

Official Journal

of the European Communities

ISSN 0378-6978

L 290

Volume 36

24 November 1993

English edition

Legislation

Contents

I Acts whose publication is obligatory

.....

II Acts whose publication is not obligatory

Council

- ★ Council Directive 93/97/EEC of 29 October 1993 supplementing Directive 91/263/EEC in respect of satellite earth station equipment 1
 - ★ Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights 9
 - ★ Council Directive 93/99/EEC of 29 October 1993 on the subject of additional measures concerning the official control of foodstuffs 14
- 93/605/EC:
- ★ Council Decision of 5 November 1993 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 financial contribution provided for in the Agreement between the European Economic Community and the Islamic Republic of Mauritania on fishing off the coast of Mauritania for the period 1 August 1993 to 31 July 1996 18
 - Agreement in the form of an exchange of letters concerning the provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Community and the Islamic Republic of Mauritania of fishing off the coast of Mauritania for the period 1 August 1993 to 31 July 1996 19
 - Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Community and the Islamic Republic of Mauritania on fishing off the coast of Mauritania for the period 1 August 1993 to 31 July 1996 20

1

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 93/97/EEC

of 29 October 1993

supplementing Directive 91/263/EEC in respect of satellite earth station equipment

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

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

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

(1) Whereas the Commission has issued a Green Paper on a common approach in the field of satellite communications in the Community proposing the introduction of mutual recognition of type approval for satellite earth station equipment as one of the major preconditions for, *inter alia*, a Community-wide market for satellite earth station equipment;

(2) Whereas the Council resolution of 19 December 1991 on the development of a common market for satellite communications services and equipment ⁽⁴⁾ considers as one of the major goals in satellite telecommunications policy the harmonization and liberalization of appropriate satellite earth station equipment, subject, in particular, to conditions necessary for compliance with essential requirements;

(3) Whereas that resolution notes with interest the intention of the Commission to propose measures

for the approximation of the laws of the Member States concerning the appropriate satellite earth station equipment, including the mutual recognition of their conformity, in line with the principles already established in Directive 91/263/EEC ⁽⁵⁾;

(4) Whereas the goal of an advanced, open Community-wide market for satellite earth station equipment requires effective and efficient harmonized procedures for certification, testing, marking, quality assurance and product surveillance; whereas the alternative to Community legislation is an analogous system of provisions negotiated between Member States, which would involve obvious difficulties because of the number of organisms which would be involved in multiple bilateral negotiations; whereas this is not practicable, rapid or efficient; whereas therefore the objectives of the proposed action cannot be sufficiently achieved by the Member States; whereas on the contrary the form of a Community directive has repeatedly shown itself, in the sector of telecommunications among others, as a practicable, rapid and efficient means; whereas the objective of the action under consideration can therefore be better achieved at Community level;

(5) Whereas Community law in its present form provides, notwithstanding one of the fundamental rules of the Community, namely the free movement of goods, that obstacles to movement within the Community, resulting from disparities in national legislations relating to the marketing of products, must be accepted in so far as such requirements can be recognized as being necessary to satisfy essential requirements; whereas, therefore, the harmonization of laws in this case must be limited only to

⁽¹⁾ OJ No C 4, 8. 1. 1993, p. 3.

⁽²⁾ OJ No C 176, 28. 6. 1993, p. 74 and Decision of 27 October 1993 (not yet published in the Official Journal).

⁽³⁾ OJ No C 161, 14. 6. 1993, p. 11.

⁽⁴⁾ OJ No C 8, 14. 1. 1992, p. 1.

⁽⁵⁾ OJ No L 128, 23. 5. 1991, p. 1.

those requirements necessary to satisfy the essential requirements relating to satellite earth station equipment; whereas these requirements must replace the relevant national requirements because they are essential;

Committee for Electrotechnical Standardization (Cenelec) and the European Telecommunications Standards Institute (ETSI) are the bodies recognized as competent to adopt harmonized standards;

- (6) Whereas Council Directive 73/23/EEC of 19 February 1973 on the harmonization of the laws of the Member States relating to electrical equipment designed for use within certain voltage limits (*) and Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (2), are applicable, *inter alia*, to the fields of telecommunications and information technology;
- (7) Whereas Directive 73/23/EEC in general also covers safety of persons;
- (8) Whereas Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility (3) sets out harmonized procedures for the protection of apparatus by electromagnetic disturbances and defines the protection requirements and inspection procedures relating thereto; whereas the general requirements of that Directive also apply to satellite earth station equipment; whereas electromagnetic compatibility requirements are covered by this Directive in so far as they are specific to satellite earth station equipment;
- (9) Whereas Decision 87/95/EEC (4) sets out the measures to be implemented for the promotion of standardization in Europe and the preparation and implementation of standards in the field of information technology and telecommunications;
- (10) Whereas bearing in mind the essential requirements, it is desirable in order to help manufacturers to prove conformity with these essential requirements, to have standards harmonized at European level to safeguard the general interest in the design and manufacture of satellite earth station equipment and allow checks on conformity with these essential requirements; whereas these standards harmonized at European level are drawn up by private-law bodies and must retain their non-binding status; whereas for this purpose the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (Cenelec) and the European Telecommunications Standards Institute (ETSI) are the bodies recognized as competent to adopt harmonized standards;
- (11) Whereas the proposals for common technical regulations are, as a general rule, drawn up on the basis of harmonized standards, and, in order to ensure appropriate technical coordination on a broad European basis, of additional consultations, in particular with the Telecommunications Regulations Application Committee (TRAC);
- (12) Whereas Directive 91/263/EEC introduced the full mutual recognition of type approval for telecommunications terminal equipment and established the Approvals Committee for Terminal Equipment (ACTE) composed of representatives of the Member States and chaired by the representative of the Commission to assist the Commission in executing the tasks entrusted to it by that Directive;
- (13) Whereas Directive 91/263/EEC does not explicitly apply to satellite earth station equipment;
- (14) Whereas it is therefore necessary to extend to satellite earth station equipment the principles already established in that Directive in relation to telecommunications terminal equipment;
- (15) Whereas the scope of this Directive must be based on a general definition of the term 'satellite earth station equipment' so as to allow the technical development of products; whereas the scope excludes purpose-built satellite earth station equipment intended for use as part of the public terrestrial telecommunications network; whereas this is intended to exclude, *inter alia*, gateway satellite earth stations for major trunking applications within the context of the infrastructure provision (such as large size diameter stations) and satellite tracking and control earth stations;
- (16) Whereas this Directive does not affect current special or exclusive rights concerning satellite communications which may in accordance with Community law, be retained by the Member States;
- (17) Whereas satellite earth station equipment is configured, as far as its interface to the space-based system is concerned, either for the transmission of radio communications signals or for both the transmission and reception of radio-communications signals, or for the reception-only of radio-communications signals;

(*) OJ No L 77, 26. 3. 1973, p. 29.

(2) OJ No L 109, 26. 4. 1983, p. 8. Directive as last amended by Commission Decision 92/400/EEC (OJ No L 221, 6. 8. 1992, p. 55).

(3) OJ No L 139, 23. 5. 1989, p. 19. Directive as last amended by Directive 92/31/EEC (OJ No L 126, 12. 5. 1992, p. 11).

(4) OJ No L 36, 7. 2. 1987, p. 31.

- (18) Whereas satellite earth station equipment is, as far as the terrestrial interface is concerned, either intended for, or not intended for terrestrial connection to the public telecommunications network;
- (19) Whereas orbits (such as the geo-stationary orbit, low earth orbits and elliptical orbits) are paths in space described by satellites or other space-based systems, and are limited, nature-given resources;
- (20) Whereas orbital resources are used in conjunction with the radio frequency spectrum which is also a limited, nature-given resource; whereas transmitting satellite earth station equipment makes use of both these resources;
- (21) Whereas the effective use of orbital resources in conjunction with the radio frequency spectrum and avoidance of harmful interference between space-based and terrestrial communications systems and other technical systems is of importance for the development of European satellite communications; whereas the International Telecommunications Union (ITU) establishes criteria for effective use of orbital resources as well as for radio-coordination to enable space and terrestrial systems to co-exist without undue interference;
- (22) Whereas harmonizing conditions for the placing on the market of satellite earth station equipment will create the conditions for an open and unified market and further will achieve an effective use of orbital resources and the radio frequency spectrum and facilitate avoidance of harmful interference between space-based and terrestrial communications systems and other technical systems;
- (23) Whereas in respect of the essential requirements related to effective use of orbital resources and the radio frequency spectrum, and avoiding harmful interference with space-based and terrestrial communications systems and other technical systems, it is in general not possible to comply with such requirements other than by the application of special technical solutions; whereas common technical regulations are therefore necessary;
- (24) Whereas the parameters for the use of the frequency spectrum by transmitters are covered by the essential requirements in Article 4 (c) and (e) of Directive 91/263/EEC, with the test methods and the limit values being specified in conjunction with the technical features of the specific equipment;
- (25) Whereas satellite earth station equipment, capable of being used for transmission or for reception of radio-communications signals, may be subject to licensing terms, in addition to the provisions of this Directive;
- (26) Whereas satellite earth station equipment, only capable of being used for reception of radio-communications signals, shall not be subject to licensing terms but only to the provisions of this Directive unless they are intended for terrestrial connection to the public telecommunications network, as proposed in the Green Paper on satellite communications in the European Community; whereas the use of such satellite earth station equipment must be in conformity with national regulations, compatible with Community law;
- (27) Whereas real, comparable access to third country markets, in particular the United States of America and Japan, for European manufacturers should preferably be achieved through multilateral negotiations within the GATT, although bilateral talks between the Community and third countries may also contribute to this process;
- (28) Whereas representatives of the telecommunication organizations, users, consumers, manufacturers, service providers and the trade unions should have the right to be consulted;
- (29) Whereas the addressees of any decision taken under this Directive must be informed of the reasons for such a decision and the means of appeal open to them;
- (30) Whereas transitional arrangements are required in order that the manufacturers have the necessary time to adapt the design and production of satellite earth station equipment to the common technical regulations; whereas in order to have the necessary flexibility the transition arrangements must be worked out on a case-by-case basis; whereas the common technical regulations shall lay down the necessary transition arrangements;
- (31) Whereas ACTE has to play an important role in the application of this Directive; whereas it should work in close cooperation with relevant committees dealing with licence procedures for satellite network and services,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope, placing on the market and free circulation

Article 1

1. This Directive shall apply to satellite earth station equipment as defined in paragraph 2.
2. For the purpose of this Directive:
 - the definitions given in Directive 91/263/EEC shall apply, where relevant,

— *satellite earth station equipment* means equipment which is capable of being used either for transmission only, or for transmission and reception (transmit-receive), or for reception only (receive-only), of radio-communication signals by means of satellites or other space-based systems, but excluding purpose-built satellite earth station equipment intended for use as part of the public telecommunications network of a Member State,

— *terrestrial connection to the public telecommunications network* means any connection to the public telecommunications network which does not include a space segment.

3. The manufacturer or supplier of satellite earth station equipment shall declare if the equipment is either intended for, or not intended for terrestrial connection to the public telecommunications network.

Article 2

1. Member States shall take all appropriate measures to ensure that receive-only satellite earth station equipment not intended for terrestrial connection to the public telecommunications network may be placed on the market and put into service and used on their territory, in conformity with national law compatible with Community law, only if it complies with the requirements of this Directive when it is properly installed and maintained and used for its intended purposes.

Such use must be in conformity with any national law, compatible with Community law, which restricts the use to the reception of services intended for that user.

2. Member States shall take all appropriate measures to ensure that other satellite earth station equipment may be placed on the market only if it complies with the requirements of this Directive when it is properly installed and maintained and used for its intended purposes. The use of such equipment may be subject to licensing terms in conformity with Community law.

3. Member States shall also take all appropriate measures to ensure that satellite earth station equipment which is not intended for terrestrial connection to the public telecommunications network is not permitted to be connected to the public telecommunications network.

4. Member States shall also take all appropriate measures to ensure that satellite earth station equipment which is not intended for terrestrial connection to the public telecommunications network is disconnected from the public telecommunications network.

Member States shall moreover take all appropriate measures, according to their national laws, to prevent

terrestrial connection to the public telecommunications network of such equipment.

Article 3

Member States shall not impede the free circulation and the placing on the market of satellite earth station equipment conforming to the provisions of this Directive.

Article 4

1. Satellite earth station equipment shall satisfy the same essential requirements as those set out in Article 4 of Directive 91/263/EEC.

2. For the purpose of this Directive, as well as Directive 91/263/EEC, the essential requirements of Article 4 (a) of Directive 91/263/EEC shall imply the safety of persons in the same way as in Directive 73/23/EEC.

3. In the context of transmit or transmit-receive satellite earth station equipment, the essential requirement set out in Article 4 (e) of Directive 91/263/EEC concerning effective use of the radio frequency spectrum shall include the effective use of orbital resources and the avoidance of harmful interference between space-based and terrestrial communications systems and other technical systems.

4. In the context of satellite earth station equipment, electromagnetic compatibility requirements in so far as they are specific to satellite earth station equipment shall be subject to the essential requirement set out in Article 4 (c) of Directive 91/263/EEC.

5. Satellite earth station equipment shall satisfy the essential requirement set out in Article 4 (f) of Directive 91/263/EEC, regarding the interworking of satellite earth station equipment with the public telecommunications network.

6. Satellite earth station equipment shall satisfy the essential requirement set out in Article 4 (g) of Directive 91/263/EEC regarding the interworking of satellite earth station equipment via the public telecommunications network in justified cases.

Cases where satellite earth station equipment is capable of supporting and intended to support a service for which the Council has decided that there should be Community-wide availability are considered as justified cases and the requirements concerning this interworking shall be determined in accordance with the procedure laid down in Article 16 of this Directive.

7. Notwithstanding paragraphs 1, 5 and 6 of this Article, satellite earth station equipment which is not intended for connection to the public telecommunications network shall not be required to satisfy the essential requirements set out in Article 4 (b), (d), (f) and (g) of Directive 91/263/EEC.

Article 5

1. Member States shall presume compliance with the essential requirements referred to in Article 4 (a) and (b) of Directive 91/263/EEC in respect of satellite earth station equipment which is in conformity with the national standards implementing the relevant harmonized standards, the references of which have been published in the *Official Journal of the European Communities*. Member States shall publish the references of such national standards.

2. The Commission shall, in accordance with the procedure laid down in Article 16 of this Directive, adopt:

— as a first step, the measures identifying the type of satellite earth station equipment for which a common technical regulation is required, as well as the associated scope statement for that regulation, with a view to its transmission to the relevant standardization bodies,

— as a second step, once they have been prepared by the relevant standardization bodies, the corresponding harmonized standards, or parts thereof, implementing the essential requirements referred to in Article 4 (2) to (5), which shall be transformed into common technical regulations, compliance with which shall be mandatory and the reference of which shall be published in the *Official Journal of the European Communities*.

Article 6

Where a Member State or the Commission considers that the harmonized standards referred to in Article 5 of this Directive exceed or do not entirely meet the relevant essential requirements referred to in Article 4 of this Directive, the same enquiry and notification procedures shall apply as those set out in Article 7 of Directive 91/263/EEC.

Article 7

1. Where a Member State finds that satellite earth station equipment bearing the marking under the provisions laid down in Chapter III does not comply with the relevant essential requirements when properly used in accordance with the purpose intended by the manufacturer, the same measures, information and consultation procedures shall apply as those set out in Article 8 (1) (2) and (4) of Directive 91/263/EEC.

2. Where satellite earth station equipment which does not comply with the relevant essential requirements bears the CE marking, the competent Member State shall take appropriate action against whomsoever has affixed the marking. The same notification procedures shall apply as those set out in Article 8 (3) and (4) of Directive 91/263/EEC.

CHAPTER II

Conformity assessment*Article 8*

1. All transmit or transmit receive satellite earth station equipment shall, according to the choice of the manufacturer or his authorized representative established within the Community, be subject to all the provisions of Article 9 (1) and (2) of Directive 91/263/EEC concerning conformity assessment.

2. The same procedures regarding language requirements shall apply as those set out in Article 9 (3) of Directive 91/263/EEC.

3. Article 10 (5) of Directive 89/336/EEC shall not apply to equipment falling within the scope of this Directive or of Directive 91/263/EEC.

Article 9

Receive-only satellite earth station equipment, which is intended for terrestrial connection to the public telecommunications network, shall, as far as its terrestrial interface is concerned, be subject to the provisions of Article 8 (1) concerning conformity assessment while, as far as other elements are concerned, they shall be subject either to the provisions of Article 8 (1) or to the Community internal production control procedures set out in the Annex, as far as the requirements of this Directive are concerned.

Article 10

Receive-only satellite earth station equipment which is not intended for terrestrial connection to the public telecommunications network shall be subject either to the provisions of Article 8 (1) or to the Community internal production control procedures set out in the Annex as far as the requirements of this Directive are concerned.

Article 11

In addition to the provisions of Articles 8, 9 and 10 of this Directive satellite earth station equipment which is not intended for connection to the public telecommunications network shall be accompanied by a manufacturer's or supplier's declaration made and transmitted in accordance with the same procedures as those set out in Article 2 and Annex VIII to Directive 91/263/EEC, except that the declaration shall make a reference to this Directive instead of Directive 91/263/EEC.

Article 12

In relation to satellite earth station equipment, the same procedures for notified bodies and test laboratories shall apply as those set out in Article 10 and Annex V to Directive 91/263/EEC.

CHAPTER III

CE marking of conformity and inscriptions

Article 13

1. The marking of satellite earth station equipment complying with this Directive shall consist of the CE marking consisting of the symbol 'CE', followed by the identifying symbol of the notified body responsible and, where relevant, a symbol indicating that the equipment is intended and is suitable to be connected through a terrestrial connection to the public telecommunications network. The 'CE' symbol and these two other symbols shall be the same as those shown in Annex VI to Directive 91/263/EEC.

2. The affixing of marks which are likely to be confused with the CE marking referred to in paragraph 1 above shall be prohibited.

3. Satellite earth station equipment shall be identified by the manufacturer by means of type, batch and/or serial numbers and by the name of the manufacturer and/or supplier responsible for placing it on the market.

4. Notwithstanding paragraph 1, the marking of receive-only satellite earth station equipment which is not intended for terrestrial connection to the public telecommunications network and which has been subject to the Community internal production control procedure set out in the Annex as far as the requirements of this Directive are concerned, shall consist of the CE marking, consisting of the symbol 'CE'.

Article 14

Where it is established that the marking referred to in Article 13 (1) of this Directive has been affixed to satellite earth station equipment which:

- does not conform to an approved type, or
- conforms to an approved type which does not meet the essential requirements applicable to it, or

or where the manufacturer has failed to fulfil his obligations under the relevant Community declaration of conformity, the same procedures shall apply as those set out in Article 12 of Directive 91/263/EEC.

CHAPTER IV

Committee Procedures

Article 15

1. The Approvals Committee for Terminal Equipment (hereinafter referred to as 'the Committee') set up under Article 13 (1) of Directive 91/263/EEC shall assist the Commission in implementing this Directive.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. The Commission shall inform the Committee of the manner in which its opinion has been taken into account.

3. The Commission will periodically consult the representatives of the telecommunications organizations, users, consumers, manufacturers, service providers and trade unions and will inform the Committee of the outcome of such consultations, with a view to taking due account of the outcome.

Article 16

1. Notwithstanding Article 15 (1) and (2), the procedure laid down in the following paragraphs shall apply for matters covered by Articles 4 (6) and 5 (2).

2. The representative of the Commission shall submit to the Committee set up under Article 14 a draft of the measures to be taken as referred to in Articles 4 (6) and 5 (2). The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

4. If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority. If, within three months from the date referred to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

CHAPTER V

Final and transitional provisions*Article 17*

1. The Commission shall report on the implementation of this Directive at the same time and in the same manner as provided for in Article 15 of Directive 91/263/EEC.

2. The Commission shall, when submitting those draft measures referred to in Article 5 (2) of this Directive dealing with common technical regulations, ensure that transition arrangements, where appropriate, form part of the draft measures.

Article 18

1. Member States shall take the measures necessary to comply with this Directive no later than 1 May 1995. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

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

Article 19

This Directive is addressed to the Member States.

Done at Brussels, 29 October 1993.

For the Council

The President

R. URBAIN

*ANNEX***Community internal production control procedure**

1. This Annex describes the procedure whereby the manufacturer or his authorized representative established within the Community, who carries out the obligations laid down in 2, ensures and declares that the products concerned satisfy the requirements of this Directive that apply to them.

The manufacturer must affix the CE marking to each product and draw up a written declaration of conformity.

2. The manufacturer must establish the technical documentation described in 3 and he or his authorized representative established within the Community must keep it, for a period ending at least 10 years after the last product has been manufactured, at the disposal of the relevant national authorities for inspection purposes.

Where neither the manufacturer nor his authorized representative is established within the Community, the obligation to keep the technical documentation available is the responsibility of the person who places the product on the Community market.

3. Technical documentation must enable the conformity of the products to be assessed against the requirements of this Directive that apply to them. It must contain, so far as relevant for assessment:

- a general description of the product,
- conceptual design and manufacturing drawings and lists of components, sub-assemblies, circuits, etc.,
- descriptions and explanations necessary for the understanding of the said drawings and lists and the operation of the product,
- a list of the standards mentioned in Article 5 of this Directive applied in full or as far as is relevant or, in the absence of such standards, the technical construction file, and descriptions of the solutions adopted to meet those requirements of this Directive that apply to the products,
- results of design calculations made, examinations carried out, etc.,
- test reports.

4. The manufacturer or his authorized representative must keep a copy of the declaration of conformity with the technical documentation.

5. The manufacturer must take all measures necessary to ensure that the manufacturing process ensures compliance by the manufactured products with the technical documentation referred to in 2 and with those requirements of this Directive that apply to them.

COUNCIL DIRECTIVE 93/98/EEC

of 29 October 1993

harmonizing the term of protection of copyright and certain related rights

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

- provisions of Article 14a (2) (b), (c) and (d) and (3) of the Berne Convention;
- (1) Whereas the Berne Convention for the protection of literary and artistic works and the International Convention for the protection of performers, producers of phonograms and broadcasting organizations (Rome Convention) lay down only minimum terms of protection of the rights they refer to, leaving the Contracting States free to grant longer terms; whereas certain Member States have exercised this entitlement; whereas in addition certain Member States have not become party to the Rome Convention;
 - (2) Whereas there are consequently differences between the national laws governing the terms of protection of copyright and related rights, which are liable to impede the free movement of goods and freedom to provide services, and to distort competition in the common market; whereas therefore with a view to the smooth operation of the internal market, the laws of the Member States should be harmonized so as to make terms of protection identical throughout the Community;
 - (3) Whereas harmonization must cover not only the terms of protection as such, but also certain implementing arrangements such as the date from which each term of protection is calculated;
 - (4) Whereas the provisions of this Directive do not affect the application by the Member States of the
 - (5) Whereas the minimum term of protection laid down by the Berne Convention, namely the life of the author and 50 years after his death, was intended to provide protection for the author and the first two generations of his descendants; whereas the average lifespan in the Community has grown longer, to the point where this term is no longer sufficient to cover two generations;
 - (6) Whereas certain Member States have granted a term longer than 50 years after the death of the author in order to offset the effects of the world wars on the exploitation of authors' works;
 - (7) Whereas for the protection of related rights certain Member States have introduced a term of 50 years after lawful publication or lawful communication to the public;
 - (8) Whereas under the Community position adopted for the Uruguay Round negotiations under the General Agreement on Tariffs and Trade (GATT) the term of protection for producers of phonograms should be 50 years after first publication;
 - (9) Whereas due regard for established rights is one of the general principles of law protected by the Community legal order; whereas, therefore, a harmonization of the terms of protection of copyright and related rights cannot have the effect of reducing the protection currently enjoyed by rightholders in the Community; whereas in order to keep the effects of transitional measures to a minimum and to allow the internal market to operate in practice, the harmonization of the term of protection should take place on a long term basis;
 - (10) Whereas in its communication of 17 January 1991 'Follow-up to the Green Paper — Working programme of the Commission in the field of copyright and neighbouring rights' the Commission stresses the need to harmonize copyright and neighbouring rights at a high level of protection since these rights are fundamental to intellectual creation and stresses that their protection ensures the maintenance and development of creativity in

(1) OJ No C 92, 11. 4. 1992, p. 6 and OJ No C 27, 30. 1. 1993, p. 7.

(2) OJ No C 337, 21. 12. 1992, p. 205 and Decision of 27 October 1993 (not yet published in the Official Journal).

(3) OJ No C 287, 4. 11. 1992, p. 53.

the interest of authors, cultural industries, consumers and society as a whole;

whereas these Articles should accordingly be repealed;

- (11) Whereas in order to establish a high level of protection which at the same time meets the requirements of the internal market and the need to establish a legal environment conducive to the harmonious development of literary and artistic creation in the Community, the term of protection for copyright should be harmonized at 70 years after the death of the author or 70 years after the work is lawfully made available to the public, and for related rights at 50 years after the event which sets the term running;
- (12) Whereas collections are protected according to Article 2 (5) of the Berne Convention when, by reason of the selection and arrangement of their content, they constitute intellectual creations; whereas those works are protected as such, without prejudice to the copyright in each of the works forming part of such collections, whereas in consequence specific terms of protection may apply to works included in collections;
- (13) Whereas in all cases where one or more physical persons are identified as authors the term of protection should be calculated after their death; whereas the question of authorship in the whole or a part of a work is a question of fact which the national courts may have to decide;
- (14) Whereas terms of protection should be calculated from the first day of January of the year following the relevant event, as they are in the Berne and Rome Conventions;
- (15) Whereas Article 1 of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs⁽¹⁾ provides that Member States are to protect computer programs, by copyright, as literary works within the meaning of the Berne Convention; whereas this Directive harmonizes the term of protection of literary works in the Community; whereas Article 8 of Directive 91/250/EEC, which merely makes provisional arrangements governing the term of protection of computer programs, should accordingly be repealed;
- (16) Whereas Articles 11 and 12 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property⁽²⁾ make provision for minimum terms of protection only, subject to any further harmonization; whereas this Directive provides such further harmonization;
- (17) Whereas the protection of photographs in the Member States is the subject of varying regimes; whereas in order to achieve a sufficient harmonization of the term of protection of photographic works, in particular of those which, due to their artistic or professional character, are of importance within the internal market, it is necessary to define the level of originality required in this Directive; whereas a photographic work within the meaning of the Berne Convention is to be considered original if it is the author's own intellectual creation reflecting his personality, no other criteria such as merit or purpose being taken into account; whereas the protection of other photographs should be left to national law;
- (18) Whereas, in order to avoid differences in the term of protection as regards related rights it is necessary to provide the same starting point for the calculation of the term throughout the Community; whereas the performance, fixation, transmission, lawful publication, and lawful communication to the public, that is to say the means of making a subject of a related right perceptible in all appropriate ways to persons in general, should be taken into account for the calculation of the term of protection regardless of the country where this performance, fixation, transmission, lawful publication, or lawful communication to the public takes place;
- (19) Whereas the rights of broadcasting organizations in their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite, should not be perpetual; whereas it is therefore necessary to have the term of protection running from the first transmission of a particular broadcast only; whereas this provision is understood to avoid a new term running in cases where a broadcast is identical to a previous one;
- (20) Whereas the Member States should remain free to maintain or introduce other rights related to copyright in particular in relation to the protection of critical and scientific publications; whereas, in order to ensure transparency at Community level, it is however necessary for Member States which introduce new related rights to notify the Commission;
- (21) Whereas it is useful to make clear that the harmonization brought about by this Directive does not apply to moral rights;
- (22) Whereas, for works whose country of origin within the meaning of the Berne Convention is a third country and whose author is not a Community national, comparison of terms of protection should

⁽¹⁾ OJ No L 122, 17. 5. 1991, p. 42.

⁽²⁾ OJ No L 346, 27. 11. 1992, p. 61.

be applied, provided that the term accorded in the Community does not exceed the term laid down in this Directive;

- (23) Whereas where a rightholder who is not a Community national qualifies for protection under an international agreement the term of protection of related rights should be the same as that laid down in this Directive, except that it should not exceed that fixed in the country of which the rightholder is a national;
- (24) Whereas comparison of terms should not result in Member States being brought into conflict with their international obligations;
- (25) Whereas, for the smooth functioning of the internal market this Directive should be applied as from 1 July 1995;
- (26) Whereas Member States should remain free to adopt provisions on the interpretation, adaptation and further execution of contracts on the exploitation of protected works and other subject matter which were concluded before the extension of the term of protection resulting from this Directive;
- (27) Whereas respect of acquired rights and legitimate expectations is part of the Community legal order; whereas Member States may provide in particular that in certain circumstances the copyright and related rights which are revived pursuant to this Directive may not give rise to payments by persons who undertook in good faith the exploitation of the works at the time when such works lay within the public domain,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Duration of authors' rights

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his death, irrespective of the date when the work is lawfully made available to the public.
2. In the case of a work of joint authorship the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. In the case of anonymous or pseudonymous works, the term of protection shall run for seventy years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author

discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.

4. Where a Member State provides for particular provisions on copyright in respect of collective works or for a legal person to be designated as the rightholder, the term of protection shall be calculated according to the provisions of paragraph 3, except if the natural persons who have created the work as such are identified as such in the versions of the work which are made available to the public. This paragraph is without prejudice to the rights of identified authors whose identifiable contributions are included in such works, to which contributions paragraph 1 or 2 shall apply.

5. Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately.

6. In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within seventy years from their creation, the protection shall terminate.

Article 2

Cinematographic or audiovisual works

1. The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States shall be free to designate other co-authors.
2. The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.

Article 3

Duration of related rights

1. The rights of performers shall expire 50 years after the date of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.
2. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the

phonogram is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.

3. The rights of producers of the first fixation of a film shall expire 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. The term 'film' shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

4. The rights of broadcasting organizations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

Article 4

Protection of previously unpublished works

Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author. The term of protection of such rights shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public.

Article 5

Critical and scientific publications

Member States may protect critical and scientific publications of works which have come into the public domain. The maximum term of protection of such rights shall be 30 years from the time when the publication was first lawfully published.

Article 6

Protection of photographs

Photographs which are original in the sense that they are the author's own intellectual creation shall be protected in accordance with Article 1. No other criteria shall be applied to determine their eligibility for protection. Member States may provide for the protection of other photographs.

Article 7

Protection *vis-à-vis* third countries

1. Where the country of origin of a work, within the meaning of the Berne Convention, is a third country,

and the author of the work is not a Community national, the term of protection granted by the Member States shall expire on the date of expiry of the protection granted in the country of origin of the work, but may not exceed the term laid down in Article 1.

2. The terms of protection laid down in Article 3 shall also apply in the case of rightholders who are not Community nationals, provided Member States grant them protection. However, without prejudice to the international obligations of the Member States, the term of protection granted by Member States shall expire no later than the date of expiry of the protection granted in the country of which the rightholder is a national and may not exceed the term laid down in Article 3.

3. Member States which, at the date of adoption of this Directive, in particular pursuant to their international obligations, granted a longer term of protection than that which would result from the provisions, referred to in paragraphs 1 and 2 may maintain this protection until the conclusion of international agreements on the term of protection by copyright or related rights.

Article 8

Calculation of terms

The terms laid down in this Directive are calculated from the first day of January of the year following the event which gives rise to them.

Article 9

Moral rights

This Directive shall be without prejudice to the provisions of the Member States regulating moral rights.

Article 10

Application in time

1. Where a term of protection, which is longer than the corresponding term provided for by this Directive, is already running in a Member State on the date referred to in Article 13 (1), this Directive shall not have the effect of shortening that term of protection in that Member State.

2. The terms of protection provided for in this Directive shall apply to all works and subject matter which are protected in at least one Member State, on the date referred to in Article 13 (1), pursuant to national provisions on copyright or related rights or which meet the criteria for protection under Directive 92/100/EEC.

3. This Directive shall be without prejudice to any acts of exploitation performed before the date referred to

in Article 13 (1). Member States shall adopt the necessary provisions to protect in particular acquired rights of third parties.

4. Member States need not apply the provisions of Article 2 (1) to cinematographic or audiovisual works created before 1 July 1994.

5. Member States may determine the date as from which Article 2 (1) shall apply, provided that date is no later than 1 July 1997.

Article 11

Technical adaptation

1. Article 8 of Directive 91/250/EEC is hereby repealed.

2. Articles 11 and 12 of Directive 92/100/EEC are hereby repealed.

Article 12

Notification procedure

Member States shall immediately notify the Commission of any governmental plan to grant new related rights, including the basic reasons for their introduction and the term of protection envisaged.

Article 13

General provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 11 of this Directive before 1 July 1995.

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 methods of making such a reference shall be laid down by the Member States.

Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

2. Member States shall apply Article 12 from the date of notification of this Directive.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 29 October 1993.

For the Council
The President
R. URBAIN

COUNCIL DIRECTIVE 93/99/EEC

of 29 October 1993

on the subject of additional measures concerning the official control of foodstuffs

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

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

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas it is necessary to adopt measures in the context of the internal market; whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas trade in foodstuffs occupies a very important place in the internal market;

Whereas it is therefore essential that the application of Council directive 89/397/EEC of 14 June 1989 on the official control of foodstuffs ⁽⁴⁾ is uniform throughout the Member States; whereas this Directive lays down general rules on the official control of foodstuffs;

Whereas there is a need for additional rules designed to improve the control procedures in force in the Community;

Whereas Member States should take the necessary action to ensure that the staff of the competent authorities have sufficient technical and administrative competence;

Whereas, in order to guarantee the quality of the test data, a system of quality standards should be introduced for laboratories entrusted by the Member States with the official control of foodstuffs; whereas such a system should comply with generally accepted and standardized norms; whereas, in addition, it is essential that these laboratories use validated methods of analysis, whenever possible;

Whereas the development of trade in foodstuffs between the various Member States necessitates closer cooperation between the authorities involved in the control of foodstuffs;

Whereas general rules are required for the Commission officials specialized in the control of foodstuffs who cooperate with specific officials of the Member States in order to ensure the uniform application of legislation on foodstuffs;

Whereas provisions should be laid down under which the national authorities and the Commission must provide mutual administrative assistance with a view to ensuring proper application of the legislation on foodstuffs, in particular through preventive action and the detection of infringements or behaviour suspected of infringing the rules;

Whereas, in view of the nature of the information exchanged pursuant to this Directive, it should be covered by the requirements of commercial or professional secrecy;

Whereas a procedure should be provided for to establish close cooperation between the Member States and the Commission,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive supplements Directive 89/397/EEC.
2. For the purposes of this Directive, the provisions of Article 1 (2), (3) and (4) of Directive 89/397/EEC apply.

Article 2

Member States shall ensure that the competent authorities have, or have access to, a sufficient number of suitably qualified and experienced staff, in particular in areas such as chemistry, food chemistry, veterinary medicine, medicine, food microbiology, food hygiene, food technology and law so that the controls referred to in Article 5 of Directive 89/397/EEC can be carried out adequately.

Article 3

1. Member States shall take all measures necessary to ensure that the laboratories referred to in Article 7 of

⁽¹⁾ OJ No C 51, 26. 2. 1992, p. 20.

⁽²⁾ OJ No C 337, 21. 12. 1992, p. 143 and Decision of 27 October 1993 (not yet published in the Official Journal).

⁽³⁾ OJ No C 332, 16. 12. 1992, p. 5.

⁽⁴⁾ OJ No L 186, 30. 6. 1989, p. 23.

Directive 89/397/EEC comply with the general criteria for the operation of testing laboratories laid down in European Standard EN 45001 supplemented by standard operating procedures and the random audit of their compliance by quality assurance personnel, in accordance with the OECD principles No 2 and 7 of good laboratory practice as set out in Section II of Annex 2 to the Decision of the Council of the OECD of 12 May 1981 concerning the mutual acceptance of data in the assessment of chemicals.

2. In assessing the laboratories referred to in Article 7 of Directive 89/397/EEC, Member States shall:

- (a) apply the criteria laid down in European Standard EN 45002; and
- (b) require the use of proficiency testing schemes as far as appropriate.

Laboratories meeting the assessment criteria shall be presumed to fulfil the criteria referred to in paragraph 1.

Laboratories which do not meet the assessment criteria shall not be considered as laboratories referred to in Article 7 of the said Directive.

3. Member States shall designate bodies responsible for the assessment of laboratories as referred to in Article 7 of Directive 89/397/EEC. These bodies shall comply with the general criteria for laboratory accreditation bodies laid down in European Standard EN 45003.

4. The accreditation and assessment of testing laboratories referred to in this Article may relate to individual tests or groups of tests. Any appropriate deviation in the way in which the standards referred to in paragraphs 1, 2 and 3 are applied shall be adopted in accordance with the procedure laid down in Article 8.

Article 4

Member States shall ensure that the validation of methods of analysis used within the context of official control of foodstuffs by the laboratories referred to in Article 7 of Directive 89/397/EEC comply whenever possible with the provisions of paragraphs 1 and 2 of the Annex to Council Directive 85/591/EEC of 23 December 1985 concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption⁽¹⁾.

Article 5

1. The Commission shall appoint and designate specific officials to cooperate with the competent authorities of the Member States to monitor and evaluate the equivalence and effectiveness of official food control

systems operated by the competent authorities of the Member States. The Commission shall send regular reports to the Member States concerned on the work of its specific officials.

The Commission shall ensure that such officials are suitably qualified and possess the appropriate knowledge and experience to carry out this task; detailed rules of application may be adopted in accordance with the procedure laid down in Article 8.

The competent authorities of the Member States shall cooperate with the Commission's designated officials and give all the necessary assistance to enable them to accomplish their tasks.

2. In pursuance of the duties set out in paragraph 1, Member States shall permit the Commission's designated officials to accompany the officials of their competent authorities carrying out the operations provided for in Article 5 of Directive 89/397/EEC. In any event, the officials of the competent authorities of the Member States shall remain responsible for the carrying out of the control operations.

The Commission shall give Member States at least five working days' notice before the start of these operations. After the execution of each operation referred to in this paragraph the Commission shall forward a report on the work of its specific officials to the Member States concerned.

For the purpose of the operations referred to in this paragraph, the Commission's designated officials shall produce written authorization specifying their identity and status.

The Commission's designated officials shall comply with the rules and practices which officials of the competent authorities of the Member States must follow.

3. The Commission shall present an annual report to the Member States and to the European Parliament on the implementation of this Article.

Article 6

1. The competent authorities of the Member States shall afford each other administrative assistance in all supervisory procedures in connection with legal provisions and quality standards applicable to foodstuffs and in all proceedings for infringements of the law applicable to foodstuffs.

2. To facilitate this administrative assistance each Member State shall designate a single liaison body. It shall be for the body designated by the Member State to liaise as appropriate with the liaison bodies of other Member States. The role of the bodies shall be to assist

⁽¹⁾ OJ No L 372, 31. 12. 1985, p. 50.

and coordinate communication and, in particular, the transmission and reception of requests for assistance.

3. Member States shall inform the Commission of all the relevant details of their designated liaison body. The list of designated liaison bodies and the relevant details shall be published in the 'C' series of the *Official Journal of the European Communities*.

4. Upon receiving a reasoned request, the body concerned shall be responsible for ensuring that the requesting body is provided with all necessary information, except that which cannot be released because it is the subject of legal proceedings, enabling that body to guarantee compliance with legal provisions and quality standards applicable to foodstuffs within its jurisdiction.

5. The information and documents provided pursuant to paragraph 4 shall be forwarded without undue delay either through the liaison body or directly, as appropriate. When original documents cannot be sent, copies of the documents may be transmitted.

6. When, during the exchange of information, it becomes clear that there may have been a case of non-compliance of Community laws or rules or national law of either the receiving Member State or the sending Member State, the competent authority in the Member State in whose territory the alleged non-compliance has taken place shall in due time report back to the competent authority in the other Member State

— on any action that may have been undertaken to deal with the alleged non-compliance, and also

— on any action which has taken, including any action to try to prevent a reoccurrence of the alleged non-compliance.

Such a report may also be copied to the Commission on the initiative of either the transmitting or the receiving Member State.

7. This Article shall apply without prejudice to Council Decision 89/45/EEC of 21 December 1988 on dangers arising from the use of consumer products⁽¹⁾ and Council Directive 92/59/EEC on general product safety⁽²⁾.

⁽¹⁾ OJ No L 17, 21. 1. 1989, p. 51. Decision as amended by Decision 90/352/EEC (OJ No L 173, 6. 7. 1990, p. 49).

⁽²⁾ OJ No L 228, 11. 8. 1992, p. 24.

Article 7

1. Information forwarded pursuant to Article 6 of this Directive, in whatever form, is covered by professional secrecy. In criminal proceedings, the information can be used only with the prior consent of the sending Member State in accordance with, for those Member States who are parties to them, the international conventions and agreements in force on mutual assistance in criminal affairs.

2. Where a Member State has rules permitting free access by persons to information held by competent authorities, this fact must be revealed at the time of the request to another Member State or during the exchange of information if no such request occurs. If the sending Member State indicates that the information involves matters of professional or commercial secrecy, the receiving Member State shall ensure that the information is not divulged more widely than is provided under paragraph 1. If it is not possible for the receiving Member State to restrict the giving out of the information in this way, it shall not be contrary to the terms of this Directive for the sending Member State to withhold the information.

3. Any refusal to provide information according to the provisions of this Article must be justified.

Article 8

1. Where the procedure laid down in this Article is to be followed, the Commission shall be assisted by the Standing Committee for Foodstuffs, set up under Decision 69/414/EEC⁽¹⁾, hereinafter referred to as the Committee.

2. The Chairman shall refer the matter to the Committee either on his own initiative or at the request of the representative of a Member State.

3. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representative of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

⁽¹⁾ OJ No L 291, 19. 11. 1969, p. 9.

4. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.
- (b) If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 9

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply

— with this Directive, except for Article 3, before 1 May 1995,

— with Article 3 before 1 November 1998.

They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

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

Article 10

This Directive is addressed to the Member States.

Done at Brussels, 29 October 1993.

For the Council

The President

R. URBAIN

COUNCIL DECISION

of 5 November 1993

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 financial contribution provided for in the Agreement between the European Economic Community and the Islamic Republic of Mauritania on fishing off the coast of Mauritania for the period 1 August 1993 to 31 July 1996

(93/605/EC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement between the European Economic Community and the Islamic Republic of Mauritania on fishing off the coast of Mauritania ⁽¹⁾,

Having regard to the proposal from the Commission,

Whereas negotiations have been held between the Community and the Islamic Republic of Mauritania, in accordance with the second paragraph of Article 13 of the abovementioned Agreement, to determine the amendments or additions to be introduced into the Annex to the Agreement and into the Protocol at the end of the period of application of the Protocol ⁽²⁾;

Whereas, as a result of these negotiations, a new Protocol was initialled on 10 June 1993;

Whereas, under that Protocol, Community fishermen have fishing rights in the waters under the sovereignty or jurisdiction of Mauritania;

Whereas, in order to avoid any interruption in the fishing activities of Community vessels, it is essential that the new Protocol be applied as soon as possible; whereas, for this reason, the two Parties initialled an Agreement in the form of an exchange of letters providing for the provisional application of the initialled

Protocol from the day following the date of expiry of the Protocol in force; whereas this Agreement should be approved, pending a final decision taken under Article 43 of the Treaty,

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 financial contribution provided for in the Agreement between the European Economic Community and the Islamic Republic of Mauritania on fishing off the coast of Mauritania for the period 1 August 1993 to 31 July 1996 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 President of the Council is hereby authorized to designate the persons empowered to sign the Agreement in the form of an exchange of letters in order to bind the Community.

Done at Brussels, 5 November 1993.

*For the Council**The President*

E. TOMAS

⁽¹⁾ OJ No L 388, 31. 12. 1987, p. 1.

⁽²⁾ OJ No L 117, 10. 5. 1991, p. 1.

AGREEMENT

in the form of an exchange of letters concerning the provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Community and the Islamic Republic of Mauritania of fishing off the coast of Mauritania for the period 1 August 1993 to 31 July 1996

A. Letter from the Islamic Republic of Mauritania

Sir,

With reference to the Protocol initialled on 10 June 1993 setting out the fishing opportunities and financial contribution for the period 1 August 1993 to 31 July 1996, I have the honour to inform you that the Islamic Republic of Mauritania is ready to apply this Protocol on a provisional basis, with effect from 1 August 1993, pending its entry into force in accordance with Article 9 of the said Protocol, provided that the European Community is disposed to do the same.

This is on the understanding that a first instalment equal to one-third of the financial compensation specified in Article 2 of the Protocol is paid by 30 November 1993.

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
Islamic Republic of Mauritania*

B. Letter from the Community

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

'With reference to the Protocol initialled on 10 June 1993 setting out the fishing opportunities and financial contribution for the period 1 August 1993 to 31 July 1996, I have the honour to inform you that the Islamic Republic of Mauritania is ready to apply this Protocol on a provisional basis, with effect from 1 August 1993, pending its entry into force in accordance with Article 9 of the said Protocol, provided that the European Community is disposed to do the same.

This is on the understanding that a first instalment equal to one-third of the financial compensation specified in Article 2 of the Protocol is paid by 30 November 1993.

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 this provisional application of the Protocol.

Please accept, Sir, the assurance of my highest consideration.

*On behalf of the Council
of the European Communities*

PROTOCOL

setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Community and the Islamic Republic of Mauritania on fishing off the coast of Mauritania for the period 1 August 1993 to 31 July 1996

Article 1

For a period of three years from 1 August 1993, the fishing opportunities granted pursuant to Article 2 of the Agreement shall be as follows:

1. Specialized vessels

- (a) fishing vessels specializing in crustaceans, with the exception of crawfish: 4 500 GRT/month annual average;
- (b) black hake trawlers and bottom longliners: 12 000 GRT/month annual average;
- (c) vessels fishing for demersal species other than black with gear other than trawls (fixed gillnet, longliner, line): 2 600 GRT/month annual average;
- (d) trawlers fishing for deepwater demersal species other than black hake: 4 200 GRT/month annual average;
- (e) pot vessels (crawfish): 300 GRT/month annual average.

Vessels with licences for crawfish fishing may keep on board no fishing gear other than pots. These vessels are not authorized for live-bait fishing.

In addition, crawfish fishing shall be prohibited between 1 July and 30 September each year, since this is the height of the breeding season for these species.

2. Vessels fishing for highly migratory species

- Pole-and-line tuna vessels and surface longliners: 11 vessels
- Freezer tuna seiners: 34 vessels.

Pole-and-line tuna vessels are authorized to fish with live bait within the limits and under the conditions (zones and mesh sizes) laid down in the Annex to the Agreement.

Article 2

1. The total financial compensation referred to in Article 6 of the Agreement shall be, for the period referred to in Article 1, ECU 26 000 000, payable in three annual instalments.

2. The use to which this compensation is put shall be the sole responsibility of Mauritania.

3. The compensation shall be paid into an account opened with a financial institution or any other body designated by Mauritania.

Article 3

If Mauritania decides, taking account of stock levels, to re-open cephalopod fishing to vessels other than those of the national fleet, cephalopod fishing authorizations shall be granted to Community vessels under technical and financial conditions to be agreed. In such a case, the financial compensation referred to in Article 2 shall be adjusted.

Article 4

Of the amount of total financial compensation provided for in Article 2 (1), Mauritania shall allocate, for the period referred to in Article 1, the sum of ECU 900 000 towards the financing of scientific and technical programmes to improve biological and fishery resource information as regards the Mauritanian fishing zone. This sum shall be made available to Mauritania and the corresponding amounts shall be transferred to the accounts indicated by the Mauritanian authorities (CNROP in Nouadhibou).

The Community reserves the right to request the contracting party to provide any information that may be useful for scientific purposes.

Article 5

1. Of the amount of total financial compensation provided for in Article 2 (1), Mauritania shall allocate, for the period referred to in Article 1, the sum of ECU 360 000 to study and practical training in the various scientific, technical and economic disciplines relating to fisheries. To this end, the Community shall make it easier for nationals of Mauritania to find places in establishments in its Member States.

2. Part of the amount referred to in paragraph 1 may be allocated to cover the costs of participating in international meetings or training courses on fisheries.

Article 6

Should the Community fail to make the payments provided for in Article 2, Mauritania reserves the right to suspend the application of this Protocol.

Article 7

The Parties agree to encourage cooperation in the field of fisheries. They shall encourage the integration of Community and Mauritanian concerns through associations of mutual interest to exploit fisheries resources and process and market fishery products.

Article 8

The Annex to the Agreement between the European Community and Mauritania on fishing off the coast of Mauritania is hereby replaced by the Annex to this Protocol.

Article 9

This Protocol shall enter into force on the date on which it is signed.

It shall apply with effect from 1 August 1993.

ANNEX

CONDITIONS FOR THE EXERCISE OF FISHING ACTIVITIES BY COMMUNITY VESSELS IN MAURITANIA'S FISHING ZONE

A. Licence applications and issuing formalities

1. The Commission of the European Communities shall, via its delegation in Mauritania, present to the Mauritanian fishery authorities a licence application in respect of each vessel, drawn up by shipowners wishing to fish under the Agreement, at least 20 days before the date of commencement of the period of validity requested. The applications shall be made on the forms provided for that purpose by Mauritania, a specimen of which is shown in Appendix I. Licence applications shall be accepted only if accompanied by proof of payment of the fee for the period of the licence's validity. The fees shall include all national and local charges except for the cost referred to at 2.

In addition, in the case of freezer tuna seiners, a tonnage certificate must be attached to the licence application form.

2. Before receiving a licence, each vessel, with the exception of freezer tuna seiners and pole-and-line tuna vessels, must be presented at the port of Nouadhibou for inspection in accordance with the rules and regulations in force. This inspection shall be carried out within 48 hours of the vessel's arrival in port. The expenses incurred shall be borne by the shipowner and may not be higher than those usually paid by other vessels for the same services.

In the case of pole-and-line tuna vessels and surface longliners, the inspection may be made in a foreign port to be agreed. All expenses linked to such inspection shall be at the shipowner's expense.

3. Licences shall be issued for a given vessel. At the request of the Commission of the European Communities, a licence issued for one vessel may in a case of *force majeure* be replaced by a licence for another Community vessel having the same characteristics. In such a case, the owner of the vessel to be replaced shall return the licence to the Ministry responsible for maritime fisheries via the Delegation of the Commission of the European Communities in Mauritania.

The new licence shall indicate:

- the date of issue,
- the fact that this licence cancels and replaces that of the first vessel.

No fee shall be due for the period of validity remaining.

4. The licence shall be delivered to the master of the vessel or his representative by the Mauritanian authorities within 20 days of receipt of proof of payment of the fee. The Delegation of the Commission of the European Communities in Mauritania shall be notified of delivery.
5. The licence must be held on board at all times.
6. The Mauritanian authorities shall specify the bank account and currencies to be used for payment of fees before the entry into force of the Agreement.

B. Validity of licences and payment of fees by shipowners

1. Provisions applicable to tuna vessels and surface longliners

- (a) Licences for these vessels shall be issued for periods of 12 months.
- (b) The fee to be paid by the shipowner shall be set at ECU 20 per tonne caught within the Mauritanian fishing zone.
- (c) Licences shall be issued following payment to the Mauritanian public treasury of a lump sum of ECU 2 000 a year for each pole-and-line tuna vessel and each surface longliner and ECU 1 000 a year for each freezer tuna seiner, equivalent to the fees for:
 - 100 tonnes of tuna a year in the case of pole-and-line tuna vessels,
 - 100 tonnes per year of species caught by surface longliners,
 - 50 tonnes of tuna per year caught by freezer tuna seiners.

The final statement of the fees due for the fishing period shall be drawn up by the Commission of the European Communities at the end of each calendar year on the basis of the catch statements made by each shipowner and confirmed by the scientific institutes responsible for verifying catch data such as the French Office de la recherche scientifique et technique d'outre-mer (Orstom) and the Instituto Español de Oceanografía (IEO) on the one hand and the Centre national de recherche océanographique et des pêches (CNROP) on the other.

This statement shall be forwarded simultaneously to the Mauritanian seafishing services and to the shipowners not later than 30 April of the following year. Any additional payment due shall be made by the shipowners to the Mauritanian public treasury no later than 30 days after notification of the final statement.

However, if the amount of the final statement is lower than the abovementioned advance, the resulting balance shall not be reimbursable to the shipowner.

In addition, ships' masters shall keep a logbook for each fishing period in Mauritania's fishing zone in accordance with the ICCAT form in Appendix II.

2. Provisions applicable to other vessels

- (a) Licences for these vessels shall be issued for periods of 3, 6 or 12 months. They shall be renewable.
- (b) The licence fees to be paid by shipowners, expressed in ecus per gross registered tonnage per year, shall be as follows:
 - fishing vessels specializing in crustaceans, with the exception of crawfish: 276
 - black hake trawlers and bottom longliners: 142
 - vessels fishing for demersal species other than black hake with gear other than trawls:
 - vessels less than 100 GRT: 133
 - vessels greater than 100 GRT: 200
 - trawlers fishing for deepwater demersal species other than black hake: 156
 - pot vessels (crawfish): 242

C. Fishing logbook and statement of catch

1. All vessels authorized to fish in Mauritania's fishing zone under the Agreement, with the exception of tuna vessels and longliners, shall be required to enter their operations every day in the fishing logbook and its annex, specimens of which are given in Appendices III and IIIa. These documents must be completed legibly and be signed by the master of the vessel. Copies of these documents must be sent at the end of the voyage to the headquarters of the Commande des Pêches of the Ministry for Fisheries and the Economy of the Sea at Nouadhibou, via the Commission Delegation in Mauritania.
2. Should these provisions not be adhered to, Mauritania reserves the right to suspend the licence of the offending vessel until the required formality has been complied with. In this case, the Delegation of the Commission of the European Communities at Nouakchott shall be informed without delay.

D. Signing-on of seamen

1. With the exception of freezer tuna seiners, each vessel shall employ Mauritanian fishermen during its fishing activities in Mauritania's fishing zone to make up 35 % of the non-officer crew engaged in manning the vessel or fishing operations. At the request of the Mauritanian authorities, one of the seamen taken on board may be an officer or a trainee officer whose conditions of presence on board (activity, lodging) shall be agreed jointly before sailing between the shipowner and the competent Mauritanian authority. A breakdown of the composition of the crew between officers and non-officers shall be provided when licence applications are lodged.

The pay conditions shall be identical to those applicable to seamen, officers and trainee officers on Mauritanian vessels.

2. The actual signing-on rate may be less than 35 % but must be greater than 25 %. Otherwise, compensation of ECU 200 per month for each seaman shall be paid by the shipowners to the Mauritanian authorities for the number of seamen not employed on board with regard to the limit of 35 %. Such compensation shall be used for the training of Mauritanian fishermen.

3. At the request of the Mauritanian authorities, each vessel, with the exception of freezer tuna seiners, shall take on board a scientific observer within the 35 % limit referred to in paragraph 1. The captain shall facilitate the task of the scientific observer, whose activities may not disturb fishing operations.
4. Shipowners shall be free to choose which Mauritanian sailors, officers and trainee officers they take on board their vessels. The Mauritanian authorities shall therefore keep an up-to-date list containing an adequate number of sailors, officers and trainee officers.
5. Shipowners shall communicate a list of the Mauritanian seamen taken on board each vessel to the Ministry for Fisheries and the Economy of the Sea every six months.
6. The employment contracts of these seamen, officers and trainee officers shall be drawn up in Mauritania between the shipowners or their representatives and those concerned in agreement with the Mauritanian fisheries authorities. These contracts shall cover the social security arrangements applicable to the seamen (including life, accident and sickness insurance). The pay agreed shall be determined in proportion to the period of validity of the licence.

E. Inspection and monitoring of fishing activities

Any Community vessel fishing in Mauritania's fishing zone shall allow on board any Mauritanian official responsible for inspecting and monitoring fishing activities and permit him to carry out his duties.

These officials should not remain on board any longer than the time required to carry out their duties.

F. Entering and leaving the zone

Community vessels, except those of less than 150 GRT, fishing under this Agreement shall inform the headquarters of the *Commande des pêches* (DCP) at Nouadhibou of the date, time and their position whenever entering or leaving the Mauritanian fishing zone. In addition, pole-and-line tuna vessels shall radio to the same station 24 hours in advance their intention to fish with live bait in the zones demarcated for this purpose.

G. Fishing zones

Community vessels shall have access to the fishing zones beyond the following limits:

1. for fishing vessels specializing in crustaceans, with the exception of crawfish:

— north of latitude 19°21'N: nine nautical miles from the baseline of Cap Blanc — Cap Timiris,

during a period laid down annually by decree of the Minister responsible for sea fishing, fishing is not authorized within the lines between the following points:

20°46'N	17°03'W,
19°50'N	17°03'W,
19°21'N	16°45'W;

— south of latitude 19°21'N: six nautical miles from the low-water mark;

2. for black trawlers and bottom longliners and trawlers fishing for deepwater demersal species other than hake:

— north of latitude 19°21'N: the line between the following points:

20°36'N	17°36'W,
20°03'N	17°36'W,
19°50'N	17°12,8'W,
19°50'N	17°03'W,
19°04'N	16°34'W;

— south of latitude 19°21'N: 18 nautical miles from the low water mark;

3. for vessels fishing for demersal species other than black hake with gear other than trawls: three nautical miles from the baselines;
4. for pot vessel (crawfish):
 - north of latitude 19° 21'N: 20 nautical miles from the baselines of Cap Blanc — Cap Timiris,
 - south of latitude 19° 21'N: 15 nautical miles from the low-water line;
5. for pole-and-line tuna vessels and surface longliners:
 - north of latitude 19° 21'N: 15 nautical miles from the base lines of Cap Blanc — Cap Timiris,
 - south of latitude 19° 21'N: 12 nautical miles from the low-water line;
6. for freezer tuna seiners:
 - north of latitude 19° 21'N: 30 nautical miles from the base lines of Cap Blanc — Cap Timiris,
 - south of latitude 19° 21'N: 30 nautical miles from the low-water line;
7. for pole-and-line tuna vessels fishing with live bait:
 - north of latitude 19° 21'N: three nautical miles from the base lines of Cap Blanc — Cap Timiris,
 - south of latitude 19° 21'N: three nautical miles from the low-water line.

H. By-catch

The by-catch (expressed as a proportion of the total weight of the catch) may not exceed the following percentages at any time during fishing:

- fishing vessels specializing in crustaceans, with the exception of crawfish:
 - 20 % fish,
 - 15 % cephalopods;
- black hake trawlers and bottom longliners:
 - 35 % fish,
 - 0 % shrimps and cephalopods;
- trawlers fishing for deepwater demersal species other than black hake:
 - 10 %, of which a maximum of 5 % shrimps and 5 % cephalopods;
- vessels fishing for demersal species other than black hake with gear other than trawls: 0 %.

It shall be forbidden to keep crawfish on board vessels other than crawfish pot vessels.

I. Authorized mesh sizes

The minimum mesh sizes authorized are the following:

- fishing vessels specializing in crustaceans, with the exception of crawfish: 40 mm,
 - during the first year of the Protocol, one vessel will experiment with the use of a trawl equipped with a 70 mm separator intended to protect juveniles; the assessment made by joint agreement between the parties concerned will lead to the general use of the method in the subsequent years if the results on the protection of juveniles and the profitability of fishing operations prove conclusive. If this is not the case, the 50 mm mesh will be used from the second year of the Protocol,
- black hake trawlers: 60 mm,
- trawlers fishing for deepwater demersal species other than black hake:
 - 60 mm in the first year of application of the Protocol,
 - 70 mm in the following years,

- vessels fishing for demersal species other than black hake, using a fixed gillnet: 120 mm,
- pole-and-line tuna vessels fishing with live bait: 8 mm,
- tuna seiners: the standards recommended by ICCAT shall apply.

J. Seizure and detention of vessels

The seizure or detention, under the terms of Mauritanian legislation, of a fishing vessel flying the flag of a Member State of the Community shall be the subject of a report to the Delegation of the Commission of the European Communities in Mauritania within 48 hours indicating the circumstances and reasons which led to the seizure or detention.

K. Transhipment of catches

Transhipment of catches for fishing vessels specializing in crustaceans, with the exception of crawfish, shall be made in Mauritanian ports.

Appendix I

I. APPLICANT

Business name:

Number and date of registration:

Commercial registration number:

Forename and name of person responsible:

Date and place of birth:

Profession:

Address:

.....

Number of employees: Permanent: Temporary:

Name and address of person responsible:

.....

II. VESSEL

Name of shipowner: Type of ship:

Registration number:

Home port:

New name: Former name:

Date and place of construction:

Modifications: to the structure: to the equipment:

Nationality of origin: Current nationality:

Date of acquiring current flag:

Classification bureau:

Length overall: Breadth: Draught:

..... GRT NRT

Make of main engine: Type:

HP of engine:

Engine No:

Propeller: fixed pitch Controllable pitch Nozzle

Maximum speed:

Radio: call sign: Frequency:

Detection, navigation and transmission equipment:

Radar Sonar Sounder/headline/Net Sonde

VHF SSB Navigation: satellite Other

Crew:

Name of master:

Number of seamen: Total:

Mauritanian:

III. PRESERVATION METHOD

Ice Ice + refrigeration

Freezing: In brine Dry In cold water

Total refrigeration capacity:

Freezer capacity per 24 hours in tonnes:

Hold capacity:

IV. TYPE OF FISHING FOR WHICH AUTHORIZATION IS SOUGHT

— Crustaceans, type:

— Black hake:

— Pelagic species:

— Tuna:

— Gear and mesh used:

V. OTHER

— Live bait fishing:

— Gear and mesh used:

— Period of validity sought:

— Date of application:

— Name and signature:

