92		20,0 %	1,5 %
6115 93		20,0 %	1,5 %
6115 99		20,0 %	1,5 %
6116 10		20,0 %	1,5 %
6116 91		20,0 %	1,5 %
6116 92		20,0 %	1,5 %
6116 93		20,0 %	1,5 %
6116 99		20,0 %	1,5 %
6117 10		20,0 %	1,5 %
6117 20		20,0 %	1,5 %
6117 80		20,0 %	1,5 %
6117 90		20,0 %	1,5 %
6201 11		20,0 %	1,5 %
6201 12		20,0 %	1,5 %
6201 13		20,0 %	1,5 %
6201 19		20,0 %	1,5 %
6201 91		20,0 %	1,5 %
6201 92		20,0 %	1,5 %
6201 93		20,0 %	1,5 %
6201 99		20,0 %	1,5 %
6202 11		20,0 %	1,5 %
6202 12		20,0 %	1,5 %
6202 13		20,0 %	1,5 %
6202 19		20,0 %	1,5 %
6202 91		20,0 %	1,5 %
6202 92		20,0 %	1,5 %
6202 93		20,0 %	1,5 %
6202 99		20,0 %	1,5 %
6203 11		20,0 %	1,5 %
6203 12		20,0 %	1,5 %
6203 19		20,0 %	1,5 %
6203 21		20,0 %	1,5 %
6203 22		20,0 %	1,5 %
6203 23		20,0 %	1,5 %
6203 29		20,0 %	1,5 %
6203 31		20,0 %	1,5 %
6203 32		20,0 %	1,5 %
6203 33		20,0 %	1,5 %
6203 39		20,0 %	1,5 %
6203 41		20,0 %	1,5 %

(1)	(2)	(3)	(4)
6203 42		20,0 %	1,5 %
6203 43		20,0 %	1,5 %
6203 49		20,0 %	1,5 %
6204 11		20,0 %	1,5 %
6204 12		20,0 %	1,5 %
6204 13		20,0 %	1,5 %
6204 19		20,0 %	1,5 %
6204 21		20,0 %	1,5 %
6204 22		20,0 %	1,5 %
6204 23		20,0 %	1,5 %
6204 29		20,0 %	1,5 %
6204 31		20,0 %	1,5 %
6204 32		20,0 %	1,5 %
6204 33		20,0 %	1,5 %
6204 39		20,0 %	1,5 %
6204 41		20,0 %	1,5 %
6204 42		20,0 %	1,5 %
6204 43		20,0 %	1,5 %
6204 44		20,0 %	1,5 %
6204 49		20,0 %	1,5 %
6204 51		20,0 %	1,5 %
6204 52		20,0 %	1,5 %
6204 53		20,0 %	1,5 %
6204 59		20,0 %	1,5 %
6204 61		20,0 %	1,5 %
6204 62		20,0 %	1,5 %
6204 63		20,0 %	1,5 %
6204 69		20,0 %	1,5 %
6205 10		20,0 %	1,5 %
6205 20		20,0 %	1,5 %
6205 30		20,0 %	1,5 %
6205 90		20,0 %	1,5 %
6206 10		20,0 %	1,5 %
6206 20		20,0 %	1,5 %
6206 30		20,0 %	1,5 %
6206 40		20,0 %	1,5 %
6206 90		20,0 %	1,5 %
6207 11		20,0 %	1,5 %
6207 19		20,0 %	1,5 %
6207 21		20,0 %	1,5 %
6207 22		20,0 %	1,5 %
6207 29		20,0 %	1,5 %
6207 91		20,0 %	1,5 %
6207 92		20,0 %	1,5 %
6207 99		20,0 %	1,5 %

(1)	(2)	(3)	(4)
6208 11		20,0 %	1,5 %
6208 19		20,0 %	1,5 %
6208 21		20,0 %	1,5 %
6208 22		20,0 %	1,5 %
6208 29		20,0 %	1,5 %
6208 91		20,0 %	1,5 %
6208 92		20,0 %	1,5 %
6208 99		20,0 %	1,5 %
6209 10		20,0 %	1,5 %
6209 20		20,0 %	1,5 %
6209 30		20,0 %	1,5 %
6209 90		20,0 %	1,5 %
6210 10		20,0 %	1,5 %
6210 20		20,0 %	1,5 %
6210 30		20,0 %	1,5 %
6210 40		20,0 %	1,5 %
6210 50		20,0 %	1,5 %
6211 11		20,0 %	1,5 %
6211 12		20,0 %	1,5 %
6211 20		20,0 %	1,5 %
6211 31		20,0 %	1,5 %
6211 32		20,0 %	1,5 %
6211 33		20,0 %	1,5 %
6211 39		20,0 %	1,5 %
6211 41		20,0 %	1,5 %
6211 42		20,0 %	1,5 %
6211 43		20,0 %	1,5 %
6211 49		20,0 %	1,5 %
6212 10		20,0 %	1,5 %
6212 20		20,0 %	1,5 %
6212 30		20,0 %	1,5 %
6212 90		20,0 %	1,5 %
6213 10		20,0 %	1,5 %
6213 20		20,0 %	1,5 %
6213 90		20,0 %	1,5 %
6214 10		20,0 %	1,5 %
6214 20		20,0 %	1,5 %
6214 30		20,0 %	1,5 %
6214 40		20,0 %	1,5 %
6214 90		20,0 %	1,5 %
6215 10		20,0 %	1,5 %
6215 20		20,0 %	1,5 %
6215 90		20,0 %	1,5 %
6216 00		20,0 %	1,5 %
6217 10		20,0 %	1,5 %

(1)	(2)	(3)	(4)
6217 90		20,0 %	1,5 %
6301 10		20,0 %	1,5 %
6301 20		20,0 %	1,5 %
6301 30		20,0 %	1,5 %
6301 40		20,0 %	1,5 %
6301 90		20,0 %	1,5 %
6302 10		20,0 %	1,5 %
6302 21		20,0 %	1,5 %
6302 22		20,0 %	1,5 %
6302 29		20,0 %	1,5 %
6302 31		20,0 %	1,5 %
6302 32		20,0 %	1,5 %
6302 39		20,0 %	1,5 %
6302 40		20,0 %	1,5 %
6302 51		20,0 %	1,5 %
6302 52		20,0 %	1,5 %
6302 53		20,0 %	1,5 %
6302 59		20,0 %	1,5 %
6302 60		20,0 %	1,5 %
6302 91		20,0 %	1,5 %
6302 92		20,0 %	1,5 %
6302 93		20,0 %	1,5 %
6302 99		20,0 %	1,5 %
6303 11		20,0 %	1,5 %
6303 12		20,0 %	1,5 %
6303 19		20,0 %	1,5 %
6303 91		20,0 %	1,5 %
6303 92		20,0 %	1,5 %
6303 99		20,0 %	1,5 %
6304 11		20,0 %	1,5 %
6304 19		20,0 %	1,5 %
6304 91		20,0 %	1,5 %
6304 92		20,0 %	1,5 %
6304 93		20,0 %	1,5 %
6304 99		20,0 %	1,5 %
6305 10		16,0 %	1,5 %
6305 20		16,0 %	1,5 %
6305 32		16,0 %	1,5 %
6305 33		16,0 %	1,5 %
6305 39		16,0 %	1,5 %
6305 90		16,0 %	1,5 %
6306 11		20,0 %	1,5 %
6306 12		20,0 %	1,5 %
6306 19		20,0 %	1,5 %
6306 21		20,0 %	1,5 %

(1)	(2)	(3)	(4)
6306 22		20,0 %	1,5 %
6306 29		20,0 %	1,5 %
6306 31		20,0 %	1,5 %
6306 39		20,0 %	1,5 %
6306 41		20,0 %	1,5 %
6306 49		20,0 %	1,5 %
6306 91		20,0 %	1,5 %
6306 99		20,0 %	1,5 %
6307 10		20,0 %	1,5 %
6307 20		20,0 %	1,5 %
6307 90 10	Other made-up articles, including dress patterns, other than floor-cloths, dish-cloths, dusters and similar cleaning cloths, other than life-jackets and life-belts, of non-wovens	20,0 %	1,5 %
6307 90 20	Other made-up articles, flame-retardant tubular articles, for use as an emergency exit for people, whether or not containing accessories for assembly, other than of non-wovens	2,0 %	1,5 %
6307 90 90	Other made-up articles, including dress patterns, other than floor-cloths, dish-cloths, dusters and similar cleaning cloths, other than life-jackets and life-belts, other than of non-wovens, other than flame-retardant tubular articles, for use as an emergency exit for people whether or not containing accessories for assembly	20,0 %	1,5 %
6308 00		20,0 %	1,5 %
6310 10		20,0 %	1,5 %
6310 90		20,0 %	1,5 %

The description of the products is deemed to be indicative only. The scope of the arrangements provided for in this Regulation is, for the purposes of this Annex, determined by the scope of the codes as they exist at the time of the adoption of the latest amendment of this Regulation.

ANNEX 2

In order to avoid circumvention of import regulations applied by the Federative Republic of Brazil and the European Community:

1. In accordance with Paragraph 4 of the MoU, the European Community will subject to a double-checking system the categories previously under quotas, i.e. Categories 1, 2, 2A, 3, 4, 6, 6C, 9, 20, 22 and 39. In accordance with such a system, as provided for in Articles 18 to 24 of Annex III to Council Regulation (EEC) No 3030/93, the licensing offices of the European Community shall issue import licences automatically without restriction, within five days from the presentation of an export licence, and free of charge. Both Parties can enter into an administrative arrangement providing for the transmission of data concerning export licenses in an electronic form replacing the granting of export licences in a paper form.

2. The European Community will closely co-operate with Brazil to ensure the authenticity of the origin of exports from the European Union of textiles and clothing products covered by this agreement, and in particular the following:

   CN code [1]:

5402 31 00	5503 20 00	5804 10 90	6110 19	6211 11 00
5402 32 00	5503 30 00	5804 21	6110 30	6211 33
5402 33 00	5509 32	5810 92	6110 90	6211 43
5402 41 00	5513 11	5810 99	6111 30	6305 10
5402 42 00	5514 13 00	60	6112 12 00	6308 00 00
5402 52 00	5515	6103 43	6203	
5406 10 00	5516 12 00	6106 20 00	6204	
5407	5516 13 00	6106 90	6205	
5408	5516 14 00	6110 11	6206	
5501 30 00	5516 22 00	6110 12	6208 22 00	
	5516 92 00			

   Such co-operation will be carried out in accordance with the provisions of Title V of Protocol A in the Agreement between the EC and Brazil on trade in textile products of 12 September 1986.

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[1] The products covered by this list are determined by the corresponding product description of 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).

Agreed Minute (referred to in Paragraph 5 of the MoU)

In the context of the Agreement in the form of a Memorandum of Understanding on trade in textile and clothing products between the European Community and the Federative Republic of Brazil initialled in Brasilia on 8 August 2002 and more particularly with reference to Paragraph 5 thereof the Parties recorded their understanding that non-tariff barriers related to all forms of hindrance to trade in the sector are not to be applied by any of the Parties. Bearing in mind their WTO commitments (rights and obligations), the Parties agree these non-tariff barriers include but are not limited to matters such as:

— any additional customs duties on the import or sale of products of EU or Brazilian origin in excess of those set out in the Agreement, or any fees and charges in connection with importation or exportation in excess of the approximate cost of services rendered ([1]);

— any taxes which are higher than any such taxes imposed on the production or sale of equivalent domestic goods;

— technical regulations or standards, or conformity assessment or certification rules, procedures or practices going beyond the purposes for which they are required;

— any indicative values resulting in effective application of minimum prices or arbitrary and fictitious prices or any customs valuation rules, procedures or practices giving rise to barriers to trade;

— rules, procedures or practices for pre-shipment inspection that are discriminatory, non-transparent, excessively lengthy or burdensome, and the imposition of customs controls for the clearance of goods to shipments that have already been subject of pre-shipment inspection;

— excessively burdensome, costly or arbitrary rules, procedures or practices concerning the certification of the origin of products or requiring direct shipment of goods from the country of origin to the country of destination;

— any non-automatic, discretionary or other licensing requirements, rules, procedures or practices imposing disproportionate burdens or having restrictive effects on imports. In particular application for automatic licenses submitted in an appropriate and complete form should be approved immediately on receipt, to the extent administratively feasible, but within a maximum of 10 working days;

— requirements or practices concerning marking, labelling, the description of composition of the product or the description of the manufacturing of products which, either in their formulation or in their application, are in any form discriminatory as compared with domestic products and non more trade restrictive than necessary to fulfil a legitimate objective ([2]);

— unduly long customs clearance delays or excessively burdensome, non-transparent or costly customs procedures, including inspection requirements, which have an unnecessary restrictive effect on imports;

— subsidies causing injury to the textiles and clothing industry of the other Party.

In order to facilitate legitimate trade, notwithstanding the need of effective control, the Parties undertake to:

— co-operate and exchange information on all issues concerning customs legislation and procedures, and in particular to deal promptly with problems faced by operators arising from measures covered by this agreement;

([1]) The Parties understand that the AFRMM is not covered by this provision.

([2]) The European Community agrees that eco-labelling requirements in the textile sector will not be applied as an additional hindrance to imports from Brazil.

— provide effective, non-discriminatory and prompt procedures enabling the right of appeal against customs and other agency administrative actions, ruling and decisions affecting import or export of goods;

— establish an appropriate consultation mechanism between customs administrations and traders on customs regulations and procedures;

— publish, as far as possible through electronic means, and publicise new legislation and general procedures related to customs, as well as any modification, no later than the entry into force of any such legislation and procedures;

— co-operate with a view to reaching a common approach to issues relating to customs valuation, in particular the elaboration of a 'code of good practices' in relation to working methods and operational aspects, the use of indicative or reference indices, appropriate documentation to certify the accuracy of the customs value and the use of securities. The Parties agree to open negotiations on the 'code of good practices' at the entry into force of the present Memorandum of Understanding and to conclude them as soon as possible.

Additional agreed minute

The European Community notes the commitment by the Government of Brazil to make its best endeavours so that the additional tax of 1,5 % applied on imports of goods into Brazil and initially expiring on 31 December 2002 will not be applied beyond that date for the products listed in Annex 1 of the Memorandum of Understanding. The European Community considers that the discontinuation of this tax for the products listed in Annex 1 of the Memorandum of Understanding from 31 December 2002 is part of the balance of concessions of the agreement. If, however, this additional tax of 1,5 % is extended for the products listed in Annex 1 of the Memorandum of Understanding, the European Community agrees to grant a maximum period of three months, beginning 1 January 2003, for its expiration. Should such tax be extended beyond that date, the European Community and the Federative Republic of Brazil agree that the European Community can reintroduce the quota for either category 2A or for category 9 at the levels corresponding to their bilateral understanding notified under the present Agreement on Textiles and Clothing (ATC). Before reintroducing this quota, the European Community will notify Brazil of its intention of doing so. Brazil and the European Community agree to hold consultations prior to the reintroduction of such quota within 60 days of the request of either Party. In the event the Parties cannot agree on appropriate remedial action within 60 days from the request the consultations, the European Community will have the right to re-introduce the quota as from 1 June 2003 on.

Declaration

In the context of the Agreement in the form of a Memorandum of Understanding on trade in textile and clothing products between the European Community and the Federative Republic of Brazil and the Agreed Minute thereto initialled in Brasilia on 8 August 2002, and more particularly with reference to the possible reintroduction of quotas in the event of a failure by Brazil to fulfil the obligations referred to in Paragraphs 2 and 5 in the same way as Brazil retains the right to suspend the application of its commitments on Paragraphs 2 and 5, should the European Community reapply quotas in a manner inconsistent with its obligations under this agreement or fail to fulfil any of the obligations contained in Paragraph 5, the Parties declare that the commitments taken concerning non-tariff barriers are bilateral commitments entered into between the parties independently of any multilateral commitments also applicable to the Parties. In consequence the Parties agree that the application of these provisions is of a purely bilateral nature. The Parties further agree that these bilateral commitments are not intended to go beyond or place them under higher standards or obligations than the level of commitments they have entered into in a multilateral context. This agreement is without prejudice to the rights and obligations of the Parties under multilateral agreements to which both are Parties.

With respect to existing taxes, fees or charges applied by any of the two Parties not covered by the Agreed Minute, it is understood they are subject to WTO rules.

'Side Letter'

With reference to the Memorandum of Understanding between the Federative Republic of Brazil and the European Union of 8 August 2002 and as part of the result of these negotiations, it is agreed that both Parties will seek an early elimination, either upon entry into force or at the latest in stage 1 of the industrial tariff dismantling schedule, of customs duties applied to all products listed in Annex 1 of the Memorandum of Understanding under the EU-Mercosur FTA.

Proposal for a Council Directive amending Directive 88/407/EEC laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the bovine species

(2003/C 20 E/22)

COM(2002) 527 final — 2002/0229(CNS)

(Submitted by the Commission on 25 September 2002)

EXPLANATORY MEMORANDUM

Council Directive 88/407/EEC lays down the animal health requirements applicable to intra-Community trade in, and imports of semen of domestic animals of the bovine species.

This Directive needs to be amended.

The purpose of this proposal is:

— to allow the storage of semen at other premises than the Artificial Insemination centre where semen was collected,

— to amend, in the light of the new scientific data available and the new provisions laid down in the Office International des Epizooties (OIE), the animal health conditions applicable to entry of bulls into AI centres, in particular concerning infectious bovine rhinothracheitis (IBR/IPV) and bovine viral diarrhoea (BVD/MD),

— to simplify, at the Community level, the procedure for the agreement and listing of AI centres in third countries. These lists are frequently modified on the basis of the information sent by the competent authorities of third countries (address, name, new establishment, etc.),

— to allow the Commission to amend, following the comitology procedure, the annexes of Directive 88/407/EEC as they cover technical points relating to approval of centres and conditions of admission of bulls onto centres.

The proposal has no financial impact on Community budget.

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,

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

Whereas:

(1) Directive 88/407/EEC [1] lays down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the bovine species.

(2) In the light of the new scientific data available, it is necessary to amend the animal health conditions applying to entry of bulls into artificial insemination centres, in particular concerning infectious bovine rhinotracheitis/infectious pustular vulvovaginitis (IBR/IPV) and bovine viral diarrhoea/mucosal diarrhoea (BVD/MD).

(3) The procedure to establish the list of semen collection centres in third countries from which the importation of semen is authorised should be simplified.

(4) The same requirements for storage should apply to all establishments whether or not they are associated with a production unit.

(5) The necessary measures for the implementation of this Directive are of general scope within the meaning of Article 2 of Council Decision 1999/468 of 28 June 1999 laying down the procedures for the exercise of implementation powers conferred on the Commission, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision,

[1] OJ L 194, 22.7.1988, p. 10.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 88/407/EEC is hereby amended as follows:

1. Article 2(b) is replaced by the following:

   '(b) "Semen collection centre" means an officially approved and supervised establishment situated in the territory of a Member State or third country, in which semen is produced and stored for use in artificial insemination;

   "Semen storage centre" means an officially approved and supervised establishment situated in the territory of a Member State or third country in which semen is stored for use in artificial insemination.'

2. Article 3(a) is replaced by the following:

   '(a) it must have been collected, processed and/or stored in a centre or centres approved in accordance with Article 5(1).'

3. Articles 4(1) and 4(2) are deleted.

4. In Articles 5, 9(2) and 9(3), the words 'semen collection centre(s)' are replaced by the words 'semen collection or storage centre(s)'.

5. Article 9(1) is replaced by the following:

   '1. The Commission shall establish the lists of semen collection and storage centres from which the Member States may authorise the importation of semen originating in third countries.

   The Commission shall inform the Member States of the modifications proposed by the third country concerned to the lists of centres.

   The Member States shall have ten working days, from receipt of the proposed modifications, to send any written comments to the Commission.

   Where no comments are received from Member States within the time limit laid down in the third sub-paragraph, the modifications to the lists shall be considered to have been accepted by the Member States and imports shall be authorised from such centres when the Commission notifies the competent authorities of the Member states and third country concerned that the modifications are published on the website of the Commission.

   Where written comments are made by at least one Member State, the Commission shall inform the Member States and include the point on the next meeting of the Standing Committee on the Food Chain and Animal Health for decision in accordance with the procedure referred to in Article 18.'

6. Article 17 shall be replaced by:

   'The Annexes to this Directive shall be amended in accordance with the procedure set out in Article 18, in particular to adapt them to advances in technology.'

7. Article 18 is replaced by:

   '*Article 18*

   1. Where the procedure referred to in this Article is to be used the Commission shall be assisted by the Standing Committee on the Food Chain and Animal Health set up by Regulation 2002/178/EC shall act in accordance with the procedure laid down in Article 5 of Decision 1999/468/EC and in compliance with Article 7(3) thereof.

   2. The period referred to in Article 5(6) of Decision 1999/468/EC shall be three months.'

8. Article 19 is deleted.

9. In Articles 8, 9, 11 and 16, the words 'the procedure laid down in article 19' are replaced by the words 'the procedure referred to in article 18'.

10. Annexes A, B, C and D to Directive 88/407/EEC are replaced by the text in the Annex to this Directive.

Article 2

1. 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 shall be accompanied by such reference on the occasion of their official publication. The Member States shall adopt the methods of making such reference.

2. Member States shall inform the Commission of the text of the essential provisions of national law, which they adopt in the area governed by this Directive.

Article 3

This Directive shall enter into force on the . . . following that of its publication in the *Official Journal of the European Communities*. Intra-community trade in and imports of semen certified according to the provisions and the model of certificate formerly in force shall be accepted for a period of six months after the date of publication of this Directive.

Article 4

This Directive is addressed to the Member States.

ANNEX

'*Annex A*

CHAPTER I

CONDITIONS FOR THE APPROVAL OF CENTRES

1. **Semen collection centres must:**

(a) be placed under the permanent supervision of a centre veterinarian;

(b) have a least:

(i) animal housing including isolation facilities;

(ii) semen collection facilities including a separate room for the cleaning and disinfection or sterilisation of equipment;

(iii) a semen processing room which need not necessarily be on the same site;

(iv) a semen storage room which need not necessarily be on the same site;

(c) be so constructed or isolated that contact with livestock outside is prevented;

(d) be so constructed that the animal housing and the semen collecting, processing and storage facilities can be readily cleaned and disinfected;

(e) have isolation accommodation which shall have no direct communication with the normal animal accommodation;

(f) be so designed that the animal accommodation is physically separated from the semen processing room and both are separated from the semen storage room.

2. **Semen storage centres must:**

(a) be placed under the permanent supervision of a centre veterinarian;

(b) be so constructed or isolated that contact with livestock outside is prevented;

(c) be so constructed that the storage facilities can be readily cleaned and disinfected;

CHAPTER II

CONDITIONS RELATING TO THE SUPERVISION OF CENTRES

1. **The collection centres must:**

(a) be so supervised that they contain only animals of the species whose semen is to be collected. Other domestic animals which are strictly necessary for the normal operation of the collection centre may nonetheless also be admitted, provided that they present no risk of infection to those species whose semen is to be collected, and that they fulfil the conditions laid down by the centre veterinarian;

(b) be so supervised that a record is kept of all bovine animals at the centre, giving details of the breed, date of birth and identification of each of the animals, and also a record of all checks for diseases and all vaccinations carried out for each animal;

(c) be regularly inspected by an official veterinarian, at least twice a year, in the context of standing checks on the conditions of approval and supervision;

(d) be so supervised that the entry of unauthorised persons is prevented. Furthermore, authorised visitors must be required to comply with the conditions laid down by the centre veterinarian;

(e) employ technically competent staff suitably trained in disinfection procedures and hygiene techniques relevant to the control of the spread of disease;

(f) be so supervised that:

(i) only semen collected at an approved centre is processed and stored in approved centres, without coming into contact with any other consignment of semen. However, semen not collected in an approved centre may be processed in approved collection centres provided that:

— such semen is produced from bovine animals which fulfil the conditions laid down in Chapter I. 1(d)(i), (ii), (iii) and (v) of Annex B,

— processing is carried out with separate equipment or at a different time from semen intended for intra-Community trade, the equipment in the latter case being cleaned and sterilised after use,

— such semen may not be the subject of intra-Community trade and cannot at any time come into contact with, or be stored with, semen intended for intra-Community trade,

— such semen is identifiable by a marking different from that provided for in point (vii).

Also deep-frozen embryos may be stored in approved centres provided that:

— such storage is authorised by the competent authority,

— the embryos meet the requirements of Council Directive 89/556/EEC of 25 September 1989 on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species,

— the embryos are stored in separate storage flasks in the premises for storing approved semen;

(ii) collection, processing and storage of semen takes place only on the premises set aside for the purpose and under the strictest conditions of hygiene;

(iii) all implements(?) which come into contact with the semen or the donor animal during collection and processing are properly disinfected or sterilised prior to use;

(iv) products of animal origin used in the processing of semen — including additives or a diluent — are obtained from sources which present no animal health risk or are so treated prior to use that such risk is prevented;

(v) storage flasks and transport flasks are either properly disinfected or sterilised before the commencement of each filling operation, except for disposable containers;

(vi) the cryogenic agent used has not been previously used for other products of animal origin;

(vii) each individual dose of semen is clearly marked in such a way that the date of collection of the semen, the breed and identification of the donor animal, and the approval number of the centre, can be readily established; each Member State shall communicate to the Commission and other Member States the characteristics and form of the marking implemented on its territory;

(viii) the storage unit must comply with specific conditions relating to the supervision of semen storage centres provided in the following paragraph.

2. **The storage centres must:**

(a) be so supervised that a record is kept of all movement of semen (in and out the centre) and of the status of the donor bulls whose semen is stored there, and which must comply with the requirements of Directive 88/407/EEC;

(b) be regularly inspected by an official veterinarian, at least twice a year, in the context of the standing checks on the conditions of approval and supervision;

(c) be so supervised that the entry of unauthorised persons is prevented. Furthermore, authorised visitors must be required to comply with the conditions laid down by the centre veterinarian;

(d) employ technically competent staff suitably trained in disinfection procedures and hygiene techniques relevant to the control of the spread of disease;

(e) be so supervised that:

(i) only semen collected at collection centres approved in accordance with Directive 88/407/EEC is stored in approved storage centres, without coming into contact with any other semen.

Also deep-frozen embryos may be stored in approved centres provided that:

— such storage is authorised by the competent authority,

— the embryos meet the requirements of Council Directive 89/556/EEC of 25 September 1989 on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species,

— the embryos are stored in separate storage flasks in the premises for storing approved semen;

(ii) storage of semen takes place only on the premises set aside for the purpose and under the strictest conditions of hygiene;

(iii) all implements which come into contact with the semen are properly disinfected or sterilised prior to use;

(iv) storage flasks and transport flasks are either properly disinfected or sterilised before the commencement of each filling operation, except for disposable containers;

(v) the cryogenic agent used has not been previously used for other products of animal origin;

(vi) each individual dose of semen is clearly marked in such a way that the date of collection of the semen, the breed and identification of the donor animal, and the approval number of the centre, can be readily established; each Member State shall communicate to the Commission and other Member States the characteristics and form of the marking implemented on its territory.

Annex B

CHAPTER I

CONDITIONS APPLYING TO THE MOVEMENT OF ANIMALS INTO APPROVED SEMEN COLLECTION CENTRES

1. For all bovine animals admitted to a semen collection centre the following requirements apply:

(a) they have been subjected to a period of quarantine of at least 28 days in accommodation specifically approved for the purpose by the competent authority of the Member State, and where only other cloven-hoofed animals having at least the same health status are present;

(b) prior to their stay in the quarantine accommodation described in (a), they have belonged to a herd which is officially tuberculosis free and officially brucellosis free in accordance with Directive 64/432/EEC. The animals shall not previously have been kept in one herds of a lower status;

(c) they have come from a herd officially free of enzootic bovine leucosis as defined in Directive 64/432/EEC, or have been produced by dams which have been subjected, with negative results, to a test carried out in accordance with Annex D (Chapter II) of Directive 64/432/EEC, after removal of the animals from their dam. In the case of animals derived by embryo transfer, "dam" means the recipient of the embryo.

If this requirement cannot be fulfilled, the semen shall not be the subject of trade until the donor has reached the age of two years and has been tested in accordance with Chapter II. 1(c) with a negative result;

(d) within the 28 days preceding the period of quarantine specified in (a), they have been subjected to the following tests with negative results in each case, except for BVD/MD antibody test mentioned in (v):

(i) for bovine tuberculosis, an intradermal tuberculin test carried out in accordance with the procedure laid down in Annex B to Directive 64/432/EEC;

(ii) for bovine brucellosis, a serological test carried out in accordance with the procedure described in Annex C to Directive 64/432/EEC;

(iii) for enzootic bovine leukosis, a serological test carried out in accordance with the procedure laid down in Annex D (Chapter II) to Directive 64/432/EEC;

(iv) for IBR/IPV, a serological test (whole virus) on a blood sample if the animals don't come from an IBR/IPV free herd as defined in Article 2.3.5.3 of the International Animal Health Code;

(v) for BVD/MD,

— a virus isolation test or a test for virus antigen, and

— a serological test to determine the presence or absence of antibodies.

The competent authority may give authorisation for the tests referred to in (d) to be carried out on samples collected in the quarantine accommodation, provided that the results are known before the commencement of the quarantine period laid down in (a);

(e) during the quarantine period specified in (a), they have been subjected after at least 21 days of quarantine to the following tests with negative results, except in the case of for BVD/MD antibody serological testing (see (iii) below):

(i) for bovine brucellosis, a serological test carried out in accordance with the procedure described in Annex C to Directive 64/432/EEC;

(ii) for IBR/IPV, a serological test (whole virus) on a blood sample;

if any animals test positive, these animals shall be removed immediately from the quarantine station and the other animals of the same group shall remain in quarantine and be retested, with negative results, not less than 21 days after removal of the positive animal(s);

(iii) for BVD/MD,

— a virus isolation test or a test for virus antigen, and

— a serological test to determine the presence or absence of antibodies.

Only if no sero-conversion occurs in the animals, which tested seronegative before entry into the quarantine station, may any animal (seronegative or seropositive) be allowed entry to the semen collection facilities.

If sero-conversion occurs, all the animals that remain seronegative shall be kept in quarantine over a prolonged time, until there is no more sero-conversion in the group for a period of three weeks. Serologically positive animals may be allowed entry into the semen collection facilities;

(iv) for *campylobacter* fetus subsp *venerealis*:

— in the case of animals less than six months old or kept since that age in a single sex group prior to quarantine, a single test on a sample of artificial vagina washings or preputial specimen;

— in the case of animals aged six months or older that could have had contact with females prior to quarantine, a test three times at weekly intervals on a sample of artificial vagina washings or preputial specimen;

(v) for *trichomonas foetus*:

— in the case of animals less than six months old or kept since that age in a single sex group prior to quarantine, a test once on a sample of preputial specimen;

— in the case of animals aged six months or older that could have had contact with females prior to quarantine, a test three times at weekly intervals on a sample of preputial specimen;

if any of the above tests is positive, the animal must be removed forthwith from the isolation accommodation. In the case of group isolation, the competent authority must take all necessary measures to re-establish the eligibility of the remaining animals for entry into the collection centre in accordance with the Annex;

(f) prior to the initial dispatch of semen from BVD/MD serologically positive bulls, a semen sample from each animal shall be subjected to a virus isolation or virus antigen ELISA test for BVD/MD. In the event of a positive result, the bull shall be removed from the centre and all of its semen destroyed.

2. All tests must be carried out in a laboratory approved by the Member State.

3. Animals may only be admitted to the semen collection centre with the express permission of the centre veterinarian. All movements, both in and out, must be recorded.

4. No animal admitted to the semen collection centre may show any clinical sign of disease on the day of admission. All animals must, without prejudice to paragraph 5, have come from isolation accommodation as referred to in paragraph 1(a), which on the day of consignment, officially fulfils the following conditions:

(a) is situated in the centre of an area of 10 kilometres radius in which there has been no case of foot-and-mouth disease for at least 30 days;

(b) has for at least three months been free from foot-and-mouth disease and brucellosis;

(c) has for at least 30 days been free from those bovine diseases which are compulsorily notifiable in accordance with Annex E to Directive 64/432/EEC.

5. Provided that the conditions laid down in paragraph 4 are satisfied and the routine tests referred to in Chapter II have been carried out during the previous 12 months, animals may be transferred from one approved semen collection centre to another of equal health status, without isolation or testing if transfer is direct. The animal in question must not come into direct or indirect contact with cloven-hoofed animals of a lower health status and the means of transport used must have been disinfected before use. If the movement from one semen collection centre to another takes place between Member States it must take place in accordance with Directive 64/432/EEC.

CHAPTER II

ROUTINE TESTS WHICH MUST BE APPLIED TO ALL BOVINE ANIMALS IN AN APPROVED SEMEN COLLECTION CENTRE

1. All bovine animals kept at an approved semen collection centre must be subjected at least once a year to the following tests, with negative results:

(a) for bovine tuberculosis, an intradermal tuberculin test, carried out in accordance with the procedure laid down in Annex B to Directive 64/432/EEC;

(b) for bovine brucellosis, a serological test carried out in accordance with the procedure described in Annex C to Directive 64/432/EEC;

(c) for enzootic bovine leucosis, a serological test carried out in accordance with the procedure described in Annex D (Chapter II) to Directive 64/432/EEC;

(d) for IBR/IPV, a serological test (whole virus) on a blood sample;

(e) for BVD/MD, a serological antibody which is applied only to seronegative animals.

Should an animal become serologically positive, every ejaculate of that animal collected since the last negative test shall be either discarded or tested for virus with negative results;

(f) for *campylobacter fetus* subsp *venerealis*, a test on a sample of preputial specimen. Only bulls on semen production or having contact with bulls on semen production need to be tested. Bulls returning to collection after a lay off of more than six months shall be tested not more than 30 days prior to resuming production;

(g) for *trichomonas foetus*, a test on a sample of preputial specimen. Only bulls on semen production or having contact with bulls on semen production need to be tested. Bulls returning to collection after a lay off of more than six months shall be tested not more than 30 days prior to resuming production.

2. All tests must be carried out in a laboratory approved by the Member State.

3. If any of the above tests is positive, the animal must be isolated and the semen collected from it since the last negative test may not be the subject of intra-Community trade with the exception, for BVD/MD, of semen from every ejaculate which has been tested BVD/MD virus negative.

   Semen collected from all other animals at the centre since the date when the positive test was carried out shall be held in separate storage and may not be the subject of intra-Community trade until the health status of the centre has been restored.

Annex C

CONDITIONS WHICH SEMEN MUST SATISFY FOR THE PURPOSES OF INTRA-COMMUNITY TRADE

1. **Semen must be obtained from animals which:**

   (a) show no clinical signs of disease on the day the semen is collected;

   (b) (i) have not been vaccinated against foot-and-mouth disease during the 12 months prior to collection, or

   (ii) have been vaccinated against foot-and-mouth disease during the 12 months prior to collection, in which case 5 % (with a minimum of five straws) of each collection shall be submitted to virus isolation test for foot-and-mouth disease with negative results;

   (c) have not been vaccinated against foot-and-mouth disease within 30 days immediately prior to collection;

   (d) have been kept at an approved semen collection centre for a continuous period of at least 30 days immediately prior to the collection of the semen in the case of collections of fresh semen;

   (e) are not allowed to serve naturally;

   (f) are kept in semen collection centres which have been free from foot-and-mouth disease for at least three months prior to collection of the semen and 30 days after collection or, in the case of fresh semen, until the date of dispatch, and which are situated in the centre of an area of 10 kilometres radius in which for at least 30 days there has been no case of foot-and-mouth disease;

   (g) have been kept in semen collection centres which, during the period commencing 30 days prior to collection and ending 30 days after collection of the semen or, in the case of fresh semen, until the date of dispatch, have been free from those bovine diseases which are compulsorily notifiable in accordance with Annex E(I) to Directive 64/432/EEC.

2. **Antibiotics as listed below must be added to produce these concentrations in the final diluted semen:**

   not less than:

   — 500 µg streptomycin per ml final dilution,

   — 500 IU penicillin per ml final dilution,

   — 150 µg lincomycin per ml final dilution,

   — 300 µg spectinomycin per ml final dilution.

   An alternative combination of antibiotics with an equivalent effect against campylobacters, leptospires and mycoplasmas may be used.

   Immediately after their addition the diluted semen must be kept at a temperature of at least 5 °C for a period of not less than 45 minutes.

3. **Semen for intra-Community trade must:**

   (a) be stored in approved conditions for a minimum period of 30 days prior to dispatch. This requirement shall not apply to fresh semen;

   (b) be transported to the Member State of destination in flasks which have been cleaned and disinfected or sterilised before use and which have been sealed and numbered prior to dispatch from the approved storage facilities.

Annex D

HEALTH CERTIFICATE
FOR INTRA-COMMUNITY TRADE IN OF SEMEN OF DOMESTIC ANIMALS OF THE BOVINE SPECIES
IN ACCORDANCE WITH COUNCIL DIRECTIVE 88/407/EEC

1. Member State of provenance and competent authority	2. Health certificate No

A. ORIGIN OF SEMEN

3. Approval number of the centre of origin/provenance of the consignment: collection/storage (1)	
4. Name and address of centre of origin/provenance of the consignment: collection/storage (1)	5. Name and address of the consignor
6. Country and place of loading	7. Means of transport

B. DESTINATION OF SEMEN

8. Member State of destination	9. Name and address of the consignee

C. IDENTIFICATION OF SEMEN

10. Identification mark of the doses (2)	11. Number of doses	12. Approval number of the collection centre of origin

D. HEALTH INFORMATION

I, the undersigned official veterinarian, certify that:

(a) the semen described above was collected, processed and/or stored under conditions which comply with the standards laid down in Directive 88/407/EEC;

(b) the semen described above was sent to the place of loading in a sealed container under conditions which comply with Directive 88/407/EEC and bearing the number . . . . . .;

(c) the semen described above was collected from bulls:

(i) which have not been vaccinated against foot-and-mouth disease within 12 months prior to collection (1)

or

(ii) which have been vaccinated against foot-and-mouth disease within 12 months prior to collection, in which case 5 % (with a minimum of 5 straws) of each collection shall be submitted to a virus isolation test for foot-and-mouth disease in . . . . . laboratory) (3) with negative results (1).

(d) the semen was stored in approved conditions for a minimum period of 30 days prior to dispatch (4).

E. VALIDITY

13. Date and place	14. Name and qualification of the official veterinarian	15. Signature and stamp of the official veterinarian

(1) Delete as necessary.
(2) Corresponding to the identification of the donor animals and date of collection.
(3) Name of the laboratory specified in accordance with Article 4(3) of Directive 88/407/EEC.
(4) May be deleted for fresh semen.'

Amended Proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances [1]

(2003/C 20 E/23)

(Text with EEA relevance)

COM(2002) 540 final — 2001/0257(COD)

(Submitted by the Commission on 26 September 2002)

1. BACKGROUND

On 3 July 2002, the European Parliament voted in first reading on the amendments tabled on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances [2] (COM(2001) 624 final of 10 December 2001).

Transmission of the proposal to the Council and to the European Parliament (COM(2001) 624 — 2001/0257(COD) in accordance with Article 175(1) of the EC Treaty: 11 December 2001.

Opinion of the Committee of the Regions: 24 April 2002.

Opinion of the Economic and Social Committee: none

2. OBJECTIVE OF THE COMMISSION PROPOSAL

Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (so-called Seveso II Directive) aims at the prevention of major accidents and the limitation of their consequences for man and the environment, with a view to ensuring high levels of protection throughout the Community in a consistent and effective manner.

The proposal follows the Communication on the 'Safe operation of mining activities: a follow-up to recent mining accidents' (COM(2000) 664 final) in which the Commission sets out three key actions in order to increase the safety of mining operations (an amendment of the Seveso II Directive, an initiative on the management of mining waste and a Best Available Technologies reference document under the IPPC Directive (96/61/EC)) and aims at including certain activities of the extractive industries, including tailings disposal facilities.

The proposal also addresses the fireworks explosion that occurred in Enschede in May 2000 by proposing a better definition of explosive and pyrotechnic substances along with a decrease of qualifying quantities for these substances. Furthermore, following the recommendations of two studies on carcinogens and substances dangerous for the environment, it proposes to include more carcinogenic substances and to lower the qualifying quantities for substances toxic to aquatic environment.

Consideration has also been given as to whether the explosion of the chemical site of AZF that occurred in Toulouse on 21 September 2001 necessitates immediate amendments of the Seveso II Directive. However, as the site was fully covered by the obligations of the Seveso II Directive (contrary to the sites in Baia Mare and Enschede), and as accident had only started at the time of the adoption of the proposal, it does not contain additional legislative measures in this respect.

3. COMMISSION OPINION ON THE AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT

On 3 July 2002, the European Parliament adopted 47 amendments out of the 55 that were tabled. Only 13 of the 47 amendments adopted are related to the scope of the Seveso II Directive. Many of the other amendments seem to have been developed under the cloud of the tragic accident in Toulouse and address issues unrelated to the scope of the Directive.

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[1] OJ No C 75 E, 26.3.2002, p. 357.

[2] OJ No L 10, 14.1.1997, p. 13.

The Commission emphasises that its proposal was solely aimed at broadening the scope of the Directive, and not at a major revision. The Seveso II Directive has fully replaced the original Seveso Directive [1] of 1982 that had been in force for more than fifteen years. The step from Seveso to Seveso II itself represented a fundamental revision of the European major hazard legislation. The new Directive has only been applicable for three years. The Commission does not yet have sufficient feedback from both industrial operators and the Member States with regard to any problems encountered in the application of the Directive, and therefore the Commission is of the opinion that it is too early to proceed to a broader revision.

Nevertheless, the Commission has examined all the amendments proposed with a view to accepting as many as possible. The Commission is particularly pleased to note that a Workshop on Ammonium Nitrate organised by the Major Accident Hazards Bureau established within its Joint Research Centre has contributed to developing proposals for an appropriate follow-up of the Toulouse accident.

Amendments 1, 2, 27, 37, 39, 40, 42 and 45 can be accepted by the Commission in full.

Amendments 8, 9, 13, 16, 18, 23-25, 32, 46 and 53 are accepted in principle subject to re-wording. The Commission partially accepts amendments 7, 17, 26, 54 and 55.

Amendments 3-6, 10-12, 14, 15, 19-22, 28, 29, 31, 33-36, 38, 43 and 44 are not accepted by the Commission.

The Commission's position with regard to the amendments of the European Parliament is as follows:

3.1. **Amendments accepted fully by the Commission**

Amendments 1 and 2 propose recitals related to the Toulouse accident, introducing the modifications of the entries for ammonium nitrate while pointing out that sites of end-users of ammonium nitrate should not be covered by the Directive.

Amendment 27 creates a link with Council decision 2001/792/EC establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions [2], by requiring Member States to take account of the decision in external emergency plans.

Amendment 37 aims at obliging the Member States to provide the Commission with basic information on establishments covered by the Directive (name, address, activity).

Amendment 39 proposes the creation of 4 new entries for ammonium nitrate including their qualifying quantities.

Amendments 40 and 42 propose the creation of 2 new entries for potassium nitrate including their definitions and qualifying quantities.

Amendment 45 rephrases a part of the section on organisation and personnel in Annex III, which defines the information to be included in the safety management system, emphasising the involvement of subcontractors.

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[1] Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities (OJ No L 230, 5.8.1982, p. 1).

[2] OJ No L 297, 15.11.2001, p. 7.

3.2. **Amendments accepted in part or in principle by the Commission**

Amendment 7, relating to the coverage of tailings from mining activities, specifies that only 'operational' tailings facilities are to be covered, which the Commission accepts in principle, while proposing to replace the term 'operational' by 'active'. The amendment also proposes to broaden the scope of the tailings facilities covered to include those used in connection with mechanical and physical processing, which the Commission does not accept for the reasons given under Amendment 6 (see section 3.3 below). As stated in the Explanatory Memorandum attached to the Commission's original proposal, the Commission intends to cover the safety aspects of such tailings disposal facilities through the initiative on the management of mining waste. The Commission therefore proposes the following text for Article 4, point (g) (new):

'(g) waste land-fill sites with the exception of active tailings disposal facilities, including tailing ponds or dams, containing dangerous substances as defined in Annex I of this Directive and used in connection with the chemical and thermal processing of minerals.'

Amendment 8 proposes to create an additional paragraph in Article 4, moving the exclusion of offshore exploration and exploitation of minerals from paragraph (e) into this paragraph for reasons of clarity. The Commission accepts this clarification, subject to an addition to make explicit that hydrocarbons are covered by the exclusion. The Commission therefore proposes:

In Article 4, the following text for point (e):

'(e) the exploitation (exploration, extraction and processing) of minerals in mines, quarries, or by means of boreholes with the exception of chemical and thermal processing operations and storage related to those operations which involve dangerous substances as defined in Annex I of this Directive;'

In Article 4, the following text for point (f):

'(f) the offshore exploration and exploitation of minerals, including hydrocarbons;'

Amendments 9, 13, 18, 23 and 24 address the issue of establishments that come subsequently under the scope of the Seveso II Directive. These amendments aim at providing reasonable time limits for the submission of notifications (Article 6) and safety reports (Article 9), and the establishment of the major accident prevention policy (Article 7) and the internal and external emergency plans (Article 11). The Commission accepts all of these in principle, with slight modifications to the wording. It therefore proposes:

In Article 6(1), a new indent to be added after the second indent:

'— for establishments which subsequently fall under the scope of this Directive, within three months after the date on which the Directive applies to the establishment concerned, as laid down in the first sentence of Article 2(1).'

In Article 7, a new paragraph to be inserted after paragraph (2):

'2(a) For establishments which subsequently fall under the scope of this Directive, the document will be drawn up without delay, however at the latest within three months after the date on which the Directive applies to the establishment concerned, as laid down in the first sentence of Article 2(1).'

In Article 9(3), a new indent to be inserted after the third indent:

'— for establishments which subsequently fall under the scope of this Directive, without delay, however at the latest within one year after the date on which the Directive applies to the establishment concerned, as laid down in the first sentence of Article 2(1).'

In Article 11(1), point (a), a new indent to be added after the third indent:

'— for establishments which subsequently fall under the scope of this Directive, without delay, however at the latest within one year after the date on which the Directive applies to the establishment concerned, as laid down in the first sentence of Article 2(1).'

In Article 11(1), point (b), a new indent to be added after the third indent:

'— for establishments which subsequently fall under the scope of this Directive, without delay, however at the latest within one year after the date on which the Directive applies to the establishment concerned, as laid down in the first sentence of Article 2(1).'

Amendment 16 proposes to replace in Article 8 the term 'competent authority for external emergency planning' with the term 'authority responsible for external emergency planning'. The Commission accepts this in principle. However, since the amendment is proposed in conjunction with amendment 15, rejected by the Commission, new wording is necessary. The Commission therefore proposes the following text for Article 8(2), point (b):

'provision is made for cooperation in informing the public and in supplying information to the authority responsible for the preparation of external emergency plans.'

Amendment 17 proposes that the safety report indicate all persons and organisations involved in drawing it up, as well as describing the methods used. The Commission accepts the first part of this proposal, but does not believe that an additional requirement to describe the methods used — beyond the elements necessary for the evaluation of the safety report — would contribute to safety. It therefore proposes the following text to replace the first subparagraph in Article 9(2):

'The safety report shall contain at least the data and information listed in Annex II. It shall name all persons and organisations involved in the drawing up of the report. The safety report shall also contain an updated inventory of the dangerous substances present in the establishment.'

Amendments 25 and 26 propose to reinforce the provisions of Article 11 for consultation in the preparation and review of emergency plans. The Commission accepts in principle amendment 25, and also accepts in principle the intention of amendment 26 to insist on the consultation of staff of external enterprises employed on the site. It therefore proposes the following text to replace Article 11(3):

'Without prejudice to the obligations of the competent authorities, Member States shall ensure that the internal emergency plans provided for in this Directive are drawn up in consultation with the personnel working inside the establishment, including relevant subcontracted personnel, and that the public is consulted on external emergency plans, when they are established or updated.'

Amendment 32 specifies that information on safety measures and on the requisite behaviour in the event of an accident should be supplied to persons liable to be affected by major accidents 'regularly and in the most appropriate form' and extends the scope of this obligation to 'all establishments serving the public (schools, hospitals, etc.)'. The Commission accepts this amendment in principle and proposes the following text to replace the first subparagraph of Article 13(1):

'Member States shall ensure that information on safety measures and on the requisite behaviour in the event of an accident is supplied regularly and in the most appropriate form, without their having to request it, to all persons and all establishments assembling people (schools, hospitals, etc.) liable to be affected by a major accident originating in an establishment covered by Article 9.'

Amendment 54 proposes to modify Article 12 (Land-use planning) by extending the list of developments which should, in the long term, be separated from Seveso II establishments, to include buildings of public use, transport routes, industrial establishments, and recreational areas. The Commission accepts this proposal in part, with the exception of industrial establishments, noting that domino effects between hazardous industrial establishments are already addressed in Article 8. It also believes that 'transport routes' is too broad in this context, and should be replaced by 'major transport routes'. It therefore proposes the following text to replace Article 12(1) second subparagraph:

'Member States shall ensure that their land-use and/or other relevant policies and the procedures for implementing those policies take account of the need, in the long term, to maintain appropriate distances between establishments covered by this Directive and residential areas, buildings and areas of public use, major transport routes, recreational areas, and areas of particular natural sensitivity or interest, and, in the case of existing establishments, of the need for additional technical measures in accordance with Article 5 so as not to increase the risks to people.'

Amendment 55 would oblige the Commission to draw up guidelines to be used for assessing the compatibility between existing establishments covered by the Directive and sensitive areas and to develop a methodology for establishing appropriate minimum safety distances. The Commission supports the further development of guidelines on land-use planning, in addition to those already published (http://mahbsrv.jrc.it/downloads-pdf/Landuse2.pdf), and is already leading work in this domain. However, it is not convinced that it is possible or useful to develop a single methodology at the present time. The Commission can therefore only partly accept this amendment. Given also the necessary involvement of the Member States in the preparation of the guidelines requested, it proposes the following new paragraph for Article 12, to be inserted after paragraph (1):

'1(a) The Commission is invited, in close cooperation with the Member States, to draw up guidelines defining a harmonised technical database of risk data and risk scenarios to be used for assessing the compatibility between the establishments covered and the sensitive areas listed in Article 12, paragraph 1. The establishment of this database shall take account of the evaluations performed by the Member States, the information obtained from operators and all other relevant information.'

Amendment 53 proposes definitions for the four new entries on ammonium nitrate proposed in amendment 39. The Commission accepts this amendment in principle, and proposes the following text to replace Notes 1 and 2 to Annex I, Part 1:

'1. Ammonium nitrate (5 000/10 000): fertilisers capable of self-sustaining decomposition

This applies to ammonium nitrate-based compound/composite fertilisers (compound/ composite fertilisers contain ammonium nitrate with phosphate and/ or potash) in which the nitrogen content as a result of ammonium nitrate is

— between 15,75 % [1] and 24,5 % [2] in weight, and either with not more than 0,4% total combustible/organic materials or which fulfil the requirements of Annex II of Directive 80/876/EEC (as amended and updated),

— 15,75 % [3] in weight or less and unrestricted combustible materials,

and which are capable of self-sustaining decomposition according to the UN Trough Test (see United Nations Recommendations on the Transport of Dangerous Goods: Manual of Tests and Criteria, Part III, sub-section 38.2).

2. Ammonium nitrate (1 250/5 000): fertiliser grade

This applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/ composite fertilisers in which the nitrogen content as a result of ammonium nitrate is

— more than 24,5 % in weight, except for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90 %,

— more than 15,75 % in weight for mixtures of ammonium nitrate and ammonium sulphate,

— more than 28 % ([4]) in weight for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90 %,

and which fulfil the requirements of Annex II of Directive 80/876/EEC (as amended and updated).

3. Ammonium nitrate (350/2 500): technical grade

This applies to

— ammonium nitrate and preparations of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is

— between 24,5 % and 28 % in weight, and which contain not more than 0,4 % combustible substances,

— more than 28 % in weight, and which contain not more than 0,2 % combustible substances,

— aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80 % by weight.

4. Ammonium nitrate (10/50): "off-specs" material and fertilisers not fulfilling the detonation test

This applies to

— material rejected during the manufacturing process and to ammonium nitrate and preparations of ammonium nitrate, straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound/composite fertilisers referred to in Notes 2 and 3, that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use, because they no longer comply with the specifications of Notes 2 and 3

— fertilisers referred to in Notes 1 and 2 which do not fulfil the requirements of Annex II of Directive 80/876/EEC (as amended and updated).

([1]) 15,75 % nitrogen content in weight as a result of ammonium nitrate corresponds to 45 % ammonium nitrate.

([2]) 24,5 % nitrogen content in weight as a result of ammonium nitrate corresponds to 70 % ammonium nitrate

([3]) 15,75 % nitrogen content in weight as a result of ammonium nitrate corresponds to 45 % ammonium nitrate.

([4]) 28 % nitrogen content in weight as a result of ammonium nitrate corresponds to 80 % ammonium nitrate.'

Amendment 46 concerns the obligation to supply information to those liable to be affected by the consequences of an accident. The amendment proposes to add to the items to be communicated a map showing risk areas. The Commission accepts this amendment in principle, and proposes the following text to be inserted in Annex V after point 10:

'10(a) A map showing areas which might be affected by the consequences of major accidents arising from the establishment.'

3.3. **Amendments not accepted by the Commission**

Amendments 3-5 propose recitals which refer to matters arising from the Toulouse accident. The Commission is of the opinion that the recitals proposed in amendments 1 and 2 are sufficient, and the recitals here proposed are not appropriate in Community legislation.

Amendment 6 proposes to broaden the scope of the mining activities to be covered by the Directive by including mechanical and physical processing of minerals. The Commission emphasises that this Directive should only apply where dangerous substances are brought onto site and stored there, and/or where chemical and thermal processing take place. Where the processing is mechanical or physical, the only dangerous substances on site will normally be those contained in the minerals extracted.

Amendment 10 proposes to require the operator to include information on training measures in the notification. However, the notification is intended to provide the competent authorities with certain minimum information, such as name of the operator, address of the establishment etc. The Commission is of the opinion that the issue of training is more appropriately addressed elsewhere, for example in Annex III (safety management systems) and Annex IV (emergency plans).

Amendment 11 proposes to require operators to inform the competent authority in the event of a modification of an installation, establishment or storage area. This would introduce further bureaucratic burdens without improving safety, since Article 6 already imposes an obligation on operators to notify any significant increase in the quantity of the dangerous substance, or any change in the processes employing it.

Amendment 12 proposes to require the operator to 'evidence compliance with his obligations' in the document setting out the major accident prevention policy (MAPP). This is inappropriate for the MAPP. Normally, there should be a hierarchy of documentation: at the top of this hierarchy the MAPP sets out the policy and principles of major hazard prevention, and then each subsequent level explains in more detail the application of these principles, finishing with working documents and instructions.

Amendment 14 proposes to add into Article 8 (Domino effect) a link to Article 12 on land-use planning. However, Article 8 is intended to ensure that the possibility of domino effects between different establishments is taken properly into account. The general obligation of the operator to take all necessary measures to prevent major accidents, including domino effects, is sufficiently covered by Article 5. The identification of such measures is a task to be performed by the operator, and not by the Member States within their land-use planning.

Amendment 15 proposes to require explicitly that the public be informed of the possible dangers and risks of domino effects through the local press, by mail and via the Internet website of the regional authority concerned. Under the principle of subsidiarity, this is clearly a matter for national and local authorities to decide.

Amendment 19 proposes to make the review of the safety report compulsory 'in the event of changes in work organisation with an impact on the safety of an installation.' Changes in work organisation occur constantly, and significant changes should indeed lead to adaptation of the safety management system. However, a requirement to conduct a formal review of the safety report under these circumstances would create undue administrative burdens.

Amendment 20 proposes to impose an obligation on Member States to draw together different methods used for drawing up safety reports into a single European method. The methods currently used reflect the wide variety of chemical installations, and it is hard to see how a single method could be appropriate under all circumstances. Nevertheless, the Commission encourages convergence, and has published a guidance document on how to establish safety reports (http://mahbsrv.jrc.it/GuidanceDocs-SafetyReport.html).

Amendments 21 and 22 propose to modify Article 10 so that the operators of all establishments are obliged to inform the competent authority of any modifications before making them. This obligation is already in force for 'upper tier' (Article 9) establishments, and in the Commission's view it is not appropriate for 'lower tier' (Article 6 and 7) establishments.

Amendment 28 proposes to oblige Member States, in the case of an accident, to inform the monitoring and information centre established according to Council decision 2001/792/EC and to cooperate with this centre. The Community mechanism concerned aims at facilitating cooperation in civil protection assistance interventions. A general obligation for notification and cooperation under this mechanism seems therefore inappropriate.

Amendment 29 proposes to amend Article 12 on Land-use Planning to include controls on 'technical measures put in place to reduce hazard areas'. However, the need for '. . . additional technical measures . . . so as not to increase risks to people.' is already explicitly mentioned in Article 12, and the paragraph proposed is inconsistent with the structure of the Article.

Amendment 31 would oblige the Commission to develop a 'scheme of incentives and/or funding for the relocation of establishments'. However, on the grounds of subsidiarity considerations, the Commission believes that such a task falls to the Member States. The Commission will monitor compatibility of any such scheme with European competition law.

Amendments 33 and 34 aim at reinforcing the right of the public to have access to safety reports and emergency plans by, among other points, requiring that these should appear in newspapers and on the Internet, be forwarded to local advisory bodies, and be posted in establishments open to large numbers of people. However, the Commission feels that the balance established in the Seveso II Directive between 'active' information, which is supplied automatically to persons liable to be affected by an accident, and 'passive' information, which is made available on request, is broadly correct and should be kept. Moreover, under the principle of subsidiarity, the mechanisms used to make information available are a matter for decision at Member State or local level.

Amendment 35 proposes a new article on 'Training of staff of establishments and of external enterprises', establishing obligations to provide staff with regular training and to provide competent authorities with a report on training every two years. The Commission agrees on the importance of training, but is of the opinion that the issue is appropriately addressed in Annex III (safety management systems) and Annex IV (emergency plans). Moreover, since the safety report has to demonstrate that a safety management has been put into effect, it must necessarily contain information on training of personnel. The Commission does not support the duplication of reporting requirements.

Amendment 36 proposes an obligation for Member States to suspend activities where the operator has not provided information on changes/modifications and on training. The Commission does not find this necessary, since Article 17 already empowers Member States to prohibit the operation of a plant in cases of insufficient supply of information or incompleteness of the safety report.

Amendment 38 aims at restricting 'commercial or industrial secrecy' exclusively to processes, and not to information concerning the storage of dangerous substances. While the Commission endorses the 'right to know' principle in general, and in particular the right of the public to know the hazard to which it may be exposed, it does not find it appropriate to restrict the concept of commercial or industrial secrecy.

Amendment 43 proposes references to Directive 2000/60/EC (Water Framework Directive) and Directive 91/689/EEC on hazardous waste. Such references are not necessary in the view of the Commission. The Directive already provides for the case of unclassified substances and preparations, and hazardous waste can therefore be covered on the basis of its properties as a preparation.

Amendment 44 proposes to insert in Annex II Part IV an obligation to perform substance-related 'hazard studies'. This requirement is already covered by Annex II, section III. C. 2.

3.4. **Amended proposal**

Having regard to Article 250(2) of the EC Treaty, the Commission modifies its proposal as indicated above.

Amended proposal for a Directive of the European Parliament and of the Council on the training of professional drivers for the carriage of goods or passengers by road [1]

(2003/C 20 E/24)

(Text with EEA relevance)

COM(2002) 541 final — 2001/0033(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 26 September 2002)

(Amendments are indicated by underlining/strikeout in the text)

EXPLANATORY MEMORANDUM

A. PRINCIPLES

1. In February 2001, the Commission put forward a proposal for a Directive of the European Parliament and of the Council on the training of professional drivers for the carriage of goods or passengers by road (COM(2001) 56 final – 2001/0033 (COD)) for adoption by the codecision procedure provided for in Article 251 of the Treaty establishing the European Community.

2. On 17 January 2002, the European Parliament adopted a series of amendments at first reading. The Commission then made its position known on each of these amendments, stating which of them it was able to accept as they stood, those which it could accept in substance and/or with editorial amendments, those which it could accept in part and those which were unacceptable.

3. On the basis of the above, the Commission has drawn up this amended proposal.

4. The Commission has made three types of amendments which are justified for the reasons set out below.

First, a number of new provisions were accepted without amendment after the first reading by the European Parliament. These are intended to improve the technical definitions or to bring balance to or clarify the text and to go into further detail regarding certain points of the proposal.

Second, the Commission accepted some amendments in substance, and made editorial amendments, in particular to make the text more consistent with other parts of the proposal or to define certain conditions, restrictions or exceptions more clearly.

Third, the Commission adopted some parts of the amendments from the first reading if it considered them to be compatible with the aim of the proposal and if these parts provided added value, although this was not the case with all the amendments.

B. COMMENTS ON THE AMENDMENTS ACCEPTED

Articles

Article 1

Amendment 1 adds drivers from third countries and is a clearer version of the combined Articles 1 and 2.

Article 3

Amendment 3 had been adopted in part to remove the limit of travel within a 50 km radius, which is difficult to enforce.

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[1] OJ C 154 E, 29.5.2001, p. 258.

Article 4

This Article has been recast in the light of amendment 4. It is useful to specify that a driver who has undergone vocational training may already drive a vehicle without having obtained a certificate of professional competence. However, the exemption must be limited in terms of area (territory of the Member State concerned) and time (training over a minimum of six months and a maximum of three years).

Article 6(3)

Amendment 6(a) is a useful clarification. The freedom to link together training which leads to a driving licence and the training provided for in this proposal will enable the Directive to be implemented in a manner which is more focused on local and/or individual needs. Amendment 6(b) was accepted with this in mind, but has been recast so as to exclude any duplication between training which leads to a driving licence and the training provided for in this proposal.

Article 6(5)

Amendment 7 fills in a gap in the original proposal and is in line with the structure and objectives of this Article.

Article 7(1) and (2)

Amendments 8 and 9 specify that the examination concerned must have been passed. It is therefore a useful detail which is in line with the Commission's proposal.

Article 8(2) (new)

Article 11 allows for more flexibility in the provision of continuous training, maintains a minimum of seven hours per training unit and therefore makes it possible to avoid excessively short training which would have a limited educational impact.

Article 8(3)

Amendment 12 is a useful detail within the meaning of the Commission's proposal.

Article 9(2) (new)

Amendment 14 specifies the place of training for drivers from third countries who are not normally resident in a Member State. This amendment is therefore the direct result of amendment 1, which has extended the scope of this Commission proposal.

Article 9(3)

Amendment 15 fills in a gap in the initial proposal and is in line with the aims of this proposal.

Article 13 (new)

Amendment 43 provides for an evaluation to be carried out three years after the entry into force of this Directive as proposed by the Commission. The Commission is able to accept such an evaluation in principle as the amendment does not contain any clauses which pre-empt the Commission's right of initiative. It would indeed appear to be useful to evaluate the implementation of this Directive in order to determine whether the level of EU harmonisation has made it possible to achieve the Commission's objectives. The amendment has been recast, in particular to postpone the date specified for the evaluation.

Annex

Annex, Section 1

Section 1 (Training programme) of the Annex to the Commission proposal has been recast along the same lines as amendments 16, 17 and 18. The structure proposed by the European Parliament is clearer: a clear distinction has been made between the carriage of goods and the carriage of passengers and objectives have been set for each point in this section. At the same time, section 1 has been recast in the light of amendment 6 in order to avoid any duplication with training which leads to a driving licence.

Annex, Section 4

The introduction of an independent body responsible for examinations is justified and is a useful addition which is in line with the Commission's proposal.

Annex, Section 5

Amendment 24 is in line with the Commission's initial proposal, but introduces slightly greater flexibility as regards the previous experience of instructors. It has been found that the requirement of five years' experience as a professional driver would have made it difficult to recruit instructors.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71 thereof,

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 referred to in Article 251 of the Treaty,

Whereas:

(1) Council Directive 76/914/EEC of 16 December 1976 on the minimum level of training for some road transport drivers [1] and Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport [2] have enabled progress to be made in the harmonisation of rules on vocational training.

(2) However, there are still basic differences between the laws of the Member States and so further harmonisation is necessary in this area in order to contribute to the achievement of Community policies on the freedom of movement of workers, freedom of establishment and freedom to supply services and on the common transport policy.

(3) Compulsory vocational training within the meaning of Regulation (EEC) 3820/85 at the moment applies only to a minority of professional drivers. Most professional drivers work solely on the basis of their driving licence.

(4) Full basic vocational training, adapted to the requirements of the road transport sector today, as provided for in Directive 76/914/EEC and Regulation 3820/85, remains the benchmark to be attained in the long term. In view of this, the benefits granted to those who have completed such training in terms of access to certain categories of vehicles at a younger age must be increased.

(5) However, the imposition of such a high standard on all new drivers is likely initially to distort the labour market. It is therefore advisable to provide for minimum basic training which will make it possible to demand a lower level of nonetheless adequate and effective training for all new drivers, irrespective of their age or the category of vehicle driven.

(6) The vocational training must, in accordance with a methodological approach, stress the safety rules to be observed when driving and during stops. The development of defensive driving — anticipating danger, making allowance for other road users — which goes hand in hand with rational fuel consumption, will have a positive impact both on society and on the transport sector itself. Compulsory vocational training must increase compliance with transport, traffic and work regulations, such as the rules on minimum rest periods and maximum driving and working periods. The vocational training must, lastly, also cover concepts which are essential and important for professional drivers, such as health, safety, service and logistics. The companies and sectors concerned should be associated with setting up and carrying out such a training programme.

[1] OJ L 357 29.12.1976, p. 36.

[2] OJ L 370, 31.12.1985, p. 1.

(7) Professional drivers who are already working before the Directive enters into force must retain their acquired rights. Continuous training must be provided to enable them in particular, like new drivers later on, to update their knowledge and to improve their skills with regard to professional safety and regulations.

(8) This Directive applies irrespective of Council Directive 91/439/EEC on driving licences ([1]), as last amended by Commission Directive 2000/56/EC ([2]), Council Directive 94/55/EC with regard to the transport of dangerous goods by road ([3]), as last amended by Directive 2000/61/EC of the European Parliament and of the Council ([4]), and Council Directive 96/26/EC on access to the occupation of road haulage operator and road passenger transport operator ([5]), as amended by Council Directive 98/76/EC ([6]).

(9) So as not to prejudice the right of the representatives of employers and employees to specify, in particular by means of collective bargaining agreements, provisions which are more favourable to workers, the Annex to this Directive lays down minimum requirements for vocational training.

(10) As the measures needed to adapt the Annex to this Directive to technical progress 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 ([7]), those measures must be adopted in accordance with the regulatory procedure provided for in Article 5 of that Directive.

(11) Annexes I and Ia to Council Directive 91/439/EEC need to be amended in order to add the codes corresponding to the compulsory training followed.

(12) Directive 79/914/EC must be revoked,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

This Directive applies to persons engaged in the occupation of road transport driver in the EU who are: ~~shall be governed by the provisions which the Member States adopt in conformity with the common rules in this Directive.~~

(a) nationals of a Member State,

(b) nationals of a third country employed or lawfully used by an undertaking established in a Member State,

hereinafter referred to as 'drivers' engaged in road transport operations within the Community on public roads using:

— vehicles for which it is essential to hold a driving licence in one of the categories C1, C1+E, C, C+E, as defined in Directive 91/439/EEC, or a licence recognised as being equivalent,

— vehicles for which it is essential to hold a driving licence in one of the categories D1, D1+E, D, D+E, as defined in Directive 91/439/EEC, or a licence recognised as being equivalent.

Article 2

Definitions

For the purposes of this Directive:

(a) 'professional driver for the carriage of goods by road' means a driver engaged in the transportation of goods for payment;

(b) 'professional driver for the carriage of passengers by road' means a driver engaged in the transportation of passengers for payment;

(c) 'C1, C1E, C, CE, D1, D1E, D, DE' means the categories of driving licences as defined in Directive 91/439/EEC;

(d) 'normal residence' is residence as defined in Article 9 of Directive 91/439/EEC.

Article 3

Exemptions

1. This Directive shall not apply to carriage by:

(a) vehicles with a maximum authorised speed not exceeding 30 kilometres per hour;

(b) vehicles used by, or under the control of, the armed forces, civil defence, the fire service and forces responsible for maintaining public order;

(c) vehicles undergoing road tests for technical development, repair or maintenance purposes, and new or rebuilt vehicles which have not yet been put into service;

(d) vehicles used for non-commercial carriage of goods for personal use;

([1]) OJ L 237, 24.8.1991, p. 1.
([2]) OJ L 237, 21.9.2000, p. 45.
([3]) OJ L 319, 12.12.1994, p. 7.
([4]) OJ L 279, 1.11.2000, p. 40.
([5]) OJ L 124, 23.5.1996, p.1.
([6]) OJ L 277, 14.10.1998, p. 17.
([7]) OJ L 184, 17.7.1999, p. 23.

(e) vehicles carrying material or equipment to be used by the driver in the course of his work, ~~within a 50 kilometre radius from the place where the vehicle is normally based,~~ provided that driving the vehicle is not the driver's principal activity and that the exemption does not prejudice the aims of this Directive. The Member States may make this exemption subject to an individual permit.

2. The provisions of this Directive laying down requirements which are the same as those laid down by Directive 96/26/EC do not apply to applicants for basic training who have already met the requirements of Directive 96/26/EC on the date of entry into force of this Directive.

Article 4

Compulsory training

Exercise of the occupation of professional driver for the carriage of goods or passengers by road shall be subject to the successful completion of the final examination which follows ~~of~~ the basic training and to compliance with the provisions on continuous training included ~~as provided for~~ in this Directive.

However, a Member State may authorise a driver to drive in its territory before having successfully completed the final examination following the basic training for a period of not less than six months and not more than three years during which the person concerned is employed on the basis of day-release training. In the context of such day-release training, the abovementioned examination may be carried out in stages.

The successful completion of such training shall lead to the issue of the document or certificate concerned on the basis of which the competent authorities shall mark the Community code for the training completed on the driving licence of the person concerned.

Article 5

Acquired rights

Professional drivers for the carriage of goods or passengers by road who have been working for three years out of a period of five years prior to the entry into force of this Directive shall be exempted from the requirement to undergo basic training without prejudice to Community and national provisions on minimum ages and categories of driving licences.

Article 6

Basic training

1. Any person taking up the occupation of professional driver for the carriage of goods or passengers by road following the entry into force of this Directive shall undergo basic vocational training, as defined in the Annex to this Directive.

2. The basic vocational training shall consist of either full basic training or minimum basic training, depending directly on the minimum age and the categories of vehicles driven. These two types of basic training, which are defined in the Annex to this Directive, differ only as regards the length of training and the degree of detailed instruction given.

3. ~~To be accepted for the basic training, the applicant shall hold the relevant driving licence. However, access to full basic training, which is given to young people under the age of 18 years as part of vocational training, does not require the driving licence concerned to be held in advance.~~ The basic training may be designed as an integral part of vocational training which directly enables a driving licence to be obtained.

4. Professional drivers for the carriage of goods by road may work:

(a) from the age of 18 years:

(i) on a vehicle in categories C and CE, provided they have undergone full basic training;

(ii) on a vehicle in categories C1 and C1E, provided they have undergone minimum basic training;

(b) from the age of 21 years: on a vehicle in categories C and CE, provided they have undergone minimum basic training.

5. Professional drivers for the carriage of passengers by road may work:

(a) from the age of 18 years:

(i) on a vehicle in categories D and DE used for the carriage of passengers on regular services where the route does not exceed 50 kilometre provided they have undergone full basic training;

(ii) on a vehicle in categories D1 and D1E, provided they have undergone full basic training;

(b) from the age of 21 years:

(i) on a vehicle in categories D and DE, provided they have undergone full basic training;

(ii) on a vehicle in categories D and DE used, on a route which does not exceed 50 kilometres, for regular services for the carriage of passengers, provided they have undergone minimum basic training;

(iii) on a vehicle in categories D1 and D1E, provided they have undergone minimum basic training;

(c) from the age of 24 years: on a vehicle in categories D and DE, provided they have undergone minimum basic training.

6. Professional drivers for the carriage of goods or passengers by road who have completed full basic training for one of the categories provided for in paragraphs 4 and 5 shall be exempted from undergoing basic training for any other of the categories of vehicles referred to in those paragraphs.

Professional drivers for the carriage of goods who broaden or modify their activities in order to carry passengers, or vice-versa, shall not be required to repeat the common parts of the specified training.

Article 7

Test of knowledge

1. The common part for the minimum basic training shall be subject to a final examination of professional competence. After successfully completing this examination, those wishing to become professional drivers shall undergo specific training in a company or an approved training centre. On completion of the two parts of the training, the common part and the specific training, a minimum basic training document shall be issued to the driver.

2. The common part for the full basic training shall be subject to a final examination of professional competence. After successfully completing the examination, those wishing to become professional drivers shall undergo specific training in a company or an approved training centre. On completion of the two parts of the training, the common part and the specific training, a certificate of professional competence shall be issued to the driver.

Article 8

Continuous training

1. Continuous training shall consist of training to enable persons already working as professional drivers on the date of entry into force of this Directive to update the knowledge which is essential for their work, with a specific emphasis on road safety and rationalisation of fuel consumption.

2. ~~Continuous training shall be given over a continuous period.~~ The duration of the continuous training shall be thirty- five hours every five years. The programme shall be laid down in such manner that a single session shall be a minimum of seven hours.

3. 2. ~~Professional drivers for the carriage of goods or passengers by road shall undergo continuous training as defined in the Annex to this Directive.~~ The continuous training shall vary according to ~~the profile~~ what is demanded of the driver concerned and be based on an assessment interview. It is intended to expand on and to revise certain points covered during the basic training programme, and identified during the interview, as well as the sectoral aspects.

4. ~~3.~~ On completion of the training, a continuous training certificate is issued to the driver.

5. ~~4.~~ Professional drivers for the carriage of goods or passengers by road who have been working for three years out of the five years prior to the entry into force of this Directive shall undergo the continuous training during the first renewal of their driving licence and no later than five years following the entry into force of this Directive.

Article 9

Place of training and validity of training documents

1. Professional drivers undergo the basic and continuous vocational training in the Member State in which they are normally resident or in which they are able to provide proof of having been a student for a period of at least six months.

2. Drivers from a third country who work for an undertaking established in one or more Member States and are not normally resident in the Community, within the meaning of paragraph 1 above, shall undergo the training required in the Member State in which the undertaking employing them is established.

3. ~~2.~~ The minimum basic training document, the certificate of professional competence and the continuous training document shall be recognised by all the Member States. The period of validity of the continuous training document shall not exceed five years. If a driver changes from one undertaking to another, the continuous training already undergone shall be taken into consideration.

4. ~~3.~~ The documents and certificates issued by the Member States on the basis of existing national provisions up to the date on which this Directive enters into force shall be recognised as training documents and certificates of professional competence within the meaning of this Directive.

Article 10

Community codes

The following codes shall be added to the list of harmonised Community codes as laid down in Annexes I and Ia to Directive 91/439/EEC:

95. Holder of the minimum basic training document

96. Holder of the certificate of professional competence

97. Holder of the continuous training certificate.

Article 11

Adaptation to scientific and technical progress

The amendments necessary to adapt the Annex to scientific and technical progress shall be adopted in accordance with the procedure laid down in Article 12.

Article 12

Committee

1. The Commission shall be assisted by the Committee on Driving Licences set up by Article 7 of Directive 91/439/EEC on driving licences.

2. Where reference is made to this paragraph, the regulatory procedure provided for in Article 5 of Decision 1999/468/EC shall apply, in compliance with the provisions of Article 7(3) and Article 8 of that Decision.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

Article 12a

Report

Eight years following the entry into force of this Directive, the Commission shall submit to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions a report containing an initial evaluation of the implementation of this Directive, in particular as regards the equivalence of the various basic qualification schemes provided for in Article 6. The report shall be accompanied by appropriate proposals, if necessary.

Article 13

Entry into force

Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 2004. 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 reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 14

Repeal

Directive 76/914/EEC is hereby repealed as of 1 January 2004.

Article 15

Entry into force

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

Article 16

Addressees

This Directive is addressed to the Member States.

ANNEX

MINIMUM VOCATIONAL TRAINING REQUIREMENTS

SECTION 1 — TRAINING PROGRAMME

1. **Advanced training in rational driving based on safety regulations**

All licences

1.1. aim: knowledge of technical characteristics of the transmission system to make optimum use of it

curves relating to torque, power and specific consumption of an engine, area of optimum use of revolution counter, gearbox ratio cover diagrams;

1.2. aim: knowledge of the technical characteristics and the operation of safety devices in order to be in control of the vehicle, to minimise wear and tear and to prevent malfunctions;

specific features of hydraulic vacuum servo brake circuit, limits to the use of brakes and retarder, combined use of brakes and retarder, making better use of speed and gear ratio, making use of vehicle inertia, using ways of slowing down and braking on downhill stretches, action in the event of failure;

1.3. aim: to be able to optimise fuel consumption

optimisation of fuel consumption by applying the know-how as regards points 1.1 and 1.2 above;

Licences C, C+E, C1, C1+E

1.4. aim: to be able to load a vehicle in compliance with safety regulations and to ensure the proper use of the vehicle

forces affecting vehicles in motion, use of gearbox ratios according to vehicle load and road profile, calculation of payload of vehicle or assembly, calculation of total volume, load distribution, consequences of overloading the axle, vehicle stability and centre of gravity, types of packaging and pallets;

main categories of goods needing securing, clamping and securing techniques, use of securing straps, checking of securing devices, use of handling equipment, placing and removal of tarpaulins;

Licences D, D+E, D1, D1+E

1.5. aim: to be able to ensure passenger safety and comfort

cornering technique, road sharing, position on the road, smooth braking, driving of overhanging vehicles, use of specific infrastructures (public areas, dedicated lanes), managing conflicts between safe driving and a driver's other tasks, interaction with passengers, specific requirements for the carriage of certain groups of passengers (disabled persons, children);

1.6. aim: to be able to load a vehicle in compliance with safety regulations and to ensure the proper use of the vehicle

forces affecting vehicles in motion, use of gearbox ratios according to vehicle load and road profile, calculation of payload of vehicle or assembly, load distribution, compliance with consequences of overloading the axle, vehicle stability and centre of gravity;

2. **Compliance with regulations**

All licences

2.1. aim: knowledge of the social environment of road transport and its regulation

maximum working periods specific to the transport industry; principles, application and consequences of Regulations (EEC) No 3820/85 and No 3821/85; penalties for failure to use, improper use of and tampering with the tachograph; knowledge of the social environment of road transport; rights and obligations of drivers as regards initial qualification and continuous training;

Licences C, C+E, C1, C1+E

2.2. aim: knowledge of the regulations on the carriage of goods

transport operating licences, obligations under standard contracts for the carriage of goods, drafting of documents which form the transport contract, international transport permits, obligations under the Convention on the Contract for the International Carriage of Goods by Road, crossing borders, freight forwarders, special documents accompanying good;

Licences D, D+E, D1, D1+E

2.3. aim: knowledge of the regulations on the carriage of passengers

carriage of specific groups, on-board safety equipment, safety belts, vehicle loading;

3. **Health, road safety and environmental safety, service, logistics**

All licences

3.1. aim: awareness about road hazards and accidents at work

types of accidents at work in the transport sector; road accident statistics, involvement of lorries/coaches, human, material and financial consequences;

3.2. aim: to be capable of preventing trafficking in illegal immigrants

trafficking in illegal immigrants: general information, implications for drivers, preventive measures, check lists, legislation on operator liability;

3.3. aim: ability to prevent physical risks

ergonomic principles: movements and postures which pose a risk, physical fitness, handling exercises, personal protection;

3.4. aim: awareness of the importance of physical and mental capability

principles of a healthy, balanced diet, effects of alcohol, drugs and any other substance likely to affect behaviour, symptoms, causes, effects of fatigue and stress, fundamental role of the basic work/rest cycle;

3.5. aim: ability to assess emergency situations

behaviour in an emergency situation: assessment of the situation, avoiding complications of an accident, summoning assistance, assisting injured persons and giving first aid, reaction in the event of fire, evacuation of lorry occupants/coach passengers, guaranteeing the safety of all passengers, reaction to aggressive behaviour; basic principles of the drafting of an accident report;

3.6. aim: ability to behave in a manner which improves the image of a service company

behaviour of the driver and company image: importance for the company of the standard of service provided by the driver, the roles of the driver, people with whom the driver will be dealing, vehicle maintenance, work organisation, commercial and financial consequences of legal action;

Licences C, C+E, C1, C1+E

3.7. aim: knowledge of the economic environment of the carriage of goods by road and the organisation of the market

road transport in relation to other modes of transport (competition, consignors), different road transport activities (transport for hire or reward, own account, auxiliary transport activities), organisation of the main types of transport company and auxiliary transport activities, different transport specialisations (road tanker, controlled temperature, etc.) chances in the industry (diversification of services provided, rail-road, subcontracting, etc.);

Licences D, D+E, D1, D1+E

3.8. aim: knowledge of the economic environment of the carriage of passengers by road and the organisation of the market

the carriage of passengers by road in relation to other modes of transport of passengers (rail, private cars), different activities concerning the carriage of passengers by road, crossing borders (international carriage), organisation of the main types of companies for the carriage of passengers by road;

SECTION 2 — STRUCTURE OF BASIC TRAINING

The basic vocational training shall consist of two parts: a common part for all professional drivers, with variations for the carriage of goods or the carriage of passengers, and specific training given within a company in the sector in which the professional driver will work.

The common part must in particular cover advanced training in rational driving based on safety rules, the observance of all transport, traffic and work regulations, and the concepts of health, safety, service and logistics, as defined in the Annex to this Directive.

The specific training must enable what has been learnt in the identical parts of the training to be specifically applied in the immediate environment in which the professional driver works. The training covers the same subjects as are taught during the common part, but applies them to the specific situation in the company or sector concerned. In this way, new professional drivers will do part of their training on the type of vehicle they will be using afterwards; they will learn about specific regulations, contracts and documents; they will acquire knowledge about specific logistics chains. The specific training will therefore involve companies in the sector concerned in the basic training of professional drivers.

SECTION 3 — LENGTH OF TRAINING

The length of the minimum basic vocational training is 140 hours for the common part and 70 hours for the specific part.

The length of the full basic vocational training is 420 hours for the common part and 210 hours for the specific part.

During each of the basic training periods, at least 30 % of the time available will be devoted to each of the paragraphs 1.1, 1.1 and 1.3, the remainder being used according to the profile of the driver concerned.

At least half of the basic training in paragraph 1.1 will be carried out under real driving conditions, in a vehicle of the category concerned which meets the requirements for test vehicles as defined in Directive 91/439/EEC. In view of the possibility that several persons may take part in the driving under real conditions in one and the same vehicle, it must be specified that each driver must drive for at least ten hours on their own.

The continuous vocational training is 35 hours every five years. The training varies according to the profile of the driver concerned.

SECTION 4 — TEST OF KNOWLEDGE

The minimum basic vocational training concludes with an examination of professional competence based on the knowledge acquired during the training. This examination shall be organised by a body independent of the training body. The examination must make it possible to check that participants have learnt the main points covered during the training.

Only drivers who obtain a sufficiently high mark in the examination of professional competence will be issued with a minimum basic training document certifying that the common part and the specific part of the training have been fully completed.

The full basic vocational training concludes with an examination of professional competence based on the knowledge acquired during the training. The examination must cover each of the main points dealt with and include at least one question on each of paragraphs 1.1, 1.2 and 1.3. This examination shall be organised by a body independent of the training body.

Only drivers who obtain a sufficiently high mark in the examination of professional competence will be issued with a full basic training document certifying that the common part and the specific part of the training have been fully completed.

SECTION 5 — APPROVAL OF THE TRAINING

5.1 The training courses for the common part of the basic training and for the continuous training must be approved by the competent authority. Approval may only be given following a written application. The application for approval must be accompanied by the following documents:

5.1.1. a detailed training programme specifying the subjects taught and setting out the proposed implementing plan and teaching methods;

5.1.2. the instructors' qualifications and fields of activity;

5.1.3. information about the premises where the courses are given, the teaching materials, the resources made available for the practical work, and the vehicle fleet used;

5.1.4. the conditions regarding participation in the courses (number of participants).

5.2. The competent authority must give approval in writing subject to the following conditions:

5.2.1. the training must be given in accordance with the documents accompanying the application;

5.2.2. the competent authority reserves the right to send authorised persons to assist in the training courses and examinations;

5.2.3. the competent authority must be informed in good time of the dates and places of each training course;

5.2.4. the approval may be withdrawn if the conditions of approval are not complied with.

The training body must guarantee that the instructors have a sound knowledge of regulations and training requirements for vocational training and that they will cover the latest changes. Instructors must ~~have five years' experience~~ show, in the framework of a specific selection procedure, that they have knowledge of both education and teaching and an appropriate level of ability and experience in driving the vehicle concerned. They shall have experience as a professional driver and have completed full basic training ~~and continuous training and have a knowledge of both education and teaching.~~ The programme of instruction must be in accordance with the approval and must cover the subjects referred to in paragraphs 1.1, 1.2 and 1.3.

Amended proposal for a Decision of the European Parliament and of the Council amending Decision No 1692/96/EC on Community guidelines for the development of the trans-European transport network [1]

(2003/C 20 E/25)

(Text with EEA relevance)

COM(2002) 542 final — 2001/0229(COD)

(Submitted by the Commission on 26 September 2002)

(Amendments are indicated by underlining/strikeout in the text)

EXPLANATORY MEMORANDUM

During the Plenary Session of 31 May 2002, the European Parliament approved, subject to a number of amendments, the Commission's proposal for a Decision of the European Parliament and the Council amending Decision No 1692/96/EC on Community guidelines for the development of the trans-European transport network (TEN-T). The Economic and Social Committee and the Committee of Regions also supported the legislative initiative:

— Adoption of the proposal by the Commission COM(2001) 544 on 2 October 2001;

— Opinion on the Committee of Regions adopted on 15 May 2002;

— Opinion of the Economic and Social Committee adopted on 21 March 2002;

— Opinion of the European Parliament at first reading adopted on 30 May 2002.

The European Parliament agrees with the main elements of the Commission's proposal. However, the European Parliament has formulated a number of amendments, on the basis of which the Commission proposes to introduce some new elements to its original text.

A political agreement in the Council is not yet reached. The European Commission forwards this revised proposal in order to facilitate the process of achieving the objectives outlined at the European Council in Barcelona [2].

1. AMENDMENTS ACCEPTED/ACCEPTED IN PART

The modified proposal incorporates the text or substance of the Parliament's amendments No 1, 2, 3, 4, 5, 6, 7, 8, 11, 14, 15 (partly), 16, 22, 23 (partly), 24, 26 (partly), 28, 48, 51 aiming at strengthen certain elements or clarify the text of the initial proposal. Modifications to article 8 on environment are proposed in response to some ideas suggested by amendment 20.

1.1. **Recitals**

The following elements have been integrated:

— In recital 1, inclusion of 'international mobility' as a key objective of the TEN-T policy (amendment 1).

— In recital 2, a reference to the need to improve the consistency between the TEN-T guidelines and the programming of financial instruments available at Community level (Structural Funds, Cohesion Fund, and the TEN budget) (amendment 2).

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[1] OJ C 362 E, 18.12.2001, p. 205.

[2] The European Council requests the Council and the European Parliament to adopt, by December 2002, the revision of the Guidelines and the accompanying financial rules on trans-European networks (TEN), including new priority projects identified by the Commission, with a view to improving transport conditions with a high level of safety throughout the European Union and to reducing bottlenecks such as, among other, the Alps and the Pyrenees and the Baltic Sea.

— In recital 3 a reference to promotion, as a priority, of modes of transport that cause less damage to the environment (amendment 3).

— In recital 5, a reference to the environmental assessment for new plans and programmes, as envisaged by Directive 2001/42/CE (amendment 4).

— In recital 6, a reference to the objectives set out in the White Paper: 'European Transport policy for 2010: time to decide'; in particular the objective of decoupling economic and transport growth and in this context reducing traffic congestion, especially on roads, (amendment 5) and promoting a modal shift.

— In recital 7, a reference to the promotion of inland waterway shipping is included (amendment 6).

— In recital 8, a reference to the future revision of the guidelines and short sea shipping (amendments 7 and 48).

— In recital 11, a clarification on the preparation of the extension of the TEN-T to the Candidate Countries (amendment 8).

— In recital 21, a reference to the consequences of enlargement on the appropriations for the trans-european networks in the next financial perspective (amendment 11).

1.2. **Article 5 (priorities of the guidelines)**

The following elements have been integrated:

— A reference to the objective of balanced territorial development in the second priority (amendment 14).

— The strengthening in the fourth priority of the measures to promote short sea shipping and inland shipping (amendment 16).

— The strengthening in the sixth priority of the objective of promoting intermodality by establishing intermodal terminals or deploying intelligent transport systems (amendment 15).

1.3. **Article 8 (environmental protection)**

The following elements have been modified in response to the Parliament's amendment No 20. giving a stronger role to the Commission to carry out strategic environmental assessment and to develop methods to carry out such assessment:

— Article 8(2) is changed in order to clarify the co-ordinating role of the Committee established under Article 18.2.

— A new paragraph is added indicating that the Commission shall continue to develop improved methods of analysis for strategically assessing the environmental impact (as well as economic, safety and social impacts) of the whole network and for implementing the environmental assessments, referred to in the Directive 2001/42/EC on the cross-border corridors and projects.

It should be noted that such modifications reinforce the role of the Community in the field of strategic environmental assessment, while ensuring added value to actions undertaken by Member States.

1.4. **Others**

In additions to drafting clarifications in Articles 10.4 and 10.5 (amendments 22, 51 and 23), the new elements are:

— Article 10.6 covers a broader range of infrastructures and facilities allowing integration of rail transport services with air transport services but also with road and maritime transport services (amendment 24).

— Article 11.4 includes River Information Systems as part of the inland waterway trans-European network (amendment 26).

— Article 18.3 indicates that the report on the implementation of the guidelines shall be produced every two years and shall contain information on the breakdown between national, Community and other funding (amendment 28).

2. **AMENDMENTS NOT ACCEPTED**

The modified proposal does not integrate the Parliament's amendments No 9, 10, 12, 13, 15 (partly), 17, 18, 19, 20, 21, 23 (partly), 25, 26 (partly), 27, 29, 30, 41, 42, 44, 46, 47, 49, 50, 52 & 53. More specifically:

— Amendments concerning the recitals which are not followed by any amendments of the legislative part (Articles) of the text are not integrated for reason of order (amendments 44 and 47). Similarly, to avoid repetition, recitals with text more or less identical to one of the Articles are excluded.

— A recital to stress that the Treaty offers the European Parliament the opportunity to decide on the specific projects listed in the Annex III of the proposal is not deemed relevant as the whole proposal is subject to co-decision (amendment 53).

— An analysis of the costs and benefits of Galileo has been already done in 2001. As for all other TEN-T projects, there is therefore no reason to ask for additional analysis in a recital (amendment 10).

— The Commission does not want to prejudge its right of initiative, for example on the specific content and date of the next revision of the TEN-T guidelines (amendments 29 and 50), or on a deployment plan for the River Information System (amendment 26). However, a new recital 8 referring to the action plan of the White Paper on the European Transport Policy by 2010 is included in the present proposal.

— The TEN-T policy is not aimed at reducing transport growth by questioning the right of mobility The objective of reducing transport growth through the TEN-T policy is therefore not included in the objectives of the guidelines in Article 2 (amendment 12).

— Amendment 19 can not be accepted as Article 5 concerns priorities and not broad general policy goals.

— Intersections between multimodal corridors are usually bottlenecks and therefore de facto part of the priorities of the guidelines in Article 5 (amendments 13 and 49).

— Amendment 52 puts an unbalanced emphasis on a particular geographical area in the list of priorities.

— A reference to local passenger trains in the priority related to rail freight transport infrastructure (Article 5) is not included as this would unduly weaken this priority (amendment 15). The Commission however emphasises that the present proposal clarifies that the conventional rail network comprises lines for both freight and passengers (Article 10.3).

— A particular emphasis on sea/air connections (mainly Article 5) is not included since sea/air transport represents overall a very small segment of transport demand (amendments 17 and 27).

— The more important health impacts from transport stem mainly from environmental and safety impacts covered by Article 5 and are therefore not mentioned explicitly (amendment 18).

— Recitals and legal provisions on the application of environmental legislation (recitals and Article 8) to transport infrastructure in the Candidate Countries cannot be incorporated because the TEN-T guidelines address the Member States only. Related to this point, it should be noted that the preparatory work on the amendments of maps and other modifications required in the framework of the technical adaptation of Decision No 1692/96/EC has been included in the framework of the accession negotiations with the Candidate Countries (amendments 9).

— The amendment to include (Article 8) a reference to Council Directive 79/409/ EEC on wild birds is not seen as relevant since Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora is included in the text and contains a reference to this Directive (amendments 20, 41 and 42).

— The amendment which calls the Commission to undertake strategic assessments of TEN-T projects and corridors pursuant to Directive 2001/42/EC is not taken over as Directive 2001/42/EC is addressed to the Member States (Article 8). However, the Commission emphasises that it has recently adopted a Communication which indicates its intention to carry out impact assessment prior to the adoption of proposals for legal acts (COM(2002) 276) (amendment 20, 41 and 42).

— The amendments 21 and 27 (Article 5 and 10) requesting a particular attention to the connections between the high speed rail network and regional airports were not integrated, since connections between high speed rail and airports are more likely to promote the modal shift from air to rail when they concern major airports.

— As regards the deployment plan of rail traffic management systems (Article 10), the Commission wishes to concentrate on issues addressed by the rail interoperability Directives, and therefore does not want to mention in the present proposal the interconnections with traffic management systems of other modes (amendment 23).

— Including detailed maps of inland ports (Article 11) is not considered useful, taking into account their high number and the low resolution of maps in Annex I. The Commission emphasises that the eligibility criteria of inland ports remain unchanged and that ports can be qualified as ports of common interest even if they do not appear in the maps (amendment 25).

— The amendment aiming at a new Article on the revision of Annex III — proposing that projects of Annex III are reviewed by the Commission every 15 years — is not taken forward. It has to be stressed that some specific projects situated on transit routes are particularly important for the Community although less important for the Member States where they are located. Member States have however, the prime responsibility for their financing and implementation. Delays in such type of projects should therefore not lead automatically to withdrawals from Annex III but should be assessed on a case by case basis. The two-yearly report mentioned in Article 18 provides the instrument for such assessment (amendments 30 and 46).

Within this context the Commission has modified its proposal accordingly.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION;

Having regard to the Treaty establishing the European Community, and in particular the first paragraph of Article 156 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,

Whereas:

(1) Growth in traffic, in particular due to the growing share of heavy goods vehicles, has resulted in increased congestion and bottlenecks on international transport corridors. In order to ensure international mobility of goods and passengers, it is therefore necessary to optimise the capacity of the trans-European transport network, as referred to in Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network ([1]), as amended by Decision No 1346/2001/EC ([2]).

(2) Pursuant to Article 154 of the Treaty, the trans-European network policy should help to strengthen economic and social cohesion within the Community. In order to achieve this objective, efforts should be made to maximise consistency between the Community guidelines for the trans-European network and the programming of the relevant financial instruments available at Community level.

(3) Requirements for the protection of the environment must be integrated into the definition and implementation of policy in the field of the trans-European network in accordance with Article 6 of the Treaty. This entails the promotion as a priority of modes that cause less damage to the environment, namely rail transport, short sea shipping and inland waterways shipping.

(4) The Gothenburg European Council has invited the Community institutions to adopt revised guidelines for the trans-European transport network by 2003, with a view to giving priority, where appropriate, to infrastructure investment for railways, inland waterways, short sea shipping, intermodal operations and effective interconnections.

(5) Environmental assessment pursuant to Directive 2001/42/EC will in the future be carried out for all plans and programmes leading to projects of common interest.

(6) In view of sustainable development, the Commission White Paper on the European transport policy ([3]) calls for decoupling transport growth significantly from growth in GDP in order to reduce congestion and other negative side-effects of transport.

(7) The Commission White Paper on the European transport policy calls for an integrated approach combining *inter alia* measures to revitalise the rail sector, in particular for freight services, to promote inland waterway shipping and short sea shipping, to encourage greater complementarity between high speed rail and air transport, to promote the development of interoperable intelligent transport systems in order to ensure increased network efficiency and safety.

(8) In the above-mentioned White Paper, the Commission also states that the present revision of the Community guidelines for the trans-European network represents the first stage. The second stage will involve a more fundamental revision, in the light of reactions to the White paper, aimed in particular at introducing the concept of 'motorways of the sea' in order to promote short sea shipping, developing airport capacity and including routes situated on the territory of the new Member States. A primary network made up of the most important infrastructure for long distance traffic and cohesion on the European continent should be designed in such a way.

(9) The efficiency of the common transport policy depends *inter alia* on coherence between the measures to revitalise the rail sector and to develop the rail infrastructure. Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways ([4]) provides for a Trans-European Rail Freight Network open to international freight transport services after 2003. The lines of the Trans-European Rail Freight Network should be considered as part of the rail network defined by the guidelines set out in Decision No 1692/96/EC so that they can benefit from investments and attract traffic from the road.

(10) The second Pan-European Transport Conference in Crete in 1994 and the third Pan-European Transport Conference in Helsinki in 1997 identified ten Pan-European transport corridors and four Pan-European areas as priorities for co-operation between the European Community and the third countries concerned.

([1]) OJ L 228, 9.9.1996, p. 1.

([2]) OJ L 185, 6.7.2001, p. 1.

([3]) COM(2001) 370.

([4]) OJ L 75, 15.3.2001, p. 1.

(11) Bulgaria, Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic, Slovenia, and Turkey have concluded association and Europe agreements and applied for membership in the European Union. ~~The transport administrations of 11 of those~~ All these countries have carried out, with the support of the Commission, a transport infrastructure needs assessment [1] aimed at defining a network following the same principles as laid down in Decision 1692/96/EC.

(12) Specific projects No 9, 10 and 11 of Annex III have been completed.

(13) The interconnection of the high-speed train south to the rest of the network requires the extension of the project to Nîmes.

(14) The Brenner axis needs better connections to Italian cities.

(15) Galileo, a European project for satellite-based radio navigation for civilian purposes, offers a strong potential for the development of navigation, positioning and traffic management applications and services for all modes of transport, as well as for the development of value-added mobility services.

(16) Immediate actions must be taken to develop a high capacity rail route to transfer road freight traffic to rail and to make transit across the Pyrenees easier in order to handle the sharp traffic increase in that area.

(17) The growth of international traffic on the west-east route between Stuttgart and Vienna, in particular along the Danube corridor, requires efficient infrastructure.

(18) The bottleneck between Straubing and Vilshofen on the River Danube seriously hinders traffic on the international inland waterway Rhine-Main-Danube from the North Sea to the Black Sea.

(19) The lack of interoperability of the Iberian rail network is a major obstacle to achieving an efficient trans-European rail network.

(20) The completion of a fixed link between Germany and Denmark should make the Nordic area more accessible.

(21) In order to comply with the objectives of the trans-European transport network and to meet the transport challenges of enlargement, a considerable increase in appropriations for the trans-European networks is needed in the next financial perspectives.

(22) Decision No 1692/96/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DECISION:

Article 1

Decision No 1692/96/EC is amended as follows:

1. Article 5 is replaced by the following:

'Taking into account the objectives set out in Article 2 and the broad lines of measures set out in Article 4, the priorities shall be:

(a) establishment and development of the key links and interconnections needed to eliminate bottlenecks, fill in missing sections, notably their cross-border parts, and improve interoperability on major routes;

(b) establishment and development of infrastructure making it possible to link island, landlocked, peripheral and outermost regions with the central regions of the Community as well as to promote the balanced development of the Community territory;

(c) the necessary measures for the gradual achievement of an interoperable rail network giving priority to freight transport; ~~including measures in intermodal terminals~~

(d) the necessary measures to promote short sea and inland shipping, including the establishment of rail infrastructures to ensure connections to ports; ~~in order to foster short sea and inland shipping services~~

(e) measures to link rail and air transport, including especially through rail access to airports, and the infrastructure and facilities required for air and rail transport services~~;~~

(f) to optimise the capacity and efficiency of existing and new infrastructure, to promote intermodality and improve the safety and reliability of the network, by establishing and improving intermodal terminals and/or by deploying interoperable intelligent transport systems ~~deployment of interoperable intelligent transport systems to optimise the capacity of existing infrastructure and improve safety;~~

(g) integration of safety and environmental concerns in the design and implementation of the trans-European transport network.'

[1] See contract 97/0150.00 financed by the PHARE-programme.

2. Article 8 is replaced by the following:

'1. When projects are developed and carried out, environmental protection must be taken into account by the Member States through execution of environmental impact assessments of project of common interest which are to be implemented pursuant to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment ([1]) and by applying Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ([2]).

An environmental assessment of the plans and programmes leading to such projects, in particular those financed by the Community, is implemented by Member States, pursuant to and in application of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment ([3]).

2. If new routes or other important nodal infrastructure developments are proposed for inclusion in this Decision, an environmental ~~evaluation~~ assessment of the proposed changes, ~~in line with the principles of the Strategic Environmental Assessment~~ pursuant and in application to Directive 2001/42/EC, shall be initiated by the concerned Member States. For cross border projects and corridors, the Committee established under Article 18.2 shall coordinate such assessments with the objective of facilitating the implementation of Directive 2001/42/EC.

3. The Commission:

(a) shall continue to develop improved methods of analysis for strategically assessing the environmental impact (as well as economic, safety and social impacts) of the whole network;

b) shall develop suitable methods for implementing the environmental assessment pursuant to Directive 2001/42/EC with the objective of facilitating *inter alia* appropriate coordination, avoiding duplication of efforts and achieving simplification and acceleration of procedures for cross border projects and corridors.'

3. In Article 9, paragraph 3 is replaced by the following:

'(3) The network shall include infrastructure for traffic management, user information, incident and emergency handling and electronic fee collection based on active co-operation between traffic management systems at European, national and regional level and service providers of travel and traffic information and value added services, ensuring the necessary complementarity with applications whose deployment is facilitated under the trans-European telecommunications networks programme.'

4. Article 10 is replaced by the following:

'1. The rail network shall comprise high-speed rail lines and conventional rail lines.

2. The high-speed rail lines,

shall comprise:

(a) specially built high-speed lines equipped for speeds generally equal to or greater than 250 km/h using current or new technology,

(b) specially upgraded high-speed lines equipped for speeds of the order of 200 km/h,

(c) specially upgraded high-speed lines which have special features as a result of topographical, relief or town planning constraints, on which the speed must be adapted to each case, or lines which provide access to airports of common interest.

This network shall be defined by the lines indicated in Annex I. Essential requirements and technical specification for interoperability applicable to high speed rail lines in current technology are defined according to Council Directive No 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system ([4]). Member States shall notify to the Commission prior to the opening of any high-speed line whether it is a specially built high-speed line or a specially upgraded high-speed line.

3. The conventional rail ~~lines~~ network shall comprise ~~high quality lines~~ lines for the conventional transport by rail of passengers and freight, including the rail segments of combined transport referred to in Article 14, access links to sea and inland ports of common interest and those freight terminals, which are open to all operators. Essential requirements and Technical Specification for Interoperability applicable to the conventional rail lines are defined according to Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system ([5]).

([1]) OJ L 175, 5.7.1985, p. 40.

([2]) OJ L 206, 22.7.1992, p. 7.

([3]) OJ L 197, 21.7.2001, p. 30.

([4]) OJ L 235, 17.9.1996, p. 6.

([5]) OJ L 110, 20.4.2001, p. 1.

4. The rail network shall:

— play an important role in long distance passenger traffic,

— permit interconnection with airports where appropriate,

— permit access to regional and local rail networks,

— facilitate freight transport by identifying and developing trunk routes dedicated to freight or routes on which freight trains have a priority,

— play an important role in combined transport,

— permit interconnection via ports of common interest with short sea shipping and inland waterways.

5. The network shall offer users a high level of quality and safety, owing to its continuity and to gradual implementation of its interoperability, brought about in particular by technical harmonisation and the European Rail Traffic Management System (ERTMS) harmonised command and control system recommended for the European railway network. To this end, a deployment plan shall be established by the Commission in consultation with the Member States.

6. The network shall include the infrastructures and the facilities allowing the integration of rail, road and, where appropriate, maritime services and air transport services.'

5. In Article 11 is amended as follows:

(a) the following paragraph 3b shall be inserted:

'3b. The inland ports of the network equipped with transhipment facilities for intermodal transport and with an annual freight traffic volume of at least 500 000 tonnes are shown in Annex I.'

(b) paragraph 4 is replaced by the following:

'(4) The network shall include the traffic management infrastructure. This shall include in particular the establishment of an interoperable, intelligent traffic and transport system known as the "River Information System" seeking to optimise the existing capacity and safety of the inland waterway network and to improve interoperability with other modes of transport.'

6. In Article 13, the following paragraph 3 is added:

'3. International and Community connecting points shall be gradually linked to the high-speed lines of the rail network, where appropriate. The network shall include the infrastructures and the facilities allowing the integration of air and rail transport services.'

7. Article 18 is amended as follows:

(a) the title is replaced by

'Committee for monitoring and the revision of the guidelines.'

(b) paragraph 1 is replaced by the following:

'1. Member States shall, before 2004, notify the Committee established under Article 18.2 and the Commission, of the national plans and programmes which they have drawn up affecting the development of the trans-European transport network, including the nature, the timetable and the estimated financial plans of the projects of common interest identified by this Decision.

Member States shall also notify the Committee established under Article 18.2 and the Commission, of any updates of those plans and programmes.

A Member State shall, before making any change affecting the network identified in the Annexes to this Decision give notice of that change to the Committee established under Article 18.2, the Commission, and to any Member States likely to be affected of its intention.'

(c) paragraph 3 is amended as follows:

'3. The Commission shall report ~~regularly~~ every two years to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the implementation of the guidelines described in this Decision. The Committee referred to in paragraph 2 shall assist the Commission with drawing up the report. The report shall contain information on the breakdown between national funding, Community funding and other funding. The report shall be accompanied where necessary by legislative proposals to revise the guidelines.'

8. Article 19 is replaced by the following:

'*Article 19*

Specific projects

Annex III contains the projects of common interest, the implementation of which is considered a priority by the Community.'

9. Articles 20 and 21 are deleted.

10. Annexes I and III to Decision 1692/96/EC are amended as set out in the Annex to this Decision.

Article 2

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

Article 3

This Decision is addressed to the Member States.

ANNEX

Annexes I and III to Decision No 1692/96/EC are amended as follows:

1. In Annex I, the sections 2, 3, 4 and 6 are replaced as follows:

'*Section 2:* **Road Network**

2.0 Europe	2.4 Greece	2.8 Italy	2.12 Portugal
2.1 Belgium	2.5 Spain	2.9 Luxembourg	2.13 Finland
2.2 Denmark	2.6 France	2.10 Netherlands	2.14 Sweden
2.3 Germany	2.7 Ireland	2.11 Austria	2.15 United Kingdom

Section 3: **Rail Network**

3.0 Europe	3.4 Greece	3.8 Italy	3.12 Portugal
3.1 Belgium	3.5 Spain	3.9 Luxembourg	3.13 Finland
3.2 Denmark	3.6 France	3.10 Netherlands	3.14 Sweden
3.3 Germany	3.7 Ireland	3.11 Austria	3.15 United Kingdom

Section 4: **Inland Waterways network and Inland Ports**

Section 6: **Airports network**

6.0 Europe
6.1 Belgium/Denmark/Germany/Luxembourg/Netherlands/Austria
6.2 Greece
6.3 Spain/Portugal
6.4 France
6.5 Ireland/United Kingdom
6.6 Italy
6.7 Finland/Sweden'

2. Annex III is replaced by:

'LIST OF SPECIFIC PROJECTS

1. High-speed train/combined transport north-south:
   Munich–Nuremberg–Erfurt-Halle/Leipzig–Berlin
   Brenner axis: Napoli–Verona–Munich and Bologna–Milano

2. High-speed train PBCAL (Paris–Brussels–Cologne–Amsterdam–London):
   Belgium: F/B border–Brussels–Liège–B/D border
   Brussels–B/NL border
   United Kingdom: London–Channel Tunnel Access
   Netherlands: B/NL border–Rotterdam–Amsterdam
   Germany: (Aachen) G27 Cologne–Rhine/Main

3. High-speed train south:
   Madrid–Barcelona–Perpignan–Montpelier–Nîmes
   Madrid–Vitoria–Dax

4. High-speed train east:
   Paris–Metz–Strasbourg–Appenweier–(Karlsruhe) with junctions to Metz–Saarbrücken–Mannheim and Metz–Luxembourg

5. Conventional rail/combined transport: Betuwe line
   Rotterdam–NL/D border–(Rhine/Ruhr)

6. High-speed train/combined transport, France–Italy:
   Lyon–Turin
   Turin–Milan–Venice–Trieste

7. Greek motorways: Pathe: Rio Antirio, Patras–Athens–Thessaloniki–Promahon (Greek/Bulgarian border) and Via Egnatia: Igoumenitsa–Thessaloniki–Alexandroupolis–Ormenio (Greek/Bulgarian border)–Kipi (Greek/Turkish border)

8. Multimodal Link Portugal–Spain–Central Europe

12. Nordic Triangle (rail/road)

13. Ireland/United Kingdom/Benelux Road link

14. West Coast main line (rail)

15. Global navigation and positioning satellite system Galileo

16. High-capacity rail link across the Pyrenees

17. East European Combined Transport/High Speed Train Stuttgart–Munich–Salzbourg/Linz–Vienna

18. Danube river improvement between Vilshofen and Straubing

19. High-speed rail interoperability on the Iberian peninsula

20. Fehmarn belt: fixed link between Germany and Denmark'

Amended proposal for a Directive of the European Parliament and of the Council on the Protection of the Environment through Criminal Law [1]

(2003/C 20 E/26)

COM(2002) 544 final — 2001/0076(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC-Treaty on 30 September 2002)

Article 250(2) of the EC Treaty states that as long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.

The Commission hereafter gives its opinion on the amendments adopted by the European Parliament.

1. BACKGROUND

Transmission of the proposal to the Council and the European Parliament (COM(2001) 139 final — 2001/0076 (COD)) in accordance with Article 175(1) of the EC Treaty: 15 March 2001

Opinion of Economic and Social Committee in Section (The ECOSOC has not been seized for Opinion by the Council in this file): 11 July 2001

Opinion of the European Parliament — first reading: 9 april 2002

2. OBJECTIVE OF THE COMMISSION PROPOSAL

EC Environmental law has existed for 25 years. More than 200 directives in the field of environment are today in force. However, there are still many cases of severe non-observance of Community environmental law.

These trends of severe non-observance of environmental law show that the sanctions currently established by the Member States are not sufficient to achieve full compliance with Community law.

The Commission proposal for a Directive requires the Member States to provide for criminal sanctions because only this type of measures seems adequate, and dissuasive enough, to achieve proper implementation of environmental law.

3. COMMISSION OPINION ON THE AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT

On 9 April, 2002, the European Parliament adopted 24 amendments out of the 32 that were tabled.

Amendments 2, 5, 7, 15, 16, 22 and 23 have been accepted by the Commission in full.

Amendments 1, 3, 4, 6, 12 and 14 were accepted in principle subject to either rewording and/or movement to another Chapter of the proposal.

The Commission accepted partially amendments 9, 21 and 30.

Amendments 8, 10, 11, 13, 18, 19, 20, 24 and 27 were not accepted by the Commission.

The Commission's position with regard to the amendments of the European Parliament is as follows:

3.1. Amendments accepted fully by the Commission

Amendment 2 is a general reference to the legal basis of the proposal for a Directive (Article 175(1) TEC).

Amendment 5 states that Community competence may be supplemented by complementary third pillar measures. This is the approach of the Commission and it has supported this viewpoint before the Council.

[1] OJ C 180 E, 26.6.2001, p. 238.

Amendment 7 makes it clear in the recitals that criminal law provisions are to be deployed at national level and that the Directive is not intended to empower the Community to intervene in national criminal law provisions. Although Articles 3 (offences) and 4 (sanctions) of the Proposal already clearly refer to national criminal law, such a clarification can be useful in the recitals.

Amendments 15, 22 and 23 strengthen the Commission's text, in line with the relevant Community environmental legislation (mainly Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds [1], Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [2] and Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer [3]).

Amendment 16 clarifies that, in the context of the distribution of powers between the Community and the Union, the proposal for a Directive under the first pillar is the appropriate legal instrument and that Article 175(1) TEC is the correct legal basis for the protection of the environment through criminal law in the Community. It is fully in line with the Commission's position concerning the Community competence to oblige Member States to provide for criminal sanctions against breaches of environmental legislation.

3.2. **Amendments accepted in principle by the Commission**

Amendment 1 refers to the political mandate given by the Tampere European Council, which identifies environmental crime as a priority sector where the Member States should agree common definitions and sanctions in the field of national criminal law. It is a political statement that is not appropriate in the recitals of a legal text. Nevertheless, this Amendment is accepted in principle and the Commission could accept this amendment without rewording it.

Amendment 3 elaborates on Community competence to provide for criminal sanctions to guarantee the application and effectiveness of Community law. It refers to Article 29 and 47 TUE, which confirm the primacy of the EC Treaty, and to the case law of the Court of Justice. The reference to third pillar provisions is, legally speaking, not appropriate in a first pillar instrument. Nevertheless, the Commission could accept this Amendment without rewording it.

Amendments 4 and 14 usefully refer to the principle of subsidiarity. They could possibly be merged into a single Amendment and refer to a standard existing clause. The following rewording is proposed by the Commission, referring to the text of a standard clause as it does exist for example in existing environment legislation (Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste [4]):

> 'In accordance with the principle of subsidiarity and proportionality as set out in Article 5 of the Treaty, there is a need to take action at the level of the Community. This Directive confines itself to minimum requirements the Member States must respect.'.

This merged Amendment could usefully replace Amendment 4, at the same place.

Amendment 6 links the proposal to existing Community environmental law. It already features in recitals 3 and 4 of the original Proposal. Nevertheless, the Commission could accept this Amendment without rewording it.

Amendment 12 clarifies that the use of criminal sanctions is indispensable for the purpose of enforcing environmental rules and that the EC Treaty provides scope for criminal sanctions. The content of this Amendment is already stated in recital 4 of the proposal. Nevertheless, the Commission could accept this amendment without rewording it.

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[1] OJ L 103, 25.4.1979, p. 1.

[2] OJ L 206, 22.7.1992, p. 7.

[3] OJ L 244, 29.9.2000, p. 1.

[4] OJ L 332, 28.12.2000, p. 91.

3.3. **Amendments accepted in part by the Commission**

Amendment 9 refers in the 1st sentence (accepted fully) to the fact that the Member States are free to maintain or introduce more stringent protective measures. The second sentence (rejected) refers to the fact that the Directive may be supplemented by complementary third pillar measures. This aspect is already mentioned under Amendment 5 (accepted fully by the Commission). There is no need to repeat it. This Amendment is therefore accepted in full for its 1st part and rejected for its 2nd part.

The Commission suggests the following rewording:

> 'This Directive contains only minimum rules, thereby leaving Member States free to introduce or apply more stringent penalties for environmental offences other than those referred to in the Directive.'

Amendment 21, in the 1st part of the sentence, strengthens the Commission's text, in line with existing Community environmental legislation. The 2nd part of the sentence makes a new reference to 'production' of hazardous waste. Community environmental legislation does not provide for a general prohibition against the production of hazardous waste. For this reason, it is impossible to refer to production in the Article 3(b) of the proposal. The Amendment 21 can be accepted by the Commission subject to the following rewording:

> 'The discharge, emission or introduction of a quantity of materials into air, soil or subsoil or surface or underground water and the treatment, disposal, storage, transport, export or import of hazardous waste.'.

Amendment 30 suggests adding a reference to the fact that prison sentences referred to in the Directive are to be subject to extradition or surrender. Requiring that the penalties be such as to give rise to extradition is in conformity with other UE texts and is accepted in principle. The added reference to the fact that 'this is provided for within national legislation of a Member State' is not clear, and should preferably be deleted. This Amendment is therefore accepted for the 1st part in principle and for the other part rejected. The Commission would accept this Amendment with the following rewording:

> 'As concerns natural persons, Member States shall provide for criminal penalties, involving in serious cases deprivation of liberty, which can give rise to extradition or surrender.'.

3.4. **Amendments rejected by the Commission**

Amendment 8 makes an erroneous reference to Article 31 TEU. The reference to Article 31 (e) TEU focuses on EU ('third pillar') competence to provide for judicial cooperation in the fields of organised crime, terrorism and illicit drug-trafficking under the Title VI of the EU Treaty. This reference cannot pursue the aim indicated by the justification for the Amendment, which is to support Community competence to oblige Member States to provide for criminal sanctions for breaches of Community environmental law. Moreover, Amendment 16 (fully accepted by the Commission) already clarifies that Article 175(1) TEC is the correct legal basis for the protection of the environment through criminal law in the European Community.

Amendment 10 underlines that the European Parliament favoured the Commission's approach in a previous Recommendation ([1]). Such a reference to the Recommendation does not provide legal grounds for the enacting part of the proposal for a Directive and should not be kept in the recitals.

Amendment 11 is a political statement inviting account to be taken of the opinion of the competent Section of the Ecosoc, that the Commission supports on the substance. This reference cannot be kept in the recitals because the proposal for a Directive, when adopted, will refer in the citations to the Ecosoc Opinion given in plenary. Such a reference does not provide legal grounds for the enacting part of the proposal for a Directive and should not be kept in the recitals.

([1]) European Parliament Recommendation on criminal sanctions and Community law, B-0707/2001, 15.11.2001.

Amendment 13 is a political statement that the Commission fully supports on the substance, as it gives priority to the adoption of the Commission proposal for a Directive over the adoption of the Council draft Framework Decision. Such a reference does not provide legal grounds for the enacting part of the proposal for a directive and should not be kept in the recitals.

Amendment 18 adds a reference to instigation in the definition of 'activities' (Article 2 of the proposal). Such a reference features already in Article 4 of the proposal, dealing with sanctions. According to Article 4 of the proposal, the offences (as defined in Article 2 and referred to in Article 3) and 'the participation in or instigation of such offences' are punishable. A new reference to instigation in Article 2 would not add anything.

Amendments 19 and 27 refer to the deletion of the Annex to the proposal.

The Commission decided to adopt the proposal for a Directive with an Annex for reasons of legal certainty. Annex to Article 3 covers the whole of the Community environmental legislation and selects, on an exhaustive basis, those obligations stemming from Community law (51 such Directives and Regulations) which constitute serious impairment of the environment.

This Annex has been considered as necessary as the Directive will oblige the Member States to provide for criminal sanctions within their national legal systems and that it would be impossible to provide for such criminal sanctions without them to be clearly defined.

Amendment 20 refers first to 'harmful substances' and second to nuclear materials.

1. 'harmful substances'

— 'substance'

The word 'substance' is a restrictive notion. It is, for instance, used in the Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations [1]. The Amendment intends to give the largest possible scope of application to Article 3. The use of a restrictive notion would not serve this purpose. The proposal for a Directive, in the Article 3b refers to 'material' (English version). This large formulation must be kept.

— 'harmful'

This Amendment adds a new condition to the enforcement of the environmental Directives referring to the discharge, emission or introduction of a quantity of materials into air, soil or water. This is useless as these Directives constitute already a full consequent set of rules. This is dangerous because it would impose a new element to be proven before these Directives can be enforced.

2. 'Nuclear materials'

The Amendment intends to cover nuclear materials. It is legally impossible to provide for criminal sanctions against unauthorised activities dealing with nuclear materials under the legal basis of the proposal for a Directive, Art. 175 TEC. This matter may have to be dealt with under the Treaty establishing the European Atomic Energy Community.

Amendment 24 adds the word 'criminal' in the introduction of Article 4 of the proposal. This amendment has not been put to vote because it has been considered a linguistic one by the European Parliament.

However, the Commission considers that this amendment alters substantially the original text of the Commission's proposal.

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[1] OJ L 262, 27.9.1976, p. 201.

In the context of the proposal for a Directive, most sanctions referred to are criminal ones. However, in some Member States, the distinction between administrative and criminal sanctions is sometimes, legally speaking, difficult to make, particularly regarding legal persons. This is the reason why the 'criminal' character of the sanctions is only referred to under letter a), referring to natural persons. Letter b), referring both to natural and to legal persons does not contain such a precision. The addition of the word 'criminal' to the text of Art. 4 could therefore create a problem of implementation of the Directive in these Member States.

3.5. **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 on the conclusion of the Protocol setting out, for the period from 3 August 2002 to 2 August 2004, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Republic of Angola on fishing off Angola

(2003/C 20 E/27)

COM(2002) 495 final — 2002/0237(CNS)

(Submitted by the Commission on 2 October 2002)

EXPLANATORY MEMORANDUM

The protocol annexed to the fisheries agreement between the EC and the Republic of Angola expired on 2 May 2002, but was prolonged until 2 August 2002 while the negotiations to renew the protocol were continuing. These negotiations resulted in the initialling of a new protocol in Luanda on 30 June 2002.

The new Protocol will be the ninth since the entry into force of the fisheries agreement between the EC and Angola in 1987. In terms of fishing opportunities for Community vessels it is the second most important agreement after Mauritania. It should also be noted that for tuna, the Agreement with Angola is an integral part of the network of agreements on tuna covering the Atlantic zone, which allows the Community fleet to follow straddling stocks.

The new protocol covers the period from 3 August 2002 to 2 August 2004. It grants fishing opportunities for 33 tuna vessels, 22 shrimp vessels and 4 200 GRT per month of demersal trawlers, compared with opportunities for 43 tuna vessels, 22 shrimp vessels and 3 750 GRT per month of demersal trawlers under the previous protocol. These levels were fixed on the basis of the conclusions of a group of Angolan and Community scientists, which met in Luanda to review the scientific information on the state of the resources at the same time as the third and final round of negotiations were being conducted.

The financial contribution has been increased to EUR 15 500 000 per year compared with EUR 13 975 000 per year in the previous protocol. The increase is justified by the increase in demersal opportunities and by the establishment of a partnership with Angola to encourage responsible and sustainable fisheries. Under this partnership, 36 % of the financial contribution is earmarked to finance the development of scientific research, surveillance, artisanal fisheries and local fishing communities, training and aquaculture, and will ensure greater coherence between the fisheries and development policies at Community level.

In order to ensure that the level of fishing under the terms of the protocol remains consistent with the responsible management of the resources, a scientific meeting will be held once per year to monitor the state of the stocks. Based on the results of these meetings, the fishing opportunities under the protocol will, if necessary, be revised.

The Angolan authorities decided to reduce the number of Community tuna vessels having access to Angolan waters from 43 vessels to 33 vessels. This is probably because other partners have offered to finance the construction of onshore tuna processing facilities in return for access to the tuna resources in Angolan waters. This reduction does not however call for a reduction of the financial compensation, since this is calculated only on the basis of the shrimp and demersal opportunities. There is no additional charge to the Community for the access of the tuna vessels, but instead the shipowners pay per tonne of the actual catches

In view of the above, the new protocol is considered to be good value for money. Moreover, the establishment of a partnership with Angola and the annual scientific reviews of the state of the stocks will encourage the responsible and sustainable exploitation of the resources to the mutual benefit of the Community and Angola.

The Commission proposes, on this basis, that the Council adopt the conclusion of the new Protocol by Regulation.

A proposal for a Council Decision on the provisional application of the new Protocol pending its definitive entry into force is the subject of a separate procedure.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard the Treaty establishing the European Community, and in particular Article 37, in conjunction with Article 300(2) and the first sentence of the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) In accordance with the Agreement between the European Economic Community and the Government of the Republic of Angola on fishing off Angola [1], the two parties held negotiations to determine any amendments or additions to be made to the Agreement at the end of the period of application of the Protocol annexed thereto.

(2) As a result of these negotiations, a new Protocol setting out the fishing opportunities and financial contribution provided for in the above Agreement for the period from 3 August 2002 to 2 August 2004 was initialled on 30 June 2002.

(3) It is in the Community's interest to approve the said Protocol.

(4) The method of allocating the fishing opportunities among the Member States should be defined on the basis of the traditional allocation of fishing opportunities under the Fisheries Agreement,

HAS ADOPTED THIS REGULATION:

Article 1

The Protocol setting out, for the period from 3 August 2002 to 2 August 2004, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Republic of Angola on fishing off Angola is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation.

Article 2

The fishing opportunities fixed in the Protocol shall be allocated among the Member States as follows:

— shrimp vessels:

  — Spain: 6 550 GRT per month, averaged over the year, 22 vessels;

— demersal fishing vessels:

  — Spain: 1 850 GRT per month, averaged over the year,

  — Portugal: 1 100 GRT per month, averaged over the year,

  — Italy: 750 GRT per month, averaged over the year,

  — Greece: 500 GRT per month, averaged over the year,

— freezer tuna seiners:

  — France: 6 vessels

  — Spain: 9 vessels

— surface longliners:

  — Portugal: 4 vessels

  — Spain: 14 vessels

— pelagic fishing vessels:

  — Netherlands and/or Ireland: 2 vessels

If licence applications from these Member States do not cover all the fishing opportunities fixed by the Protocol, the Commission may consider licence applications from any other Member State.

Article 3

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

[1] OJ L 341, 3.12.1987, p. 2.

PROTOCOL

setting out, for the period from 3 August 2002 to 2 August 2004, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Republic of Angola on fishing off Angola

Article 1

From 3 August 2002, for a period of two years, the limits referred to in Article 2 of the Agreement shall be as follows:

1. Shrimp vessels: 6 550 GRT per month, as an annual average (maximum 22 vessels)

   Catches by Community vessels may not exceed 5 000 tonnes of shrimps and prawns, including 30 % of prawns and 70 % of shrimps.

2. Demersal vessels (trawlers, bottom longliners and fixed gillnets): 4 200 GRT per month, as an annual average.

   Fishing for *Centrophorus granulosus* is prohibited.

3. Fishing for pelagic species: 2 vessels

   This type of fishing shall, because of its nature, be subject to a trial period of six months.

4. Freezer tuna seiners: 15 vessels

5. Surface longliners: 18 vessels

These limits on fishing opportunities may be raised if Community shipowners are prepared to contribute to the improvement of Angola's fisheries industry, in which case the two parties, meeting as a Joint Committee, will decide jointly on the additional fishing opportunities and the financial compensation.

Article 2

After the trial period of fishing for pelagic species and on the basis of the results achieved and the scientific opinions available, the two parties will, within the framework of the Joint Committee and following a meeting of the Joint Scientific Group referred to in Article 6, decide on the fishing opportunities for pelagic species for the remaining years of this Protocol and the financial compensation payable in return for those opportunities.

Article 3

1. The financial compensation provided for in Article 7 of the Agreement for the period referred to in Article 1 of this Protocol is hereby set at EUR 15 500 000 per year (EUR 9 975 000 per year of financial compensation proper and EUR 5 525 000 for the measures referred to in Article 3 of the Protocol) in return for the fishing opportunities set out in Article 1.

The financial compensation shall be paid into an account designated by the Ministry of Finance via the Fisheries and Environment Ministry.

The financial compensation shall be paid not later than 30 November of the first year of the Protocol and not later than the anniversary date of the Protocol the following year.

2. If vessels withdraw from the Agreement and the Angolan authorities do not agree to their replacement by other vessels, the resulting reduction in fishing opportunities for the Community shall entail a proportional adjustment of the financial compensation provided for in paragraph 1.

3. Angola shall have full discretion regarding the use to which the financial compensation is put.

Article 4

With a view to ensuring the development of sustainable and responsible fishing the two parties will, in their mutual interest, set up a partnership for the purpose in particular of encouraging: better knowledge of fishery and biological resources; quality control; marketing and obtaining the best return from fishery products; fisheries control; the development of non-industrial fishing; fishing communities; and training.

The breakdown of the EUR 5 525 000 earmarked for the measures provided for in Article 3(1) each year shall be as follows:

1. Scientific and technical programmes intended to improve knowledge of fishery and biological resources in Angola's fishing zone: EUR 750 000

2. Quality control programme: EUR 350 000

3. Support programme for marketing and obtaining the best return from fisheries products: EUR 250 000

4. Support programme for fisheries surveillance: EUR 775 000

5. Programme for the development of non-industrial fishing and the support of fishing communities: EUR 1 150 000

6. Programme of institutional support for the Fisheries and Environment Ministry: EUR 500 000

7. Programme to finance fisheries schools, study grants, practical training in the various scientific, technical and economic disciplines related to fisheries and participation in international organisations, seminars, symposia and workshops: EUR 1 500 000

8. Programme to encourage the development of aquaculture: EUR 250 000

The Fisheries and Environment Ministry shall decide on the measures and the annual amounts allocated thereto and shall keep the Commission of the European Communities informed.

The annual amounts shall be made available to the bodies concerned in an account designated by the Ministry of Finance via the Fisheries and Environment Ministry, not later than 30 November for the first year and, thereafter, on the anniversary date of the Protocol.

The Fisheries and Environment Ministry shall, three months after the anniversary date of the Protocol, provide the Commission of the European Communities with written information on the implementation of the Protocol and the results achieved. The European Community may, in the light of the actual implementation of the measures and after consulting the Angolan authorities, review the payments concerned.

Article 5

In the event of a significant change in the conditions of exploitation of fisheries resources in Angola's EEZ which prevents the exercise of fishing activities, the payment of the financial contribution by the European Community may be interrupted subject to the prior agreement of both parties.

Article 6

A joint scientific meeting shall be held annually to look into questions relating to the sustainable management of fishery resources.

Article 7

The implementation of the Agreement may be suspended if the Community fails to make the payments provided for in Articles 2, 3 and 4 within the time limits laid down.

Article 8

All activities of vessels operating under this Protocol and the annexes thereto, in particular transhipment and the consumption of ship's supplies (food and fuel), shall be governed by the laws applicable in the Republic of Angola.

Fishery products caught by Community vessels operating under the terms of the Agreement shall, for the purposes of this Protocol, be regarded as being of Community origin.

Article 9

This Protocol shall enter into force after both parties have given notification of the conclusion of their respective approval procedures.

ANNEX A

CONDITIONS GOVERNING THE FISHING ACTIVITIES OF COMMUNITY VESSELS IN ANGOLAN WATERS

1. **Applications for licences and formalities for their issuance**

1.1. The Commission of the European Communities shall, via its Delegation in Angola, present to Angola's fisheries authorities one application per vessel for each shipowner wishing to fish under the terms of this Agreement. It shall do so at least 15 days before the date of commencement of the period of validity requested. Applications shall be made on forms provided for the purpose by Angola, specimens of which are set out in Appendix 1 and Appendix 2. On first application the form shall be accompanied by a tonnage certificate for the vessel concerned. Each application shall be accompanied by proof of payment of the fee covering the period of validity of the licence.

1.2. For the purposes of this Protocol fishery products caught by Community vessels fishing under the terms of this Agreement shall be regarded as being of Community origin.

1.3. Each licence shall be issued to a shipowner for a specific vessel. In proven cases of force majeure, the licence for a vessel shall, at the request of the Commission of the European Communities, be replaced by another licence, for a Community vessel of a similar type.

1.4. Licences shall be issued by the Angolan authorities to the skipper of the vessel, at the port of Luanda, after the vessel has been inspected by the competent authority.

1.5. The Delegation of the Commission of the European Communities in Angola shall be notified of the licences issued by Angola's fisheries authorities.

1.6. Licences must be kept on board at all times. However, in the case of tuna vessels and surface longliners, the vessel shall be entered on the list of authorised fishing vessels as soon as notification is received that the European Commission has paid the advance to the Angolan authorities and the list shall be communicated to the Angolan authorities responsible for fisheries surveillance. Pending receipt of the actual licence, a copy may be obtained by fax which must be kept on board.

1.7. Licences shall be valid for one year.

1.8. Each vessel shall be represented by an agent who is officially resident in Angola and is approved by the Fisheries and Environment Ministry.

1.9. The Angolan authorities shall, as soon as possible, communicate details of the bank accounts and currencies to be used for payments under this Agreement.

2. **Fees**

2.1. *Provisions applicable to shrimp vessels and demersal fishing vessels*

The licence fee shall be:

— EUR 52/month per GRT for shrimp vessels,

— EUR 220/year per GRT for demersal vessels.

2.2. The fees may be paid quarterly or half-yearly, in which case the amount shall be increased by 5 % and 3 % respectively.

2.3. *Provisions applicable to tuna vessels and surface longliners*

The licence fee shall be EUR 25 per tonne caught within Angola's fishing zone.

Licences shall be issued once Angola has been paid a flat-rate advance of EUR 4 500 a year — equivalent to the fee for a catch of 180 tonnes per year — for each freezer tuna seiner and EUR 2 500 a year — equivalent to the fee for a catch of 100 tonnes per year — for each surface longliner.

The final statement of the fees due for the fishing year shall be drawn up by the Commission of the European Communities, at the end of the first quarter of the year following that of the catches on the basis of the catches reported for each vessel and confirmed by a specialised scientific body in the region, in particular the IRD (Institut de Recherche pour le Développement), the IEO (Instituto Español de Oceanografía) and IPIMAR (Instituto Português de Investigação Marítima).

This statement shall simultaneously be communicated to the Angolan authorities and the shipowners. Additional payments, if any, by the shipowners shall be made within 30 days of notification of the final statement, into an account opened with a financial institution or to any other body specified by the Angolan authorities.

However, if the amount of the final statement is less than the advance referred to above, shipowners shall not be reimbursed the balance.

3. **Biological rest period**

Shrimp fishing may each year be the subject of a biological rest period in the light of the findings of current scientific surveys. Such periods shall be notified not less than three months in advance to the Commission and the shipowners. Shipowners shall not be required to pay a licence fee during a biological rest period.

4. **By-catches**

By-catches by shrimp vessels shall remain the property of the shipowners. Altogether, shrimp vessels may catch up to 500 tonnes of crab per year.

5. **Landings**

Community surface longliners and tuna boats shall endeavour to supply Angolan tuna canneries, in accordance with their fishing effort in the zone and at a price agreed jointly between the shipowners and the Angolan fisheries authorities on the basis of current world market prices. Payment shall be made in convertible currency.

6. **Control of transhipments and departing vessels**

Transhipments shall be notified eight days in advance to the Angolan fisheries authorities and shall take place, either in the Bay of Luanda or in the Bay of Lobito, in the presence of the Angolan customs authorities.

Transhipment operations shall be subject to stamp duty and service taxes, all payments concerned being made to the customs authorities in accordance with the legislation in force.

A copy of the documentation relating to transhipments shall, 15 days before the end of each month for the preceding month, be transmitted to the Surveillance Directorate of the Fisheries and Environment Ministry.

Any Community fishing vessel wishing to leave Angola's EEZ with its catch or catches must give eight days' notice and submit to a customs check in the Bay of Luanda or the Bay of Lobito.

7. **Food supplies (ship's supplies)**

7.1. European Community fishing vessels taking on supplies of food in Angola shall do so in accordance with the legislation in force, using only specialist ship's chandlers registered with the Ministry of Trade and established in Angola.

7.2. If some or all of the food supplies come from outside Angola a list of the products must be sent to the Customs authorities in respect of each vessel, stating the number of crew members on board, in order to determine whether the quantities concerned are reasonable in relation to on-board consumption requirements. Export duty and other taxes shall be payable on any quantity in excess of what is regarded as reasonable.

7.3. Work relating to the provision of ship's supplies shall be subject to stamp duty and to service taxes.

8. **Fuel supplies (ship's supplies)**

8.1. With the exception of tuna vessels, all vessels operating in Angola's fishing zone under the terms of this Agreement will be provided with facilities for obtaining supplies of fuel and water in Angola.

8.2. In Angola, fuel may be taken on in Luanda or Lobito only.

Any transhipment of fuel supplies from a tanker or merchant vessel in Lobito or Luanda must take place in the presence of the customs authorities and shall be subject to stamp duty and service taxes.

8.3. Where a fishing vessel obtains supplies outside territorial waters and the 24-mile area, the customs authorities shall be notified, stating the quantities concerned, the location of the vessel and the name of the supplier.

9. **Reporting catches**

9.1. *Shrimp vessels and demersal vessels*

9.1.1. Shrimp vessels and demersal vessels shall, at the end of each fishing campaign, transmit the catch reports set out in Appendices 3 and 4 to the Instituto de Investigação Marinha (Marine Research Institute) via the Delegation of the European Communities.

Moreover, each vessel shall, via the Delegation of the European Community, present to the Planning, Studies and Statistics Office of the Fisheries and Environment Ministry a monthly report listing the catches made during the month and quantities on board on the last day of the month. This report shall be presented no later than the 45th day following the end of the month concerned.

In the event of failure to comply with this provision, Angola reserves the right to apply the penalties provided for in its legislation.

9.1.2. In addition, shrimp vessels and demersal vessels shall report daily their geographical position and the previous day's catches to Luanda radio station. The call sign will be notified to the owner when the fishing licence is issued. Vessels must, if they are unable to contact the above-mentioned radio station, use alternative means of communication.

No fishing or merchant vessel may leave the territorial waters of the Republic of Angola without the prior authorisation of the Direcção Nacional de Fiscalização (National Directorate for Surveillance) of the Fisheries and Environment Ministry and without the catches on board being checked.

9.2. *Tuna vessels and surface longliners*

Every three days during fishing operations in Angola's fishing zone, vessels shall inform Luanda radio station of their position and their catches. On entering and leaving Angola's fishing zone, the vessels shall inform Luanda radio station of their position and the volume of the catches on board.

Vessels shall, if they are unable to contact the above-mentioned radio station, use alternative means of communication.

Vessels shall keep a fishing logbook in accordance with the model in Appendix 5 for each fishing period spent in Angola's fishing zone. Fishing logbooks must be filled in even where no catch has been taken.

For periods spent outside Angolan waters, 'Outside Angola's EEZ' must be entered in the fishing logbook.

The form must be completed legibly, must be signed by the skipper of the vessel and must be sent to the National Inspection and Surveillance Directorate of the Fisheries and Environment Ministry via the Delegation of the Commission of the European Communities within 45 days of the end of the fishing campaign in Angolan waters; it must also be sent as soon as possible for processing to the scientific institutes referred to at 2.2.

In the event of failure to comply with this provision Angola reserves the right to suspend the licence of the vessel concerned until the necessary formalities have been complied with and to apply the penalties applicable under Angolan legislation. The Delegation of the Commission of the European Communities in Angola will in such cases be informed at once.

10. **Fishing zones**

10.1. The fishing zones accessible to shrimp vessels shall comprise all waters under the sovereignty or jurisdiction of the Republic of Angola north of 12°20' prime and beyond the first 12 nautical miles measured from the base lines.

10.2. The fishing zones accessible to vessels engaged in demersal fishing shall comprise all waters under the sovereignty or jurisdiction of the Republic of Angola:

— trawlers: beyond the first 12 nautical miles measured from the base lines and restricted northwards by 13°00' prime South, and southwards by a line five miles north of the limit between the EEZs (exclusive economic zones) of Angola and Namibia,

— vessels using other types of gear: beyond the first 12 nautical miles, measured from the base lines and restricted southwards by a line five miles north of the limit between the EEZs of Angola and Namibia.

The fishing zones accessible to freezer tuna seiners and surface longliners shall comprise all waters under the sovereignty or jurisdiction of the Republic of Angola beyond the first 12 nautical miles measured from the base lines.

11. **Hiring of crew members**

11.1. Owners of fishing vessels other than freezer tuna seiners and surface longliners to whom fishing licences have been issued under the terms of this Agreement shall contribute to the on-the-job vocational training of at least six Angolan seamen on board each vessel, who shall be freely chosen from a list drawn up by the Fisheries and Environment Ministry.

11.2. Should an observer be taken on board at Angola's request, he shall be regarded as one of the six seamen referred to at 11.1.

11.3. Community shipowners shall endeavour to increase the number of seamen and improve their vocational skills.

11.4. The wages of the seamen and technicians on board shall be borne by the shipowners in accordance with terms mutually agreed by the contracting parties and shall be paid into an account opened with a financial institution designated by the Fisheries and Environment Ministry. This pay shall include life insurance against all risks.

11.5. In addition, a total of 20 trainee seamen will each year be selected for the engine room and deck by the Fisheries and Environment Ministry and be distributed among the above-mentioned vessels. The trainees' wages, which shall be borne by the shipowners, may be worth up to 1/3 of that of seasoned seamen and must include the cost of life insurance against all risks.

11.6. After the traineeship has been satisfactorily completed the skipper shall sign a document to that effect after the trip, such document then being sent, via the owner or his representative, to the Fisheries and Environment Ministry.

12. **Scientific observers**

12.1. Any vessel may be asked to take on board a scientific observer designated and employed by the Fisheries and Environment Ministry.

12.2. Observers shall not normally remain on board for more than one trip.

12.3. The time spent on board by the observer shall be set by the Angolan authorities but, as a general rule, should not exceed the time required to carry out the duties concerned.

12.4. Observers will be treated as ship's officers.

Observers shall:

— observe the fishing activities of the vessels,

— perform biological sampling in the context of scientific programmes,

— take note of the fishing gear used,

— verify the catch data for Angola's zone as recorded in the logbook,

— report fishing data by radio once a week.

12.5. While on board,

observers shall:

— take all appropriate steps to ensure that the conditions under which they are taken on board and their presence on board do not interrupt or hamper fishing activities,

— respect the material and equipment on board and the confidentiality of all documents belonging to the said vessel,

— draft an activity report to be transmitted to the competent Angolan authorities.

The conditions under which observers are taken on board are to be agreed between the shipowner or his agent and the Angolan authorities. The cost of the observers' wages and social insurance contributions shall be charged to the Fisheries and Environment Ministry. Shipowners shall, through their agents, pay the Marine Research Institute EUR 15 for each day spent by an observer on board a vessel. Shipowners who are unable to take observers aboard and put them ashore at an Angolan port agreed by common accord with the Angolan authorities shall bear the cost of taking the observers aboard and putting them ashore.

If the observer is not present at the time and place agreed or during the twelve hours following the time agreed, shipowners shall automatically be absolved of their obligation to take the observer on board.

13. **Inspection and monitoring**

Community vessels fishing under the terms of the Agreement shall be monitored by satellite in accordance with the Protocol on VMS and without prejudice to the Angolan legislation applicable.

At the request of the Angolan authorities, Community fishing vessels operating under the terms of the Agreement shall allow on board any Angolan officials responsible for the inspection and monitoring of fishing activities and facilitate the accomplishment of their duties.

These officials shall not remain on board any longer than is necessary for the accomplishment of their duties.

14. **Mesh size**

The minimum size of the mesh used shall be:

— 50 mm for shrimp fishing;

— 110 mm for demersal fishing.

The introduction of new mesh sizes shall apply to Community vessels from the sixth month following notification to the Commission of the European Communities.

15. **Boarding**

15.1. The European Community Delegation in Luanda shall be informed within 48 hours of the boarding, within Angola's fishing zone, of any fishing vessel flying the flag of a Member State of the Community and operating under the terms of this Agreement between the Community and a third country, and shall at the same time receive a summary report of the circumstances and reasons for the boarding of the vessel.

15.2. In the case of vessels authorised to fish in Angolan waters, before any measures regarding the master or the crew of the vessel or any action regarding the cargo and equipment of the vessel are considered, other than those to safeguard evidence relating to the alleged infringement, a consultation meeting shall be held, within 48 hours of receipt of the above-mentioned information, between the Delegation of the Commission of the European Communities, the Fisheries and Environment Ministry and the inspection authorities, possibly attended by a representative of the Member State concerned.

At the meeting, the parties shall exchange any relevant documentation or information, in particular automatically registered data showing the vessel's positions during the trip up to the time of boarding, which may help to clarify the circumstances of the facts concerned.

The shipowner or his representative shall be informed of the outcome of the meeting and of any measures resulting from the boarding.

15.3. Before any judicial proceedings are brought, an attempt shall be made to resolve the alleged infringement through a compromise procedure. This procedure shall be completed no later than three working days after the boarding.

15.4. If the case cannot be settled by compromise, judicial proceedings shall be brought and bank security payable by the shipowner shall be set by the relevant authority within 48 hours following the conclusion of the compromise procedure pending the judicial decision. The amount of the security may not exceed the maximum penalty applicable under national legislation for the alleged infringement. The bank security shall be returned to the shipowner by the relevant authority once the case is settled by judicial decision without the master of the vessel concerned being incriminated.

15.5. The vessel and its crew shall be released:

— at the end of the concertation meeting, if the established facts permit, or

— as soon as the obligations arising from the compromise have been fulfilled, or

— as soon as bank security has been lodged by the shipowner (judicial proceedings).

16. **Infringements**

Any infringement of Angolan legislation or the provisions of this Protocol by a Community vessel shall be notified to the Delegation of the Commission of the European Communities in Luanda, without prejudice to the sanctions applicable under the legislation concerned.

ANNEX B

CONDITIONS GOVERNING THE FISHING ACTIVITIES OF COMMUNITY VESSELS FISHING FOR PELAGIC SPECIES IN ANGOLAN WATERS

1. **Applications for licences and formalities for their issuance**

1.1. The Commission of the European Communities shall, via its Delegation in Angola, present to Angola's fisheries authorities one application per vessel for each shipowner wishing to fish under the terms of this Agreement. It shall do so at least 15 days before the date of commencement of the period of validity requested. Applications shall be made on forms provided for the purpose by Angola, specimens of which are contained in Appendix 1. On first application the form shall be accompanied by a tonnage certificate for the vessel concerned. Each application shall be accompanied by proof of payment of the fee covering the period of validity of the licence.

When renewing the licence, only proof of payment of the fee for the period in question need be presented to the Angolan authorities, the other documents referred to above being presented only with the first application or if the technical characteristics of the vessel have changed.

1.2. Licences shall, in the case of a first application, be issued to a shipowner for a specific vessel. In proven cases of force majeure the licence for a vessel shall, at the request of the Commission of the European Communities, be replaced by another licence, for a Community vessel of a similar type.

1.3. Licences shall be issued by the Angolan authorities to the skipper of the vessel, at the nearest port, after the vessel has been inspected by the competent authority.

1.4. The Delegation of the Commission of the European Communities in Angola shall be notified of the licences by Angola's fisheries authorities.

1.5. Licences must be kept on board at all times. However, the vessel shall be entered on the list of authorised fishing vessels as soon as notification is received that the European Commission has paid the advance to the Angolan authorities and the list shall be communicated to the Angolan authorities responsible for fisheries surveillance. Pending receipt of the actual licence, a copy may be obtained by fax which must be kept on board.

1.6. Licences shall be valid for a minimum of one month and may be renewed.

1.7. Each vessel shall be represented by an agent who is officially resident in Angola and is approved by the Fisheries and Environment Ministry.

1.8. The Angolan authorities shall, before the entry into force of this Protocol, communicate details of the bank accounts and currencies to be used for paying the fees.

1.9. Licences shall cover the fishing of mackerel, sardinella and horse mackerel. A by-catch of up to 10 % is authorised.

2. **Fees**

The fee is set at EUR 3/month per GT.

After the trial period the conditions governing these fishing operations (obligation to take seamen on board and put them ashore) shall be laid down by common agreement between the shipowners and the Angolan authorities in the light of the results of the said period.

3. **Transhipment**

All transhipments shall be notified to the competent Angolan fisheries authorities eight days in advance and shall take place in either the Bay of Luanda or the Bay of Lobito in the presence of the Angolan Customs authorities.

Transhipment operations shall be subject to stamp duty and service taxes, all payments concerned being made to the customs authorities in accordance with the legislation in force.

A copy of the documentation relating to transhipments shall be forwarded to the National Surveillance Directorate of the Fisheries and Environment Ministry 15 days before the end of each month for the preceding month.

Any Community fishing vessel wishing to leave Angola's EEZ with its catch or catches must submit to a customs check in the Bay of Luanda or the Bay of Lobito after giving eight days' notice.

4. **Food supplies (ship's supplies)**

4.1. European Community fishing vessels taking on supplies of food in Angola shall do so in accordance with the legislation in force, using only specialist ship's chandlers registered with the Ministry of Trade and established in Angola.

4.2. If some or all of the food supplies come from outside Angola a separate list of the products must be sent to the Customs in respect of each vessel, stating the number of crew members on board, in order to determine whether the quantities of products concerned may be regarded as reasonable in relation to on-board consumption requirements. Any quantity in excess of what is regarded as reasonable shall be subject to export duty and other taxes.

4.3. Work relating to the provision of ship's supplies shall be subject to stamp duty and service taxes.

5. **Fuel supplies (ship's supplies)**

5.1. With the exception of tuna vessels, all vessels operating in Angola's fishing zone under the terms of this Agreement will be provided with facilities for obtaining their fuel and water supplies in Angola.

5.2. Any fuel taken on board in Angola must be taken on in Luanda or Lobito.

The transhipment of fuel supplies from a tanker or merchant ship in Lobito or Luanda must take place in the presence of the customs authorities and is subject to stamp duty and service taxes.

5.3. Where a fishing vessel obtains its supplies outside territorial waters and the 24-mile area, the customs authorities shall be notified, stating the quantities concerned, the location of the vessel and the name of the supplier.

6. **Reporting catches**

6.1. At the end of each fishing campaign vessels fishing for pelagic species shall transmit to the Fisheries Research Institute in Luanda, via the Delegation of the Commission of the European Communities, daily catch reports in accordance with the specimen shown in Appendix 6.

Moreover, each vessel shall present a monthly report to the Planning, Studies and Statistics Office of the Fisheries and Environment Ministry, listing the catches made during the month and the quantities on board on the last day of the month. This report shall be presented no later than the 45th day following the end of the month concerned.

6.2. No fishing vessel may leave Angola's fishing zone without obtaining the prior authorisation of the Fisheries Surveillance Directorate of the Fisheries and Environment Ministry after the catches on board have been checked.

In the event of failure to comply with this provision, Angola reserves the right to apply the penalties applicable under its legislation.

7. **Fishing zones**

The fishing zones accessible to vessels fishing for pelagic species shall comprise all waters under the sovereignty or jurisdiction of the Republic of Angola beyond the first 12 nautical miles.

8. **Hiring of crew members**

Vessels fishing for pelagic species during the trial period shall not be subject to the requirement to hire Angolan seamen.

9. **Scientific observers**

9.1. Vessels may be asked to take on board a scientific observer designated and employed by the Fisheries and Environment Ministry.

Observers shall not normally remain on board for more than one trip.

9.2. The time spent on board by the observer shall be fixed by the Angolan authorities, but, as a general rule, should not exceed the time required to carry out the duties concerned.

9.3. Observers shall be treated as ship's officers.

Observers shall:

— observe the fishing activities of the vessels,

— perform biological sampling in the context of scientific programmes,

— take note of the fishing gear used,

— verify the catch data for Angola's zone as recorded in the logbook,

— report fishing data by radio once a week.

While on board, observers shall:

— take all appropriate steps to ensure that the conditions under which they are taken on board and their presence on board do not interrupt or hamper fishing activities,

— respect the material and equipment on board and the confidentiality of all documents belonging to the said vessel,

— draft an activity report to be transmitted to the competent Angolan authorities.

The terms under which observers are taken on board are to be agreed between the shipowner or his agent and the Angolan authorities. Their wages and social insurance contributions are to be paid by the Fisheries and Environment Ministry. Shipowners shall, through their agents, pay the Marine Research Institute EUR 30 for each day spent by an observer on board a vessel. Shipowners who are unable to take observers on board and put them ashore at an Angolan port agreed by common accord with the Angolan authorities shall bear the cost of taking the observers aboard and putting them ashore.

If the observer is not present at the time and place agreed or during the twelve hours following the time agreed, shipowners shall automatically be absolved of their obligation to take the observer on board.

10. **Inspection and surveillance**

Community vessels fishing under the Agreement shall be monitored by satellite in accordance with the Protocol on VMS and without prejudice to the Angolan legislation applicable.

At the request of the Angolan authorities, Community fishing vessels fishing under the terms of the Agreement shall allow on board any Angolan officials responsible for the inspection and monitoring of fishing activities and shall facilitate the accomplishment of their duties.

These officials shall not remain on board any longer than is necessary for the accomplishment of their duties.

11. **Mesh size**

The minimum size of the mesh used shall be 60 mm.

12. **Boarding**

12.1. The European Community Delegation in Luanda shall be informed within 48 hours of the boarding, within Angola's fishing zone, of any fishing vessel flying the flag of a Member State of the Community within Angola's fishing zone and operating under this Agreement, and shall at the same time receive a summary report of the circumstances and reasons for the boarding of the vessel.

12.2. In the case of vessels authorised to fish in Angolan waters, before any measures regarding the master or the crew of the vessel or any action regarding the cargo and equipment of the vessel are considered, other than those to safeguard evidence relating to the alleged infringement, a consultation meeting shall be held, within 48 hours of receipt of the above-mentioned information, between the Delegation of the Commission of the European Communities, the Fisheries and Environment Ministry and the inspection authorities, possibly attended by a representative of the Member State concerned.

At the meeting, the parties shall exchange any relevant documentation or information, in particular automatically registered data showing the vessel's positions during the trip up to the time of boarding, which may help to clarify the circumstances of the facts concerned.

The shipowner or his representative shall be informed of the outcome of the meeting and of any measures resulting from the boarding.

12.3. Before any judicial proceedings, an attempt shall be made to resolve the alleged infringement through a compromise procedure. This procedure shall be completed no later than three working days after the boarding.

12.4. If the case cannot be settled by compromise, judicial proceedings shall be brought before a competent judicial body and a bank security payable by the shipowner shall be set by the relevant authority within 48 hours following the conclusion of the compromise procedure pending a judicial decision. The amount of the security may not exceed the maximum penalty applicable under national legislation for the alleged infringement. The bank security shall be returned to the shipowner by the relevant authority once the case is settled by judicial decision without the master of the vessel concerned being incriminated.

12.5. The vessel and its crew shall be released:

— at the end of the concertation meeting, if the established facts permit, or

— as soon as the obligations arising from the compromise have been fulfilled, or

— as soon as bank security has been lodged by the shipowner (judicial proceedings).

Appendix 1

APPLICATION FOR A LICENCE TO FISH FOR SHRIMP AND DEMERSAL SPECIES IN ANGOLAN WATERS

SECTION A

1. Name of shipowner: .....
2. Nationality of shipowner: .....
3. Business address of shipowner: .....

.....

.....

4. Chemical additives which may be used (name and composition): .....

.....

.....

.....

SECTION B

(To be completed for each vessel)

1. Period of validity: .....
2. Name of vessel: .....
3. Year of construction: .....
4. Original flag: .....
5. Current flag: .....
6. Date on which current flag acquired: .....
7. Year acquired: .....
8. Port and registration number: .....
9. Type of fishing: .....
10. Gross tonnage: .....
11. Call sign: .....
12. Length overall (m): .....
13. Bow height (m): .....
14. Depth (m): .....
15. Hull construction material: .....
16. Engine power: .....
17. Speed (knots): .....
18. Capacity of the cold storage chamber: .....
19. Capacity of tanks (m^3): .....
20. Capacity of fish holds (m^3): .....
21. Colour of hull: .....
22. Colour of superstructure: .....

23. On-board communication equipment:

Type	Make	Power (Watts)	Year of construction	Frequencies	
				Reception	Transmission

24. Navigating and sounding equipment:

Type	Make	Model	Range

25. Skipper: .....

26. Nationality of skipper: .....

Include:

— three colour photographs of the vessel (side view), of any additional boats used for fishing and of any aerial equipment used for detecting fish,

— an illustration and detailed description of the fishing gear used,

— a document proving that the representative of the shipowner is empowered to sign this application.

....

(Date of application) (Signature of representative of shipowner)

Appendix 2

APPLICATION FOR A LICENCE TO FISH FOR TUNA IN ANGOLAN WATERS

PART A

1. Name of shipowner: .....

2. Nationality of shipowner: .....

3. Business address of shipowner: .....

.....

.....

PART B

(To be completed for each vessel)

1. Period of validity: .....

2. Name of vessel: .....

3. Year of construction: .....

4. Original flag: .....

5. Current flag: .....

6. Date on which current flag was acquired: .....

7. Year acquired: .....

8. Port and registration number: .....

9. Type of fishing: .....

10. Gross register tonnage: .....

11. Call sign: .....

12. Length overall (metres): .....

13. Bow height (metres): .....

14. Depth (metres): .....

15. Hull construction material: .....

16. Engine power (HP): .....

17. Speed (knots): .....

18. Cabins: .....

19. Capacity of fuel tanks (m^3): .....

20. Capacity of fish holds (m^3): .....

21. Freezing capacity in tonnes/24 hours and system used: .....

.....

22. Colour of hull: .....

23. Colour of superstructure: .....

24. On-board communication equipment:

Type	Make	Model	Power (watts)	Year of manufacture	Frequencies	
					Reception	Transmission

25. Navigation and sounding equipment:

Type	Make	Model

26. Auxiliary boats used (for each vessel): .....

26.1. Gross register tonnage: .....

26.2. Length overall (metres): .....

26.3. Bow height (metres): .....

26.4. Depth (metres): .....

26.5. Hull construction material: .....

26.6. Engine power (HP): .....

26.7. Speed (knots): .....

27. Auxiliary aerial equipment used to detect fish (even if not installed on board): .....

.....

28. Home port: .....

29. Name of skipper: .....

30. Nationality of skipper: .....

Include:

— three colour photographs of the vessel (side view), of any additional boats used for fishing and of any aerial equipment used for detecting fish,

— an illustration and detailed description of the fishing gear used,

— a document proving that the representative of the shipowner is empowered to sign this application.

....

(Date of application) (Signature of representative of shipowner)

Appendix 3.1.

FISHING LOGBOOK

(for all bottom trawlers)

INSTITUTO DE INVESTIGAÇÃO PESQUEIRA

(Fisheries Research Institute)

Haul	(13)	No	No	No	No	No
Date	(14)					
Latitude	(15)					
Longitude	(16)					
Sounding (metres)	(17)					
Duration (h)	(18)					
Total catch (kg)	(19)					

	1. Horse mackerel					
	2. Sardinella					
	3. Scabbardfish					
	4. Antarctic toothfish					
	5. Large-eye dentex					
	6. Red Pandora					
	7. Sea bream					
	8. Barracuda					
	9. Hake					
	10. Drums					
	11. Meagres					
	12. Splitfins					
	13. Grunts					
	14. Skate and rays					
	15. Shark					
	16. Shrimps					
	17. Cuttlefish					
	18. Squid					

Total quantity of fish processed (kg)

Species	Whole	Fillets	Heads off

Discards

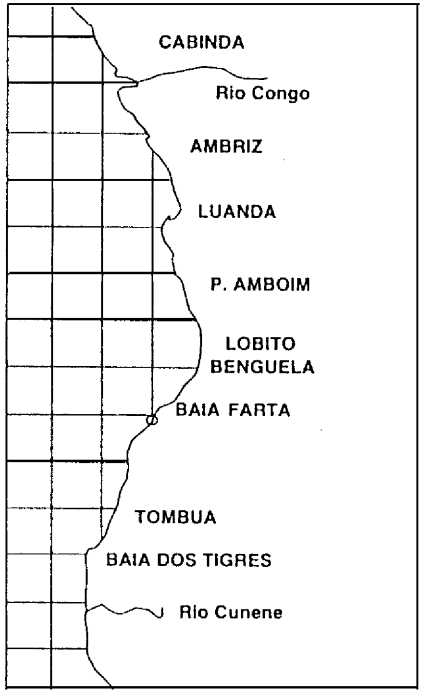
Species	Total (kg)

Appendix 3.2.

TRIP

Call sign (1)	
Registration (2)	
Name of vessel (3)	
Nationality (4)	
Shipowner (5)	

	Departure (6)	Arrival (7)
Date		
Port		
Skipper's name and signature (8)		



FISHING GEAR (specify and give measurements) (9)

Gear	Headline (m) (g)	Footrope (m)	Cod end mesh size (mm)
Demersal trawl (a)			
Pelagic trawl (b)			
Shrimp trawl (c)			
	Floatline	Depth (m)	
Seine (d)			
	Length (m)	Number of hooks used	
Longline (e)			
	Length (m)	Depth (m)	
Gillnet/trammel net (f)			
Other (specify)			

MAIN SPECIES FISHED (please state name or serial number) (10)

Please enter the total number of fishing days in each box in the diagram opposite (11)

TOTAL CATCH (kg) (Weight of all fish on board) (12)	

Appendix 4.1.

FISHING LOGBOOK
(for all shrimp vessels)

INSTITUTO DE INVESTIGAÇÃO PESQUEIRA
(Fisheries Research Institute)

Haul	(13)	No	No	No	No	No
Date	(14)					
Latitude	(15)					
Longitude	(16)					
Sounding (m)	(17)					
Duration (h)	(18)					
Total catch (kg)	(19)					

	1. Deepwater shrimp					
	2. Deepwater rose shrimp					
	3. Blue-and-red shrimp					
	4. Lobster					
	5. Crab					
	6.					
	7.					
	8.					
	9.					
	10.					
	11.					
	12.					
	13.					

NB: See attached table to confirm the common name of the species in your language.

Total quantity of fish processed (kg)

Species	Heads off	Others

Discards

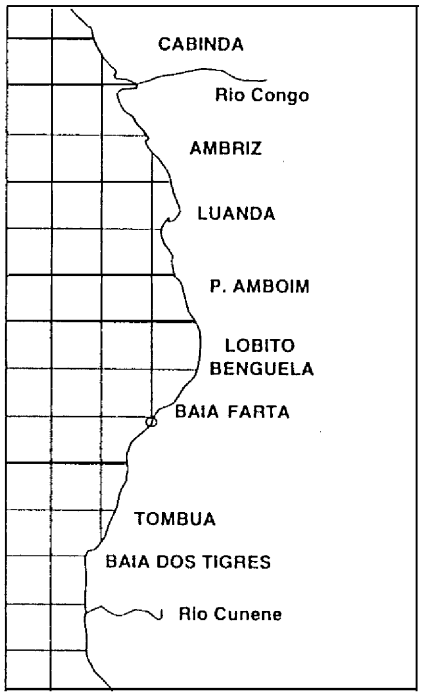
Species	Total (kg)

Appendix 4.2.

TRIP

Call sign (1)	
Registration (2)	
Name of vessel (3)	
Nationality (4)	
Shipowner (5)	

	Departure (6)	Arrival (7)
Date		
Port		
Skipper's name and signature (8)		



FISHING GEAR (specify and give measurements) (9)

Gear	Headline (m) (g)	Footrope (m)	Cod end mesh size (mm)
Demersal trawl (a)			
Pelagic trawl (b)			
Shrimp trawl (c)			
	Floatline	Depth (m)	
Seine (d)			
	Length (m)	Number of hooks used	
Longline (e)			
	Length (m)	Depth (m)	
Gillnet/trammel net (f)			
Other (specify)			

MAIN SPECIES FISHED (please state name or serial number) (10)

Please enter the total number of fishing days in each box in the diagram opposite (11)

TOTAL CATCH (kg) (weight of all the fish on board) (12)	

Appendix 5

IIP

MINISTERIO DAS PESCAS — DIARIO DE PESCA PARA ATUNEIRO
(ANGOLAN FISHERIES MINISTRY — TUNA BOAT FISHING LOGBOOK)

Modalidade de pesca (Fishing method)	
	Palangre (Longline)
	Isco vivo (Baitboat)
	Rede de cerco (Purse seine)
	Corrico (Trol) (Trolling)
	Outros (Other)

			Mês (Month)	Dia (Day)	Ano (Year)	Porto (Port)
Nome do navio: (Vessel name)	Tonelagem de arqueação bruta: (Gross Tonnage)	Saída: (Boat Left)				
Nacionalidade: (Flag Country)	Capacidade (TM) tm (Capacity (tonnes))	Chegada: (Boat Returned)				
Número de registro: (Registration No)	Capitão ou Mestre (Captain)					
Armador ou afretador: (Company or owner)	N.º de tripulantes (No of crew)					
Endereço: (Address)	Data de comunicação: (Reporting date)					
	Comunicado por: (Reported by)					

Número de dias no mar (No of days at sea)		N.º de dias de pesca (No of fishing days)		Número de viagem (Trip Number)	
		N.º de lanços efectuados (No of sets made)			

Datas (Dates)		Area		Temp. água sup. (°C) Surf. Water Temp (°C)	Esforço de pesca (Effort) (n.º de anzóis usados) (No of hooks used)	Capturas (Catches)																		Isco usado na pesca (Bait used)				
Dia/Mês Day/Month	Número de operação (Set No)	Latitude N/S	Longitude E/W			Atum rabilho ou Rabil (Bluefin Tuna) *Thunnus maccoyi*		Albacora (Yellowfin Tuna) *Thunnus albacares*		Patudo (Bigeye Tuna) *Thunnus obesus*		Voador (Albacore) *Thunnus alalunga*		Espadarte (Swordfish) *Xiphias gladius*		Espadim (Strip Marlin) (White Marlin) *Tetraptunus audax*		Espadin negro (Black Marlin) *Makaira indica*		Veleiro (Sailfish) *Istiophorus spp.*		Gaiado (Skipjack) *Katsuwonus pelamis*		Diversos (Miscellaneous Fishes)		Total diário (Daily Total) Apenas em Kg (in kg only)		Agulhão (Saury)	Lula (Squid)	Isco vivo (Livebait)	Outros (Other)
						No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg				
Quantidades descarregadas (kg) LANDING WEIGHT (IN KG)																															

1 — No fim de cada viagem enviar uma copia do Diário de Pesca ao Ministério das Pescas

(At the end of each trip send a copy of the log to Ministry of Fisheries).

2 — ÁREA. Significa a posição da operação, com arredondamento dos minutos e registando graus de latitude e longitude

(Fishing area refers to the position of the set. Round off minutes and record degree of latitude and longitude).

3 — A última linha «Quantidade descarregada» deve ser preenchida só no fim da viagem. Deve ser registrado o peso real na altura da descarga

(The bottom line -landing weight- should not be completed until the end of the trip. Record the actual weight at the time of unloading).

4 — Toda a informação aqui registada será mantida estritamente confidencial

(All information reported herein will be kept strictly confidential).

Appendix 6

STATISTICS ON PELAGIC FISHING ACTIVITIES

FISHERIES MINISTRY

Month: Year:

Name of vessel:	
Nationality (flag):	

Engine rating:	
Gross register tonnage (GRT):	

Fishing method:	
Home port:	

Date	Fishing zone		Number of Sets	Number of hours of Fishing	Species (kg)							
					Mackerel and horse mackerel				Total	Other fish		Total
					Mackerel		Horse mackerel					
	Longitude	Latitude										
1.												
2.												
3.												
4.												
5.												
6.												
7.												
8.												
9.												
10.												
11.												
12.												
13.												
14.												
15.												
16.												
17.												
18.												
19.												
20.												
21.												
22.												
23.												
24.												
25.												
26.												
27.												
28.												
29.												
30.												
31.												
		TOTAL										

Proposal for a Council Decision on the conclusion of the Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol setting out the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Republic of Senegal on fishing off the coast of Senegal for the period from 1 July 2002 to 30 June 2006

(2003/C 20 E/28)

COM(2002) 496 final

(Submitted by the Commission on 2 October 2002)

EXPLANATORY MEMORANDUM

The Community has a longstanding relation with the Democratic Republic of Senegal on Fisheries. The Framework Agreement, which dates from 1980, is the earliest agreement concluded by the Community and quite considerable in financial terms. The Agreement is important both for the fishing possibilities obtained and for its political and economic impact. For Senegal, apart from providing for a considerable financial contribution, the Agreement also ensures an important share of the raw materials to the Senegalese industry, even though the global effect of the EC fishery in Senegalese waters is not very significant. The EC catches compared to the global catches made in Senegal (1997-2001) represented only 1,7-3,3 %, while the EC vessels provided for almost a quarter (24,8 % in 1997) of the landings made by the industrial fleet at the port of Dakar. Under the Protocol some EC vessels are obliged to land a part of their catches in Senegal and the tuna vessels land an important part of their catches in Dakar, not only from the Senegalese EEZ, but from the whole area.

The latest protocol annexed to the fisheries agreement between the EC and Senegal expired on 31.12.2001. The latest round of negotiations to renew the protocol, which took place in Dakar on 24 to 25 June 2002, resulted in the initialling of a new protocol.

The new protocol, which covers the period from 1 July 2002 to 30 June 2006, will be the 17th since the entry into force of this fisheries agreement. It grants fishing opportunities for 78 tuna vessels and 8 000 GRT for trawlers and longliners. Compared to the previous Protocol there has been a considerable reduction of the fishing possibilities on the socially, politically and economically sensitive segments: the coastal demersal segment has been reduced by 30 % and the pelagic segment has been excluded from the new Protocol.

The overall financial contribution to be paid to Senegal has been increased from EUR 12 000 000 per year to EUR 16 000 000 per year. Out of this amount, the Protocol foresees EUR 3 000 000/year for the development of a partnership aiming at, inter alia, stock evaluations, control and the surveillance of the fishing activities, the improvement of the safety of the small-scale fishing vessels and institutional support for the introduction of sustainable and responsible fishing.

This partnership constitutes an innovative element which did not exist in the previous protocol and which shows the desire of the two parties to contribute to the development of sustainable and responsible fisheries. Moreover, this partnership envisages a programming and follow-up mechanism, which is in line with the other fishing agreements concluded by the Community with third countries. In this respect, it should also be stressed that, within the framework of the partnership, the Senegalese authorities committed themselves to undertake, for each year of application of the protocol, an evaluation and an audit of all the partnership actions.

The protocol includes several more positive elements, for example:

— For the first time, the new protocol EC/Senegal envisages a continuous monitoring of the development of the state of stocks. To this end, Article 3 of the protocol foresees an annual scientific meeting. On the basis of the conclusions of the scientific meeting, the Joint Committee can adopt appropriate measures of the durable management of resources, including — if necessary — a reduction in the fishing opportunities.

— The new way of calculating the fishing possibilities for trawlers and longliners ('per month, averaged over the year') will show the actual fishing effort deployed and will involve a larger flexibility for the EC fishery. It will also most likely bring about a larger rate of utilisation of the fishing possibilities (cost/benefit).

— The advances paid by ship-owners have been increased.

— The technical conditions have been strengthened (introduction of yearly obligatory biological resting periods, reduced fishing zones, reduced allowed by-catches, larger mesh sizes and increased obligatory landings).

— The number of Senegalese observers and seamen on board Community vessels has been increased.

In view of the above, the new Protocol is considered to be good value for money and will encourage the responsible and sustainable exploitation of the resources to the mutual benefit of the Community and Senegal.

The Commission proposes, on this basis, that the Council adopt by decision the draft Agreement in the form of an Exchange of Letters concerning the provisional application of the new Protocol pending its definitive entry into force.

A proposal for a Council regulation on the conclusion of the new Protocol is the subject of a separate procedure.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) In accordance with the Agreement between the European Economic Community and the Government of the Republic of Senegal on fishing off the coast of Senegal [1], the two parties held negotiations with a view to determining the amendments or additions to be made to the Agreement at the end of the period of application of the Protocol.

(2) As a result of these negotiations, a new Protocol was initialled on 25 June 2002.

(3) The Protocol provides Community fishermen with fishing opportunities in waters under the sovereignty or jurisdiction of Senegal for the period from 1 July 2002 to 30 June 2006.

(4) The new Protocol must come into force as soon as possible to enable Community vessels to resume fishing. Both parties therefore initialled an Agreement in the form of an Exchange of Letters, temporarily applying the Protocol from 1 July 2002. The Agreement in the form of an Exchange of Letters should therefore be concluded, subject to a final decision pursuant to Article 37 of the Treaty.

(5) The allocation of the fishing opportunities among the Member States, their obligation to report catches and the obligation for Community shipowners to land tuna catches in Senegal at their own expense in accordance with point C of the Annex to the Protocol should be laid down,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol setting out the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Government of the Republic of Senegal on fishing off the coast of Senegal for the period from 1 July 2002 to 30 June 2006 is hereby approved on behalf of the Community.

The texts of the Agreement in the form of an Exchange of Letters and of the Protocol are attached to this Decision.

Article 2

The fishing opportunities set out in the Protocol shall be allocated among the Member States as follows:

— Category 1:

331 gross registered tons per quarter (Greece)

649 gross registered tons per quarter (Spain)

520 gross registered tons per quarter (Italy)

— Category 2:

3 000 gross registered tonnes per month averaged over the year (Spain)

[1] OJ L 226, 29.8.1980, p. 17.

— Category 3:

3 186 gross registered tonnes per month averaged over the year (Spain)

314 gross registered tonnes per month averaged over the year (Portugal)

— Category 4:

10 vessels (Spain)

6 vessels (France)

— Category 5:

21 vessels (Spain)

18 vessels (France)

— Category 6:

20 vessels (Spain)

3 vessels (Portugal)

If licence applications from these Member States do not cover all the fishing opportunities fixed by the Protocol, the Commission may take into consideration licence applications from any other Member State.

Article 3

The obligation of direct landing by freezer tuna seiners set out in point C c) of the Annex to the Protocol shall be met by Community shipowners on the basis of the following breakdown:

— Vessels flying the French flag: 44 %

— vessels flying the Spanish flag: 56 %.

Article 4

The Member States whose vessels fish under this Protocol shall be required to notify the Commission of the quantities of each stock caught in the Senegalese fishing zone in accordance with Commission Regulation (EC) No 500/2001 of 14 March 2001 [1].

Article 5

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement in the form of an Exchange of Letters in order to bind the Community.

[1] OJ L 73, 15.3.2001, p. 8.

AGREEMENT

in the form of an Exchange of Letters concerning the provisional application of the Protocol setting out the fishing opportunities and the financial contribution provided for in the Agreement between the European Economic Community and the Government of the Republic of Senegal on fishing off the coast of Senegal, for the period from 1 July 2002 to 30 June 2006

A. *Letter from the Government of the Republic of Senegal*

Sir . . .,

With reference to the Protocol initialled in Dakar on 25 June 2002 setting out the fishing opportunities and the financial contribution for the period from 1 July 2002 to 30 June 2006, I have the honour to inform you that the Government of Senegal is prepared to apply the Protocol on a provisional basis with effect from 1 July 2002, pending its entry into force in accordance with Article 7 thereof, provided that the European Community is disposed to do the same.

This is on the understanding that the first instalment of the financial compensation specified in Article 2 of the Protocol is paid by 31 December 2002.

I should be obliged if you would confirm the European Community's agreement to such provisional application.

Please accept, Sir . ., the assurance of my highest consideration,

For the Government of the Republic of Senegal

B. *Letter from the European Community*

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

> 'With reference to the Protocol initialled in Dakar on 25 June 2002 setting out the fishing opportunities and the financial contribution for the period from 1 July 2002 to 30 June 2006, I have the honour to inform you that the Government of Senegal is prepared to apply the Protocol on a provisional basis with effect from 1 July 2002, pending its entry into force in accordance with Article 7 thereof, provided that the European Community is disposed to do the same.
>
> This is on the understanding that the first instalment of the financial compensation specified in Article 2 of the Protocol is paid by 31 December 2002.
>
> I should be obliged if you would confirm the European Community's agreement to such provisional application.'

I have the honour to confirm the European Community's agreement to such provisional application.

Please accept, Sir, the assurance of my highest consideration,

On behalf of the Council of the European Union

PROTOCOL

Setting out the fishing opportunities and the financial contribution provided for in the Agreement between the European Economic Community and the Government of the Republic of Senegal on fishing off the coast of Senegal for the period from 1 July 2002 to 30 June 2006

Article 1

From 1 July 2002, for a period of four years, the annual limits referred to in Article 4(2) of the Agreement shall be as follows:

1. trawlers (inshore demersal fishing for fish and cephalopods) landing and selling part of their catch in Senegal: 1 500 GRT per quarter;

2. ocean-going fish trawlers (deep-water demersal species) and bottom longliners not landing their catch in Senegal: 3 000 GRT per month averaged over the year;

3. ocean-going freezer trawlers (deep-water demersal fishing for crustaceans, except lobster) not landing their catch in Senegal: 3 500 GRT per month averaged over the year;

4. pole-and-line tuna vessels: 16 vessels;

5. freezer tuna seiners: 39 vessels;

6. surface longliners: 23 vessels.

Article 2

1. The financial contribution for the fishing opportunities provided for in Article 1 is hereby fixed at EUR 16 000 000 a year (of which EUR 13 000 000 as financial compensation and EUR 3 000 000 for the measures referred to in Article 4.

2. The first instalment of the financial compensation shall be payable not later than 31 December 2002 and the other three instalments on the anniversary of the Protocol.

3. The use of the financial compensation shall be the responsibility of Senegal. It shall be paid to the Public Treasury.

Article 3

Throughout the period of validity of this Protocol the European Community (hereinafter referred to as the Community) and the Senegalese authorities shall make every effort to monitor the state of resources in the Senegalese fishing zone; to that end a joint annual scientific meeting is hereby established.

Based on the conclusions of the annual scientific meeting and in the light of the best available scientific advice, the two parties shall consult each other within the Joint Committee provided for in Article 11 of the Agreement and, where necessary and by common agreement, take measures deemed appropriate for the sustainable management of resources.

Should the above measures involve a reduction in the fishing opportunities granted under this Protocol, the financial compensation shall be adjusted.

Article 4

Anxious to ensure the development of sustainable and responsible fishing in their mutual interest, the two parties shall establish a partnership to support the evaluation of the state of stocks, fisheries inspection and monitoring, improving the safety of small-scale fishing vessels, the establishment of responsible fishing and training. Out of the financial contribution provided for in Article 2(1) the Community shall contribute EUR 3 000 000 per year to the measures listed below, broken down as follows:

— Resource monitoring/evaluation of stocks (research, participation in exchange and regional coordination networks, etc.): EUR 500 000

— Fisheries inspection and monitoring (including VMS, etc.): EUR 700 000

— Improving the safety of small-scale fishing: EUR 500 000

— Institutional support for establishing sustainable fishing: EUR 500 000

— Improving skills: EUR 700 000

— Evaluation and audit of partnership schemes: EUR 100 000.

Measures under the partnership and the annual amounts allocated to them shall be decided by the Senegalese Minister with responsibility for sea fishing not later than 31 December 2002 on the basis of an action programme and the European Commission duly notified.

The annual amounts shall be made available to the competent Senegalese authorities not later than 31 December 2002 for the first instalment, and not later than the anniversary date of the Protocol for the other three instalments and paid, on the basis of the programme for their use, into the bank accounts of the competent Senegalese authorities notified by the Ministry responsible for fisheries.

The Ministry responsible for fisheries shall transmit a detailed report on the implementation of these measures and the results achieved to the Delegation of the European Commission, not later than four months after the anniversary date of the Protocol. The said report shall be considered by the Joint Committee referred to in Article 11 of the Agreement. The European Commission may request any additional information on these results from the Ministry responsible for fisheries and may review the following payments concerned in the light of the actual implementation of the various measures, after consulting the Senegalese authorities in the Joint Committee provided for in Article 11 of the Agreement.

Article 5

Failure by the Community to make the payments provided for in Article 2 of this Protocol may result in the suspension of the Fisheries Agreement.

Article 6

Annex I to the Agreement between the European Economic Community and the Government of the Republic of Senegal on fishing off the coast of Senegal is hereby repealed and replaced by the Annex to this Protocol.

Article 7

This Protocol shall enter into force on the date of its signing.

It shall apply from 1 July 2002.

ANNEX

CONDITIONS GOVERNING FISHING IN THE SENEGALESE FISHING ZONE BY VESSELS FLYING THE FLAGS OF EUROPEAN COMMUNITY MEMBER STATES

All the general provisions of the Law laying down the Fishing Code and of the Decree implementing the Code, in force in Senegal, shall also apply to European Community vessels.

A. LICENCE APPLICATION AND ISSUING FORMALITIES

1.1. The relevant Community authorities shall present to the Senegalese Ministry responsible for sea fisheries an application in respect of each vessel wishing to fish under the Agreement.

The application shall be made on the form provided for that purpose by the Government of Senegal, a specimen of which is at Appendix 1. It shall be accompanied by a tonnage certificate and proof of payment of the fee. The application shall be lodged with the appropriate departments of the Senegalese Ministry responsible for sea fisheries at least 20 days before the starting date requested.

Any Community vessel applying for a fishing licence must be represented by an agent resident in Senegal. The name and address of that agent must be mentioned in the licence application.

1.2. Fees shall include all national and local charges with the exception of port charges and the costs of services. After payment of the fee, the licence shall be signed and forwarded to the Delegation of the Commission of the European Communities in Dakar.

1.3. **Duration of licences:**

— for inshore demersal fishing trawlers, ocean-going trawlers fishing for deep-water demersal fish species and for ocean-going freezer trawlers engaged in deep-water demersal fishing for crustaceans, except lobster, licences shall be issued for three, six or twelve months.

Quarterly licences shall begin on 1 July, 1 October, 1 January and 1 April of each year.

Half-year licences shall begin on 1 July and 1 January of each year.

Annual licences shall begin on 1 July of each year.

The averaging of monthly figures over a year shall mean that the average use per month at the end of a year of the Protocol corresponds to the figure for the category concerned, with the possibility of carrying over unused quantities to the following period.

For tuna fishing and fishing with surface longliners, licences shall be annual and shall begin on 1 July of each year.

1.4. The fees and advances shall be set in accordance with the following rates.

(a) *Fees for trawlers*

1. Trawlers (inshore demersal fishing for fish and cephalopods): in EUR per gross registered ton per year.

1st year	2nd year	3rd year	4th year
246	258	271	285

2. Ocean-going fish trawlers (deep-water demersal species) and bottom longliners not landing their catches in Senegal: in EUR per gross registered ton per year.

1st year	2nd year	3rd year	4th year
157	161	165	169

3. Ocean-going freezer trawlers fishing for crustaceans except lobster, not landing their catches in Senegal: in EUR per gross registered ton per year.

1st year	2nd year	3rd year	4th year
210	215	220	226

Fees for half-year licences shall be 3 % higher and fees for quarterly licences 5 % higher.

(b) *Fees for tuna vessels and surface longliners*

1. Pole-and-line tuna vessels: EUR 15 per tonne of fish caught in the Senegalese fishing zone.

2. Freezer tuna seiners: EUR 25 per tonne of fish caught in the Senegalese fishing zone.

3. Surface longliners: EUR 48 per tonne of fish caught in the Senegalese fishing zone.

The licences referred to in points 2 and 3 shall be issued following payment to the Receveur des domaines of a flat rate of EUR 3 000 for each tuna seiner and EUR 2 000 for each surface longliner, equivalent to the fees for 120 and 42 tonnes respectively of fish per vessel per year.

Upon receipt of the notification of payment of the European Commission's advance to the Senegalese authorities, the latter shall enter the vessel in question on the list of vessels authorised to fish which shall be sent to the Senegalese control authorities. A copy of the original of the licence may also be kept on board provisionally.

The final statement of the fees due for the fishing year shall be drawn up at the end of each calendar year by the European Commission on the basis of catch statements made by the shipowners for each vessel and confirmed by the Centre de Recherches Océanographiques de Dakar-Thiaroye (CRODT). The statement shall be forwarded simultaneously to the Senegalese authorities and the shipowners. Shipowners must make any additional payment due to the Receveur des domaines within 30 days of notification of the final statement.

However, where the sum due as set out in the final statement is less than the advance, the shipowner shall not be reimbursed the difference.

The Senegalese authorities shall supply details of the bank account to be used for payment or transfer of the fees before the Agreement enters into force. Payments may also be made directly to Receveur des domaines in Dakar.

B. CATCH STATEMENTS

All vessels authorised to fish in Senegalese waters under the Agreement shall be required to forward to the Direction de l'Océanographie et des Pêches Maritimes, with a copy to the Delegation of the European Commission in Dakar, a statement of their catch made out in line with Appendices 2, 3, 4 and 5. These statements must be presented no later than the end of the month following the end of a voyage, and a copy must be kept on board.

Should these provisions not be adhered to, the Government of Senegal reserves the right to suspend the licence of the offending vessel until formalities have been completed and to apply the penalty laid down in current Senegalese legislation. The Delegation of the European Commission in Dakar shall be informed.

C. LANDING OF CATCHES

(a) Freezer trawlers (inshore demersal fishing) in category 1 shall land (at local market prices) 250 kilograms of fish and shrimp per GRT per half-year.

Wet trawlers (inshore demersal fishing) in category 1 shall land (at local market prices) 150 kilograms of fish and shrimp per GRT per half-year.

These landings may be made individually or collectively.

Any failure to comply with the requirements to land catches may incur the following sanctions from the Senegalese authorities:

— a fine of EUR 900 per tonne not landed;

— withdrawal without renewal of the licence of the vessel concerned or of another vessel belonging to the same shipowner.

In order to ensure payment of the fine, the issuing of a licence shall be subject to the lodging in Senegal of a banker's guarantee of EUR 200 per GRT per half-year.

The Senegalese authorities shall release this security as soon as a vessel has met its landing requirements in full.

(b) In the case of pole-and-line tuna vessels, the target set shall be to land at least 5 000 tonnes of tuna a year in Senegalese ports at the prevailing international price.

If, during the fishing year, total landings by the fleet concerned fall short of this minimum quantity as a result of an unforeseeable change in the state of fish stocks or the structure of the fleet, the two Parties shall enter into consultations without delay in order to find and put forward appropriate solutions to cover the shortfall.

(c) Freezer tuna seiners shall land 12 500 tonnes of tuna a year at the prevailing international price and in accordance with a programme to be established by agreement between Community shipowners and Senegalese canners. In the event of disagreement on the timetable for landings, the Joint Committee referred to in Article 11 of the Agreement shall hold a special meeting at the request of either of the Parties.

D. SIGNING-ON OF SEAMEN

1. Trawlers, bottom longliners and surface longliners authorised to fish in Senegalese waters under the Agreement shall be required to take on enough Senegalese seamen to make up 50 % of their non-officer crew. This percentage shall include the observer referred to in point J.

The taking-on of Senegalese seamen must be confirmed by a certificate of compliance issued by the merchant navy. All individual contracts for the recruitment of Senegalese seamen must comply with current Senegalese rules and regulations.

Seamen's wages shall be determined by mutual agreement between the shipowners or their representatives and the ministry responsible for the merchant navy in accordance with current Senegalese regulations. Wages shall be paid by the shipowners and shall include the social security applicable to the seamen, including life insurance, accident and sickness cover and IPRES (Institut de prévoyance retraite du Sénégal) and Caisse de sécurité sociale contributions.

If the vessel holds a valid fishing licence issued by another country in the subregion (Mauritania, Gambia, Guinea-Bissau or Guinea), it shall be required to take on board a number of Senegalese seamen equivalent to 50 % of the non-officer crew assigned to sail the vessel.

2. In the case of freezer tuna seiners and pole-and-line tuna vessels, the number of seamen to be taken on board shall be established globally on the basis of the scale of activity in Senegal's fishing zone and the employment of crew from other countries whose fisheries are frequented by that fleet.

E. SPECIAL EQUIPMENT AND USE OF SUPPLIES AND SERVICES

Wherever possible, Community vessels shall procure the supplies and services they require, including dry dock facilities and regular maintenance, in Senegal.

F. TECHNICAL INSPECTIONS

1. Once a year, and whenever there is an alteration in tonnage or a change in fishing category involving the use of different fishing gear, Community trawlers must undergo the inspections provided for in current regulations at the port of Dakar. Such inspections must be completed within 48 hours of the vessel's arrival in the port, provided the competent authorities have been notified in advance.

2. Once the inspection has been completed, a certificate shall be issued to the master of the vessel. The certificate must be kept on board at all times.

3. The purpose of the technical inspection is to check that the vessel's technical characteristics and fishing gear are in order and that the conditions governing the recruitment of Senegalese crew are complied with. Safety matters remain the exclusive responsibility of the authority of the flag state.

4. Charges for technical inspections are payable by the shipowner, and shall be determined by the scale set by Senegal's regulations. They must be no higher than those usually paid by other vessels for the same services.

5. Failure to comply with the provisions of points 1 and 2 shall result in the automatic suspension of the fishing licence until the shipowner complies with his obligations.

G. FISHING ZONES

1. The fishing zones shall be measured from a reference line joining the points below:

   1. From point P1 (16°04'00"N–16°31'30"W) to point P2 (15°45'00"N–16°33'00"W);

   2. From point P3 (15°00'00"N–17°04'06"W) to point P4 (14°52'48"N–17°11'12"W);

   3. (a) From point P5 (14°46'30"N–17°25'30"W) to the northern tip of the island of Yoff (14°46'18"N–17°28'42"W);

      (b) From the northern tip of the island of Yoff (14°46'18"N–17°28'42"W) to the tip of the island of Ngor (14°45'30"N–17°30'56"W);

      (c) From the northern tip of the island of Ngor (14°45'30"N–17°30'56"W) to the Almadies light (14°44'36"N–17°32'30"W);

      (d) From the Almadies light (14°44'36"N–17°32'30"W) to Cap Manuel (14°39'00"N–17°26'00"W);

      (e) From Cap Manuel (14°39'00"N–17°26'00"W) to Pointe Rouge (14°38'12"N–17°10'30"W);

      (f) From Pointe Rouge (14°38'12"N–17°10'30"W) to Pointe Gombaru (14°29'50"N–17°05'30"W);

      (g) From Pointe Gombaru (14°29'50"N–17°05'30"W) to Pointe Sarène (14°17'05"N–16°55'50"W);

      (h) De la Pointe Sarène (14°17'05"N–16°55'50"W) à la Pointe Gaskel (14°11'10"N–16°52'00"W);

      (i) From Pointe Gaskel (14°11'10"N–16°52'00"W) to Pointe de Sangomar (13°47'54"N–16°45'40"W);

      (j) From Pointe de Sangomar (13°47'54"N–16°45'40"W) to point P6 (13°35'28"N–16°40'30"W).

   4. (a) From the Senegal-Gambia border (13°03'27"N–16°45'05"W) to point P7 (12°45'10"N–16°47'30"W);

      (b) From point P7 (12°45'10"N–16°47'30"W) to point P8 (12°36'12"N–16°48'00"W);

      (c) From point P8 (12°36'12"N–16°48'00"W) to Pointe Djimbéring (12°29'00"N–16°47'30"W);

   5. From Cap-Skirring (12°24'30"N–16°46'30"W) to the border with Guinea-Bissau (12°20'30"N–16°43'10"W).

For the stretches of Senegalese coast situated outside the limits defined by the reference points specified above, the fishing zones shall be measured from the low-water mark, which shall form an integral part of the reference line.

The distances measured from the reference line or low-water mark shall be expressed in relation to the nearest point on the line in whichever zone the vessel is located.

2. Inshore trawlers (demersal fishing for fish and cephalopods), of up to 250 GRT, shall be authorised to fish:

(a) from six nautical miles from the reference line, from the Senegal—Mauritania border to the latitude of Cap Manuel (14°39'00"N);

(b) from seven nautical miles from the reference line, from the latitude of Cap Manuel to the Senegal—Gambia border;

(c) from six nautical miles from the reference line from the south Senegal-Gambia border to the Senegal—Guinea-Bissau border.

3. Inshore trawlers (demersal fishing for fish and cephalopods), between 250 GRT and 300 GRT, shall be authorised to fish:

from twelve nautical miles from the reference line of waters under Senegalese jurisdiction.

4. Inshore trawlers (demersal fishing for fish and cephalopods), between 300 and 500 GRT, shall be authorised to fish:

from 15 nautical miles from the reference line of waters under Senegalese jurisdiction.

5. Inshore trawlers (demersal fishing for fish and cephalopods), over 500 GRT, shall be authorised to fish:

(a) from 15 nautical miles from the reference line, from the Senegal-Mauritania border to latitude 14°25'00"N;

(b) west of longitude 17°22'00"W, in the zone between latitude 14°25'00"N and the north Senegal—Gambia border;

(c) west of longitude 17°22'00"W, in the zone between the south Senegal—Gambia border and the Senegal—Guinea—Bissau border.

6. Ocean-going trawlers (demersal fishing for deep-water shrimp or hakes) shall be entitled to fish:

(a) west of longitude 16°53'42"W between the Senegal—Mauritania border and latitude 15°40'00"N;

(b) from 15 nautical miles from the reference line between latitude 15°40'00"N and latitude 15°15'00"N;

(c) from 12 nautical miles from the reference line from latitude 15°15'00"N to latitude 15°00'00"N;

(d) from 8 nautical miles off the baselines from latitude 15°00'00"N to latitude 14°32'30"N;

(e) west of longitude 17°30'00"W, in the zone between latitude 14°32'00"N and latitude 14°04'00"N;

(f) west of longitude 17°22'00"W, in the zone between latitude 14°04'00"N and the north Senegal—Gambia border;

(g) west of longitude 17°35'00"W, in the zone between the south Senegal—Gambia border and latitude 12°33'00"N;

(h) south of the azimuth 137° traced from point P9 (12°33'00"N; 17°35'00"W).

7. Pole-and-line tuna vessels, wet tuna seiners and freezer tuna seiners shall be authorised to fish for tuna anywhere in the waters under Senegal's jurisdiction.

   Fishing for live bait shall be authorised in all waters under Senegal's jurisdiction.

8. For safety reasons fishing activities and anchoring and casting shall be prohibited in the zone defined by the following coordinates:

   A = L 14°40'00"N–G 17°45'00"W

   B = L 14°40'00"N–G 17°30'30"W

   C = L 14°40'36"N–G 17°28'12"W

   D = L 14°39'00"N–G 17°25'54"W

   E = L 14°39'54"N–G 17°23'54"W

   F = L 14°30'06"N–G 17°23'54"W

   G = L 14°30'00"N–G 17°44'54"W

H. BIOLOGICAL REST-PERIOD

Where required by the need to manage resources in a sustainable manner, every year the Senegalese authorities may institute a ban on fishing applicable to all demersal trawlers of the same category, without discrimination.

The annual closure period shall be as follows:

— Trawlers (inshore demersal fishing for fish and cephalopods): 1 October to 30 November;

— ocean-going fish trawlers (deep-water demersal species) and bottom longliners: 1 March to 30 June;

— ocean-going freezer trawlers (deep-water demersal fishing for crustaceans, except lobster): 1 September to 31 October.

When the Senegalese authorities adopt emergency measures, to regulate fishing for a given species, applicable to all, and in particular Senegalese, vessels, a meeting of the Joint Committee shall be convened to evaluate the impact of such measures on European Community vessels and, where appropriate, adjust the level of the financial contribution.

I. RADIO COMMUNICATIONS

The master of the vessel must notify the Direction de la Protection et Surveillance des Pêches (Directorate for Fisheries Protection and Monitoring) in Senegal by radio (frequency 5283 VHF and/or 7349.5 HF), telephone (221) 864 05 89 or (221) 864 05 88, fax (221) 860 31 19 or email (psps@sentoo.sn) when the vessel enters or leaves waters under Senegalese jurisdiction, specifying the following: position, course, speed, and tonnage of catches on board.

The master shall authorise the observer to contact the Direction de la Protection et Surveillance des Pêches by radio whenever necessary.

J. OBSERVERS

1. (a) Community trawlers and bottom longliners of 150 GRT or more in the case of wet fishing and 100 GRT or more in the case of other vessels fishing in Senegalese waters shall take on board an observer designated by Senegal. The master shall facilitate the work of the observer, who shall enjoy all the respect owed to the officers of the vessel concerned.

   (b) In the case of surface longliners, at the request of the competent Senegalese authorities, an observer shall be taken on board for the duration of the voyage where the vessel is fishing in Senegalese waters.

   (c) The Senegalese authorities shall communicate the names of the designated observers to the European Commission.

(d) Observers shall be provided with board and accommodation at the shipowner's expense. Their meals shall be served in the officers' messroom and they shall be accommodated in the areas provided for the officers or, if this is impossible, in a living area distinct from that provided for the crew if possible.

(e) In the case of freezer tuna seiners and tuna pole-and-line vessels fishing for bait, one of the Senegalese seamen on board shall be designated seaman/observer.

The master shall facilitate the work of the seaman/observer that is additional to actual fishing operations so that he can compile his report. Seamen/observers shall receive the normal seaman's rate of pay from the shipowner. Seamen/observers shall be required to submit a report to the Direction de la Protection et Surveillance des Pêches at the end of each voyage.

2. In principle the observer shall be taken on board for a maximum period of 60 days. This period may be extended where the duration of a voyage by the vessel on which the observer is taken on board exceeds that period.

In such cases, the observer shall leave the vessel on its return. A deposit equivalent to 60 days' activity at sea shall be lodged before the observer boards. Settlement shall be made after each voyage.

3. The taking on board and disembarkation of observers shall not interrupt or hinder fishing operations. Observers may therefore be taken on board and/or leave the vessel in a port elsewhere than in Senegal provided that their travel and subsistence expenses are reimbursed by the shipowner.

4. The deposit equivalent to 60 days' activity at sea shall be considered an advance on the payment of the observer's allowance. The allowance shall be paid after the observer has left the vessel. A final statement of advances made shall be drawn up when the licence expires. However, where the sum due as set out in the final statement is less than the advance, the shipowner shall not be reimbursed the difference.

K. BY-CATCHES

1. Trawlers (inshore demersal fishing for fish and cephalopods):

— crustaceans: 7,5 %

2. Ocean-going fish trawlers (deep-water demersal species):

— crustaceans: 7 %

— cephalopods: 7 %

3. Ocean-going freezer trawlers (deep-water demersal fishing for crustaceans, except lobster):

— fish: 10 %

— cephalopods: 10 %

— lobster: 2 %

4. The percentages of by-catches fixed above shall be calculated at the end of each voyage by reference to the total catch weight, in accordance with Senegalese law.

Should these percentages exceed the authorised by-catches, penalties shall be imposed in accordance with Senegalese law and may result in the permanent banning of the offending masters and vessels from all fishing activities in Senegal.

In accordance with the relevant ICCAT and FAO recommendations, fishing for basking shark (Cetorhinus maximus), white shark (Carcharodon carcharias), sand tiger shark (Carcharias taurus) and tope shark (Galeorhinus galeus) shall be prohibited.

L. MINIMUM AUTHORISED MESH

The minimum mesh sizes for authorised industrial fishing gear shall be as follows (mesh opening):

— purse seines with live bait: 16 mm;

— standard otter trawls (inshore demersal fishing for fish or cephalopods): 70 mm;

— standard otter trawls (deep-sea demersal species): 70 mm;

— deep-sea demersal trawls for crustaceans, except lobster: 40 mm.

In the case of all fishing gear, no methods or devices may be used to seek to obstruct the mesh of the nets or reduce their selective effect. However, in the interests of reducing wear or damage, protective aprons of netting or other material may be attached, but only to the underside of the codend of a bottom trawl. Such aprons must be attached only to the forward and lateral edges of the codend of the trawl. Protective devices may be used for the top of the trawl, but these must consist of a single section of net of the same material as the codend, with the mesh measuring at least 300 millimetres when stretched out.

Doubling of the codend's netting yarn, whether single or multiple, shall be prohibited.

In the case of tuna, the international standards recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) shall apply.

M. TRANSHIPMENT

Any Community vessel wishing to tranship catches in Senegalese waters shall be subject to the procedure laid down below.

The catches of Community vessels shall be transhipped within Senegalese ports.

Owners of the vessels concerned must report the following information to the Direction de la Protection et Surveillance des Pêches at least 24 hours in advance:

— the names of the transhipping fishing vessels,

— the names of the cargo vessels,

— the tonnage by species to be transhipped,

— the day of transhipment.

Transhipment shall be considered as an exit from the Senegalese fishing zone. Vessels must therefore provide the Directorate for the Protection and Monitoring of Fisheries with the catch statements and state whether they intend to continue fishing or leave Senegal's fishing zone.

Any transhipment of catches not covered above shall be prohibited in Senegal's fishing zone. Any person infringing this provision shall be liable to the penalties provided for by Senegalese law.

N. BOARDING AND APPLICATION OF PENALTIES

1. The European Commission Delegation in Senegal shall be informed as far as possible within 48 hours of any boarding of a fishing vessel flying the flag of a Community Member State fishing under the Fisheries Agreement between the European Economic Community and Senegal. Such information shall include:

   — the vessel's name and flag;

   — the date of boarding;

   — the position of boarding;

   — the reasons for boarding;

   — the penalties incurred;

   — the security for provisional release of the vessel.

Such security must be at least equal to the maximum fine and the value of the catches to be confiscated.

The vessel may resume its activities if the owner lodges the security defined above. Otherwise the vessel shall be detained at the quayside until the administrative procedure has been completed.

A statement shall be drawn up concerning fishing infringements, containing all relevant information and evidence. The statement shall be signed by the officials compiling it, any witnesses and the offender, who shall have the opportunity to make comments.

On receipt of the statement of boarding, the case shall be dealt with by the Direction de la Protection et de la Surveillance des Pêches (DPSP). The national boarding committee shall be convened to consider the case and make proposals to the Minister for Fisheries and Shipping.

This second phase of processing the boarding case may not exceed 20 days from the date of notification of the boarding to the European Union representation in Dakar.

The owner shall be notified of the amount of the fine imposed under the administrative procedure by letter from the DPSP. If the owner pays the fine, the security shall be released immediately.

If the owner does not agree with the conclusions of the administrative procedure, he shall be free to refer the case to the competent court provided that the above-mentioned security has been lodged with the Senegalese authorities.

If the judicial decision finds against the vessel, the security shall be used to pay the fine.

If the vessel is acquitted, the bank guarantee shall be returned to the owner.

2. The European Commission Delegation in Dakar shall be informed of any penalties imposed on a vessel flying the flag of a Community Member State fishing under the Fisheries Agreement between the European Economic Community and Senegal and shall receive a brief report of the circumstances and reasons leading to the penalty.

Appendix 1

REPUBLIC OF SENEGAL

MINISTRY FOR SEA FISHERIES

DIRECTORATE OF OCEANOGRAPHY AND SEA FISHERIES

FISHING LICENCE APPLICATION FORM

For official use only	Remarks
Nationality:	.....
Licence No:	.....
Date of signature:	.....
Date of issue:	.....

APPLICANT

Company name: .....

Number and date of authorisation of the company: .....

Trade register No (*): .....

First name and surname of applicant: .....

Date and place of birth: .....

Occupation: .....

Account No (*): .....

Address: .....

.....

Number of employees (*): ..... Permanentstaff (*): ..... Temporary staff (*): .....

Name and address of agent: .....

.....

Annual turnover (*): .....

VESSEL

Type of vessel: ..... Registration No: .....

New name: ..... Former name: .....

Date and place of construction: .....

Original nationality: .....

Date of taking the Senegalese flag: .....

Provisionally: ..... Period granted: ..... Permanently: .....

Length: ..... Width: ..... Depth: .....

Gross tonnage (GRT): ..... Net tonnage: .....

Type of building material: ..... Draught: .....

Make of main engine: ..... Type: ..... HP: .....

Propeller: Fixed ☐ Variable ☐ Ducted ☐

Transit speed: .....

Call sign: ..... Call frequency: .....

(*) Optional for foreign vessels.

List of navigation, sounding and transmission instruments:

Radar	☐	Sonar	☐	VHF radio	☐
Satellite navigation	☐	Net sounder	☐	HF, BLU radio	☐
Automatic pilot	☐	Scanmar	☐	Telex	☐
Route plotter	☐				

Other: .....

.....

CONSERVATION

Ice	☐	Ice and refrigeration	☐		
Freezing in brine	☐	Dry	☐	In refrigerated sea water	☐

Total refrigerating power (fg): .....

Freezing capacity in tonnes/24 hours: .....

Hold capacity: .....

TYPE OF FISHING

A. **Inshore demersal**

Shrimp	☐	Fish	☐		
Type of gear: Shrimp trawl	☐	Fish trawl	☐	Bottom longline	☐

1. trawl length: ..... length of headline: .....

mesh opening in codend: ..... in the wings: .....

2. length of line: ..... number of hooks: .....

number of lines: ..... size of hooks: .....

B. **Deep-sea demersal**

Shrimp	☐	Fish and cephalopods	☐		
Type of gear: Fish trawl	☐	Shrimp trawl	☐	bottom longline	☐

1. trawl length: ..... length of headline: .....

mesh opening in codend: ..... in the wings: .....

2. length of line: ..... number of hooks: .....

number of lines: ..... size of hooks: .....

C. **Inshore pelagic:**

Mid-water trawl: ☐ Seine: ☐

1. trawl length: ..... length of headline: .....

mesh opening in codend: .....

2. length of seine: ..... depth of seine: .....

size of mesh (stretched out) .....

D. **Deep-sea pelagic (tuna)**

Type of gear: seine: ☐ pole and line: ☐ longline: ☐

1. length of seine: ..... depth of seine: .....

size of mesh (stretched out) .....

2. number of poles and lines: .....

3. longline:

length of line: ..... number of hooks: .....

number of lines: ..... size of hooks: .....

number of tanks: ..... capacity in tonnes: .....

E. **Longlines and pots:**

number of pots: ..... material: .....

length (diameter of base): ..... width (diameter of top): .....

diameter of openings: ..... cover system: .....

mesh (cover): .....

SHORE INSTALLATIONS (*)

Address and permit No: .....

.....

Company name: .....

Activities: .....

Domestic wholesale fish trade: ☐ export: ☐

Type and No of wholesale trader's card: .....

(*) Optional for foreign vessels.

Description of processing and conservation plant: .....

.....

.....

.....

.....

Number of employees (*): ..... Senegalese: ..... Foreigners: .....

Permanentstaff: ..... Temporary staff: .....

(*) Optional for foreign vessels..

Appendix 2

STATEMENT OF CATCH MADE BY VESSELS USING LONG LINES AND POTS

VESSEL NAME: .....

TYPE OF FISHING (longlines or pots) .....

SPACING OF CATCH EQUIPMENT (hooks or pots) .....

Date of drops		Number of hooks or pots	Time of drop		Time of raising		Average position		Depth		Species (please ring discards)										
			Start	End	Start	End	Latitude	Longitude	Start	End	No	kg	No	kg	No	kg	No	kg	No	kg	No
1.																					
2.																					
3.																					
4.																					
5.																					
6.																					
7.																					
8.																					
9.																					
10.																					

Appendix 3

STATEMENT OF CATCH BY BOTTOM TRAWLERS

Voyage from: ..... to: .....

VESSEL NAME: .....

Type: wet or freezer: .....

NATIONALITY: .....

Species	Dates						
Fishing zone (1)							
Sounder							
Time of fishing							
Total weight of catch							
Total weight of discards							

(1) Dakar North, Petite-Côte or Casamance.

Appendix 4

STATEMENT OF CATCH BY TUNA VESSELS

Voyage from: ..... to: .....

VESSEL NAME: .....

Type: pole and line or seine: .....

NATIONALITY: .....

Catches from Senegal's economic zone

Species	Tonnage landed	Tonnage not landed	Discards	Total
Yellowfin				
Skipjack				
Bigeye				
Thunnidae + Bonito				
Other species				
Total				

Appendix 5

STATEMENT OF CATCH BY TUNA SEINERS

One line per haul whether yielding a catch or not. Please enter crosses under 'Indicators' and 'Haul'

Departure: Port: Date: Time:	Arrival: Port: Date: Time:	Loch Departure: Arrival:	Vessel: Skipper:	Sheet No.:

Date	Position At time of haul, otherwise at midday	Haul		Tank No	Estimated catches										Indicators				Remarks	Loch		T° Surface	State of sea	Visibility in miles	Wind		Current	
		With catch	With no catch		Yellowfin		Skipjack		Bigeye		Albacore		Other species		Wreckage	Birds	Whales	Whale-sharks	Route or search Discards Type of shoal or wreckage Miscellaneous problems General weather conditions	06.00 or start of lookout	18.00 or end of lookout				Direction	Speed	Direction	Speed
					Size	Tonnage	Size	Tonnage	Size	Tonnage	Size	Tonnage	Size	Tonnage															

Appendix 6

REPUBLIC OF SENEGAL
Logbook

Name of vessel .....

..... Start of voyage: Date Day Time

..... End of voyage: Date

Fishing gear ..... Mesh Fishing gear dimensons:

DATE						
FISHING ZONE NORTH SOUTH						
NUMBER OF FISHING OPERATIONS						
FISHING TIME HOURS						
SARDINELLA						
HORSE MACKEREL						
MACKEREL						
FLAT FLAT						
ETHMALOSA						
BIGEYE GRUNT						
BONITO						
SNOOK						
ATLANTIC SPORTTED GRUNT						
MISCELLANEOUS						
TOTAL CATCH IN KG						
TOTAL FISH FROZEN KG						
NOTES						

Proposal for a Council Regulation on the conclusion of the Protocol setting out the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Republic of Senegal on fishing off the coast of Senegal for the period from 1 July 2002 to 30 June 2006

(2003/C 20 E/29)

COM(2002) 497 final — 2002/0238(CNS)

(Submitted by the Commission on 2 October 2002)

EXPLANATORY MEMORANDUM

The Community has a longstanding relation with the Democratic Republic of Senegal on Fisheries. The Framework Agreement, which dates from 1980, is the earliest agreement concluded by the Community and quite considerable in financial terms. The Agreement is important both for the fishing possibilities obtained and for its political and economic impact. For Senegal, apart from providing for a considerable financial contribution, the Agreement also ensures an important share of the raw materials to the Senegalese industry, even though the global effect of the EC fishery in Senegalese waters is not very significant. The EC catches compared to the global catches made in Senegal (1997-2001) represented only 1,7-3,3 %, while the EC vessels provided for almost a quarter (24,8 % in 1997) of the landings made by the industrial fleet at the port of Dakar. Under the Protocol some EC vessels are obliged to land a part of their catches in Senegal and the tuna vessels land an important part of their catches in Dakar, not only from the Senegalese EEZ, but from the whole area.

The latest protocol annexed to the fisheries agreement between the EC and Senegal expired on 31 December 2001. The latest round of negotiations to renew the protocol, which took place in Dakar on 24 to 25 June 2002, resulted in the initialling of a new protocol.

The new protocol, which covers the period from 1 July 2002 to 30 June 2006, will be the 17th since the entry into force of this fisheries agreement. It grants fishing opportunities for 78 tuna vessels and 8 000 GRT for trawlers and longliners. Compared to the previous Protocol there has been a considerable reduction of the fishing possibilities on the socially, politically and economically sensitive segments: the coastal demersal segment has been reduced by 30 % and the pelagic segment has been excluded from the new Protocol.

The overall financial contribution to be paid to Senegal has been increased from EUR 12 000 000 per year to EUR 16 000 000 per year. Out of this amount, the Protocol foresees EUR 3 000 000/year for the development of a partnership aiming at, *inter alia*, stock evaluations, control and the surveillance of the fishing activities, the improvement of the safety of the small-scale fishing vessels and institutional support for the introduction of sustainable and responsible fishing.

This partnership constitutes an innovative element which did not exist in the previous protocol and which shows the desire of the two parties to contribute to the development of sustainable and responsible fisheries. Moreover, this partnership envisages a programming and follow-up mechanism, which is in line with the other fishing agreements concluded by the Community with third countries. In this respect, it should also be stressed that, within the framework of the partnership, the Senegalese authorities committed themselves to undertake, for each year of application of the protocol, an evaluation and an audit of all the partnership actions.

The protocol includes several more positive elements, for example:

— For the first time, the new protocol EC/Senegal envisages a continuous monitoring of the development of the state of stocks. To this end, Article 3 of the protocol foresees an annual scientific meeting. On the basis of the conclusions of the scientific meeting, the Joint Committee can adopt appropriate measures of the durable management of resources, including — if necessary — a reduction in the fishing opportunities.

— The new way of calculating the fishing possibilities for trawlers and longliners ('per month, averaged over the year') will show the actual fishing effort deployed and will involve a larger flexibility for the EC fishery. It will also most likely bring about a larger rate of utilisation of the fishing possibilities (cost/benefit).

— The advances paid by ship-owners have been increased.

— The technical conditions have been strengthened (introduction of yearly obligatory biological resting periods, reduced fishing zones, reduced allowed by-catches, larger mesh sizes and increased obligatory landings).

— The number of Senegalese observers and seamen on board Community vessels has been increased.

In view of the above, the new Protocol is considered to be good value for money and will encourage the responsible and sustainable exploitation of the resources to the mutual benefit of the Community and Senegal.

The Commission proposes, on this basis, that the Council adopt the conclusion of the new Protocol by regulation.

A draft Council decision on the provisional application of the new Protocol pending its definitive entry into force is the subject of a separate procedure.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37, in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) In accordance with the Agreement between the European Economic Community and the Republic of Senegal on fishing off the coast of Senegal [1], the two parties have held negotiations with a view to determining the amendments or additions to be made to the Agreement at the end of the period of application of the Protocol.

(2) As a result of these negotiations, a new Protocol setting out the fishing opportunities and the financial contribution provided for in the above-mentioned Agreement for the period from 1 July 2002 to 30 June 2006 was initialled on 25 June 2002.

(3) It is in the Community's interest to approve the Protocol.

(4) The allocation of the fishing opportunities among the Member States, their obligation to report catches and the obligation for Community shipowners to land tuna catches in Senegal at their own expense in accordance with point C of the Annex to the Protocol should be laid down,

HAS ADOPTED THIS REGULATION:

Article 1

The Protocol setting out the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Republic of Senegal on fishing off the coast of Senegal for the period from 1 July 2002 to 30 June 2006 is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation.

Article 2

The fishing opportunities set out in the Protocol shall be allocated among the Member States as follows:

— Category 1:

331 gross registered tonnes per quarter (Greece)

649 gross registered tonnes per quarter (Spain)

520 gross registered tonnes per quarter (Italy)

— Category 2:

3 000 gross registered tonnes per month, averaged over the year (Spain)

[1] OJ L 226, 29.8.1980, p. 17.

— Category 3:

3 186 GRT per month, averaged over the year (Spain)

314 GRT per month, averaged over the year (Portugal)

— Category 4:

10 vessels (Spain)

6 vessels (France)

— Category 5:

21 vessels (Spain)

18 vessels (France)

— Category 6:

20 vessels (Spain)

3 vessels (Portugal)

If licence applications from these Member States do not cover all the fishing opportunities fixed by the Protocol, the Commission may take into consideration licence applications from any other Member State.

Article 3

The obligation of direct landing by freezer tuna seiners set out in point C c) of the Annex to the Protocol shall be met by Community shipowners on the basis of the following breakdown:

— Vessels flying the French flag: 44 %

— Vessels flying the Spanish flag: 56 %.

Article 4

The Member States whose vessels fish under this Protocol shall be required to notify the Commission of the quantities of each stock caught in the Senegalese fishing zone in accordance with Commission Regulation (EC) No 500/2001 of 14 March 2001 [1].

Article 5

The President of the Council is hereby authorised to designate the persons empowered to sign the Protocol in order to bind the Community.

Article 6

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

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

[1] OJ L 73, 15.3.2001, p. 8.

PROTOCOL

Setting out the fishing opportunities and the financial contribution provided for in the Agreement between the European Economic Community and the Government of the Republic of Senegal on fishing off the coast of Senegal for the period from 1 July 2002 to 30 June 2006

Article 1

From 1 July 2002, for a period of four years, the annual limits referred to in Article 4(2) of the Agreement shall be as follows:

1. trawlers (inshore demersal fishing for fish and cephalopods) landing and selling part of their catch in Senegal: 1 500 GRT per quarter;

2. ocean-going fish trawlers (deep-water demersal species) and bottom longliners not landing their catch in Senegal: 3 000 GRT per month averaged over the year;

3. ocean-going freezer trawlers (deep-water demersal fishing for crustaceans, except lobster) not landing their catch in Senegal: 3 500 GRT per month averaged over the year;

4. pole-and-line tuna vessels: 16 vessels;

5. freezer tuna seiners: 39 vessels;

6. surface longliners: 23 vessels.

Article 2

1. The financial contribution for the fishing opportunities provided for in Article 1 is hereby fixed at EUR 16 000 000 a year (of which EUR 13 000 000 as financial compensation and EUR 3 000 000 for the measures referred to in Article 4).

2. The first instalment of the financial compensation shall be payable not later than 31 December 2002 and the other three instalments on the anniversary of the Protocol.

3. The use of the financial compensation shall be the responsibility of Senegal. It shall be paid to the Public Treasury.

Article 3

Throughout the period of validity of this Protocol the European Community (hereinafter referred to as the Community) and the Senegalese authorities shall make every effort to monitor the state of resources in the Senegalese fishing zone; to that end a joint annual scientific meeting is hereby established.

Based on the conclusions of the annual scientific meeting and in the light of the best available scientific advice, the two parties shall consult each other within the Joint Committee provided for in Article 11 of the Agreement and, where necessary and by common agreement, take measures deemed appropriate for the sustainable management of resources.

Should the above measures involve a reduction in the fishing opportunities granted under this Protocol, the financial compensation shall be adjusted.

Article 4

Anxious to ensure the development of sustainable and responsible fishing in their mutual interest, the two parties shall establish a partnership to support the evaluation of the state of stocks, fisheries inspection and monitoring, improving the safety of small-scale fishing vessels, the establishment of responsible fishing and training. Out of the financial contribution provided for in Article 2(1) the Community shall contribute EUR 3 000 000 per year to the measures listed below, broken down as follows:

— Resource monitoring/evaluation of stocks (research, participation in exchange and regional coordination networks, etc.): EUR 500 000

— Fisheries inspection and monitoring (including VMS, etc.): EUR 700 000

— Improving the safety of small-scale fishing: EUR 500 000

— Institutional support for establishing sustainable fishing: EUR 500 000

— Improving skills: EUR 700 000

— Evaluation and audit of partnership schemes: EUR 100 000.

Measures under the partnership and the annual amounts allocated to them shall be decided by the Senegalese Minister with responsibility for sea fishing not later than 31 December 2002 on the basis of an action programme and the European Commission duly notified.

The annual amounts shall be made available to the competent Senegalese authorities not later than 31 December 2002 for the first instalment, and not later than the anniversary date of the Protocol for the other three instalments and paid, on the basis of the programme for their use, into the bank accounts of the competent Senegalese authorities notified by the Ministry responsible for fisheries.

The Ministry responsible for fisheries shall transmit a detailed report on the implementation of these measures and the results achieved to the Delegation of the European Commission, not later than four months after the anniversary date of the Protocol. The said report shall be considered by the Joint Committee referred to in Article 11 of the Agreement. The European Commission may request any additional information on these results from the Ministry responsible for fisheries and may review the following payments concerned in the light of the actual implementation of the various measures, after consulting the Senegalese authorities in the Joint Committee provided for in Article 11 of the Agreement.

Article 5

Failure by the Community to make the payments provided for in Article 2 of this Protocol may result in the suspension of the Fisheries Agreement.

Article 6

Annex I to the Agreement between the European Economic Community and the Government of the Republic of Senegal on fishing off the coast of Senegal is hereby repealed and replaced by the Annex to this Protocol.

Article 7

This Protocol shall enter into force on the date of its signing.

It shall apply from 1 July 2002.

ANNEX

CONDITIONS GOVERNING FISHING IN THE SENEGALESE FISHING ZONE BY VESSELS FLYING THE FLAGS OF EUROPEAN COMMUNITY MEMBER STATES

All the general provisions of the Law laying down the Fishing Code and of the Decree implementing the Code, in force in Senegal, shall also apply to European Community vessels.

A. LICENCE APPLICATION AND ISSUING FORMALITIES

1.1. The relevant Community authorities shall present to the Senegalese Ministry responsible for sea fisheries an application in respect of each vessel wishing to fish under the Agreement.

The application shall be made on the form provided for that purpose by the Government of Senegal, a specimen of which is at Appendix 1. It shall be accompanied by a tonnage certificate and proof of payment of the fee. The application shall be lodged with the appropriate departments of the Senegalese Ministry responsible for sea fisheries at least 20 days before the starting date requested.

Any Community vessel applying for a fishing licence must be represented by an agent resident in Senegal. The name and address of that agent must be mentioned in the licence application.

1.2. Fees shall include all national and local charges with the exception of port charges and the costs of services. After payment of the fee, the licence shall be signed and forwarded to the Delegation of the Commission of the European Communities in Dakar.

1.3. Duration of licences:

— for inshore demersal fishing trawlers, ocean-going trawlers fishing for deep-water demersal fish species and for ocean-going freezer trawlers engaged in deep-water demersal fishing for crustaceans, except lobster, licences shall be issued for three, six or twelve months.

Quarterly licences shall begin on 1 July, 1 October, 1 January and 1 April of each year.

Half-year licences shall begin on 1 July and 1 January of each year.

Annual licences shall begin on 1 July of each year.

The averaging of monthly figures over a year shall mean that the average use per month at the end of a year of the Protocol corresponds to the figure for the category concerned, with the possibility of carrying over unused quantities to the following period.

For tuna fishing and fishing with surface longliners, licences shall be annual and shall begin on 1 July of each year.

1.4. The fees and advances shall be set in accordance with the following rates.

(a) *Fees for trawlers*

1. Trawlers (inshore demersal fishing for fish and cephalopods): in EUR per gross registered ton per year.

1st year	2nd year	3rd year	4th year
246	258	271	285

2. Ocean-going fish trawlers (deep-water demersal species) and bottom longliners not landing their catches in Senegal: in EUR per gross registered ton per year.

1st year	2nd year	3rd year	4th year
157	161	165	169

3. Ocean-going freezer trawlers fishing for crustaceans except lobster, not landing their catches in Senegal: in EUR per gross registered ton per year.

1st year	2nd year	3rd year	4th year
210	215	220	226

Fees for half-year licences shall be 3 % higher and fees for quarterly licences 5 % higher.

(b) *Fees for tuna vessels and surface longliners*

1. Pole-and-line tuna vessels: EUR 15 per tonne of fish caught in the Senegalese fishing zone.

2. Freezer tuna seiners: EUR 25 per tonne of fish caught in the Senegalese fishing zone.

3. Surface longliners: EUR 48 per tonne of fish caught in the Senegalese fishing zone.

The licences referred to in points 2 and 3 shall be issued following payment to the Receveur des domaines of a flat rate of EUR 3 000 for each tuna seiner and EUR 2 000 for each surface longliner, equivalent to the fees for 120 and 42 tonnes respectively of fish per vessel per year.

Upon receipt of the notification of payment of the European Commission's advance to the Senegalese authorities, the latter shall enter the vessel in question on the list of vessels authorised to fish which shall be sent to the Senegalese control authorities. A copy of the original of the licence may also be kept on board provisionally.

The final statement of the fees due for the fishing year shall be drawn up at the end of each calendar year by the European Commission on the basis of catch statements made by the shipowners for each vessel and confirmed by the Centre de Recherches Océanographiques de Dakar-Thiaroye (CRODT). The statement shall be forwarded simultaneously to the Senegalese authorities and the shipowners. Shipowners must make any additional payment due to the Receveur des domaines within 30 days of notification of the final statement.

However, where the sum due as set out in the final statement is less than the advance, the shipowner shall not be reimbursed the difference.

The Senegalese authorities shall supply details of the bank account to be used for payment or transfer of the fees before the Agreement enters into force. Payments may also be made directly to Receveur des domaines in Dakar.

B. CATCH STATEMENTS

All vessels authorised to fish in Senegalese waters under the Agreement shall be required to forward to the Direction de l'Océanographie et des Pêches Maritimes, with a copy to the Delegation of the European Commission in Dakar, a statement of their catch made out in line with Appendices 2, 3, 4 and 5. These statements must be presented no later than the end of the month following the end of a voyage, and a copy must be kept on board.

Should these provisions not be adhered to, the Government of Senegal reserves the right to suspend the licence of the offending vessel until formalities have been completed and to apply the penalty laid down in current Senegalese legislation. The Delegation of the European Commission in Dakar shall be informed.

C. LANDING OF CATCHES

(a) Freezer trawlers (inshore demersal fishing) in category 1 shall land (at local market prices) 250 kilograms of fish and shrimp per GRT per half-year.

Wet trawlers (inshore demersal fishing) in category 1 shall land (at local market prices) 150 kilograms of fish and shrimp per GRT per half-year.

These landings may be made individually or collectively.

Any failure to comply with the requirements to land catches may incur the following sanctions from the Senegalese authorities:

— a fine of EUR 900 per tonne not landed;

— withdrawal without renewal of the licence of the vessel concerned or of another vessel belonging to the same shipowner.

In order to ensure payment of the fine, the issuing of a licence shall be subject to the lodging in Senegal of a banker's guarantee of EUR 200 per GRT per half-year.

The Senegalese authorities shall release this security as soon as a vessel has met its landing requirements in full.

(b) In the case of pole-and-line tuna vessels, the target set shall be to land at least 5 000 tonnes of tuna a year in Senegalese ports at the prevailing international price.

If, during the fishing year, total landings by the fleet concerned fall short of this minimum quantity as a result of an unforeseeable change in the state of fish stocks or the structure of the fleet, the two Parties shall enter into consultations without delay in order to find and put forward appropriate solutions to cover the shortfall.

(c) Freezer tuna seiners shall land 12 500 tonnes of tuna a year at the prevailing international price and in accordance with a programme to be established by agreement between Community shipowners and Senegalese canners. In the event of disagreement on the timetable for landings, the Joint Committee referred to in Article 11 of the Agreement shall hold a special meeting at the request of either of the Parties.

D. SIGNING-ON OF SEAMEN

1. Trawlers, bottom longliners and surface longliners authorised to fish in Senegalese waters under the Agreement shall be required to take on enough Senegalese seamen to make up 50 % of their non-officer crew. This percentage shall include the observer referred to in point J.

The taking-on of Senegalese seamen must be confirmed by a certificate of compliance issued by the merchant navy. All individual contracts for the recruitment of Senegalese seamen must comply with current Senegalese rules and regulations.

Seamen's wages shall be determined by mutual agreement between the shipowners or their representatives and the ministry responsible for the merchant navy in accordance with current Senegalese regulations. Wages shall be paid by the shipowners and shall include the social security applicable to the seamen, including life insurance, accident and sickness cover and IPRES (Institut de prévoyance retraite du Sénégal) and Caisse de sécurité sociale contributions.

If the vessel holds a valid fishing licence issued by another country in the subregion (Mauritania, Gambia, Guinea-Bissau or Guinea), it shall be required to take on board a number of Senegalese seamen equivalent to 50 % of the non-officer crew assigned to sail the vessel.

2. In the case of freezer tuna seiners and pole-and-line tuna vessels, the number of seamen to be taken on board shall be established globally on the basis of the scale of activity in Senegal's fishing zone and the employment of crew from other countries whose fisheries are frequented by that fleet.

E. SPECIAL EQUIPMENT AND USE OF SUPPLIES AND SERVICES

Wherever possible, Community vessels shall procure the supplies and services they require, including dry dock facilities and regular maintenance, in Senegal.

F. TECHNICAL INSPECTIONS

1. Once a year, and whenever there is an alteration in tonnage or a change in fishing category involving the use of different fishing gear, Community trawlers must undergo the inspections provided for in current regulations at the port of Dakar. Such inspections must be completed within 48 hours of the vessel's arrival in the port, provided the competent authorities have been notified in advance.

2. Once the inspection has been completed, a certificate shall be issued to the master of the vessel. The certificate must be kept on board at all times.

3. The purpose of the technical inspection is to check that the vessel's technical characteristics and fishing gear are in order and that the conditions governing the recruitment of Senegalese crew are complied with. Safety matters remain the exclusive responsibility of the authority of the flag state.

4. Charges for technical inspections are payable by the shipowner, and shall be determined by the scale set by Senegal's regulations. They must be no higher than those usually paid by other vessels for the same services.

5. Failure to comply with the provisions of points 1 and 2 shall result in the automatic suspension of the fishing licence until the shipowner complies with his obligations.

G. FISHING ZONES

1. The fishing zones shall be measured from a reference line joining the points below:

1. From point P1 (16°04'00"N–16°31'30"W) to point P2 (15°45'00"N–16°33'00"W);

2. From point P3 (15°00'00"N-17°04'06"W) to point P4 (14°52'48"N–17°11'12"W);

3. (a) From point P5 (14°46'30"N–17°25'30"W) to the northern tip of the island of Yoff (14°46'18" N–17°28'42"W);

(b) From the northern tip of the island of Yoff (14°46'18"N–17°28'42"W) to the tip of the island of Ngor (14°45'30"N–17°30'56"W);

(c) From the northern tip of the island of Ngor (14°45'30"N–17°30'56"W) to the Almadies light (14°44'36"N–17°32'30"W);

(d) From the Almadies light (14°44'36"N–17°32'30" W) to Cap Manuel (14°39'00"N–17°26'00"W);

(e) From Cap Manuel (14°39'00"N–17°26'00"W) to Pointe Rouge (14°38'12"N–17°10'30"W);

(f) From Pointe Rouge (14°38'12"N–17°10'30"W) to Pointe Gombaru (14°29'50"N–17°05'30"W);

(g) From Pointe Gombaru (14°29'50"N–17°05'30"W) to Pointe Sarène (14°17'05"N–16°55'50"W);

(h) De la Pointe Sarène (14°17'05"N–16°55'50"W) à la Pointe Gaskel (14°11'10"N–16°52'00"W);

(i) From Pointe Gaskel (14°11'10"N–16°52'00"W) to Pointe de Sangomar (13°47'54"N–16°45'40" W);

(j) From Pointe de Sangomar (13°47'54"N–16°45'40" W) to point P6 (13°35'28"N–16°40'30"W).

4. (a) From the Senegal-Gambia border (13°03'27"N–16°45'05"W) to point P7 (12°45'10"N–16°47'30"W);

(b) From point P7 (12°45'10"N–16°47'30"W) to point P8 (12°36'12"N–16°48'00"W);

(c) From point P8 (12°36'12"N–16°48'00"W) to Pointe Djimbéring (12°29'00"N–16°47'30"W);

5. From Cap-Skirring (12°24'30"N–16°46'30"W) to the border with Guinea-Bissau (12°20'30"N–16°43'10"W).

For the stretches of Senegalese coast situated outside the limits defined by the reference points specified above, the fishing zones shall be measured from the low-water mark, which shall form an integral part of the reference line.

The distances measured from the reference line or low-water mark shall be expressed in relation to the nearest point on the line in whichever zone the vessel is located.

2. Inshore trawlers (demersal fishing for fish and cephalopods), of up to 250 GRT, shall be authorised to fish:

(a) from six nautical miles from the reference line, from the Senegal-Mauritania border to the latitude of Cap Manuel (14°39'00"N);

(b) from seven nautical miles from the reference line, from the latitude of Cap Manuel to the Senegal-Gambia border;

(c) from six nautical miles from the reference line from the south Senegal-Gambia border to the Senegal-Guinea-Bissau border.

3. Inshore trawlers (demersal fishing for fish and cephalopods), between 250 GRT and 300 GRT, shall be authorised to fish:

from twelve nautical miles from the reference line of waters under Senegalese jurisdiction.

4. Inshore trawlers (demersal fishing for fish and cephalopods), between 300 and 500 GRT, shall be authorised to fish:

from 15 nautical miles from the reference line of waters under Senegalese jurisdiction.

5. Inshore trawlers (demersal fishing for fish and cephalopods), over 500 GRT, shall be authorised to fish:

(a) from 15 nautical miles from the reference line, from the Senegal-Mauritania border to latitude 14°25'00"N;

(b) west of longitude 17°22'00"W, in the zone between latitude 14°25'00"N and the north Senegal-Gambia border;

(c) west of longitude 17°22'00"W, in the zone between the south Senegal-Gambia border and the Senegal-Guinea-Bissau border.

6. Ocean-going trawlers (demersal fishing for deep-water shrimp or hakes) shall be entitled to fish:

(a) west of longitude 16°53'42"W between the Senegal-Mauritania border and latitude 15°40'00"N;

(b) from 15 nautical miles from the reference line between latitude 15°40'00"N and latitude 15°15'00"N;

(c) from 12 nautical miles from the reference line from latitude 15°15'00"N to latitude 15°00'00"N;

(d) from 8 nautical miles off the baselines from latitude 15°00'00"N to latitude 14°32'30"N;

(e) west of longitude 17°30'00"W, in the zone between latitude 14°32'30"N and latitude 14°04'00"N;

(f) west of longitude 17°22'00"W, in the zone between latitude 14°04'00"N and the north Senegal-Gambia border;

(g) west of longitude 17°35'00"W, in the zone between the south Senegal-Gambia border and latitude 12°33'00"N;

(h) south of the azimuth 137° traced from point P9 (12°33'00"N; 17°35'00"W).

7. Pole-and-line tuna vessels, wet tuna seiners and freezer tuna seiners shall be authorised to fish for tuna anywhere in the waters under Senegal's jurisdiction.

Fishing for live bait shall be authorised in all waters under Senegal's jurisdiction.

8. For safety reasons fishing activities and anchoring and casting shall be prohibited in the zone defined by the following coordinates:

A = L 14°40'00"N–G 17°45'00"W

B = L 14°40'00"N–G 17°30'30"W

C = L 14°40'36"N–G 17°28'12"W

D = L 14°39'00"N–G 17°25'54"W

E = L 14°39 54"N–G 17°23'54"W

F = L 14°30'06"N–G 17°23'54"W

G = L 14°30'00"N–G 17°44'54"W

H. BIOLOGICAL REST-PERIOD

Where required by the need to manage resources in a sustainable manner, every year the Senegalese authorities may institute a ban on fishing applicable to all demersal trawlers of the same category, without discrimination.

The annual closure period shall be as follows:

— Trawlers (inshore demersal fishing for fish and cephalopods): 1 October to 30 November;

— ocean-going fish trawlers (deep-water demersal species) and bottom longliners: 1 March to 30 June;

— ocean-going freezer trawlers (deep-water demersal fishing for crustaceans, except lobster): 1 September to 31 October.

When the Senegalese authorities adopt emergency measures, to regulate fishing for a given species, applicable to all, and in particular Senegalese, vessels, a meeting of the Joint Committee shall be convened to evaluate the impact of such measures on European Community vessels and, where appropriate, adjust the level of the financial contribution.

I. RADIO COMMUNICATIONS

The master of the vessel must notify the Direction de la Protection et Surveillance des Pêches (Directorate for Fisheries Protection and Monitoring) in Senegal by radio (frequency 5283 VHF and/or 7349.5 HF), telephone (221) 864 05 89 or (221) 864 05 88, fax (221) 860 31 19 or email (psps@sentoo.sn) when the vessel enters or leaves waters under Senegalese jurisdiction, specifying the following: position, course, speed, and tonnage of catches on board.

The master shall authorise the observer to contact the Direction de la Protection et Surveillance des Pêches by radio whenever necessary.

J. OBSERVERS

1. (a) Community trawlers and bottom longliners of 150 GRT or more in the case of wet fishing and 100 GRT or more in the case of other vessels fishing in Senegalese waters shall take on board an observer designated by Senegal. The master shall facilitate the work of the observer, who shall enjoy all the respect owed to the officers of the vessel concerned.

(b) In the case of surface longliners, at the request of the competent Senegalese authorities, an observer shall be taken on board for the duration of the voyage where the vessel is fishing in Senegalese waters.

(c) The Senegalese authorities shall communicate the names of the designated observers to the European Commission.

(d) Observers shall be provided with board and accommodation at the shipowner's expense. Their meals shall be served in the officers' messroom and they shall be accommodated in the areas provided for the officers or, if this is impossible, in a living area distinct from that provided for the crew if possible.

(e) In the case of freezer tuna seiners and tuna pole-and-line vessels fishing for bait, one of the Senegalese seamen on board shall be designated seaman/observer.

The master shall facilitate the work of the seaman/observer that is additional to actual fishing operations so that he can compile his report. Seamen/observers shall receive the normal seaman's rate of pay from the shipowner. Seamen/observers shall be required to submit a report to the Direction de la Protection et Surveillance des Pêches at the end of each voyage.

2. In principle the observer shall be taken on board for a maximum period of 60 days. This period may be extended where the duration of a voyage by the vessel on which the observer is taken on board exceeds that period.

In such cases, the observer shall leave the vessel on its return. A deposit equivalent to 60 days' activity at sea shall be lodged before the observer boards. Settlement shall be made after each voyage.

3. The taking on board and disembarkation of observers shall not interrupt or hinder fishing operations. Observers may therefore be taken on board and/or leave the vessel in a port elsewhere than in Senegal provided that their travel and subsistence expenses are reimbursed by the shipowner.

4. The deposit equivalent to 60 days' activity at sea shall be considered an advance on the payment of the observer's allowance. The allowance shall be paid after the observer has left the vessel. A final statement of advances made shall be drawn up when the licence expires. However, where the sum due as set out in the final statement is less than the advance, the shipowner shall not be reimbursed the difference.

K. BY-CATCHES

1. Trawlers (inshore demersal fishing for fish and cephalopods):

— crustaceans: 7,5 %

2. Ocean-going fish trawlers (deep-water demersal species):

— crustaceans: 7 %

— cephalopods: 7 %

3. Ocean-going freezer trawlers (deep-water demersal fishing for crustaceans, except lobster):

— fish: 10 %

— cephalopods: 10 %

— lobster: 2 %

4. The percentages of by-catches fixed above shall be calculated at the end of each voyage by reference to the total catch weight, in accordance with Senegalese law.

Should these percentages exceed the authorised by-catches, penalties shall be imposed in accordance with Senegalese law and may result in the permanent banning of the offending masters and vessels from all fishing activities in Senegal.

In accordance with the relevant ICCAT and FAO recommendations, fishing for basking shark (*Cetorhinus maximus*), white shark (*Carcharodon carcharias*), sand tiger shark (*Carcharias taurus*) and tope shark (*Galeorhinus galeus*) shall be prohibited.

L. MINIMUM AUTHORISED MESH

The minimum mesh sizes for authorised industrial fishing gear shall be as follows (mesh opening):

— purse seines with live bait: 16 mm;

— standard otter trawls (inshore demersal fishing for fish or cephalopods): 70 mm;

— standard otter trawls (deep-sea demersal species): 70 mm;

— deep-sea demersal trawls for crustaceans, except lobster: 40 mm.

In the case of all fishing gear, no methods or devices may be used to seek to obstruct the mesh of the nets or reduce their selective effect. However, in the interests of reducing wear or damage, protective aprons of netting or other material may be attached, but only to the underside of the codend of a bottom trawl. Such aprons must be attached only to the forward and lateral edges of the codend of the trawl. Protective devices may be used for the top of the trawl, but these must consist of a single section of net of the same material as the codend, with the mesh measuring at least 300 millimetres when stretched out.

Doubling of the codend's netting yarn, whether single or multiple, shall be prohibited.

In the case of tuna, the international standards recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) shall apply.

M. TRANSHIPMENT

Any Community vessel wishing to tranship catches in Senegalese waters shall be subject to the procedure laid down below.

The catches of Community vessels shall be transhipped within Senegalese ports.

Owners of the vessels concerned must report the following information to the Direction de la Protection et Surveillance des Pêches at least 24 hours in advance:

— the names of the transhipping fishing vessels,

— the names of the cargo vessels,

— the tonnage by species to be transhipped,

— the day of transhipment.

Transhipment shall be considered as an exit from the Senegalese fishing zone. Vessels must therefore provide the Directorate for the Protection and Monitoring of Fisheries with the catch statements and state whether they intend to continue fishing or leave Senegal's fishing zone.

Any transhipment of catches not covered above shall be prohibited in Senegal's fishing zone. Any person infringing this provision shall be liable to the penalties provided for by Senegalese law.

N. BOARDING AND APPLICATION OF PENALTIES

1. The European Commission Delegation in Senegal shall be informed as far as possible within 48 hours of any boarding of a fishing vessel flying the flag of a Community Member State fishing under the Fisheries Agreement between the European Economic Community and Senegal. Such information shall include:

   — the vessel's name and flag;

   — the date of boarding;

   — the position of boarding;

   — the reasons for boarding;

   — the penalties incurred;

   — the security for provisional release of the vessel.

Such security must be at least equal to the maximum fine and the value of the catches to be confiscated.

The vessel may resume its activities if the owner lodges the security defined above. Otherwise the vessel shall be detained at the quayside until the administrative procedure has been completed.

A statement shall be drawn up concerning fishing infringements, containing all relevant information and evidence. The statement shall be signed by the officials compiling it, any witnesses and the offender, who shall have the opportunity to make comments.

On receipt of the statement of boarding, the case shall be dealt with by the Direction de la Protection et de la Surveillance des Pêches (DPSP). The national boarding committee shall be convened to consider the case and make proposals to the Minister for Fisheries and Shipping.

This second phase of processing the boarding case may not exceed 20 days from the date of notification of the boarding to the European Union representation in Dakar.

The owner shall be notified of the amount of the fine imposed under the administrative procedure by letter from the DPSP. If the owner pays the fine, the security shall be released immediately.

If the owner does not agree with the conclusions of the administrative procedure, he shall be free to refer the case to the competent court provided that the above-mentioned security has been lodged with the Senegalese authorities.

If the judicial decision finds against the vessel, the security shall be used to pay the fine.

If the vessel is acquitted, the bank guarantee shall be returned to the owner.

2. The European Commission Delegation in Dakar shall be informed of any penalties imposed on a vessel flying the flag of a Community Member State fishing under the Fisheries Agreement between the European Economic Community and Senegal and shall receive a brief report of the circumstances and reasons leading to the penalty.

Appendix 1

REPUBLIC OF SENEGAL

MINISTRY FOR SEA FISHERIES

DIRECTORATE OF OCEANOGRAPHY AND SEA FISHERIES

FISHING LICENCE APPLICATION FORM

For official use only	Remarks
Nationality:	.....
Licence No:	.....
Date of signature:	.....
Date of issue:	.....

APPLICANT

Company name: .....

Number and date of authorisation of the company: .....

Trade register No (*): .....

First name and surname of applicant: .....

Date and place of birth: .....

Occupation: .....

Account No (*): .....

Address: .....

.....

Number of employees (*): ..... Permanent staff (*): ..... Temporary staff (*): .....

Name and address of agent: .....

.....

Annual turnover (*): .....

VESSEL

Type of vessel: ..... Registration No: .....

New name: ..... Former name: .....

Date and place of construction: .....

Original nationality: .....

Date of taking the Senegalese flag: .....

Provisionally: ..... Period granted: ..... Permanently: .....

Length: ..... Width: ..... Depth: .....

Gross tonnage (GRT): ..... Net tonnage: .....

Type of building material: ..... Draught: .....

Make of main engine: ..... Type: ..... HP: .....

Propeller: Fixed ☐ Variable ☐ Ducted ☐

Transit speed: .....

Call sign: ..... Call frequency: .....

(*) Optional for foreign vessels.

List of navigation, sounding and transmission instruments:

Radar:	☐	Sonar:	☐	VHF radio:	☐
Satellite navigation:	☐	Net sounder:	☐	HF, BLU radio:	☐
Automatic pilot:	☐	Scanmar:	☐	Telex:	☐
Route plotter:	☐				

Other: .....

.....

CONSERVATION

Ice:	☐	Ice and refrigeration:	☐		
Freezing in brine:	☐	Dry:	☐	In refrigerated sea water:	☐

Total refrigerating power (fg): .....

Freezing capacity in tonnes/24 hours: .....

Hold capacity: .....

TYPE OF FISHING

A. **Inshore demersal**

Shrimp:	☐	Fish:	☐		
Type of gear: Shrimp trawl	☐	Fish trawl	☐	Bottom longline	☐

1. trawl length: ..... length of headline: .....

mesh opening in codend: ..... in the wings: .....

2. length of line: ..... number of hooks: .....

number of lines: ..... size of hooks: .....

B. **Deep-sea demersal**

Shrimp:	☐	Fish and cephalopods:	☐		
Type of gear: Fish trawl	☐	Shrimp trawl	☐	bottom longline	☐

1. trawl length: ..... length of headline: .....

mesh opening in codend: ..... in the wings: .....

2. length of line: ..... number of hooks: .....

number of lines: ..... size of hooks: .....

C. **Inshore pelagic:**

Mid-water trawl: ☐ Seine: ☐

1. trawl length: ..... length of headline: .....

mesh opening in codend: .....

2. length of seine: ..... depth of seine: .....

size of mesh (stretched out) .....

D. **Deep-sea pelagic (tuna)**

Type of gear: seine: ☐ pole and line: ☐ longline: ☐

1. length of seine: ..... depth of seine: .....

size of mesh (stretched out) .....

2. number of poles and lines: .....

3. longline:

length of line: ..... number of hooks: .....

number of lines: ..... size of hooks: .....

number of tanks: ..... capacity in tonnes: .....

E. **Longlines and pots:**

number of pots: ..... material: .....

length (diameter of base): ..... width (diameter of top): .....

diameter of openings: ..... cover system: .....

mesh (cover): .....

SHORE INSTALLATIONS (*)

Address and permit No: .....

.....

Company name: .....

Activities: .....

Domestic wholesale fish trade: ☐ export: ☐

Type and No of wholesale trader's card: .....

(*) Optional for foreign vessels.

Description of processing and conservation plant: .....

.....

.....

.....

.....

Number of employees: ..... Senegalese: ..... Foreigners: .....

Permanent staff: ..... Temporary staff: .....

Appendix 2

STATEMENT OF CATCH MADE BY VESSELS USING LONG LINES AND POTS

VESSEL NAME: .....

TYPE OF FISHING (longlines or pots) .....

SPACING OF CATCH EQUIPMENT (hooks or pots) .....

Date of drops		Number of hooks or pots	Time of drop		Time of raising		Average position		Depth		Species (please ring discards)										
			Start	End	Start	End	Latitude	Longitude	Start	End	No	kg	No	kg	No	kg	No	kg	No	kg	No
1.																					
2.																					
3.																					
4.																					
5.																					
6.																					
7.																					
8.																					
9.																					
10.																					

Appendix 3

STATEMENT OF CATCH BY BOTTOM TRAWLERS

Voyage from: ..... to: .....

VESSEL NAME: .....

Type: wet or freezer: .....

NATIONALITY: .....

Species	Dates						
Fishing zone (1)							
Sounder							
Time of fishing							
Total weight of catch							
Total weight of discards							

(1) Dakar North, Petite-Côte or Casamance.

Appendix 4

STATEMENT OF CATCH BY TUNA VESSELS

Voyage from: ..... to: .....

VESSEL NAME: .....

Type: pole and line or seine: .....

NATIONALITY: .....

Catches from Senegal's economic zone

Species	Tonnage landed	Tonnage not landed	Discards	Total
Yellowfin				
Skipjack				
Bigeye				
Thunnidae + Bonito				
Other species				
Total				

Appendix 5

STATEMENT OF CATCH BY TUNA SEINERS

One line per haul whether yielding a catch or not. Please enter crosses under 'Indicators' and 'Haul'

Departure: Port: Date: Time:	Arrival: Port: Date: Time:	Loch Departure: Arrival:	Vessel: Skipper:	Sheet No:

Date	Position At time of haul, otherwise at midday	Haul		Tank No	Estimated catches										Indicators				Remarks	Loch		T° Surface	State of sea	Visibility in miles	Wind		Current	
		With catch	With no catch		Yellowfin		Skipjack		Bigeye		Albacore		Other species		Wreckage	Birds	Whales	Whale-sharks	Route or search Discards Type of shoal or wreckage Miscellaneous problems General weather conditions	06.00 or start of lookout	18.00 or end of lookout				Direction	Speed	Direction	Speed
					Size	Tonnage	Size	Tonnage	Size	Tonnage	Size	Tonnage	Size	Tonnage															

Appendix 6

REPUBLIC OF SENEGAL
Logbook

Name of vessel ..... Start of voyage: Date Day | | | | | | Time | |

..... End of voyage: Date | | | | | | | |

Fishing gear ..... Mesh | | | | Fishing gear dimensons:

DATE	FISHING ZONE NORTH SOUTH	NUMBER OF FISHING OPERATIONS	FISHING TIME HOURS											TOTAL CATCH IN KG	TOTAL FISH FROZEN KG	NOTES
				SARDINELLA	HORSE MACKEREL	MACKEREL	PLAT PLAT	ETHMALOSA	BIGEYE GRUNT	BONITO	SNOOK	ATLANTIC SPORTTED GRUNT	MISCELLANEOUS			

Proposal for a Council Decision on suspending the Community obligations under the Sectoral Annex for Electrical Safety of the Agreement on Mutual Recognition between the European Community and the United States of America

(2003/C 20 E/30)

COM(2002) 537 final

(Submitted by the Commission on 2 October 2002)

EXPLANATORY MEMORANDUM

1. Background

1. The Agreement on Mutual Recognition (MRA) between the European Community (EC) and the United States of America (US) entered into force on 1 December 1998. Its objective is to facilitate EC-US trade by providing effective market access with regard to conformity assessment for products covered by the Agreement. This is achieved by permitting manufacturers to test and certify their products with a domestic conformity assessment body (CAB) according to the requirements of the other Party. The MRA also aims at promoting regulatory simplification and efficiency since the authorities of one Party will no longer have to carry out assessment and monitoring of CABs located on the territory of the other Party.

2. CABs play a key role in the successful operation of the MRA since they offer the testing, certification and approval services needed by manufacturers to take advantage of the MRA. Without an adequate availability of CABs exporters will have difficulty in taking advantage of the trade facilitation offered by the MRA. In this respect it should be kept in mind that the use of the MRA by both manufacturers and CABs is voluntary.

3. A general principle of the MRA is that a Designating Authority (DA) is responsible for the assessment, designation and continuos surveillance of the technical competence of the CABs located on its territory. In recognising a CAB under a Sectoral Annex, the MRA foresees a procedure whereby a party is to give its consent or objection to a CAB designated by the other party. The MRA also offers the possibility for a party to propose the suspension or withdrawal of a CAB on the grounds that it no longer fulfils the applicable requirements on technical competence. Furthermore, the MRA foresees, in view of maintaining confidence, that the parties exchange information on each other's systems for assessing and monitoring CABs and can by mutual consent participate in joint audits/inspections of CABs.

2. Problems in implementing the Sectoral Annex for Electrical Safety

4. The Sectoral Annex for Electrical Safety (hereafter referred to as 'the Annex') lays down in its Section VI the procedures to be followed with regard to the designation, listing, suspension and withdrawal of CABs. According to the text of the Annex the following procedure applies with regard to the designation and listing of an EC CAB:

   (i) The DA of the Member State in which the CAB is located shall designate a CAB by filing a properly prepared proposal for listing, which includes a complete laboratory assessment under the procedures of the US Occupational Safety and Health Administration (OSHA). OSHA would notify the DA within 30 days whether the proposal was complete or whether additional information was required. In reviewing the application OSHA shall rely on the Member State DA for conducting on-site reviews of the CAB.

   (ii) Upon receiving a complete proposal, the US shall give consent or objection to listing the proposed CAB in Section V of the Annex.

   (iii) The CAB is listed in Section V of the Annex by a decision of the Joint Committee and has thus the status of Nationally Recognised Testing Laboratory (NRTL).

5. These procedures clearly lay down the role and responsibility of, on the one hand, Member State DAs, which is to prepare the complete application including on-site assessments done according to the requirements in OSHA's regulation and procedures, and on the other hand, OSHA which is to review the application and give its consent or objection to the proposed CAB.

6. However, the responsible US authority, OSHA, has refused to acknowledge and follow the procedures set out in the MRA and recognise the role and responsibility of Member State DAs. OSHA has insisted that only they can carry out the on-site assessment of EC CABs, since this is prescribed in their regulations (29 CFR 1910). OSHA views the MRA as simply the mechanism needed for them to recognise foreign bodies (in this case from the EC) to be eligible to be recognised under the Nationally Recognised Testing Laboratory (NRTL) programme (see 29 CFR 1910 Appendix A I.A.1.b). Thus, OSHA does not view the MRA as offering anything more in terms of facilitating the recognition of CABs, by relying on the assessments made by Member State DAs.

7. Another element that needs to be taken into consideration is that OSHA has introduced fees for the processing of NRTL applications and on-site assessments. The introduction of fees in itself is not objectionable, however it would lead to a situation where EC CABs would have to pay fees to both their Member State DA, which are responsible for the designation (including any on-site assessment) under the MRA, and OSHA, which consider themselves responsible for the on-site assessment according to their regulations. In this respect, it should be noted that Article 18 of the MRA clearly states that a Party shall not charge fees with respect to conformity assessment services provided by the other Party. The same situation would not apply to US CABs since the Community is in principle ready to recognise them according to the procedures set out in the Annex and thus rely on the assessment and designation made by the US DA.

8. This situation has led to considerable uncertainty among potential EC CABs as to whether they would be recognised and in particular under what conditions. To date no EC CABs have been recognised under the Annex. A CAB designated by Germany has been recognised as a NRTL by OSHA. However, this was done according to OSHA's own procedures and not according to those of the MRA. The German CAB has consequently not yet been listed in Section V of the Annex.

9. The Commission services and the US administration have, in accordance with the third sentence of Article 2 of the Agreement, held numerous consultations and made several attempts to find solutions to the implementation problems described above. The Commission services have made numerous proposals for ways of implementing the Annex and for confidence building activities that aimed at addressing the concerns of all parties involved. All proposals have been rejected by OSHA. The confidence building measures proposed by OSHA were of such a nature that they contradicted both the spirit and text of the MRA and would have thus required a re-negotiation of the Annex.

3. **Proposed course of action**

10. The conclusion from the situation described above is that the US has, by refusing to abide by the procedures laid down in the Annex, failed to fulfil its obligations under the Agreement. It is also clear that this situation has led to that no EC CABs have been recognised under the Annex and thus EU industry has no means of using the Agreement as an instrument for facilitating trade and market access. As a consequence the EC has lost market access, as provided for in Article 2 of the Agreement, for its products. In this context, it can also be considered that the US has failed to maintain legal and regulatory authority capable of implementing the provisions of the Annex, in particular as it relates to the reliance of the OSHA on the on-site assessment carried out by Member State Designating Authorities of the Conformity Assessment Bodies located on their territory

11. At the same time the EC has, unless appropriate measures are taken in accordance with the Agreement, the obligation to recognise CABs designated by the US and thus the Commission has the legal responsibility to take the necessary measures to ensure that this obligation is implemented. Maintaining such a situation would contradict the reciprocity and mutual recognition that underpin the MRA.

12. From this it follows that the EC has not only the right to suspend or terminate its obligations under the Annex, but is also obliged to do so in view of its implementation obligations under Community law.

13. A suspension of the Community obligations under the Annex, according to article 16 of the Agreement, would mean that the Annex as such is maintained in the MRA, but the EC would no longer be bound to recognise US CABs. If circumstances develop in such a way that would allow an implementation of the Annex according to the procedures foreseen therein, the Annex could quickly be made effective again by repealing the suspension of Community obligations.

14. Termination of the Annex, according to article 21(3) of the Agreement, would entail that the Annex is removed from the Agreement. If the EC would give notice of termination of the Annex, consensus must be reached with the US to amend the Agreement accordingly. Failing such a consensus, the Agreement in its entirety would be terminated. It should also be kept that if the Annex is to be re-introduced into the Agreement, this would require a new negotiation between the parties.

15. In conclusion, the Commission considers that the suspension of the Community obligations under the Annex is the appropriate and necessary action to take for the following reasons:

— The US has failed to fulfil its obligation and this resulted in a loss of market access as is provided for by the Agreement.

— The balance of rights and obligations under the Annex would be ensured.

— The Annex should not be terminated since it represents a market access advantage for the EC and should be made effective again as soon as circumstances permit.

— Suspension, compared to termination, would allow a quick resumption of the Annex.

16. The Commission would endeavour to take the appropriate actions, consistent with the Agreement, in view of creating the conditions under which the Annex can be implemented in accordance with its provisions.

17. Suspension of Community obligations requires, according to Article 3(3), second sentence, of Council Decision 1999/78/EC [1], a decision of the Council, acting by qualified majority on a proposal from the Commission.

4. **Impact assessment**

4.1. *Impact on the Community budget*

18. This proposal has no impact on the Community budget.

[1] OJ L 31, 4.2.1999, p. 1.

4.2. *Impact on business*

19. The inclusion of the Annex in the MRA was, from the EC point of view, a major success since this sector is, compared to the EU, heavily regulated in the US with mandatory use of specified US standards and third party certification bodies. The Annex is also closely linked to the Sectoral Annexes of Telecommunication Equipment and Electromagnetic Compatibility since most electrotechnical products are covered by regulations referred to in at least two of these three annexes. In this respect, the suspension of the Annex could be seen as being to the disadvantage of EU industry. However, since the Annex is at the moment not operational in practice — no EC CABs have been recognised under the Annex — EU exporters cannot take advantage of the trade and market access facilitation offered by the MRA in this sector.

20. The Commission has consulted with the relevant European industry federations, which for the most part consider that the Annex has a value and would prefer that it not be suspended, since they believe that it can be used as an instrument for wider regulatory cooperation with the US. However, the Commission considers that the objectives which industry want to be pursued are outside the scope of the MRA and could be better accomplished within a more appropriate framework, e.g. the Action Plan for the Transatlantic Economic Partnership. A suspension of the Annex would not prejudice such a cooperation.

5. **Conclusion**

21. For the reasons outlined in this explanatory memorandum, the Commission proposes to the Council to adopt the attached decision.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 1999/78/EC, of 22 June 1998, on the conclusion of an Agreement on Mutual Recognition between the European Community and the United States of America [1], and in particular Article 3(3), second sentence, thereof

Having regard to the proposal from the Commission,

Whereas:

(1) According to Article 16 of the Agreement on the conclusion of an Agreement on Mutual Recognition between the European Community and the United States of America, hereinafter referred to as the 'Agreement', a Party may suspend its obligations under a Sectoral Annex.

(2) The United States of America has failed to fulfil its obligation under the Agreement, in particular with regard to procedures to be followed for the recognition of Conformity Assessment Bodes designated by the Community.

(3) This has led to that Conformity Assessment Bodies designated or to be designated by the Member State Designating Authorities cannot be assessed, monitored and recognised as foreseen by the Agreement.

(4) As a consequence the Community has lost market access with regard to conformity assessment for its products covered by the Sectoral Annex for Electrical Safety.

(5) It is also considered that the United States has failed to maintain legal and regulatory authorities capable of implementing the provisions of the Sectoral Annex for Electrical Safety, in particular as it relates to the reliance of the Occupational Safety and Health Administration on the on-site assessment carried out by Member State Designating Authorities of the Conformity Assessment Bodies located on their territory.

(6) The Community and the United States have held, in accordance with the third sentence of Article 2 of the Agreement, numerous consultations without leading to a satisfactory solution,

[1] OJ L 31, 4.2.1999, p. 1.

HAS DECIDED AS FOLLOWS:

Article 1

The Community obligations under the Sectoral Annex for Electrical Safety of the Agreement on Mutual Recognition between the European Community and the United States of America are hereby suspended in whole.

Article 2

The President of the Council is authorised to designate the person empowered to send, on behalf of the Community, the attached note to the United States of America.

Article 3

The Community may repeal the suspension of its obligations if the Sectoral Annex for Electrical Safety can be implemented as prescribed in the Agreement. In such a case, the decision shall be taken by the Council in accordance with the second sentence of Article 3(3) of Council Decision 1999/78/EC.

The Commission shall endeavour to take the necessary measures, consistent with the Agreement, in view of ensuring that the Sectoral Annex for Electrical Safety can be implemented in accordance with its provisions.

ANNEX

The Council of the European Union presents its compliments to the Mission of the United States of America to the European Union and notifies it that the European Community has decided, in accordance with Article 16 of the Agreement on Mutual Recognition between the European Community and the United States of America, to suspend its obligations in whole under the Sectoral Annex for Electrical Safety of the Agreement.

The reason for the suspension of Community obligations is that the United States of America has failed to fulfil its obligation under the Agreement, in particular with regard to procedures to be followed for the recognition of Conformity Assessment Bodes designated by the Community. This has led to that Conformity Assessment Bodies designated or to be designated by the Member State Designating Authorities cannot be assessed, monitored and recognised as foreseen by the Agreement.

As a consequence the Community has lost market access with regard to conformity assessment for its products covered by the Sectoral Annex for Electrical Safety.

It is also considered that the United States has failed to maintain legal and regulatory authority capable of implementing the provisions of the Sectoral Annex for Electrical Safety, in particular as it relates to the reliance of the Occupational Safety and Health Administration on the on-site assessment carried out by Member State Designating Authorities of the Conformity Assessment Bodies located on their territory.

The Community and the United States have held, in accordance with the third sentence of Article 2 of the Agreement, numerous consultations without leading to a satisfactory solution.

The suspension of Community obligations as specified above is effective from the date of this note.

The Council of the European Union takes this opportunity to renew to the Mission of the United States of America to the European Union the assurance of its highest consideration.

Proposal for a Council Decision on providing further supplementary-financial assistance to Moldova

(2003/C 20 E/31)

COM(2002) 538 final — 2002/0236(CNS)

(Submitted by the Commission on 2 October 2002)

EXPLANATORY MEMORANDUM

INTRODUCTION

In early 1993 Moldova embarked on a comprehensive programme of economic stabilisation and market reforms, backed by the IMF and the World Bank. By 1995, inflation and the fiscal deficit had been brought under control, while good progress was also made with structural reform, notably in the areas of taxation, price liberalisation and privatisation.

During this initial stage of transition to a market economy, the European Community has supported Moldova 's through various means, including macro-financial assistance. The Community provided two macro-financial assistance packages worth EUR 45 million and EUR 15 million (Council Decisions EC/94/346 and EC/96/242). In both cases, the Community loans were part of an overall package mobilised by the international community to complement the resources provided by the IFIs. Moldova has so far serviced scrupulously its external financial obligations towards the Community and, according to the agreed scheduling, repaid EUR 18 million in principal between December 2000 and August 2002.

In March 1998, the IMF and the World Bank called a new donor meeting in order to mobilise financing in support of Moldova's new economic programme supported by the IFIs. In this framework, the Council approved a new macro-financial assistance loan for Moldova of EUR 15 million, with a maximum duration of ten years and to be disbursed in two tranches (Council Decision 2000/452/EC of 10 July 2000). By the time the Council Decision was taken, Moldova's arrangement with the IMF under the Extended Fund Facility (EFF), approved in May 1996, expired (in May 2000). It was replaced, in December 2000, by a new three-year arrangement under the Fund's Poverty Reduction and Growth Facility (PRGF). After the adoption of the arrangement, Moldova was able to draw SDR 18,48 million (some USD 24 million) under the PRGF at the turn of 2000/2001, but the programme went off track in the spring of 2001. The IMF resumed its lending to Moldova in July 2002, after the successful completion of the First Review under the PRGF Programme. At the same time, the World Bank resumed its own financial support to Moldova with the approval of a new Structural Adjustment Credit (SAC III).

Meanwhile, the foreign debt situation of the country has seriously deteriorated. In order to address the issue of Moldova's foreign debt sustainability (as well as that of six other CIS-countries), the World Bank, the IMF, the ADB and the EBRD prepared a joint study and organised a seminar on 'Poverty Reduction, Growth and Debt Sustainability in Low-Income CIS Countries'. The study and the seminar conclude *inter alia* that Moldova's financial sustainability requires debt and debt servicing alleviation and urge donors to help the country with more concessional forms of assistance. As a follow-up to the seminar, a ministerial meeting on the same issue (so-called 'CIS-7 Initiative') was held in Washington on 20 April 2002 and endorsed a statement calling for 'more concessional support (such as grants), as well as debt restructuring or debt relief where needed'.

Moldova's external financing needs for the period covered by the current programme supported by the IMF and the World Bank comprise a substantial amount of foreign debt, owed to both official and private creditors. In view of the country's limited financial resources, Moldova will need to either restructure or to refinance most of its debt servicing obligations. It is also foreseen in the economic programme that Moldova will refrain from attracting new non-concessional external financing.

Against this background and consistent with the request from the Moldovan Prime Minister Tarlev to President Prodi of 9 April 2002, the Commission is now proposing that the Community macro-financial loan to Moldova approved in July 2000 be cancelled and replaced by a straight grant of an equivalent amount. This new macro-financial assistance will be disbursed in at least two tranches under similar conditions to those foreseen for the disbursement of the loan and will be complementary to financing provided by the IFIs.

RECENT ECONOMIC DEVELOPMENTS

Growth

Real GDP grew by 6,1 % year on year in 2001, after a moderate rise in 2000. Despite slow reforms and a relatively weak external environment, the economy is still expected to grow at an annual rate of around 4,8-5 % in 2002-2003. This reflects an extremely low base period — following years of steep economic decline — as well as the accumulated effects of a gradual reform process. Moldova's economy will also benefit from relative macroeconomic stability and generally solid import demand in Russia.

The relatively strong performance seen in 2001 is mainly the result of the industrial sector's strong recovery, in combination with the halt in the agricultural sector's decline. The latter, which still accounts for about half of total exports, has benefited from the successful farm privatisation and associated reforms implemented in recent years. However, without strong growth in investments and further liberalisation, Moldova's agricultural sector will not be able to diversify into higher value-added commodities or seek out more lucrative and reliable markets outside the CIS. Even the moderate pace of growth that is currently expected (on the assumption that the important agricultural sector does not suffer from adverse weather conditions) would be jeopardised if reforms in the sector were not sustained.

Inflation

Consumer price inflation fell to 6,4 % by the end of 2001, down from 18,5 % in 2000 and 43,8 % in 1999. The significant disinflation recorded in 2001 reflects restrained growth in the money supply, relative currency stability and an improved agricultural harvest. These factors continued to hold down inflation over the first part of 2002, with a fall in food and gasoline prices keeping total inflation over the first three months of the year down to only 1,4 %.

Budget

The tightening of the fiscal policy achieved since the Russian crisis of 1998 continued in 2001: the general government deficit that still exceeded 8 % of GDP in 1998 was cut to less than 1 % in 2000 and changed into a surplus of 0,5 % in 2001. However, the 2001 performance reflected insufficient external financing rather than improved revenue performance. As a result, some new external arrears were accumulated towards the end of 2001 and severe expenditure cuts had to be made. All in all, the authorities only partly achieved their goal of maintaining a tight fiscal stance while maintaining and enhancing social expenditure, in line with the objectives of the I-PRSP (Interim Poverty Reduction Strategy Paper, prepared in cooperation with the World Bank and serving as a basis for the Bank's lending programmes).

The budget for 2002 adopted in November last year foresees a consolidated deficit of around 1,4 % of GDP. However, this budget will be revised in view of, on the negative side, unbudgeted wage increases and lower than planned VAT collection, and, on the positive side, lower interest payments.

Monetary and exchange rate policy

The easing of inflationary pressures has allowed the National Bank of Moldova (NBM) to gradually loosen its monetary stance through 2001, through lowering reserve requirements (from 13 % to 10 % in October 2001) and interest rates. Since end-February 2002, the NBM's basic rate stands at 13 %, down from 21 % in January 2001. The result of this policy has been a rapid growth of deposits and credits to the economy

After almost a year of remarkable stability in 2001, since the start of this year the Moldovan leu (MDL) showed increased volatility sparked by a seasonal rise in US dollar demand and concerns over political stability. Between mid-February and mid-March the currency lost more than 3 % of its value, but it has recovered somewhat since then. Further currency weakening could be seen through mid-2002, reflecting the political situation and concerns over the government's debt-servicing abilities.

Current account

In 2001, the current account improved considerably. While the size of the current account deficit remained virtually unchanged compared to 2000 (USD 119 million against 121 million the year before), it represented only 7,4 % of GDP, down from 8,4 % in 2000. This gradual improvement of the current account was continuing in the beginning of 2002. The main source of the improvement of Moldova's external account is the 20 % surge in remittances from Moldovans working abroad (estimated to equal well over 10 % of GDP annually). At the same time, equally strong growth in exports, resulting mainly from the improved performance of the agriculture, was not sufficient to narrow the trade deficit in view of continued high levels of imports.

Privatisation

Privatisation of the wineries, tobacco plants and utilities were earlier conditions set by both the IMF and the World Bank. The Communist Party consistently opposed the sales when in opposition, but after coming to power was forced to support them as the restoration of relations with the IFIs grew more urgent.

Moldova has failed to complete any major privatisation since February 2000, so that the government earned a meagre MDL 32,6 million (USD 2,5 million) from small-scale privatisations in 2001. It already abandoned the sales of two of its major wineries at the end of 2001 because the offers, from Russian and local companies, were too low.

The government has more ambitious plans for 2002, with between 350 and 500 companies up for sale. This includes plans to sell majority stakes in two of the country's five electricity distributors this year after two previous failed attempts. Union Fenosa (Spain) bought the other three distributors for USD 25,2 million in 2000 and promised to invest a further USD 67 million.

Foreign debt

Moldova's external debt situation is a major source of concern. Although in 2001 the total external debt decreased (due to the halt in external financing, notably from the IFIs), it still represented more than 90 % of GDP. Public and publicly guaranteed debt represents about two-thirds of the total debt stock. The external debt is expected to rise again in the coming years with the resumption of foreign financing.

The year 2002 is critical for Moldova as regards foreign debt service, which has soared to an annual 250 million dollars. The foreign debt service, if paid entirely, represents almost one-third of export revenue. Debt service on public and publicly guaranteed debt alone absorbs 18 % of export receipts and more than 50 % of the Central Government revenue.

Already in 2001 Moldova raised the spectre of default on 1997 Eurobonds with late payments on two occasions. The government is currently negotiating a comprehensive restructuring of outstanding amounts on the Eurobonds (USD 40 million) and of its debt arrears owed to Russia's Gazprom on natural gas deliveries.

THE ECONOMIC PROGRAMME AGREED WITH THE IMF AND THE WORLD BANK

The new programme aims at achieving a primary budget surplus of at least 2 % of GDP over the coming years. The debt burden will be stabilised, and wage and pension arrears will be reduced. Principally better revenue collection should contribute to the improvement of the fiscal situation. The share of education and health care in government spending will be increased, while subsidies will be limited. Monetary policy will aim at keeping annual inflation at less than 8 %, as well as at increasing the level of international reserves to be equivalent to three months of imports in 2003.

The structural reform agenda of the programme covers a wide range of policies, such as fiscal and financial sector reform, governance and transparency, privatisation in key sectors of the economy (wineries and telecommunications), improving delivery of social services and strengthening the legal and regulatory framework.

MOLDOVA'S FINANCING NEEDS

Moldova's external financing needs are estimated to be over USD 210 million for the period 2002-2003. Out of this amount, more than half is expected to be covered by new financing from the IFIs: USD 80 million by the IMF (under the current PRGF arrangement) and USD 30 million by the World Bank (under the Structural Adjustment Credit III). Under the current financing assumptions, the bulk of residual financing gap of about USD 100 million (more than USD 80 million) is to be covered by Moldova's private creditors, through restructuring of Eurobonds and of Gazprom promissory notes. The IMF assumes that the rest of the financing gap — about USD 18 million (the equivalent of about EUR 20 million, at the exchange rate at the time the projections were prepared) — would be filled by the EU macro-financial assistance in the form of grants. Although the Fund does not see at present any urgent need for a Paris Club treatment of Moldova's debt to official creditors, the possibility of such treatment has been repeatedly raised by Moldova's government.

THE PROPOSED MACRO-FINANCIAL ASSISTANCE

In view of the deterioration of the foreign debt situation of the country, Moldovan Prime Minister Tarlev requested in a letter of 9 April 2002 to President Prodi the conversion of the EUR 15 million loan decided in 2000 into a grant. This request is consistent with the commitment of the authorities to refrain from new borrowing on non-concessional terms made in the context of the economic programme for 2002-2003 agreed with the IMF. It is also consistent with the strong consensus within the donor community that Moldova should receive more concessional support, confirmed at the above-mentioned ministerial meeting on the CIS-7 Initiative in favour of the poorest countries of the CIS, including Moldova.

Against this background, the Commission proposes to cancel the existing decision on macro-financial assistance to Moldova in the form of a loan of up to EUR 15 million (Council Decision 2000/452/EC) and to replace it with a straight grant of an equivalent maximum amount. Given that the Guarantee Fund has already been provisioned with EUR 2,25 million in 2000 as a result of the adoption of the Council Decision 2000/452/EC, the corresponding deprovisioning will be implemented next year.

The Commission considers that the proposed assistance is an appropriate reference amount for the Community's support to the balance of payments of Moldova. The proposed assistance amount is consistent with Moldova's residual financing needs, taking also into account the financial outflow resulting from the settlement of Moldova's debt re-payments to the Community (EUR 46 million between 2002 and 2006). This support would help the consolidation of the country's official reserves position and sustain the reform efforts of the authorities. It would also contribute, together with assistance from IFI's and other bilateral donors to the appropriate coverage of the country's external financing needs.

Without prejudice to the competencies of the budgetary authority, the Commission considers that the new assistance would have to be implemented in at least two instalments from 2002 to 2004, within the limits of Category 4 of the financial perspective for the 2000-2006 period.

Accordingly, the Commission requests the Council to adopt the proposed decision and to allow Moldova to benefit from the new financial assistance package.

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The Commission has consulted the Economic and Financial Committee before submitting the proposal,

(2) Moldova is undertaking fundamental political and economic reforms and is making substantial efforts to sustain its progress in transition,

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

(4) The authorities of Moldova have agreed with the IMF on a macro-economic programme supported by a three-year PRGF, approved in December 2000, and have expressed their intention to subsequently continue this programme in the context of a new appropriate Fund Facility,

(5) By Decision 2000/452/EC of 10 July 2000 [1] the Council has made available to Moldova macro financial assistance up to EUR 15 million, in the form of a long-term loan,

(6) Moldova's foreign debt situation has become increasingly preoccupying and the country is facing very high debt-to-export and debt-to-central-government-revenue ratios,

(7) The Moldovan authorities have requested financial assistance on a concessional basis from the International Financial Institutions, the Community and other bilateral donors. Over and above the financing from the IMF and the World Bank a substantial residual financing gap remains to be covered to comfort the country's foreign debt sustainability, strengthen the country's reserves position and support the policy objectives attached to the authorities' reform efforts,

(8) The IMF, the World Bank, the ADB and the EBRD took the initiative in convening, on 20 April 2002, a ministerial meeting on an Initiative in favour of the low-income CIS countries, aiming at, inter alia, providing increased financial support on a concessional basis to the poorest countries of the CIS, including Moldova,

(9) Moldova became eligible to highly concessional loans from the World Bank and the IMF, and is facing particularly critical economic, social and political circumstances,

(10) In these circumstances and without prejudice to the powers of the budgetary authority, the Community macro-financial assistance to Moldova should be made available in the form of a grant, as an appropriate measure to help the beneficiary country at this critical juncture,

(11) This assistance should be managed by the Commission,

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

HAS DECIDED AS FOLLOWS:

Article 1

1. The Community shall make available to Moldova macro financial assistance in the form of a straight grant with a view to ensure a sustainable balance-of-payments situation and strengthening the country's reserve position.

2. The assistance shall amount to a maximum of EUR 15 million.

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

Article 2

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

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

Article 3

1. The assistance shall be made available to Moldova in at least two instalments. Subject to the provisions of Article 2, the first instalment is to be released on the basis of a satisfactory track record of Moldova's macro-economic programme agreed with the IMF in the context of the present Poverty Reduction and Growth Facility or of any successor upper credit tranche arrangement.

2. Subject to the provisions of Article 2, the second and any further instalments shall be released on the basis of a satisfactory continuation of Moldova's macroeconomic programme and not before three months after the release of the previous instalment.

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

4. All related costs incurred by the Community in concluding and carrying out the operation under this Decision shall be borne by Moldova, if appropriate.

Article 4

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

Article 5

1. This Decision shall take effect on the day of its publication in the *Official Journal of the European Communities*. It will expire three years after the date of its publication.

2. Council Decision 2000/452/EC is hereby repealed.

[1] OJ L 181, 20.7.2000, p. 77.

Proposal for a Council Decision on the signing by the European Community of the Council of Europe Convention on contact concerning children

(2003/C 20 E/32)

COM(2002) 520 final

(Submitted by the Commission on 2 October 2002)

EXPLANATORY MEMORANDUM

The Convention on contact concerning children ('the Contact Convention') was adopted on 3 May 2002 in Vilnius, Lithuania, by the Committee of Ministers of the Council of Europe. The Contact Convention aims at reinforcing the fundamental right of children and their parents and other persons having family ties with the child to maintain contact on a regular basis. To this end, the Contact Convention (a) determines general principles to be applied to contact orders, (b) provides appropriate safeguards and guarantees to ensure the proper exercise of contact and the immediate return of children at the end of the contact period, (c) establishes co-operation between the authorities concerned in order to improve and promote transfrontier contact.

The Contact Convention will be open for signature in Strasbourg, France, on 14 October 2002 on the occasion of the 6th European Conference on family law.

Article 22.1 of the Contact Convention allows for accession by the European Community.

The Contact Convention will contribute to the realisation of the aims underlying existing and future Community rules in the field of recognition and enforcement of judgments in the area of parental responsibility. Therefore, the Commission is hereby proposing that the Community should sign the Contact Convention, subject to a possible conclusion at a later date.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) in conjunction with the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Convention on contact concerning children, adopted on 3 May 2002 by the Committee of Ministers of the Council of Europe, makes a valuable contribution to reinforcing the fundamental right of children and their parents and other persons having family ties with the child to maintain contact on a regular basis. It is therefore desirable that its provisions be applied as soon as possible.

(2) The Convention will be open for signature in Strasbourg, France, on 14 October 2002.

(3) Article 22.1 of the Convention allows signature by the European Community.

(4) The Convention will contribute to the realisation of the aims underlying existing and future Community rules in the field of recognition and enforcement of judgments in the area of parental responsibility and covers matters of Community competence.

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to a possible conclusion at a later date, the President of the Council is hereby authorised to designate the person empowered to sign, on behalf of the European Community, the Council of Europe Convention on contact concerning children adopted on 3 May 2002.

Proposal for a Council Regulation amending Regulation (EC) No 900/2001 imposing definitive anti-dumping duties on imports of urea and ammonium nitrate solutions originating in Poland

(2003/C 20 E/33)

COM(2002) 531 final

(Submitted by the Commission on 26 September 2002)

EXPLANATORY MEMORANDUM

By Regulation (EC) No 900/2001, the Council imposed a definitive anti-dumping duty on imports of urea and ammonium nitrate solutions originating in Poland. These measures in the form of a specific duty per tonne were imposed following a review investigation pursuant to Articles 11(2) and 11(3) of Council Regulation (EC) No 384/96 concerning the original measures imposed by Council Regulation (EC) No 3319/94 which were based on a minimum import price.

The Commission services have now carried out an interim review investigation, limited in scope to the examination of dumping, pursuant to Article 11(3) of Council Regulation (EC) No 384/96 following a request lodged by the Polish exporter Zaklady Azotowe 'Pulawy' SA (ZAP) which alleged that circumstances had changed so that the continued imposition of the anti-dumping measures on it was no longer necessary to counteract dumping. The investigation was duly initiated in October 2001.

The investigation showed a lower dumping margin, 0,8 %, i.e. *de minimis*, than that established in the original investigation and that the lower level of dumping was attributable to changes in circumstances deemed to be of a lasting nature.

In the light of the foregoing, the Commission proposes that the Council adopt the attached proposal for a Regulation amending Regulation (EC) No 900/2001 on imports of urea and ammonium nitrate solutions originating in Poland.

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], as last amended by Regulation (EC) No 2238/2000 [2], and in particular Article 11(3) thereof,

Having regard to the proposal submitted by the Commission, after consulting the Advisory Committee,

Whereas:

A. EXISTING MEASURES

(1) By Regulation (EC) No 900/2001 [3], the Council imposed a definitive anti-dumping duty on imports of urea and ammonium nitrate solutions ('UAN') originating in Poland. This Regulation changed the form of the measure from the minimum import prices imposed originally by Regulation (EC) No 3319/94 into a specific duty of 19 Euro per tonne with regard to Zaklady Azotowe Pulawy SA and 22 Euro per tonne for all other Polish exporting producers.

[1] OJ L 56, 6.3.1996, p. 1.

[2] OJ L 257, 11.10.2000, p. 2.

[3] OJ L 127, 9.5.2001, p. 1.

B. **REQUEST FOR A REVIEW**

(2) On 28 June 2001, the Polish exporting producer Zaklady Azotowe Pulawy SA (the 'applicant') lodged a request for an interim review of the anti-dumping measure applicable to it, limited to the aspects of dumping pursuant to Article 11(3) of Regulation (EC) No 384/96 (the 'basic Regulation'). The request provided *prima facie* evidence that measures were no longer necessary to counteract dumping, and also that this was attributable to lasting changes in circumstances. Notably, the applicant alleged that it had started to sell UAN on the domestic market. It was further alleged that the export sales pattern had changed as the company had stopped selling through its related exporter. The applicant had provided prima facie evidence showing the absence of dumping. Having determined, after consulting the Advisory Committee, that sufficient *prima facie* evidence existed for the initiation of an interim review, the Commission published a notice in the *Official Journal of the European Communities* [1] and commenced an investigation.

C. **PROCEDURE**

(3) The investigation of dumping covered the period from 1 October 2000 until 30 September 2001 (the 'investigation period' or 'IP').

(4) The Commission officially advised the authorities of the exporting country of the initiation of the interim review and gave all the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(5) The Commission sent a questionnaire and received detailed information from the applicant.

(6) The Commission sought and verified all information it deemed necessary for the purpose of a determination of dumping and carried out a verification visit at the premises of the exporting producer concerned.

(7) The applicant and the Community industry were informed of the facts and considerations of the investigation and were given an opportunity to comment. Their comments were taken into account and, where appropriate, the findings were modified as reflected above.

D. **PRODUCT CONCERNED AND LIKE PRODUCT**

(8) The findings of the previous investigation as published in Council Regulation (EC) No 900/2001 with regard to product concerned and like product were confirmed.

E. **DUMPING**

1. **Normal value**

(9) It was first determined that the total volume of domestic sales of UAN was representative in relation to export sales. Indeed, the sales volume on the Polish domestic market was higher than the sales volume exported to the Community. It was then determined whether these domestic sales had been made in the ordinary course of trade. In this regard, the investigation showed that the volume of sales above unit production cost represented more than 10 % but less than 80 % of all sales. Therefore normal value was established on the basis of the prices actually paid for all profitable sales of the product under consideration.

(10) The Community industry presented a dumping calculation based on a constructed normal value and assumptions regarding costs, prices and adjustments. However, the assumptions were not correct as they were not borne out by the actual confidential data verified in the course of the investigation. Moreover, no indication was found which put into question these verified data.

(11) After final disclosure, the Community industry re-presented the calculation mentioned under (10) above together with another calculation incorporating a normal value based on domestic prices this time claiming that the difference between its and the Commission's calculations could only be due to very low gas prices. A comparison between the data submitted by the applicant and verified by the Commission on the one hand and the data used for the dumping calculations submitted by the Community industry showed that the most important differences were not related to the gas price issue. The major differences between these calculations concerned most other cost factors including adjustments, the use factors, and the allocation of gas prices paid in certain periods to UAN sold during the IP, and these differences stemmed from the fact that the interested party used assumed information whereas the Commission's calculation was based on verified data. Since the Community industry was unable to provide sufficient evidence to support the accuracy of its assumptions, the Commission's findings based on verified data are confirmed.

2. **Export price**

(12) Since all export sales of the product concerned were made directly to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

[1] OJ C 288, 13.10.2001, p. 2.

3. **Comparison**

(13) For the purposes of a fair comparison by type on an ex-factory basis and at the same level of trade, due allowance was made for differences which were claimed and demonstrated to affect price comparability. These adjustments were made in respect of transport, handling, loading and ancillary costs, credit and commissions in accordance with Article 2(10) of the basic Regulation.

(14) The applicant, having invoiced all export sales to the Community in the IP in US Dollars, had asked for an adjustment for currency conversion referring to a sustained revaluation of the Polish Zloty against the US Dollar, which allegedly took place in the period from October 2000 to June 2001.

(15) It was found, however, that while there was an appreciation of the Polish Zloty against the US Dollar during most of the IP, the Polish Zloty effectively devalued against the US Dollar during the last four months of the IP. If the adjustment had been applied to the transactions influenced by the upward move of the Zloty, it should also have been applied to the ones effected by its downward move. The company was unable to demonstrate that such adjustments would have any overall effect.

(16) Under these circumstances, the claim for a currency conversion adjustment could not be accepted.

4. **Dumping margin**

(17) It was found that there was a pattern of export prices which differed significantly among different time periods. In particular, it was found that export prices during the last two months of the IP were particularly low. This could not be explained by a similar development of the general price level of UAN. Consequently, a comparison of the normal value and export prices on a weighted average basis did not reflect the full degree of dumping being practised. A transaction by transaction comparison on the basis of individual export prices with individual normal values was not possible due to important differences between the transaction dates and the quantities sold of the export transactions on the one hand and the domestic transactions on the other hand. In order to calculate the dumping margin, the weighted average normal value was therefore compared to prices of all individual export transactions to the Community, in accordance with the second sub-paragraph of Article 2(11) of the basic Regulation.

(18) After final disclosure of the basis on which it was intended to amend the anti-dumping measures in force, the Community industry argued that the dumping margin in the original proceeding had been established on the basis of a comparison of prices of individual export transactions with prices of individual domestic transactions and claimed that such a comparison should be carried out in the current investigation. However, an examination of the original files showed that this method was not used in the original investigation. Indeed this is also evident on a careful reading of Commission Regulation (EC) No 1506/94 [1], which states that 'the ex-factory export prices of UAN were compared on a transaction-by-transaction basis with the normal value established as described in recitals (12) and (13).' Since those recitals make clear that normal value was constructed on the basis of the producers full fixed and variable manufacturing cost to which an amount for selling general and administrative expenses as well as a reasonable profit margin was added, it is obvious that individual export prices were compared to a weighted average normal value. In any event, as explained above, it was not possible to carry out a transaction by transaction comparison of individual export prices with individual normal values due to important differences between the transaction dates and the quantities sold of the export transactions on the one hand and the domestic transactions on the other hand. This argument was therefore rejected.

(19) The comparison, as described in (17) above, showed the existence of de minimis dumping for the applicant. The dumping margin established, expressed as a percentage of the total CIF value at Community frontier level, duty unpaid, is 0,8 %.

F. **LASTING NATURE OF CHANGED CIRCUMSTANCES**

(20) In accordance with the Commission's normal practice, it was examined whether the changed circumstances could reasonably be said to be of a lasting nature. It was found that the applicant had significant exports of UAN to non-EC countries during the last two financial periods ending in December 1999 and in June 2001 as well as during the IP. In this context, it should be mentioned that exports to non-EC countries increased substantially during the IP.

(21) It was also found that the applicant has made a significant effort to increase sales on the domestic market by promoting the increased use of liquid fertilisers (UAN), and by developing an extensive distribution network supported by investments in storage facilities at the wholesalers premises. The applicant's domestic sales of urea ammonium nitrate solutions thus increased by 18 % from 2000 and by 35 % from 1999 to the IP.

(22) It should be noted that the farmers' shift to the liquid fertiliser UAN involves investments in equipment used for its spreading. Therefore it is reasonable to presume that the domestic demand for UAN will be constant or increasing in the foreseeable future.

[1] OJ L 162, 30.6.1994, p. 16.

(23) The increased sales to markets other than the Community, in particular the domestic Polish market, are having a noticeable influence on the overall cost structure. This in turn has an influence on the profitability of UAN sales by the applicant on the domestic market and as a consequence on the normal value.

(24) It is therefore concluded that a return to dumping practices with regard to UAN sales by the applicant in the Community market is rather unlikely.

(25) After final disclosure, the Community industry claimed that the above changes in circumstances could not be regarded as being of a lasting nature in particular, because of the limited size of the domestic market in Poland, the lack of other export markets, and the enormous production capacity of the applicant. However, it was found that the domestic market in Poland, the size of which was in fact largely underestimated by the Community industry, was significant and growing, which in itself reduces the potential threat created by the applicant's production capacity and the assumed resulting dependence on export markets. In addition, it was found that other export markets were easily accessible for the applicant. Therefore, there was no reason to believe the change, i.e. the absence of dumping, would not be of a lasting nature.

G. **CONCLUSION**

(26) In view of the finding of a de minimis dumping margin for the applicant and as this situation is not considered to be of a short-term nature, the specific anti-dumping duty imposed by Council Regulation (EC) No 900/2001 on exports of the applicant should be replaced by a EURO 0 duty amount.

(27) The amendment of the measures concerns only the applicant and not Poland as a whole. The applicant remains subject to the proceeding and may be reinvestigated in any subsequent review carried out for Poland pursuant to Article 11 of the basic Regulation. All other producers in Poland remain subject to the existing residual rate of duty, although it is open to them and other interested parties to request a review of these measures in accordance with Article 11 of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 paragraph 2 of Regulation (EC) No 900/2001 shall be replaced by the following:

'Article 1

2. The amount of the applicable duty per tonne of product shall be as shown below for the products manufactured by the following companies:

Country	Company	Amount of duty (EUR per tonne)	TARIC additional code
Poland	Zaklady Azotowe Pulawy SA Al. Tysiaclecia P.P. 13, 24-110 Pulawy Poland	0	8795
	Other companies	22	8900'

Article 2

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.