

Official Journal

of the European Communities

ISSN 0378-6978

L 355

Volume 45

30 December 2002

English edition

Legislation

Contents

I Acts whose publication is obligatory

- ★ **Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security ⁽¹⁾** 1
- Interinstitutional declaration** 22
- ★ **Regulation (EC) No 2321/2002 of the European Parliament and of the Council of 16 December 2002 concerning the rules for the participation of undertakings, research centres and universities in, and for the dissemination of research results for, the implementation of the European Community Sixth Framework Programme (2002-2006) ⁽¹⁾** 23
- ★ **Council Regulation No 2322/2002 (Euratom) of 5 November 2002 concerning the rules for the participation of undertakings, research centres and universities in the implementation of the sixth framework programme of the European Atomic Energy Community (2002 to 2006)** 35
- ★ **Council Directive 2002/89/EC of 28 November 2002 amending Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community** 45

2

⁽¹⁾ Text with EEA relevance

EN

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.

I

(Acts whose publication is obligatory)

**REGULATION (EC) No 2320/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 December 2002
establishing common rules in the field of civil aviation security**

(Text with EEA relevance)

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 conclusions of the Transport Council of 16 October 2001, and in particular paragraph 9 thereof,

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

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

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾, in the light of the joint text approved by the Conciliation Committee on 15 November 2002,

Whereas:

- (1) The criminal acts committed in New York and Washington on 11 September 2001 show that terrorism is one of the greatest threats to the ideals of democracy and freedom and the values of peace, which are the very essence of the European Union.
- (2) The protection of the citizen within the European Community should at all times be ensured in civil aviation by preventing acts of unlawful interference.
- (3) Without prejudice to rules of the Member States in the field of national security and of measures to be taken on the basis of Title VI of the Treaty on European Union, such objective should be achieved by the adoption of appropriate provisions in the field of air transport policy establishing common basic standards, based on the current recommendations of the European Civil

Aviation Conference (ECAC) Document 30. Executive powers should be delegated to the Commission to adopt the related detailed implementation measures. In order to prevent unlawful acts, certain of these implementation measures should be secret and not be published.

- (4) This Regulation respects fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union.
- (5) The various types of civil aviation activities are not necessarily subject to the same type of threat. It is therefore necessary for the detailed implementation measures to be duly adjusted to the special circumstances of each activity and to the sensitivity of certain measures.
- (6) At small airports, the application of common basic standards might be disproportionate or their implementation might be impossible for objective practical reasons. In such case the appropriate authorities of the Member States should have the possibility to apply alternative measures providing an adequate level of protection. The Commission should examine whether these measures are justified for objective practical reasons and whether they provide an adequate level of protection.
- (7) The Convention on International Civil Aviation, signed in Chicago on 7 December 1944, (Chicago Convention) provides for minimum standards to ensure the security of civil aviation.
- (8) In order to achieve the objectives of this Regulation, each Member State should adopt a national civil aviation security programme, as well as a corresponding quality control programme and a training programme.
- (9) In view of the diversity of the parties involved in the implementation of security measures at national level, it is necessary for each Member State to designate a single appropriate authority responsible for the coordination and the monitoring of the implementation of aviation security programmes.
- (10) Member States should be given the possibility to apply more stringent measures.

⁽¹⁾ OJ C 51 E, 26.2.2002, p. 221.

⁽²⁾ OJ C 48, 21.2.2002, p. 70.

⁽³⁾ Opinion of the European Parliament of 29 November 2001 (not yet published in the Official Journal), Council Common Position of 28 January 2002 (OJ C 113 E, 14.5.2002, p. 17) and Decision of the European Parliament of 14 May 2002 (not yet published in the Official Journal). Decision of the European Parliament of 5 December 2002 and Decision of the Council of 9 December 2002.

- (11) The monitoring of security measures requires the setting up at national level of appropriate quality control systems and the organisation of inspections under the supervision of the Commission, so as to verify the effectiveness of each national system.
- (12) 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⁾.
- (13) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation.
- (14) Since the objectives of the proposed action, namely the establishment and application of appropriate provisions in the field of air transport policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of the Europe-wide scope of this Regulation, 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 confines itself to the common basic standards required in order to achieve the objectives of aviation security and does not go beyond what is necessary for that purpose,

HAVE ADOPTED THIS REGULATION:

Article 1

Objectives

1. The main objective of this Regulation is to establish and implement appropriate Community measures, in order to prevent acts of unlawful interference against civil aviation.
2. The additional objective is to provide a basis for a common interpretation of the related provisions of the Chicago Convention, in particular its Annex 17.
3. The means of achieving the objectives set out in paragraphs 1 and 2 shall be:
 - (a) the setting of common basic standards on aviation security measures;
 - (b) the setting up of appropriate compliance monitoring mechanisms.

⁽¹⁾ OJ L 184, 17.1.1999, p. 23.

Article 2

Definitions

For the purpose of this Regulation:

1. 'airport' shall mean any area in a Member State which is open for commercial air transport operations;
2. 'Chicago Convention' shall mean the Convention on International Civil Aviation and its annexes, signed in Chicago on 7 December 1944;
3. 'aviation security' shall mean the combination of measures and human and natural resources intended to safeguard civil aviation against acts of unlawful interference.

Article 3

Scope

1. The measures laid down in this Regulation shall apply to any airport located in the territories of the Member States to which the Treaty applies.
2. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.
3. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

Article 4

Common standards

1. The common basic standards on aviation security measures are based on the current recommendations of European Civil Aviation Conference (ECAC) Document 30 and are laid down in the Annex.
2. The necessary measures for the implementation and the technical adaptation of these common basic standards shall be adopted in accordance with the procedure referred to in Article 9(2), due consideration being given to the various types of operation and to the sensitivity of the measures relating to:
 - (a) performance criteria and acceptance tests for equipment;

(b) detailed procedures containing sensitive information;

(c) detailed criteria for exemption of security measures.

3. The appropriate authority of a Member State may, on the basis of a local risk assessment, and where the application of the security measures specified in the Annex to this Regulation may be disproportionate, or where they can not be implemented for objective practical reasons, adopt national security measures to provide an adequate level of protection, at airports:

(a) with a yearly average of 2 commercial flights per day; or

(b) with only general aviation flights; or

(c) with commercial activity limited to aircraft with less than 10 tonnes of Maximum Take Off Weight (MTOW) or less than 20 seats,

taking into account the particularities of such small airports.

The Member State concerned shall inform the Commission of these measures.

4. The Commission shall examine whether the measures adopted by a Member State in accordance with paragraph 3 are justified for objective practical reasons and provide an adequate level of protection. If the measures do not comply with these criteria, the Commission shall take a decision in accordance with the procedure referred to in Article 9(3); in such case the Member State shall revoke or adapt them.

Article 5

National civil aviation security programme

1. Within 3 months following the entry into force of this Regulation, each Member State shall adopt a national civil aviation security programme in order to ensure the application of the common standards referred to in Article 4(1) and the measures adopted in accordance with Article 4(2) by the date specified in these measures.

2. Notwithstanding that, within a Member State, one or more bodies or entities may be involved in aviation security, each Member State shall designate an appropriate authority responsible for the coordination and the monitoring of the implementation of its national civil aviation security programme.

3. Within 6 months following the entry into force of this Regulation, each Member State shall require its appropriate authority to ensure the development and implementation of a national civil aviation security quality control programme so as to ensure the effectiveness of its national civil aviation security programme.

4. Each Member State shall ensure that their airports and air carriers providing service from that State establish, implement and maintain airport and air carrier security programmes appropriate to meet the requirements of its the national civil aviation security programme. These programmes shall be submitted for approval to and monitored by the appropriate authority.

5. Each Member State shall require the appropriate authority to ensure the development and implementation of a national civil aviation security training programme.

Article 6

More stringent measures

Member States may apply, in compliance with Community law, more stringent measures than those laid down in this Regulation. As soon as possible after their application, Member States shall inform the Commission of the nature of these measures.

Article 7

Compliance monitoring

1. The specifications for the national civil aviation security quality control programme to be implemented by the Member States shall be adopted in accordance with the procedure referred to in Article 9(2). Such programme shall be based on best practices and allow for the swift detection and correction of failures. Each programme shall provide that all airports situated in the Member State concerned shall be regularly audited under the responsibility of the appropriate authority referred to in Article 5(2). These audits shall use a common methodology and shall be carried out by auditors that are qualified according to common criteria.

2. Beginning 6 months after the entry into force of the provisions of this Regulation in accordance with Article 12, the Commission shall conduct, in cooperation with the appropriate authority referred to in Article 5(2), inspections, including inspections of a suitable sample of airports, to monitor the application by Member States of this Regulation. Such inspections shall take into account the information obtained from national civil aviation security quality control programmes, in particular audit reports. The procedures for conducting such inspections shall be adopted in accordance with the procedure referred to in Article 9(2).

3. The officials mandated by the Commission to conduct inspections in accordance with paragraph 2 shall exercise their powers upon production of an authorisation in writing specifying the subject-matter, the purpose of the inspection and the date on which it is to begin. Inspections of airports shall be unannounced. The Commission shall in good time before scheduled inspections inform the Member States concerned of the inspections

The Member State concerned shall submit to such inspections and shall ensure that bodies or persons concerned also submit to those inspections.

4. The inspection reports shall be communicated by the Commission to the concerned Member State which shall, within three months of notification, indicate the measures taken to remedy any possible shortcoming. The report and the answer of the appropriate authority referred to in Article 5(2) shall be communicated to the Committee set up by Article 9(1).

Article 8

Dissemination of information

1. Without prejudice to the public right of access to documents as laid down in Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾,

(a) the measures relating to

(i) performance criteria and acceptance tests for equipment;

(ii) detailed procedures containing sensitive information;

(iii) detailed criteria for exemption from security measures;

referred to in Article 4(2);

(b) the specifications referred to in Article 7(1); and

(c) the inspection reports and the answers of the Member States referred to in Article 7(4),

shall be secret and not be published. They shall only be made available to the authorities referred to in Article 5(2), which shall communicate them only to interested parties on a need-to-know basis, in accordance with applicable national rules for dissemination of sensitive information.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

2. Member States shall as far as possible and in accordance with applicable national law treat as confidential information arising from inspection reports and answers of Member States when it relates to other Member States.

3. Unless it is clear that the inspection reports and answers shall or shall not be disclosed, Member States or the Commission shall consult with the Member State concerned.

Article 9

Committee

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

3. Where reference is made to this paragraph, Articles 6 and 7 of Decision 1999/468/EC shall apply having regard to the provisions of Article 8 thereof.

4. The Committee shall adopt its rules of procedure.

Article 10

Third countries

Without prejudice to the Member States' responsibilities respecting the risk assessment and the security clause of the civil aviation agreements, the Commission should, assisted by the Security Committee, consider, together with the International Civil Aviation Authority (ICAO) and ECAC, the possibility to develop a mechanism to assess whether flights coming from third country airports meet the essential security requirements.

Article 11

Publication of information

Subject to Regulation (EC) No 1049/2001, the Commission shall publish each year a report on the implementation of this Regulation and on the situation in the Community as far as aviation security is concerned, drawing conclusions from the inspection reports.

*Article 12***Penalties**

Penalties for breaching the provisions of this Regulation shall be effective, proportionate and dissuasive.

*Article 13***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, except for the following provisions of the Annex:

- those on screening of hold baggage (point 5.2),
- those on cargo, courier and express parcels (Part 6), and
- those on mail (Part 7),

which shall enter into force on 31 December 2002.

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

Done at Brussels, 16 December 2002.

For the European Parliament

The President

P. COX

For the Council

The President

M. FISCHER BOEL

ANNEX

1. DEFINITIONS

1. 'Accompanied hold baggage': Baggage accepted for carriage in the hold of an aircraft, on which the passenger who checked it in is on-board.
2. 'Airside': The movement area of an airport, adjacent terrain and buildings, or portions thereof.
3. 'Aircraft Security Check': An inspection of the interior of an aircraft to which passengers may have had access and an inspection of the hold for the purpose of discovering prohibited articles.
4. 'Aircraft Security Search': A thorough inspection of the interior and the exterior of the aircraft for the purpose of discovering prohibited articles.
5. 'Background check': A check of a person's identity and previous experience, including any criminal history, as part of the assessment of an individual's suitability for unescorted access to security restricted areas.
6. 'Cabin baggage': Baggage intended for carriage in the cabin of an aircraft.
7. 'Commercial Flight': A scheduled or non-scheduled flight or flight activity rendered for hire to the general public or private groups for valuable consideration.
8. 'Co-Mat': Abbreviation of air carrier company materials, shipped within its network of stations.
9. 'Co-Mail': Abbreviation of air carrier company mail, shipped within its network of stations.
10. 'Continuous Random Checks': Checks conducted during the entire period of activity, whilst those checks are to be conducted on a random basis.
11. 'General Aviation': Any scheduled or unscheduled flight activity not offered or available to the general public.
12. 'EDS' — Explosive Detection System. A system or combination of different technologies which has the ability to detect, and so to indicate by means of an alarm, explosive material contained in baggage, irrespective of the material from which the bag is made.
13. 'EDDS' — Explosive Device Detection System. A system or combination of different technologies which has the ability to detect, and so to indicate by means of an alarm, an explosive device by detecting one or more components of such a device contained in baggage, irrespective of the material from which the bag is made.
14. 'Hold Baggage': Baggage intended for carriage in the hold of an aircraft.
15. 'Known Consignor':
 - (a) For Cargo: The originator of property for transportation by air for his own account and who has established business with a regulated agent or air carrier on the basis of criteria detailed in this Annex.
 - (b) For Mail: The originator of mail for transportation by air for his own account and who has established business with a regulated postal authority/administration.
16. 'Landside': The area of an airport which is not airside and includes all public areas.
17. 'Mail': Despatches of correspondence and other objects tendered by and intended for delivery to postal administrations. A postal authority/administration is defined by Member States.
18. 'Prohibited article': An object which can be used to commit an act of unlawful interference and that has not been properly declared and subjected to the applicable laws and regulations. An indicative list of such prohibited articles is found in the Attachment.

19. 'PEDS': Primary Explosive Detection System. A system or combination of different technologies which has the ability to detect, and so to indicate by means of an alarm, explosive material contained in baggage, irrespective of the material from which the bag is made.
20. 'Regulated Agent': An agent, freight forwarder or other entity who conducts business with an operator and provides security controls that are accepted or required by the appropriate authority in respect of cargo, courier and express parcels or mail.
21. 'Security Restricted Area': Airside areas of an airport into which access is controlled to ensure security of civil aviation. Such areas will normally include, inter alia, all passenger departure areas between screening points and aircraft, ramp, baggage make-up areas, cargo sheds, mail centres and airside cleaning and catering premises.
22. 'Security Controls': Means by which the introduction of prohibited articles can be prevented.
23. 'Screening': The application of technical or other means which are intended to identify and/or detect prohibited articles.
24. 'Unaccompanied hold baggage': Baggage accepted for carriage in the hold of an aircraft, on which the passenger who checked it in is not onboard.
25. 'Terminal': The main building or group of buildings where the processing of commercial passengers and freight and the boarding of aircraft occurs.
26. 'TIP': Threat Image Projection, a software programme, which can be installed on certain x-ray machines. The programme projects virtual images of threat articles (e.g. a gun, knife, improvised explosive device) within the x-ray image of a real bag under examination, and provides immediate feedback to the x-ray machine operator on the operator's ability to detect such images.
27. 'Trace Detection Equipment': Technology system or combination of different technologies which has the ability to detect very small amounts (1/billion of a gram), and so to indicate by means of an alarm, explosive materials contained in baggage, or other articles subjected for analysis.

2. AIRPORT SECURITY

2.1. Airport Planning Requirements

The design or layout of airports, passenger and cargo terminals and other buildings having direct airside access shall take into account the essential requirements relating to:

- (a) security controls applied to passengers, baggage, cargo, courier and express parcels, mail and air carrier catering stores and supplies;
- (b) the protection and control of access to airside, security restricted areas and other sensitive airport areas and facilities;
- (c) the efficient use of security equipment.

2.1.1. Airside/Landside Boundaries

Boundaries shall be established between landside and airside areas at airports.

2.1.2. Security Restricted Areas

Security Restricted Areas shall be established at each airport.

2.2. Access Control

2.2.1. Security Restricted Areas and Other Airside Areas

- (i) Access to security restricted areas and other airside areas shall be controlled at all times to ensure that no unauthorised person enters these areas and that no prohibited articles can be introduced into security restricted areas or aircraft.

- (ii) All staff requiring access to security restricted areas shall be subjected to a minimum 5-year background check. The check shall be repeated at regular intervals not exceeding 5 years.
- (iii) All staff requiring access to security restricted areas shall also receive regular training in aviation security (see point 12.3) including the risks to aviation security and be instructed to report to the relevant authority any incident which may pose a threat to aviation security.
- (iv) Airport identification cards shall be issued to all personnel working in the airport or visiting it frequently, (including airport and air carrier employees and employees of other organisations). The airport identification card shall carry the name and photograph of the bearer. It shall be valid for a limited period only. The relevant authority shall determine when a permanent airport identification card shall be issued to frequent visitors.
- (v) The airport identification card shall be worn in a visible place, at all times while its holder is on duty.
- (vi) Vehicles which need to be used airside shall remain airside to the extent practicable.
- (vii) Vehicles requiring to move between landside and airside areas shall be issued with a pass specific to the vehicle and fixed to it in an easily visible place. Other vehicles requiring airside access shall be admitted only after having been inspected and issued with a temporary pass. Vehicles on emergency missions may be exempt from these requirements.
- (viii) Airport identification cards and vehicle passes shall be checked at all airside and security restricted area checkpoints.

2.2.2. Terminal Areas

Surveillance shall be maintained over all terminal areas accessible to the public. Terminals shall be patrolled and passengers and other persons kept under surveillance by security staff.

2.2.3. Other Public Areas

The means of controlling access to public areas which are close to aircraft movement areas, (spectator terraces, airport hotels and car parks), shall be provided. Other public areas which shall require supervision are, but are not limited to, facilities which are always located landside including patron and other public parking areas, terminal and public access roadways, rental car facilities, taxi and ground transportation staging areas, and any on-airport hotel facilities.

Arrangements shall also be made to ensure that such public areas may be closed at short notice in the event of an increase in threat. Security staff shall patrol these areas when open to the public.

2.3. Screening of Staff, Items Carried and Vehicles

- (a) All staff, including flight crew, together with items carried shall be screened before being allowed access into security restricted area. Where this is not practicable, then persons and items shall be subjected to continuous appropriate random screening at a frequency indicated by risk assessments conducted by the competent authority in each Member State; random screening shall be extended to all items carried onboard aircraft by any services including cleaning, duty free, and other parties with aircraft access.

One year after the entry into force of this Regulation, all staff, including flight crew, together with items carried shall be screened before being allowed access into the critical parts of security restricted areas, as identified by the competent authority of each Member State.

By 1 July 2004, the Commission will adopt appropriate implementing measures for a common definition of the critical parts of security restricted areas in accordance with Article 4(2) of this Regulation. Such measures shall be fully applicable at the latest five years after their adoption by the Commission, without prejudice to Article 6 of this Regulation.

The screening procedure shall ensure that no prohibited article is carried and the methods used shall be the same as for screening passengers and cabin baggage.

- (b) Vehicles and supplies being conveyed airside or to other security restricted areas shall be inspected on a random basis.

2.4. Physical Security and Patrols

- (a) Aprons and other parking areas shall be adequately illuminated, and, in particular, the lighting provided shall illuminate vulnerable areas of the airport.
- (b) Technical and maintenance areas shall be protected by fencing, guards, patrols and access to these areas controlled by means of airport identification cards and vehicle passes. Similar measures shall be taken to protect the perimeter and such airport-based installations as power supplies, electrical sub-stations, navigational facilities, control towers and other buildings used by the air traffic control services, and fuel and communications facilities. Special precautions shall be taken against attempts to sabotage fuel and communications facilities.
- (c) The perimeter fence and adjacent areas to security restricted areas, other airside areas outside this fence, including those in the immediate vicinity of the runway threshold and taxiways, shall be subjected to surveillance by patrols, closed circuit television or other monitoring measures. Strict challenging procedures for persons without airport identification displayed, and persons accessing areas for which they are unauthorised shall be implemented.
- (d) Access to airside and security restricted areas via airport tenant offices, maintenance hangars, cargo facilities, other service and facility buildings shall be restricted to the minimum required.

3. AIRCRAFT SECURITY

3.1. Searching and Checking Aircraft

1. All aircraft shall be searched as follows:
 - (a) aircraft not in service shall be subjected to an 'aircraft security search' immediately before or immediately after being taken into a security restricted area for a flight: aircraft may be searched other than immediately before being taken into a security restricted area but shall be secured or guarded from the commencement of the search until departure; if searched after entry into a security restricted area it shall be secured or guarded from the commencement of the search until departure;
 - (b) aircraft in service, during turn-around, or transit stops, shall be subjected to an 'aircraft security check' immediately after passenger disembarkation or as late as possible before passenger boarding and baggage/cargo loading as appropriate.
2. All aircraft security searches and aircraft security checks shall be conducted once all service providers (caterers, cleaners, duty-free and others), other than those involved in the security function, have left the aircraft and sterility shall be maintained until and throughout the boarding process and pre-departure.

3.2. Protection of Aircraft

1. Responsibility shall be established for controlling access to parked aircraft and executed as follows:
 - (a) for aircraft in service, access shall be controlled from the start of the aircraft security check until departure, in order to maintain the integrity of the check;
 - (b) for aircraft not in service which have been searched and brought into a security restricted area, access shall be controlled from the start of the aircraft security search until departure, in order to maintain the integrity of the search.
2. Each aircraft in service shall be placed under surveillance sufficient to detect unauthorised access.
3. Access to aircraft not in service shall be controlled as follows:
 - (a) cabin doors shall be closed;
 - (b) air bridges and/or ventral stairs shall be secured, withdrawn or retracted as appropriate; or

- (c) tamper evidence applied to aircraft doors.
4. In addition, when all staff are not screened for access into security restricted areas, each aircraft shall be visited at least once every 30 minutes by a foot or mobile patrol or placed under surveillance sufficient to detect unauthorised access.
 5. Aircraft shall, wherever possible, be parked away from perimeter fences or other easily penetrable barriers and in well-illuminated areas.

4. PASSENGERS AND CABIN BAGGAGE

4.1. Screening of Passengers

1. Other than as referred to in point 3 below, all departing passengers (i.e. originating and transfer passengers, unless previously screened to the standard detailed in this Annex), shall be screened to prevent prohibited articles from being introduced into the security restricted areas and on board an aircraft. Passengers shall be screened by the following methods:
 - (a) searched by hand; or
 - (b) screened by Walk-Through-Metal-Detection equipment. Where Walk-Through-Metal-Detection equipment is used there shall also be a continuous random hand search of screened passengers. Such hand searches shall be carried out on all passengers who cause the equipment to alarm, as well as a continuous random search which shall be carried out on those passengers who do not cause the equipment to alarm, and if:
 - (i) the alarm is activated, the person shall be required to be screened again with Walk-Through-Metal-Detection equipment; or
 - (ii) searched by hand where the support of a hand held metal detector may be employed.
2. Where Walk-Through-Metal-Detection equipment is used, it shall be calibrated to such a level as to reasonably ensure that small metallic items are detected.
3. Appropriate authorities may create categories of persons that shall be subject to special screening procedures or exempted from screening.
4. Security provisions shall be developed for potentially disruptive passengers.

4.2. Separation of Passengers

Screened departing passengers shall not mix with arriving passengers who may not have been screened to the standard detailed in this Annex. Where these passengers cannot be physically separated then the security objective shall be achieved by the application of compensatory measures in accordance with the assessment of the risk by the competent authority.

4.3. Screening of Cabin Baggage

1. The cabin baggage of all departing passengers (i.e. originating and transfer passengers, unless previously screened to the standard detailed in this Annex), shall be screened prior to being allowed into security restricted areas and on board an aircraft. Any prohibited articles shall be removed from the passenger's possession or the passenger denied access into the security restricted area or the aircraft as appropriate. Cabin baggage shall be screened by one of the following methods:
 - (a) a full hand search of the content of each bag, with each bag being examined for suspicious signs such as inconsistent weight etc; or
 - (b) screened by conventional x-ray equipment with hand searching of screened bags also being conducted on a continuous random basis, where the percentage of persons so searched is not less than 10 %, including those about which the operator has concerns; or
 - (c) screened by High Definition x-ray equipment fitted with TIP installed and employed. Only those bags about which the operator has concerns need be searched by hand but the hand search may be supported by use of Trace Detection Equipment.

2. Cabin baggage of those parties listed under point 4.1 paragraph 3 may be subject to special screening procedures or exempted from screening.

4.4. Screening of Diplomats

Subject to the provisions of the Vienna Convention on Diplomatic Relations, diplomats and other privileged persons and their personal baggage, except 'diplomatic bags', shall be liable to screening for security purposes. Air carrier staff responsible for receiving diplomatic bags shall make sure that they have, in fact, been sent by duly-appointed officials of the missions concerned. Diplomatic couriers and their personal baggage are not exempted from screening.

5. HOLD BAGGAGE

5.1. Reconciliation of Hold Baggage

1. Hold baggage shall not be placed on board an aircraft unless the following measures are taken:
 - (a) hold baggage shall be properly marked externally to permit identification with relevant passengers; and
 - (b) the passenger to whom such baggage belongs shall be checked in for the flight on which it is to be carried; and
 - (c) prior to loading, hold baggage shall be held in an area of the airport to which only authorised persons have access; and
 - (d) all items of baggage taken into the custody of an air carrier for carriage in the hold of an aircraft shall be identified as either accompanied or unaccompanied. The process of identification shall be achieved either by manual or automated means.
2. Measures shall be established to ensure that if a passenger checked in for a flight, who has placed baggage in the custody of the air carrier, is not onboard the aircraft, such hold baggage shall be removed from the aircraft and shall not be carried on that flight.
3. A hold baggage manifest or an alternative means of providing evidence which confirms the identification and screening of unaccompanied hold baggage shall be drawn up.

5.2. Screening of Hold Baggage

1. Accompanied Hold Baggage. All items of accompanied hold baggage (both originating and transfer hold baggage, unless previously screened to the standard detailed in this Annex), shall be screened by one of the following methods before being loaded onto an aircraft:
 - (a) hand search; or
 - (b) conventional x-ray equipment with at least 10 % of screened baggage also being subjected to either:
 - (i) hand search; or
 - (ii) EDS or EDDS or PEDS; or
 - (iii) conventional x-ray equipment with each bag being viewed from two different angles by the same operator at the same screening point; or
 - (c) conventional x-ray equipment with TIP installed and employed; or
 - (d) EDS or EDDS; or
 - (e) PEDS; or
 - (f) Trace Detection Equipment on open pieces of baggage.

2. Unaccompanied Hold Baggage. All items of unaccompanied baggage, both originating and transfer hold baggage, shall be screened by one of the following methods, before being loaded onto an aircraft:

- (a) EDS; or
- (b) a multi-level PEDS, where at Level 2 the images of all bags are viewed by the operators; or
- (c) conventional x-ray equipment with each bag being viewed from two different angles by the same operator at the same screening point; or
- (d) hand search supplemented by the application of Trace Detection Equipment on open pieces of baggage,

unless the unaccompanied baggage, which has been previously screened to the standard detailed in this Annex, has been separated due to factors beyond the passenger's control, and the unaccompanied baggage has been within the care of the air carrier.

5.3. Protection of Hold Baggage

1. Hold baggage to be carried on an aircraft, shall be protected from unauthorised interference from the point at which it is accepted into the care of the carrier until departure of the aircraft on which it is to be carried. The following measures shall be taken in protecting hold baggage:

- (a) Prior to being loaded, hold baggage shall be held in the baggage make-up area or other storage area of an airport to which only authorised persons may have access.
- (b) Any person entering a baggage make-up or storage area without authorisation shall be challenged and escorted out of the area.
- (c) Originating and transfer hold baggage shall not be left unattended on the ramp or plane side prior to being loaded on aircraft.
- (d) Tail-to-tail transfer hold baggage shall not be left unattended on the ramp or plane side prior to being loaded.
- (e) Access to lost-and-found offices in the terminal shall be restricted to prevent unlawful access to baggage and materials.

6. CARGO, COURIER AND EXPRESS PARCELS

6.1. Application

All cargo, courier and express parcels intended to be carried on passenger or all-cargo aircraft shall be subjected to the security controls detailed hereunder before being placed on board the aircraft.

6.2. Qualifications for a Regulated Agent

Regulated agents shall be:

- (a) designated, approved or listed by the appropriate authority;
- (b) subject to specified obligations, as defined by the appropriate authority.

6.3. Security Controls

1. Cargo, courier and express parcels shall only be carried by air where the following security controls have been applied:

- (a) the reception, processing and handling of cargo shall be performed by properly recruited and trained staff;

- (b) cargo shall be:
- (i) searched by hand or physical check; or
 - (ii) screened by x-ray equipment; or
 - (iii) subjected to simulation chamber; or
 - (iv) subjected to other means, both technical and bio-sensory, (e.g. sniffers, trace detectors, explosive detection dogs etc.)

so as to reasonably ensure that it does not contain any prohibited article as listed in points iv and v of the Attachment, unless it has been declared and properly subjected to applicable safety measures.

Where none of the above means and methods of security control can be applied owing to the nature of the consignment, the appropriate authority may specify a storage period.

2. Once security controls have been implemented, including controls on cargo from known consignors, whether on or off airport grounds, sterility of the shipments shall be maintained until such time as it is placed onboard aircraft and maintained until the departure of the aircraft.
3. The security controls detailed in paragraph 1 need not be applied in respect of:
 - (a) cargo received from a known consignor;
 - (b) transshipment cargo;
 - (c) cargo whose origin and handling conditions ensure that it presents no security threat;
 - (d) cargo which is subject to regulatory requirements providing for an appropriate level of security protection.

6.4. Criteria for a Known Consignor

1. A regulated agent or air carrier may only recognise a consignor as a known consignor by:
 - (a) establishing and registering the identity and address of the consignor and the agents authorised to carry out deliveries on his behalf; and
 - (b) requiring the consignor to declare that he:
 - (i) prepares consignments in secure premises; and
 - (ii) employs reliable staff in preparing the consignments; and
 - (iii) protects the consignments against unauthorised interference during the preparation, storage and transportation; and
 - (c) requiring the consignor to:
 - (i) certify in writing that the consignment does not contain any prohibited articles as listed in points (iv) and (v) of the Attachment; and
 - (ii) accepts that the package and contents of the consignment may be examined for security reasons.

6.5. Carriage on All-Cargo Aircraft

Where consignments can be positively identified for carriage only on all-cargo aircraft, the criteria detailed in point 6.4 need not apply provided that the known consignor:

- (a) has a confirmed bona fide business address; and
- (b) has previously shipped with the regulated agent or air carrier; and

- (c) has an established business relationship with the regulated agent or air carrier; and
- (d) ensures that all consignments are protected from unauthorised access until taken into the custody of the air carrier.

6.6. **Transshipment Cargo**

Transshipment cargo arriving by air need not have the security controls detailed in point 6.3. paragraph 1 applied to it provided that it is protected against unauthorised interference at the transit point. Other transshipment cargo, such as land or rail cargo, not being submitted to security controls at the point of departure or en route shall be screened in accordance with point 6.3 paragraph 1(b) and protected from unauthorised interference.

7. **MAIL**

7.1. **Application**

Mail carried on passenger, all-cargo and all-mail aircraft shall be subjected to security controls before being placed on board an aircraft.

7.2. **Qualifications for Regulated Postal Authority/Administration**

7.2.1. Each regulated postal authority/administration submitting mail to an air carrier for carriage shall meet the following minimum criteria:

- (a) it shall be designated, approved or listed by the Appropriate Authority;
- (b) it shall fulfil the obligations towards air carriers to apply the required security controls;
- (c) it shall employ properly recruited and trained staff; and
- (d) it shall protect mail from unauthorised interference while in its custody.

7.3. **Security Controls**

1. Time Sensitive Mail. Time-sensitive mail (i.e. up to 48 hour delivery) shall only be carried by air where the following security controls have been applied:

- (a) the reception, processing and handling of mail shall be performed by properly recruited and trained staff;
- (b) mail shall be:
 - (i) searched by hand or physical check;
 - (ii) screened by x-ray equipment;
 - (iii) subjected to simulation chamber; or
 - (iv) subjected to other means, procedural, technical or bio-sensory, (e.g. sniffers, trace detectors, explosive detection dogs, etc.);

so as to reasonably ensure that the mail does not contain any prohibited articles; and

- (c) flight details and aircraft routing on which the mail is to be carried shall remain confidential.

2. Other Mail. Mail which is not time-sensitive may be carried by air provided that the measures detailed in paragraph 1(a) and (b) have been applied. The security controls detailed in paragraph 1(b) need only be applied to a random proportion of mail.

3. The security controls detailed in paragraph 1(b) need not be applied in respect of:

- (a) mail received from a known consignor;
- (b) letters under a specified weight or thickness;

- (c) bona fide consignments of life saving materials;
- (d) high value goods which have been secured to a standard at least equal to that detailed in paragraph 1(b);
- (e) mail which is to be carried on all-mail flights between Community airports;
- (f) transshipment mail.

7.4. **Criteria for a Known Consignor**

Regulated postal authority/administration may only recognise a consignor as a known consignor by:

- (a) establishing and registering the identity and address of the consignor and the agents authorised to carry out deliveries on his behalf;
- (b) requiring the consignor to declare that he protects the consignment against unauthorised interference during preparation, storage and transportation; and
- (c) requiring the consignor to:
 - (i) certify in writing that the mail consignment does not contain any prohibited articles as listed in points (iv) and (v) of the Attachment;
 - (ii) accept that the packaging and contents of the mail consignment may be subjected to the security controls detailed in point 7.3.

7.5. **Transshipment Mail**

Transshipment mail arriving by air need not have the security controls detailed in point 7.3 applied to it provided that it is protected against unauthorised interference at the transit point. Other transshipment mail, such as land or rail mail, not being submitted to security controls at the point of departure or en route shall be screened in accordance with point 7.3 paragraph 1 and protected from unauthorised interference.

8. AIR CARRIER MAIL AND MATERIALS

8.1. **Application**

Air carrier company mail and materials carried on its own aircraft shall be subjected to security controls before being placed on board an aircraft.

8.2. **Definitions**

Mail and materials shall mean internal dispatches of correspondence and materials, such as but not limited to, documentation, supplies, maintenance spares, catering and cleaning supplies and other articles, intended for delivery to its own or contracted organisation for use within air carrier operations.

8.3. **Security controls**

Any air carrier shipment of company mail ('co-mail') or company materials ('co-mat') shall be subject to the following measures:

- (a) it shall be controlled and security screened to ensure that no prohibited article has been introduced into company shipment; and
- (b) it shall not be left unattended prior to being loaded onboard an aircraft.

Air carriers shall ensure that any other co-mail or co-mat shipment made on behalf of the carrier by a contract organisation such as, but not limited to, catering equipment and stores, cleaning supplies and other materials handled by contracted service providers, is screened prior to loading on board aircraft.

9. AIR CARRIER CATERING STORES AND SUPPLIES

9.1. Application

Air carrier catering, stores and supplies on board aircraft shall be subjected to security controls to prevent any prohibited article being taken on board an aircraft.

9.2. Security Controls

1. Suppliers of air carrier catering stores and supplies shall implement security controls to prevent the introduction of prohibited articles into such stores and supplies intended to be carried on board aircraft. These measures shall include the following:
 - (a) the appointment of a security officer responsible for the implementation and supervision of security in the company;
 - (b) high standards of reliability when employing staff;
 - (c) all staff who have access to security restricted areas shall comply with background checks and security instructions issued by the airport authority;
 - (d) the company shall prevent unauthorised access to its facilities and supplies;
 - (e) if the company is located outside the airport, all supplies shall be transported to the aircraft in locked or sealed vehicles; and
 - (f) processing and handling of stores and supplies shall be carried out by properly recruited and trained staff.
2. After delivery, stores and supplies shall be screened on a random basis.
3. Stores and supplies from a company which has not been subject to measures listed under paragraph 1 shall not be taken on board an aircraft.

10. AIR CARRIER CLEANING, STORES AND SUPPLIES

10.1. Application and objective

Measures shall be taken by air carriers and cleaning companies to ensure that air carrier cleaning, stores and supplies taken on-board do not contain any prohibited articles that could endanger the safety of the aircraft.

10.2. Security controls

1. Suppliers of air carrier cleaning services, stores and supplies shall introduce security measures necessary to prevent the introduction of prohibited articles into cleaning supplies to be taken on-board.

The following security measures shall taken:

- (a) the appointment of a security officer responsible for the implementation and supervision of security in the company;
- (b) high standards of reliability when employing staff;
- (c) all staff who have access to restricted areas shall comply with background checks and instructions issued by the airport authority;
- (d) the company shall prevent unauthorised access to its facilities;
- (e) if the company is located outside the airport, cleaning supplies shall be transported to the aircraft in locked or sealed vehicles;
- (f) processing and handling of cleaning supplies shall be carried out by properly recruited and trained staff; and
- (g) the screening of cleaning supplies shall take place before co-mailing the supplies to other destinations.

2. After delivery, cleaning supplies shall be screened on a random basis.
3. Supplies from a company which does not comply with the security control measures in paragraph 1 shall not be taken on board an aircraft.

11. GENERAL AVIATION

11.1. Security Controls

1. General aviation aircraft at airports shall not be parked in close proximity to aircraft which are used for commercial flights in order to avoid breach of security measures applied to those aircraft, baggage, cargo and mail to be carried on-board.
2. Provisions to separate screened passengers of commercial flights from occupants of general aviation aircraft shall be implemented, based on the following criteria:
 - (a) at major airports, physical arrangements and/or security controls shall be introduced to prevent mixing of departing and arriving occupants of general aviation aircraft with passengers who have been already security screened;
 - (b) if possible, departing and arriving occupants of general aviation aircraft shall pass through a separate general aviation terminal and, also, when embarking or disembarking on the apron, shall either be separated from security screened passengers, or be transported in a special bus or car, or be under constant surveillance;
 - (c) if no separate terminal is available, occupants of general aviation aircraft shall either:
 - (i) pass through a separate part of the terminal building and be escorted or transported by bus or car to and from their aircraft;
 - (ii) be subject to security screening prior to entering the security restricted area, if passing through security restricted areas of the terminal building is unavoidable; or
 - (iii) be subject to other security controls achieving the same effect depending on local circumstances.

12. STAFF RECRUITMENT AND TRAINING

12.1. National Aviation Security Training Programme

Each Appropriate Authority shall develop and implement a National Aviation Security Training Programme to enable aircrew and ground personnel to implement aviation security requirements and to respond to acts of unlawful interference with aviation.

12.2. Security Staff

1. The National Aviation Security Training programme should include selection, qualification, training, certification and motivation of security staff. People who are deployed to undertake security duties either as all or part of their employment shall fulfil the following requirements as specified by the appropriate authority:
 - (a) managers developing and conducting security training for security and air carrier and airport ground staff shall possess necessary certification, knowledge and experience which shall as a minimum include:
 - (i) extensive experience in aviation security operations;
 - (ii) certification approved by national appropriate authority, or other equivalent approval issued by the national appropriate authority; and
 - (iii) knowledge in following areas:
 1. security systems and access control;
 2. ground and in-flight security;

3. pre-boarding screening;
4. baggage and cargo security;
5. aircraft security and searches;
6. weapons and prohibited articles;
7. overview of terrorism; and
8. other areas and measures related to security that are considered appropriate to enhance security awareness.

(b) managers and instructors involved in and responsible for security training of security and airport ground staff shall undergo annual recurrent training in aviation security and latest security developments.

2. Training of Security Staff

Security staff shall be trained to undertake the duties to which they will be assigned; such training shall include, but not be limited to, the following security areas:

1. screening technology and techniques;
2. screening check point operations;
3. search techniques of cabin and hold baggage;
4. security systems and access control;
5. pre-boarding screening;
6. baggage and cargo security;
7. aircraft security and searches;
8. weapons and restricted items;
9. overview of terrorism; and
10. other areas and measures related to security that are considered appropriate to enhance security awareness.

The scope of training may be increased subject to aviation security needs and technology development. The initial training period for screening staff shall not be shorter than the International Civil Aviation Organisation (ICAO) recommendation.

3. Certification of Security Staff

Security screening staff shall be approved or certified by the national appropriate authority.

4. Motivation of security staff

Appropriate measures shall be promoted to ensure that security staff are highly motivated so as to be effective in the performance of their duties.

12.3. Other staff

Flight crew and airport ground staff Security Training and Awareness training programme shall be conducted on initial and recurrent basis for all airport and air carrier flight and airport ground staff. The training shall contribute towards raised security awareness as well as improving the existing security systems. It shall incorporate the following components:

1. security systems and access control;
2. ground and in-flight security;

3. pre-boarding screening;
4. baggage and cargo security;
5. aircraft security and searches;
6. weapons and prohibited articles;
7. overview of terrorism; and
8. other areas and measures relating to security that are considered appropriate to enhance security awareness.

The security training course for all airport and air carrier ground staff with access to security restricted areas, shall be designed for a duration of at least 3 hours in the classroom and a 1 hour field introduction.

13. GUIDELINES FOR EQUIPMENT

Equipment used in support of aviation security shall be approved by the appropriate authority in accordance with the guidelines outlined in this section.

13.1. Metal Detection Equipment

1. *Walk-through metal detectors*

Walk-through metal detectors used in passenger screening at airports shall fulfil the following requirements:

(a) Security

- (i) equipment shall be capable of detecting small items of different metals, with a higher sensitivity for ferrous metals in all foreseeable conditions;
- (ii) equipment shall be capable of detecting metal objects independently of their orientation and location inside the frame;
- (iii) the sensitivity of the equipment shall be as uniform as possible inside the whole frame and should remain stable and be checked periodically.

(b) Operating requirements

The functioning of the equipment shall not be affected by its environment.

(c) Alarm indication

Metal detection shall be indicated automatically, leaving nothing to the operator's discretion (go/no go indicator system):

(d) Controls

- (i) Equipment shall be capable of being adjusted to meet all specified detection requirements, as well as the volume of the audible alarm.
- (ii) Controls for adjustment of detection levels shall be designed to prevent unauthorised access. The settings shall be clearly indicated.

(e) Calibration

Calibration procedures shall not be made available to unauthorised persons.

2. *Hand-held metal detectors*

Hand-held metal detectors used in passenger screening shall fulfil the following requirements:

- (a) Equipment shall detect small quantities of metal without being in direct contact with the object in all foreseeable conditions.
- (b) Equipment shall detect both ferrous and non-ferrous metals.
- (c) The detector coil shall be designed to pinpoint the position of detected metal easily.
- (d) Equipment shall be fitted with audible and/or visible alarm indicators.

13.2. Standards and Testing Procedures for X-ray Equipment

1. *Applicability*

(a) *Equipment*

These requirements and guidelines for X-ray security equipment shall be applicable to any X-ray-based screening equipment that provides an image for an operator to interpret. This includes conventional X-rays as well as EDS/EDDS used in indicative mode.

(b) *Items*

Similarly, these requirements and guidelines for X-ray security equipment shall be applicable to every item being screened, whatever its type or size. Any item going on board an aircraft, if it has to be screened, has to be screened to the standards contained in this Annex.

2. *Performance requirements*

(a) *Security*

The X-ray equipment shall provide for the necessary detection, measured in terms of resolution, penetration and discrimination, to ensure that prohibited articles are not carried on board aircraft.

(b) *Tests*

Performance shall be assessed using appropriate test procedures.

(c) *Operational requirements*

The X-ray equipment shall display a complete image of any item fitting into the tunnel. There shall be no corner cut-off.

Distortion of the item displayed shall be kept to a minimum.

The belt of the machine shall be marked to indicate where bags are to be placed on the belt to obtain optimum images.

Contrast sketching: the X-ray equipment shall have the ability to display groups of grey levels (scan a smaller range).

The image of any part of the item being screened shall be displayed on the screen for at least 5 seconds. In addition, the operator shall have the ability to stop the belt and, if necessary, reverse the belt when further examination is required.

Screen size: the monitor's screen shall be sufficient in size for the operator's comfort (typically 14 inches and above).

Screen characteristics: the screen shall be flicker-free and have at least 800 lines (typically 1024 × 1024 pixels, i.e. high-resolution monitors).

Where dual monitors are used, one shall be monochrome only.

The X-ray equipment shall indicate visually materials it cannot penetrate.

The X-ray equipment shall provide organic and inorganic stripping.

The systems shall provide automatic threat recognition to facilitate the operator's search.

3. *Maintenance*

No unauthorised changes, including maintenance or repair, shall be made. There shall be no change in the hardware or the software of the machine without verifying that it does not adversely affect image performance.

The composition of the belt material shall not be changed without verifying that this induces no change in image performance.

If modem access for maintenance or upgrades is available, access shall be controlled and monitored.

*Attachment***Guidelines for classification of prohibited articles**

Guidelines are given below for the possible shapes of weapons and restricted items, common sense shall however prevail in assessing whether an object gives cause to believe that it may be used as a weapon.

- (i) Firearms: Any weapon from which a shot may be fired by the force of an explosion or compressed air or gas, including starter and flare pistols.
- (ii) Knives and cutting tools: Including sabres, swords, cardboard cutters, hunting knives, souvenir knives, martial arts devices, professional tools and such other knives with blades of 6 cm long or longer and/or knives considered illegal by local law.
- (iii) Bludgeons: Blackjacks, billy clubs, baseball clubs or similar instruments.
- (iv) Explosives/Ammunition/Flammable Liquids/Corrosive: Any explosive or incendiary components, which by themselves or in conjunction with other items can result in an explosion or fire. These include explosive materials, blasting caps, fireworks, gasoline, other flammable liquids, ammunition, etc., or any combination of these items. Any corrosive or toxic substances, including gases, whether or not under pressure.
- (v) Disabling or Incapacitating Items: All tear gas, mace, and similar chemicals and gases whether in pistol, canister, or other container, and other disabling devices such as electronic stunning/shocking devices.
- (vi) Other Articles: Such items as ice picks, alpenstocks, straight razors, and elongated scissors, which, even though not commonly thought of as a deadly or dangerous weapon, could be used as a weapon, including toy or 'dummy' weapons or grenades.
- (vii) Articles of any kind giving rise to reasonable suspicion that an items may be used to simulate a deadly weapon; such articles shall include but not be limited to: objects resembling explosive devices or other items that may give appearance of a weapon or dangerous item.
- (viii) Chemical/biological attack items and substances:

The possibilities for chemical/biological attacks include the use of chemical or biological agents to commit unlawful acts. Such restricted chemical/biological substances shall include but not be limited to the following: sulphur mustard, vx., chlorine, sarin, hydrogen cyanide, anthrax, botulism, smallpox, tularemia, and viral haemorrhagic fever (v.h.f.).

Items indicating the nature of the chemical/biological substance, or suspicion of such nature shall be immediately notified to airport authority, police, military or other relevant authority and isolated from public terminal areas.

INTERINSTITUTIONAL DECLARATION

In conjunction with the adoption of new Community legislation laying down common rules in the field of civil aviation security the European Parliament, the Council and the European Commission re-affirm their determination to continue to strengthen the quality of aviation security systems in the Community.

The three institutions recognise that this policy development raises important questions in relation to its funding aspects. In this context, while recognising the diversity of situations that currently exist in Member States and taking into account the policy position taken in February 2002 by the Member States of the EU at the Montreal Ministerial Conference on Aviation Security ⁽¹⁾ and taking note of the statement by the Commission that it would 'consider positively public financing for the compensation of additional security measures' ⁽²⁾, the necessity to avoid significant internal and external distortions of competition is a specific concern from a Community perspective.

The three institutions agree that this issue has to be analysed as a matter of urgency in order to identify both differences existing in the Community over the funding of aviation security and possible solutions.

They take note of the intention of the Commission to undertake immediately a study (which will address in particular the way the financing is shared between the public authorities and the operators, without prejudice to the distribution of competencies between the Member States and the European Community) and to submit to the European Parliament and to the Council the results and proposals if appropriate.

⁽¹⁾ Council Public register, documents 5700/02 and 6053/02, and document AVSEC-Conf/02-IP/17.

⁽²⁾ Opinion of the Commission of 12 June 2002 on the European Parliament's amendments to the Council common position, COM(2002) 327 final, p. 5.

REGULATION (EC) No 2321/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 December 2002

concerning the rules for the participation of undertakings, research centres and universities in, and for the dissemination of research results for, the implementation of the European Community Sixth Framework Programme (2002-2006)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 167 and the second paragraph of Article 172 thereof,

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

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

Acting in accordance with the procedure referred to in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) The Sixth Framework Programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002-2006) ('the Sixth Framework Programme'), was adopted by Decision No 1513/2002/EC of the European Parliament and of the Council ⁽⁴⁾. The rules for financial participation by the Community, as set out in Annex III to that Decision, need to be supplemented by other provisions.

(2) Those provisions should fit into a coherent and transparent framework which takes full account of the objectives and characteristics of the instruments defined in Annex III to the Sixth Framework Programme in order to guarantee the most efficient implementation possible, taking into account the need for easy access of participants through simplified procedures. This will especially be the case for small or medium-sized enterprises (SMEs), owing to the participation of enterprise groupings.

(3) The rules for the participation of undertakings, research centres and universities should take account of the nature of the research and technological development

activities, including demonstration activities. They may, moreover, vary depending on whether the participant is based in a Member State, in an associated State, whether a candidate country or not, or in a third country, and on its legal structure, namely whether it is a national organisation, an international organisation, of European interest or not, a SME, a European Economic Interest Grouping, or an association formed by participants.

(4) In conformity with the Sixth Framework Programme, the participation of legal entities from third countries should be envisaged, in line with the objectives of international cooperation, particularly as enshrined in Articles 164 and 170 of the Treaty.

(5) International organisations which are dedicated to developing cooperation in the field of research in Europe and which are largely made up of Member States or associated States contribute to the creation of the European Research Area. They should therefore be encouraged to participate in the Sixth Framework Programme.

(6) The Joint Research Centre takes part in indirect research and technological development actions on the same basis as legal entities established in a Member State.

(7) Activities under the Sixth Framework Programme should comply with the financial interests of the Community and should safeguard those interests. The Commission's responsibility for the implementation of the framework programme and its specific programmes also includes the financial aspects arising therefrom.

(8) The rules governing the dissemination of research results should promote the protection of intellectual property and the use and dissemination of those results. They should ensure that participants have mutual access to pre-existing know-how and to knowledge arising from research work to the extent necessary to conduct the research work or to use the resulting knowledge. At the same time, they should guarantee the protection of the participants' intellectual assets. They should also take account of the features of the integrated projects and networks of excellence, in particular by offering a high degree of flexibility to the participants, and allowing them to agree among themselves on the most suitable arrangements for their collaboration and for the exploitation of the resulting knowledge. These agreements may form part of a consortium agreement.

⁽¹⁾ OJ C 332 E, 27.11.2001, p. 275, OJ C 103 E, 30.4.2002, p. 266 and OJ C 262 E, 29.10.2002, p. 489.

⁽²⁾ OJ C 94, 18.4.2002, p. 1.

⁽³⁾ Opinion of the European Parliament of 3 July 2002 (not yet published in the Official Journal), and Council Decision of 5 November 2002.

⁽⁴⁾ OJ L 232, 29.8.2002, p. 1.

(9) Activities under the Sixth Framework Programme should be conducted in compliance with ethical principles, including those reflected in the Charter of Fundamental Rights of the European Union, and should strive both to increase the role of women in research and to improve information for, and dialogue with, society, as well as promote participation from the outermost regions of the Community,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Subject

This Regulation establishes rules for the participation of enterprises, research centres and universities in, and rules for the dissemination of results from research carried out under the Sixth Framework Programme of the European Community for, research, technological development and demonstration activities contributing to the creation of the European Research Area and to innovation (2002-2006) (hereinafter referred to as the 'Sixth Framework Programme'), with the exception of RTD activities executed by a joint undertaking or any other structure set up pursuant to Article 171 of the Treaty.

Article 2

Definitions

For the purposes of this Regulation:

1. 'RTD activity' means one of the research and technological development activities, including demonstration activities, described in Annexes I and III to the Sixth Framework Programme;
2. 'direct action' means an RTD activity undertaken by the Joint Research Centre (hereinafter referred to as the JRC) in the execution of the tasks assigned to it under the Sixth Framework Programme;
3. 'indirect action' means an RTD activity undertaken by one or more participants by means of an instrument of the Sixth Framework Programme;
4. 'instruments' means the mechanisms for indirect Community intervention as laid down in Annex III to the Sixth Framework Programme, with the exception of Community financial participation pursuant to Article 169 of the Treaty;
5. 'contract' means a grant agreement between the Community and the participants concerning the performance of an indirect action establishing rights and obligations between the Community and the participants on the one hand, and between the participants in that indirect action on the other;
6. 'consortium agreement' means an agreement that participants in an indirect action conclude amongst themselves for its implementation. Such an agreement shall not affect participants' obligations to the Community and to one another arising out of this Regulation or the contract;
7. 'participant' means a legal entity contributing to an indirect action and having rights and obligations with regard to the Community under the terms of this Regulation or according to the contract;
8. 'legal entity' means any natural person, or any legal person created under the national law of its place of establishment, under Community law, or international law, having legal personality and being entitled to have rights and obligations of any kind in its own name;
9. 'consortium' means all the participants in the same indirect action;
10. 'coordinator' means the participant appointed by participants in the same indirect action and accepted by the Commission, having specific additional obligations arising out of this Regulation and the contract;
11. 'international organisation' means any legal entity arising from an association of States, other than the Community, established on the basis of a treaty or similar act, having common institutions and an international legal personality distinct from that of its Member States;
12. 'international European interest organisation' means an international organisation, the majority of whose members are European Community Member States or associated States, and whose principal objective is to promote European scientific and technological cooperation;
13. 'associated candidate country' means an associated State acknowledged by the Community as a candidate for accession to the European Union;
14. 'associated State' means a State which is party to an international agreement with the Community, under the terms or on the basis of which it makes a financial contribution to all or part of the Sixth Framework Programme;
15. 'third country' means a State that is neither a Member State nor an associated State;

16. 'European Economic Interest Grouping (EEIG)' means any legal entity established in accordance with Council Regulation (EEC) No 2137/85⁽¹⁾;
17. 'small and medium-sized enterprises' (hereinafter referred to as SMEs) means enterprises which meet the criteria set out in Commission Recommendation 96/280/EC⁽²⁾;
18. 'enterprise grouping' means any legal entity made up for the most part of SMEs and representing their interests;
19. 'budget' means a financial plan estimating all the resources and expenditure needed to carry out an indirect action;
20. 'irregularity' means any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by a legal entity which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it through unjustified expenditure;
21. 'pre-existing know-how' means the information which is held by participants prior to the conclusion of the contract or acquired in parallel with it, as well as copyrights or rights pertaining to such information following applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection;
22. 'knowledge' means the results, including information, whether or not they can be protected, which are yielded by direct actions and indirect actions, as well as copyrights or rights pertaining to such results following applications for, or the issue of patents, designs, plant varieties, supplementary protection certificates or similar forms of protection;
23. 'dissemination' means the disclosure of knowledge by any appropriate means other than publication resulting from the formalities for protecting knowledge;
24. 'use' means the direct or indirect utilisation of knowledge in research activities or for developing, creating and marketing a product or process or for creating and providing a service;
25. 'work programme' means a plan drawn up by the Commission for the implementation of a specific programme.
26. 'joint programme of activities' means the actions undertaken by participants which are required for implementing a network of excellence;
27. 'access rights' means licences and rights to use knowledge or pre-existing know-how;
28. 'legitimate interest' means a participant's interest of any kind, particularly a commercial interest, that may be claimed in the cases specified in this Regulation; to this end, the participant must prove that failure, in any given instance, to take account of his interest would result in him suffering disproportionately great harm;
29. 'implementation plan' means all actions by participants in an integrated project;
30. 'industrial States' means those third countries that are members of G7;
31. 'public body' means a public sector body or a legal entity governed by private law with a public service mission providing adequate financial guarantees.

Article 3

Independence

1. Two legal entities shall be independent of one another for the purposes of this Regulation where there is no controlling relationship between them. A controlling relationship shall exist where one legal entity directly or indirectly controls the other or one legal entity is under the same direct or indirect control as the other. Control may result in particular from:

- (a) direct or indirect holding of more than 50 % of the nominal value of the issued share capital in a legal entity, or of a majority of voting rights of the shareholders or associates of that entity;
- (b) direct or indirect holding in fact or in law of decision-making powers in a legal entity.

2. Direct or indirect holding of more than 50 % of the nominal value of the issued share capital in a legal entity or of a majority of voting rights of the shareholders or associates of the said entity by public investment corporations, institutional investors or venture-capital companies and funds shall not in itself constitute a controlling relationship.

⁽¹⁾ OJ L 199, 31.7.1985, p. 1.

⁽²⁾ OJ L 107, 30.4.1996, p. 4.

3. Ownership or supervision of legal entities by the same public body shall not in itself give rise to a controlling relationship between them.

CHAPTER II

PARTICIPATION IN INDIRECT ACTIONS

Article 4

General principles

1. Any legal entity participating in an indirect action may receive a Community financial contribution subject to Articles 6 and 7.

2. Any legal entity established in an associated State may participate in indirect actions on the same footing and shall have the same rights and obligations as a legal entity established in a Member State, subject to Article 5.

3. The JRC may participate in indirect actions on the same footing and shall have the same rights and obligations as a legal entity established in a Member State.

4. Any international European interest organisation may participate in indirect actions on the same footing and shall have the same rights and obligations as a legal entity established in a Member State in accordance with its headquarters agreement.

5. The work programmes may specify and restrict the participation of legal entities in an indirect action according to their activity and type and according to the instrument deployed and to take into account specific objectives of the Sixth Framework Programme.

Article 5

Minimum numbers of participants and their place of establishment

1. The work programmes shall specify the minimum number of participants required for each indirect action and also their place of establishment, according to the nature of the instrument and the objectives of the RTD activity.

2. Subject to paragraph 3, the minimum number of participants established by the work programmes shall not be fewer than three independent legal entities established in three different Member States or associated States, of which at least two shall be Member States or associated candidate countries.

3. Specific support actions and actions in favour of human resources and mobility, except for research training networks, may be executed by a single legal entity.

4. An EEIG or any legal entity established in a Member State or associated State according to its national law and which is made up of independent legal entities meeting the criteria of this Regulation may be the sole participant in an indirect action, provided that its composition is in accordance with the conditions fixed pursuant to the provisions of paragraphs 1 and 2.

Article 6

Participation by legal entities from third countries

1. Over and above the minimum number of participants fixed in accordance with Article 5, any legal entity established in a third country may participate in RTD activities provided for under the heading 'Focussing and Integrating Community Research' of the Sixth Framework Programme. Detailed provisions for this participation may be set out in the relevant work programme. The involvement of participants from Industrial States may be subject to arrangements of a reciprocal nature, which could take the form of a scientific and technological agreement.

Any legal entity established in a third country targeted by the specific international cooperation activities provided under the heading 'Focussing and Integrating Community Research' of the Sixth Framework Programme may receive a Community financial contribution within the limits of the budget allocated in Annex II to the Sixth Framework Programme for the action referred to in Article 164(b) of the Treaty.

Any legal entity established in a third country other than a country covered by the second subparagraph, and taking part in the RTD activities referred to in the first subparagraph, may receive a Community financial contribution if provision is made for this purpose under an RTD activity or if it is essential for carrying out the indirect action.

2. Any legal entity established in a third country which has concluded a scientific and technological cooperation agreement with the Community may take part in RTD activities other than those covered by paragraph 1, over and above the minimum number of participants fixed pursuant to Article 5, in accordance with the conditions stipulated in that agreement.

It may receive a Community financial contribution if provision is made for this under an RTD activity or if it is essential for carrying out the indirect action.

3. Any legal entity established in a third country other than those covered by paragraph 2 may take part in RTD activities other than those covered by paragraph 1, over and above the minimum number of participants fixed in accordance with Article 5, if such participation is provided for under an RTD activity or if it is necessary for carrying out the indirect action.

It may receive a Community financial contribution if provision is made for this under an RTD activity or if it is essential for carrying out the indirect action.

Article 7

Participation by international organisations

Any international organisation other than international European interest organisations may take part in the RTD activities referred to in Article 6(1), subject to the conditions set out in the first and third subparagraphs thereof, and in other RTD activities subject to the conditions set out in paragraphs 2 and 3 of that Article.

Article 8

Conditions relating to technical competence and resources

1. Participants shall have the knowledge and technical competence needed to carry out the indirect action.

2. At the time when they present their proposal, participants shall have at least the potential resources needed to carry out the indirect action, and shall be able to specify the relevant source of those funds made available by third parties, including public authorities.

As work progresses, participants shall have the resources as and when needed to carry out the indirect action.

The resources needed to carry out the indirect action are understood to be human resources, infrastructure, financial resources and, if necessary, intangible property and other resources made available by a third party on the basis of a prior commitment.

Article 9

Submission of proposals for indirect actions

1. Proposals for indirect actions shall be submitted under the terms of calls for proposals. These terms shall be set out in the work programmes.

Calls for proposals may involve a two-stage evaluation procedure. In this case, following a positive evaluation of an outline proposal in the first stage, the proposers concerned shall be requested to submit a complete proposal in the second stage.

2. Paragraph 1 shall not apply to:

(a) specific support actions for the activities of the legal entities identified in the work programmes;

(b) specific support actions consisting of a purchase or service governed by the terms applicable to public procurement procedures;

(c) specific support actions with particular characteristics and value to the objectives and the scientific and technological content of specific programmes, for which grant applications may be submitted to the Commission if so provided for in the work programme of the relevant specific programme and where such a request does not fall within the scope of an open call for proposals;

(d) specific support actions covered by Article 11.

3. The Commission may issue calls for expressions of interest in order to assist it in identifying precise objectives and requirements that may be included in the work programmes and in the calls for proposals. This shall be without prejudice to any subsequent decision adopted by the Commission regarding the evaluation and selection of proposals for indirect actions.

4. Calls for expressions of interest and calls for proposals shall be published in the *Official Journal of the European Communities* and shall also be given the widest possible publicity, in particular using the Internet pages of the Sixth Framework Programme and through specific information channels such as the national contact points set up by the Member States and the associated States.

Article 10

Evaluation and selection of proposals for indirect actions

1. The proposals for indirect actions covered by Article 9(1) and Article 9(2)(c) shall be evaluated according to the following criteria, where applicable:

(a) scientific and technological excellence and the degree of innovation;

(b) ability to carry out the indirect action successfully and to ensure its efficient management, assessed in terms of resources and competences and including the organisational arrangements laid down by the participants;

(c) relevance to the objectives of the specific programme;

(d) European added value, critical mass of resources mobilised and contribution to Community policies;

(e) quality of the plan for using and disseminating the knowledge, potential for promoting innovation, and clear plans for the management of intellectual property.

2. In applying paragraph 1(d), the following criteria shall also be taken into account:

(a) for networks of excellence, the scope and degree of the effort to achieve integration and the network's capacity to promote excellence beyond its membership, as well as the prospects of the durable integration of their research capabilities and resources after the end of the period covered by the Community's financial contribution;

(b) for integrated projects, the scale of ambition of the objectives and the capacity of the resources to make a significant contribution to reinforcing competitiveness or solving societal problems;

(c) for integrated initiatives relating to infrastructure, the prospects of the initiative's continuing long term after the end of the period covered by the Community's financial contribution.

3. In applying paragraphs 1 and 2, the following additional criteria can be taken into account:

(a) synergies with education at all levels;

(b) readiness and capacity to engage with actors beyond the research community and with the public as a whole, to help spread awareness and knowledge and to explore the wider societal implications of the proposed work;

(c) activities to increase the role of women in research.

4. Calls for proposals shall determine, in accordance with the type of instruments deployed or the objectives of the RTD activity, how the criteria set out in paragraph 1 are to be applied by the Commission.

These criteria, and those of paragraphs 2 and 3, may be specified or complemented in the work programme, in particular to take account of the contribution of the proposals for indirect actions to improve information for and dialogue with society and to promote the competitiveness of SMEs.

5. A proposal for an indirect action which contravenes fundamental ethical principles or which does not fulfil the conditions set out in the work programme or in the call for proposals shall not be selected. Such a proposal may be

excluded from the evaluation and selection procedures at any time.

Any participant who has committed an irregularity in the implementation of an indirect action may be excluded from the evaluation and selection procedure at any time, due regard being had to the principle of proportionality.

6. The Commission shall evaluate the proposals with the assistance of independent experts appointed in accordance with Article 11. For some specific support actions, particularly those covered by Article 9(2), independent experts shall be appointed only if the Commission deems it appropriate. The Commission shall publish the list of the experts selected.

All proposals submitted for indirect actions shall be treated confidentially by the Commission, which shall ensure that the principle of confidentiality is upheld in all procedures and that the independent experts are bound by this.

Unless otherwise specified in the call for proposals, proposals shall not be evaluated anonymously.

7. Proposals for indirect actions shall be selected on the basis of the evaluation results and having regard to the Community funds available. The Commission shall adopt and publish guidelines setting out detailed provisions for evaluation and selection procedures.

Article 11

Appointment of independent experts

1. The Commission shall designate independent experts to assist with the evaluation required under the Sixth Framework Programme and the specific programmes, and also for the assistance referred to in Article 10(6) and the second subparagraph of Article 18(1).

It may in addition set up groups of independent experts to advise on the implementation of Community research policy.

2. The Commission shall appoint the independent experts in accordance with one of the following procedures:

(a) The independent experts appointed by the Commission for the evaluations provided for in Article 6 of the Sixth Framework Programme and its specific programmes shall be very high-ranking individuals from the fields of science, industry or politics with significant experience in research, research policy or research programme management at national or international level.

- (b) The independent experts appointed by the Commission to assist in the evaluation of proposals for networks of excellence and integrated projects and in the monitoring of the projects selected and carried out shall be individuals from the fields of science, industry and/or with experience in the field of innovation and also with the highest level of knowledge and who are internationally recognised authorities in the relevant specialist area.
- (c) The independent experts appointed by the Commission to form the groups referred to in the second subparagraph of paragraph 1 shall be professionals renowned for their knowledge, skills and top-level experience in the field or regarding the issues to be dealt with by the group.
- (d) For cases other than those covered by points (a), (b) and (c), and in order to take the various operators in the research sector into consideration in a balanced manner, the Commission shall appoint independent experts with skills and knowledge appropriate to the tasks assigned to them. To this end, it shall rely on calls for applications from individuals or calls addressed to research institutions with a view to establishing lists of suitable candidates, or may, if it deems appropriate, select any individual with the appropriate skills from outside the lists.

3. When appointing an independent expert, the Commission will ensure that the expert is not faced with a conflict of interests in relation to the matter on which he is required to give an opinion. To this end, the Commission shall require experts to sign a declaration to the effect that there is no such conflict of interest at the time of their appointment and undertaking to inform the Commission if one should arise in the course of their duties.

Article 12

Contracts and consortium agreements

1. The Commission shall conclude a contract for each proposal selected for an indirect action. This contract shall be drawn up in accordance with the provisions of the Sixth Framework Programme, and in accordance with this Regulation, taking into account the characteristics of the various instruments concerned.

The Commission, after conferring with interested parties from the Member States and the Associated States, will prepare a model contract to facilitate the drawing up of contracts.

2. The contract shall establish the rights and obligations of all participants in accordance with this Regulation, and in particular the provisions for the scientific, technological and financial monitoring of the indirect action, for the updating of its objectives, changes in consortium membership, the payment of the Community financial contribution and, if applicable, conditions for the eligibility of any necessary expenditure, as well as rules for dissemination and use.

The contract, which shall be concluded between the Commission and all participants in an indirect action, shall enter into force on signature by the Commission and the coordinator. The other participants identified in the contract shall accede to it in accordance with its terms and shall enjoy the rights and take on the obligations of participants.

Any participant joining an ongoing indirect action shall accede to the contract and enjoy the rights and take on the obligations of participants towards the Community.

3. In order to ensure the protection of the financial interests of the Community, appropriate penalties shall be included in the contracts, as defined, *inter alia*, in Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests⁽¹⁾.

4. The conclusion of a contract shall not affect the right of the Commission to adopt a recovery decision, enforceable in accordance with Article 256 of the Treaty, to obtain reimbursement of an amount due from a participant. Before adopting a decision of this kind, the Commission shall ask for the participant's comments to be submitted before a specified date.

5. Participants in an indirect action shall conclude a consortium agreement, unless otherwise specified in the call for proposals. The Commission shall publish non-binding guidelines on points that may be addressed by the consortium agreement, such as:

- (a) the internal organisation of the consortium;
- (b) intellectual property rights arrangements;
- (c) settlement of internal disputes, pertaining to the consortium agreement.

To this end the Commission shall confer with interested parties from the Member States and the associated States.

Article 13

Execution of indirect actions

1. The consortium shall implement the indirect action and shall take all necessary and reasonable measures to that end.

The Community financial contribution shall be paid to the coordinator. The coordinator shall administer the Community financial contribution regarding its allocation between participants and activities in accordance with the contract and with decisions taken by the consortium according to the internal procedures established in the consortium agreement.

⁽¹⁾ OJ L 312, 23.12.1995, p. 1.

Participants shall inform the Commission of any event, including modification of the consortium agreement, which might affect the implementation of the indirect action and the rights of the Community.

2. Technical implementation of the indirect action shall be the collective responsibility of the participants. Each participant shall also be liable for the use of the Community financial contribution in proportion to his share of the project up to a maximum of the total payments he has received.

Should a participant breach the contract and should the consortium not make good this breach, the Commission may, as a last resort and if all other approaches have been explored, hold the participants liable under the following conditions:

- (a) Independently of the appropriate action it shall take against the defaulting participant, the Commission shall require the remaining participants to implement the indirect action.
- (b) Should implementation be impossible or should the remaining participants refuse to comply with subparagraph (a), the Commission may terminate the contract and recover the Community financial contribution. When investigating the financial disadvantage, the Commission shall take into account the work already undertaken and results obtained, thereby establishing the debt.
- (c) As regards the part of the debt established in accordance with subparagraph (b) that is owed by the defaulting participant, the Commission shall distribute it among the remaining participants, on the basis of each participant's share of the expenses accepted and up to the amount of the Community financial contribution each participant is entitled to receive.

Where a participant is an international organisation, a public body or a legal entity whose participation in the indirect action is guaranteed by a Member State or an associated State, that participant shall be solely responsible for its own debt and shall not bear the debt of any other participant.

3. Paragraph 2 shall not apply to indirect actions implemented by means of instruments such as specific research projects for SMEs, actions to promote and develop human resources and mobility and, when duly justified, specific support actions.

4. The coordinator shall keep accounts making it possible to determine at any time what portion of the Community funds has been allocated to each participant for the purposes of the project. It shall communicate that information to the Commission every year.

5. When several legal entities are grouped in a common legal entity acting as a sole participant in accordance with Article 5(4), that legal entity shall take on the duties set out in paragraphs 1, 2(a) and 2(b) of this Article. The liability of its members shall be defined in accordance with the law under which this common legal entity was established.

Article 14

Community financial contribution

1. In accordance with Annex III to the Sixth Framework Programme, and within the limits of the Community framework for State aid for research and development ⁽¹⁾, the Community financial contribution may take the following forms:

- (a) For networks of excellence, it shall take the form of a fixed grant for integration on the basis of the joint programme of activities. The amount of that grant shall be calculated taking into account the degree of integration, the number of researchers that all participants intend to integrate, the characteristics of the field of research concerned and the joint programme of activities. It shall be used to complement the resources deployed by the participants in order to carry out the joint programme of activities.

This grant shall be paid out on the basis of results, following the ongoing execution of the joint programme of activities, and on condition that its expenses, which are to be certified by an external auditor, or in the case of public bodies, a competent public officer, are greater than the grant itself.

- (b) For some actions to promote human resources and mobility and some specific support actions, except for the indirect actions covered by Article 9(2)(b), it may take the form of a lump-sum payment.
- (c) For integrated projects and the other instruments, except for those covered by points (a) and (b) and indirect actions covered by Article 9(2)(b), it shall take the form of a grant to the budget, calculated as a percentage of the budget established by the participants to carry out the indirect action, adapted according to the type of activity and taking into account the cost model used by the participant concerned.

The expenses needed to implement the indirect action shall be certified by an external auditor or, in the case of public bodies, a competent public officer.

⁽¹⁾ OJ C 45, 17.2.1996, p. 5.

2. Eligible expenses shall be defined in accordance with the first subparagraph of Article 12(2) and must meet the following conditions:

- (a) they must be actual, economic and necessary for the implementation of the indirect action;
- (b) they must be determined in accordance with the usual accounting principles of the individual participant;
- (c) they must be recorded in the accounts of the participants or, in the case of the resources of third parties referred to in the third subparagraph of Article 8(2), in the corresponding financial documents of those third parties;
- (d) they shall be exclusive of indirect taxes, duties and interest and may not give rise to profit.

By way of derogation from the actual cost principle and with the agreement of the participants, the contract may lay down average rates of Community financial participation by type of expenditure or pre-set lump sums, as well as a value by activity which shall approximate to the expenses envisaged.

3. Costs for management of the consortium shall be reimbursed up to 100 % of the costs incurred and shall include the cost of audit certificates. In this case legal entities which participate in the indirect action on an additional cost basis may claim the full costs they have incurred for management, in so far as they can produce detailed evidence of them. The contracts shall lay down a maximum percentage of management costs in relation to the Community contribution. A share of no more than 7 % shall be reserved for management costs by the consortium.

Article 15

Changes in consortium membership

1. A consortium may modify its membership on its own initiative and may in particular extend it to include any legal entity contributing to the implementation of the indirect action.

A participant's withdrawal shall not affect access rights under Articles 26(2) and 27(2).

The consortium must notify any change of its membership to the Commission, which may object within six weeks of the notification. New participants shall accede to the contract in accordance with the terms of Article 12(2).

2. The joint programme of activities for a network of excellence or the implementation plan for an integrated project shall specify which changes in the membership of the consortium shall require the prior publication of a competitive call.

The consortium shall publish the competitive call and advertise it widely using specific information support, particularly

Internet sites on the Sixth Framework Programme, the specialist press and brochures, and the national contact points set up by the Member States and associated States for information and support.

The consortium shall evaluate offers in the light of the criteria which governed the evaluation and selection of the indirect action, defined according to the terms of Article 10(4) and (5), and with the assistance of independent experts appointed by the consortium on the basis of the criteria described in Article 11(2)(b).

Subsequent modification of the consortium shall follow the procedure established in the third subparagraph of paragraph 1.

Article 16

Additional financial contribution

The Commission may increase the Community financial contribution to an indirect action already under way in order to expand its scope to cover new activities which may involve new participants.

It shall do so in the case of the indirect actions referred to in Articles 9(1) and 9(2)(c) by way of a call for supplementary proposals, which the Commission shall publish and advertise in accordance with Article 9(4) and which may be restricted, if necessary, to indirect actions already under way. The Commission shall evaluate and select such proposals in accordance with Article 10.

Article 17

Consortium activities in favour of third parties

If the contract provides for the consortium to undertake all or some of its activities in favour of third parties, the consortium shall ensure that this is properly made public, in accordance, where applicable, with the contract.

The consortium shall evaluate and select any application received from third parties in accordance with the principles of transparency, fairness and impartiality and also with the terms of the contract.

Article 18

Scientific, technological and financial monitoring and audits

1. The indirect actions to which the Community contributes shall be periodically evaluated by the Commission on the basis of progress reports which shall also cover the implementation of the plan for the use or dissemination of knowledge submitted by the participants in accordance with the terms of the contract.

In monitoring the networks of excellence, the integrated projects and, where necessary, other indirect actions, the Commission shall be assisted by independent experts appointed in accordance with Article 11(2).

The Commission shall ensure that all the information, which it receives on pre-existing know-how and on knowledge expected or acquired during the course of an indirect action, is treated with confidentiality.

2. In accordance with the contract, the Commission shall take any useful steps to ensure that the objectives of the indirect action are achieved with proper regard for the financial interests of the Community. The Commission may, where necessary for the sake of these interests, adjust the Community financial contribution or suspend the indirect action if the terms of this Regulation or of the contract have been infringed.

3. The Commission, or any representative authorised by it, shall have the right to carry out scientific, technological and financial audits on the participants, in order to ensure that the indirect action is being or has been performed under the conditions claimed and in accordance with the terms of the contract.

The contract shall specify the conditions under which the participants may object to a technological audit of the use and dissemination of the knowledge being carried out by certain authorised representatives of the Commission.

4. Pursuant to Article 248(2) of the Treaty, the Court of Auditors may verify the use of the Community's financial contribution.

Article 19

Information made available to Member States and associated States

The Commission shall make available to any Member State or associated State, upon request, its useful information on knowledge arising from work carried out in an indirect action, provided that such information is relevant to public policies, unless the participants provide a reasoned case against doing so.

Under no circumstances, shall such availability transfer any rights or obligations of the Commission and the participants, as set out in Articles 21 to 28, to Member States or associated States receiving such information.

Unless such general information becomes public or is made available by the participants or has been communicated without any confidentiality restrictions, Member States and associated States shall comply with the Commission's obligations on confidentiality as established by this Regulation.

Article 20

Protection of the financial interests of the Community

The Commission shall ensure that, when indirect actions are implemented, the financial interests of the Community are protected by effective checks and by deterrent measures and, if irregularities are detected, by penalties which are effective, proportionate and dissuasive, in accordance with Council Regulations (EC, Euratom) No 2988/95 and (Euratom, EC) No 2185/96⁽¹⁾, and with Regulation (EC) No 1073/1999 of the European Parliament and of the Council⁽²⁾.

CHAPTER III

RULES FOR DISSEMINATION AND USE

Article 21

Ownership of knowledge

1. Knowledge arising from work carried out under direct actions shall be the property of the Community.

2. Knowledge arising from work carried out under indirect actions provided for in Article 9(2)(b) and (d) shall be the property of the Community. Knowledge arising from work carried out under other indirect actions shall be the property of the participants carrying out the work leading to that knowledge.

3. Where several participants have jointly carried out work generating the knowledge referred to in paragraph 2 and where their respective share of the work cannot be ascertained, they shall have joint ownership of such knowledge. They shall agree among themselves on the allocation and the terms of exercising the ownership of the knowledge in accordance with the provisions of this Regulation and of the contract.

4. Knowledge arising from work carried out under cooperative or collective research projects shall be the joint property of the SMEs or the enterprise groupings, which shall agree on the allocation and the terms of exercising the ownership of the knowledge in particular in the consortium agreement in accordance with the provisions of this Regulation and of the contract.

⁽¹⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

⁽²⁾ Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 1).

5. If personnel employed by a participant are entitled to claim rights to knowledge, the participant shall take steps or reach appropriate agreements to ensure that these rights can be exercised in a manner compatible with its obligations under this Regulation and the contract.

6. Where a participant transfers ownership of knowledge, it shall take steps or conclude agreements to pass on its obligations, in particular concerning the granting of access rights, the dissemination and use of the knowledge, under this Regulation and the contract, to the assignee. As long as the participant is required to grant access rights, it shall give prior notice to the Commission and the other participants in the same indirect action of the envisaged assignment and the assignee.

The Commission or other participants in the indirect action may object within 30 days of notification to such a transfer of ownership. The Commission may object to any transfer of ownership to third parties, in particular to those not established in a Member State or an associated State, if such a transfer is not in accordance with the interests of developing the competitiveness of the dynamic, knowledge-based European economy, or is inconsistent with ethical principles. The other participants may object to any transfer of ownership if this would adversely affect their access rights.

Article 22

Protection of knowledge

1. Where knowledge is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection in conformity with relevant legal provisions, the contract and the consortium agreement, and having due regard to the legitimate interests of the participants concerned.

2. Where the Commission considers it necessary to protect knowledge in a particular country, and where such protection has not been applied for or has been waived, the Commission may, with the agreement of the participant concerned, adopt protective measures. In this event, and as far as that particular country is concerned, the Community shall take on the obligations regarding the granting of access rights in the place of the participant. The participant may only refuse if it can demonstrate that its legitimate interests will be significantly impaired.

3. A participant may publish or allow the publication, on whatever medium, of data concerning knowledge it owns or knowledge obtained during work in connection with cooperative or collective research projects, provided that this does not affect the protection of that knowledge. The Commission and the other participants in the same indirect action shall be given prior written notice of any planned publication. A copy of such data shall on request be made available to them within 30 days of the request. The Commission and the other participants may object to the publication within a period of 30 days from receipt of the data, if they consider that the

protection of their knowledge could thereby be adversely affected.

Article 23

Use and dissemination of knowledge

1. The participants and the Community shall use or cause to be used the knowledge which they own arising from the direct actions or indirect actions, in accordance with the interests of the participants concerned. The participants shall set out the terms of use in a detailed and verifiable manner, in accordance with this Regulation and the contract.

2. If dissemination of the knowledge does not adversely affect its protection or use, the participants shall ensure that it is disseminated within a period laid down by the Community. Should the participants fail to do so, the Commission may disseminate the knowledge. Particular account shall be taken of the following factors:

- (a) the need to safeguard intellectual property rights;
- (b) the benefits of swift dissemination, for example in order to avoid duplication of research efforts and to create synergies between indirect actions;
- (c) confidentiality;
- (d) the legitimate interests of the participants.

Article 24

Making available knowledge arising from direct actions

Knowledge arising from work carried out under direct actions may be made available to one or more interested legal entities, in particular to those established in a Member State or an Associated State, provided that the said legal entities undertake to use the knowledge or to ensure that it is used. Such availability of knowledge shall be subject to appropriate conditions to be laid down and published by the Commission, in particular concerning the payment of fees.

Article 25

Principles for access rights in indirect actions

1. Access rights in accordance with Articles 26 and 27 shall be granted on written request. The granting of access rights may be made conditional on the conclusion of specific agreements, aimed at ensuring that they are used only for the intended purpose, and the giving of appropriate undertakings as to confidentiality. Participants may also conclude agreements with the purpose, in particular, of granting additional or more favourable access rights, including access rights to third parties, in particular to enterprises associated with participants, or specifying the requirements applicable to access rights, but not restricting the latter. Such agreements shall comply with the applicable competition rules.

The Commission may object to any grant of access rights to third parties, in particular to those not established in a Member State or an Associated State, if such a grant is not in accordance with the interests of developing the competitiveness of the dynamic, knowledge-based European economy, or is inconsistent with ethical principles.

2. Access rights to pre-existing know-how shall be granted provided that the participant concerned is free to grant them.

3. A participant may explicitly exclude specific pre-existing know-how from the obligation to grant access rights by means of a written agreement between the participants, before the participant concerned signs the contract or before a new participant joins the indirect action. The other participants may only withhold their agreement if they demonstrate that implementation of the indirect action or their legitimate interests will be significantly impaired thereby.

4. Except where the participant granting access rights so agrees, such rights shall confer no entitlement to grant sub-licences.

Article 26

Access rights for the execution of indirect actions

1. Participants in the same indirect action shall enjoy access rights to the knowledge arising from work carried out under the indirect action and to the pre-existing know-how, if that knowledge or pre-existing know-how is needed to carry out their own work under that indirect action. Access rights to knowledge shall be granted on a royalty-free basis. Access rights to pre-existing know-how shall also be granted on a royalty-free basis, unless otherwise agreed, before signature of the contract.

2. Subject to its legitimate interests, the termination of the participation of a participant shall in no way affect the obligation to grant access rights pursuant to paragraph 1 to the other participants in the same indirect action until its end.

Article 27

Access rights for use

1. Participants in the same indirect action shall enjoy access rights to the knowledge arising from work carried out under the indirect action and to the pre-existing know-how, if that knowledge or pre-existing know-how is needed to use their own knowledge. Access rights to knowledge shall be granted on a royalty-free basis, unless otherwise agreed, before signature of the contract. Access rights to pre-existing know-how shall be granted under fair and non-discriminatory conditions.

2. Subject to the participants' legitimate interests, access rights may be requested under the conditions laid down in paragraph 1 until two years after the end of the indirect action or after the termination of the participation of a participant, whichever falls earlier, unless there is provision for a longer period.

Article 28

Incompatible or restrictive commitments

1. Participants shall make no commitments incompatible with the obligations provided for in this Regulation.

2. Participants in the same indirect action shall be informed as soon as possible by the participant required to grant access rights of any limitations to the granting of access rights to pre-existing know-how, of any obligations to grant rights to knowledge, or of any restriction which might substantially affect the granting of access rights, as the case may be.

Article 29

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.

Done at Brussels, 16 December 2002.

For the European Parliament

The President

P. COX

For the Council

The President

M. FISCHER BOEL

COUNCIL REGULATION No 2322/2002 (EURATOM)

of 5 November 2002

concerning the rules for the participation of undertakings, research centres and universities in the implementation of the sixth framework programme of the European Atomic Energy Community (2002 to 2006)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 7 thereof,

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

Having regard to the opinion of the European Parliament ⁽²⁾,

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

Whereas:

(1) The sixth framework programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities, also contributing to the creation of the European Research Area (2002 to 2006) (the 'sixth framework programme'), was adopted by Council Decision 2002/668/Euratom ⁽⁴⁾. The rules for financial participation by the Community need to be supplemented by other provisions to be laid down in accordance with Article 7 of the Treaty.

(2) Those provisions should fit into a coherent and transparent framework which takes full account of the objectives and characteristics of the instruments defined in Annex III to the specific programme (Euratom) for research and training on nuclear energy, adopted by Council Decision 2002/837/Euratom ⁽⁵⁾, in order to guarantee the most efficient implementation possible.

(3) The rules for the participation of undertakings, research centres and universities should take account of the nature of the research (including demonstration) and training activities in the field of nuclear energy. They may, moreover, vary, depending on whether the participant is based in a Member State, in an associated State, whether a candidate country or not, or in a third country, and on its legal structure, namely whether it is a national organisation, an international organisation, of European interest or not, or an association formed by participants.

(4) In conformity with the sixth framework programme, the participation of legal entities from third countries should be envisaged in line with the objectives of international cooperation, particularly as enshrined in Article 101 of the Treaty.

(5) International organisations which are dedicated to developing cooperation in the field of research in Europe and which are largely made up of Member States or associated States contribute to the creation of the European Research Area. They should therefore be encouraged to participate in the sixth framework programme.

(6) Activities under the sixth framework programme should be conducted in compliance with ethical principles, including those reflected in the Charter of Fundamental Rights of the European Union, and should strive to improve information for and dialogue with society as well as to increase the role of women in research.

(7) The Joint Research Centre takes part in indirect research and technological development actions on the same basis as legal entities established in a Member State.

(8) Activities under the sixth framework programme should comply with the financial interests of the Community and should safeguard those interests. The Commission's responsibility for the implementation of the framework programme and its specific programmes also includes the financial aspects arising from them,

HAS ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Subject

This Regulation establishes rules for the participation of enterprises, research centres and universities in research carried out under the sixth framework programme of the European Atomic Energy Community for research and training activities, also contributing to the creation of the European Research Area (2002 to 2006) (hereinafter referred to as the 'sixth framework programme').

⁽¹⁾ OJ C 103 E, 30.4.2002, p. 331.

⁽²⁾ Opinion delivered on 3 July 2002 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 17 July 2002 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 232, 29.8.2002, p. 34.

⁽⁵⁾ OJ L 294, 29.10.2002, p. 74.

Article 2

Definitions

For the purposes of this Regulation:

1. 'R&TD activity' means one of the research and technological development activities, including demonstration activities, and training activities, described in Annexes I and III to the sixth framework programme;
2. 'direct action' means an R&TD activity undertaken by the Joint Research Centre (hereinafter referred to as JRC) in the execution of the tasks assigned to it under the sixth framework programme;
3. 'indirect action' means an R&TD activity undertaken by one or more participants by means of an instrument of the sixth framework programme;
4. 'instruments' means the mechanisms for indirect Community intervention as laid down in Annex III to the specific programme (Euratom) for research and training on nuclear energy;
5. 'contract' means a grant agreement between the Community and the participants concerning the performance of an indirect action establishing rights and obligations between the Community and the participants on the one hand, and between the participants in that indirect action, on the other;
6. 'consortium agreement' means an agreement that participants in an indirect action conclude amongst themselves for its implementation. Such an agreement shall not affect participants' obligations to the Community and to one another arising out of this Regulation or the contract;
7. 'participant' means a legal entity contributing to an indirect action and having rights and obligations with regard to the Community under the terms of this Regulation or according to the contract;
8. 'legal entity' means any natural person, or any legal person created under the national law of its place of establishment, under Community law or international law, having legal personality and being entitled to have rights and obligations of any kind in its own name;
9. 'consortium' means all the participants in the same indirect action;
10. 'coordinator' means the participant appointed by participants in the same indirect action and accepted by the Commission, having specific additional obligations arising out of this Regulation and the contract;
11. 'international organisation' means any legal entity arising from an association of States, other than the Community, established on the basis of a treaty or similar act, having common institutions and an international legal personality distinct from that of its Member States;
12. 'international European interest organisation' means an international organisation, the majority of whose members are European Community Member States or associated States, and whose principal objective is to promote European scientific and technological cooperation;
13. 'associated candidate country' means an associated State acknowledged by the Community as a candidate for accession to the European Union;
14. 'associated State' means a State which is party to an international agreement with the European Atomic Energy Community, under the terms or on the basis of which it makes a financial contribution to all or part of the sixth framework programme;
15. 'third country' means a State that is neither a Member State nor an associated State;
16. 'European Economic Interest Grouping (EEIG)' means any legal entity established in accordance with Council Regulation (EEC) No 2137/85 ⁽¹⁾;
17. 'budget' means a financial plan estimating all the resources and expenditure needed to carry out an indirect action;
18. 'irregularity' means any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by a legal entity which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it through unjustified expenditure;
19. 'pre-existing know-how' means the information which is held by participants prior to the conclusion of the contract or acquired in parallel with it, as well as copyrights or rights pertaining to such information following applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection;
20. 'knowledge' means the results, including information, whether or not they can be protected, which are yielded by direct actions and indirect actions, as well as copyrights or rights pertaining to such results following applications for, or the issue of patents, designs, plant varieties, supplementary protection certificates or similar forms of protection;

⁽¹⁾ OJ L 199, 31.7.1985, p. 1.

21. 'dissemination' means the disclosure of knowledge by any appropriate means other than publication resulting from the formalities for protecting knowledge;
22. 'use' means the direct or indirect utilisation of knowledge in research activities or for developing, creating and marketing a product or process or for creating and providing a service;
23. 'work programme' means a plan drawn up by the Commission for the implementation of a specific programme;
24. 'joint programme of activities' means the actions undertaken by participants which are required for implementing a network of excellence;
25. 'implementation plan' means all actions by participants in an integrated project;
26. 'public body' means a public sector body or a legal entity governed by private law with a public service mission providing adequate financial guarantees.

Article 3

Independence

1. Two legal entities shall be independent of one another for the purposes of this Regulation where there is no controlling relationship between them. A controlling relationship shall exist where one legal entity directly or indirectly controls the other or one legal entity is under the same direct or indirect control as the other. Control may result in particular from:

- (a) direct or indirect holding of more than 50 % of the nominal value of the issued share capital in a legal entity, or of a majority of voting rights of the shareholders or associates of that entity;
- (b) direct or indirect holding in fact or in law of decision-making powers in a legal entity.

2. Direct or indirect holding of more than 50 % of the nominal value of the issued share capital in a legal entity or of a majority of voting rights of the shareholders or associates of the said entity by public investment corporations, institutional investors or venture-capital companies and funds shall not in itself constitute a controlling relationship.

3. Ownership or supervision of legal entities by the same public body shall not in itself give rise to a controlling relationship between them.

CHAPTER II

PARTICIPATION IN INDIRECT ACTIONS

Article 4

Scope and general principles

1. The rules set out in this Chapter apply to the participation of legal entities in indirect actions. They apply without prejudice to specific rules for R&TD activities under the priority thematic area 'Fusion energy research' of the specific programme (Euratom) for research and training on nuclear energy set out in Chapter III.

2. Any legal entity participating in an indirect action may receive a Community financial contribution, subject to the provisions of Articles 6 and 7.

3. Any legal entity established in an associated State may participate in indirect actions on the same footing and shall have the same rights and obligations as a legal entity established in a Member State, subject to the provisions of Article 5.

4. The JRC may participate in indirect actions on the same footing and shall have the same rights and obligations as a legal entity established in a Member State.

5. Any international European interest organisation may participate in indirect actions on the same footing and shall have the same rights and obligations as a legal entity established in a Member State in accordance with its headquarters agreement.

6. The work programmes may specify and restrict the participation of legal entities in an indirect action according to their activity and type, and according to the instrument deployed and to take into account specific objectives of the sixth framework programme.

Article 5

Minimum numbers of participants and their place of establishment

1. The work programmes shall specify the minimum number of participants required for each indirect action and also their place of establishment, according to the nature of the instrument and the objectives of the R&TD activity.

2. For networks of excellence and integrated projects, the minimum number of participants shall not be fewer than three independent legal entities established in three different Member States or associated States, of which at least two shall be Member States or associated candidate countries.

3. Specific support actions and actions in favour of human resources and mobility, except for research training networks, may be executed by a single legal entity.

When the work programme establishes a minimum number that is greater than or equal to two legal entities established in as many Member States or associated States, this number shall be fixed according to the conditions provided for in paragraph 4.

4. For instruments other than those covered in paragraphs 2 and 3, the minimum number of participants shall not be fewer than two independent legal entities established in two different Member States or associated States, of which at least one shall be a Member State or an associated candidate country.

5. An EEIG or any legal entity established in a Member State or associated State according to its national law which is made up of independent legal entities meeting the criteria of this Regulation may be the sole participant in an indirect action, provided that its composition is in accordance with the conditions fixed pursuant to the provisions of paragraph 1 to 4.

Article 6

Participation by legal entities from third countries

1. Subject to other restrictions that may be specified in the work programme of the specific programme, any legal entity established in a third country may participate in R&TD activities, over and above the minimum number of participants fixed in accordance with the terms of Article 5, if such participation is provided for under an R&TD activity or if it is necessary for carrying out the indirect action.

2. Any legal entity established in a third country may receive a Community financial contribution, if provision is made for this under an R&TD activity or if it is essential for carrying out the indirect action.

Article 7

Participation by international organisations

Any international organisation other than the international European interest organisations referred to in Article 4(5) may take part in R&TD activities, subject to the conditions set out in Article 6.

Article 8

Conditions relating to technical competence and resources

1. Participants shall have the knowledge and technical competence needed to carry out the indirect action.

2. At the time when they present their proposal, participants shall have at least the potential resources needed

to carry out the indirect action, and shall be able to specify the relevant source of those funds made available by third parties, including public authorities.

As work progresses, participants shall have the resources as and when needed to carry out the indirect action.

The resources needed to carry out the indirect action are understood to be human resources, infrastructure, financial resources and, if necessary, intangible property and other resources made available by a third party on the basis of a prior commitment.

Article 9

Submission of proposals for indirect actions

1. Proposals for indirect actions shall be submitted under the terms of calls for proposals. These terms shall be set out in the work programmes.

Calls for proposals may involve a two-stage evaluation procedure. In this case, following a positive evaluation of an outline proposal in the first stage, the proposers concerned shall be requested to submit a complete proposal in the second stage.

2. Paragraph 1 shall not apply to:

(a) specific support actions for the activities of the legal entities identified in the work programme;

(b) specific support actions consisting of a purchase or service governed by the terms applicable to public procurement procedures;

(c) specific support actions with particular characteristics and value to the objectives and the scientific and technological content of the specific programme, for which grant applications may be submitted to the Commission if so provided for in the work programme of the specific programme and where such a request does not fall within the scope of an open call for proposals;

(d) specific support actions covered by Article 11.

3. The Commission may issue calls for expressions of interest in order to assist it in identifying precise objectives and requirements that may be included in the work programmes and in the calls for proposals. This shall be without prejudice to any subsequent decision adopted by the Commission regarding the evaluation and selection of proposals for indirect actions.

4. Calls for expressions of interest and calls for proposals shall be published in the *Official Journal of the European Communities* and shall also be given the widest possible publicity, in particular using the Internet pages of the sixth framework programme and through specific information channels such as the national contact points set up by the Member States and the associated States.

Article 10

Evaluation and selection of proposals for indirect actions

1. The proposals for indirect actions covered in Article 9(1) and Article 9(2)(c) shall be evaluated according to the following criteria, where applicable:

- (a) scientific and technological excellence and the degree of innovation;
- (b) ability to carry out the indirect action successfully and to ensure its efficient management, assessed in terms of resources and competencies and including the organisational arrangements laid down by the participants;
- (c) relevance to the objectives of the specific programme;
- (d) European added value, critical mass of resources mobilised and contribution to Community policies;
- (e) quality of the plan for using and disseminating the knowledge, potential for promoting innovation and clear plan for the management of intellectual property.

2. In applying paragraph 1(d), the following criteria will also be taken into account:

- (a) for networks of excellence, the scope and degree of the effort to achieve integration and the network's capacity to promote excellence beyond its membership, as well as the prospects of the durable integration of their research capabilities and resources after the end of the period covered by the Community's financial contribution;
- (b) for integrated projects, the scale of ambition of the objectives and the capacity of the resources to make a significant contribution to reinforcing competitiveness or solving societal problems;
- (c) for integrated initiatives relating to infrastructure, the prospects of the initiative's continuing long term after the end of the period covered by the Community's financial contribution.

3. In applying paragraphs 1 and 2, the following additional criteria can be taken into account:

- (a) synergies with education at all levels;
- (b) readiness and capacity to engage with actors beyond the research community and with the public as a whole, to help spread awareness and knowledge and to explore the wider societal implications of the proposed work;
- (c) activities to increase the role of women in research.

4. Calls for proposals shall determine, in accordance with the type of instruments deployed or the objectives of the R&TD activity, how the criteria set out in paragraph 1 are to be applied by the Commission.

These criteria, and those of paragraphs 2 and 3, may be specified or complemented in the work programme, in particular to take account of the contribution of the proposals for indirect actions to improve information for and dialogue with society and to promote the competitiveness of SMEs.

5. A proposal for an indirect action which contravenes fundamental ethical principles or which does not fulfil the conditions set out in the work programme or in the call for proposals shall not be selected. Such a proposal may be excluded from the evaluation and selection procedures at any time.

Any participant who has committed an irregularity in the implementation of an indirect action may be excluded from the evaluation and selection procedure at any time, due regard being had to the principle of proportionality.

6. The Commission shall evaluate the proposals with the assistance of independent experts appointed in accordance with Article 11. For some specific support actions, particularly those covered by Article 9(2), independent experts shall be appointed only if the Commission deems it appropriate. The Commission shall publish the list of the experts selected.

All proposals submitted for indirect actions shall be treated confidentially by the Commission, which shall ensure that the principle of confidentiality is upheld in all procedures and that the independent experts are bound by this.

Unless otherwise specified in the call for proposals, proposals shall not be evaluated anonymously.

7. Proposals for indirect actions shall be selected on the basis of the evaluation results and having regard to the Community funds available. The Commission shall adopt and publish guidelines setting out detailed provisions for evaluation and selection procedures.

Article 11

Appointment of independent experts

1. The Commission shall designate independent experts to assist with the evaluation required under the sixth framework programme and the specific programme, and also for the assistance referred to in Article 10(6) and the second subparagraph of Article 18(1).

It may, in addition, set up groups of independent experts to advise on the implementation of Community research policy.

2. The Commission shall appoint the independent experts in accordance with one of the following procedures:

- (a) the independent experts appointed by the Commission for the evaluations provided for in Articles 5 and 6 of the sixth framework programme and Article 7(2) of the specific programme shall be very high-ranking individuals from the fields of science, industry or politics with significant experience in research, research policy or research programme management at national or international level;
- (b) the independent experts appointed by the Commission to assist in the evaluation of proposals for networks of excellence and integrated projects and in the monitoring of the projects selected and carried out shall be individuals from the fields of science, industry and/or with experience in the field of innovation and also with the highest level of knowledge and who are internationally recognised authorities in the relevant specialist area;
- (c) the independent experts appointed by the Commission to form the groups referred to in the second subparagraph of paragraph 1 shall be professionals renowned for their knowledge, skills and top-level experience in the field or regarding the issues to be dealt with by the group;
- (d) for cases other than those covered by points (a), (b) and (c), and in order to take the various operators in the research sector into consideration in a balanced manner, the Commission shall appoint independent experts with skills and knowledge appropriate to the tasks assigned to them. To this end, it shall rely on calls for applications from individuals or calls addressed to research institutions with a view to establishing lists of suitable candidates, or may, if it deems appropriate, select any individual with the appropriate skills from outside the lists.

3. When appointing an independent expert, the Commission will ensure that the expert is not faced with a conflict of interests in relation to the matter on which he is required to give an opinion. To this end, the Commission shall require experts to sign a declaration to the effect that there is no such conflict of interest at the time of their appointment and undertaking to inform the Commission if one should arise in the course of their duties.

Article 12

Contracts and consortium agreements

1. The Commission shall conclude a contract for each proposal selected for an indirect action. This contract shall be drawn up in accordance with the provisions of the sixth framework programme, and in accordance with this Regulation, taking into account the characteristics of the various instruments concerned.

The Commission, after conferring with interested parties from the Member States and the associated States, will prepare a model contract to facilitate the drawing up of contracts.

2. The contract shall establish the rights and obligations of participants in accordance with this Regulation, and in particular the provisions for the scientific, technological and financial monitoring of the indirect action, for the updating of its objectives, for changes in consortium membership, for the payment of the Community financial contribution and, if applicable, conditions for the eligibility of any necessary expenditure.

The contract shall establish rules for dissemination and use of knowledge and results in accordance with Title II, Chapter 2 of the Treaty.

The contract, which shall be concluded between the Commission and all participants in an indirect action, shall enter into force on signature by the Commission and the coordinator. The other participants identified in the contract shall accede to it in accordance with its terms and shall enjoy the rights and take on the obligations of participants.

Any participant joining an ongoing indirect action shall accede to the contract and enjoy the rights and take on the obligations of participants towards the Community.

3. In order to ensure the protection of the financial interests of the Community, appropriate penalties shall be included in the contracts, as defined, *inter alia*, in Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests⁽¹⁾.

4. Participants in an indirect action shall conclude a consortium agreement, unless otherwise specified in the call for proposals. The Commission shall publish non-binding guidelines on points that may be addressed by the consortium agreement, such as:

- (a) the internal organisation of the consortium;
- (b) intellectual property rights' arrangements;
- (c) settlement of internal disputes, pertaining to the consortium agreement.

⁽¹⁾ OJ L 312, 23.12.1995, p. 1.

To this end the Commission shall confer with interested parties from the Member States and the associated States.

Article 13

Execution of indirect actions

1. The consortium shall implement the indirect action and shall take all necessary and reasonable measures to that end.

The Community financial contribution shall be paid to the coordinator. The coordinator shall administer the Community financial contribution regarding its allocation between participants and activities in accordance with the contract and with decisions taken by the consortium according to the internal procedures established in the consortium agreement.

Participants shall inform the Commission of any event, including modification of the consortium agreement, which might affect the implementation of the indirect action and the rights of the Community.

2. Technical implementation of the indirect action shall be the collective responsibility of the participants. Each participant shall also be liable for the use of the Community financial contribution in proportion to their share of the project up to a maximum of the total payments they have received.

Should a participant breach the contract and should the consortium not make good this breach, the Commission may, as a last resort and if all other approaches have been explored, hold the participants liable under the following conditions:

- (a) independently of the appropriate action it shall take against the defaulting participant, the Commission shall require the remaining participants to implement the indirect action;
- (b) should implementation be impossible or should the remaining participants refuse to comply with subparagraph (a), the Commission may terminate the contract and recover the Community financial contribution. When investigating the financial disadvantage, the Commission shall take into account the work already undertaken and results obtained, thereby establishing the debt;
- (c) as regards the part of the debt established in accordance with point (b) that is owed by the defaulting participant, the Commission shall distribute it among the remaining participants, on the basis of each participant's share of the expenses accepted and up to the amount of the Community financial contribution each participant is entitled to receive.

Where a participant is an international organisation, a public body or a legal entity whose participation in the indirect action is guaranteed by a Member State or an associated State, that participant shall be solely responsible for its own debt and shall not bear the debt of any other participant.

3. Paragraph 2 shall not apply to indirect actions implemented by means of instruments such as actions to promote and develop human resources and mobility and, when duly justified, specific support actions.

4. The coordinator shall keep accounts making it possible to determine at any time what proportion of the Community funds has been allocated to each participant for the purposes of the project. It shall communicate that information to the Commission every year.

5. When several legal entities are grouped in a common legal entity acting as a sole participant in accordance with Article 5(5), that legal entity shall take on the duties set out in paragraphs 1 and 2. The liability of its members shall be defined in accordance with the law under which this common legal entity was established.

Article 14

Community financial contribution

1. In accordance with Annex III to the sixth framework programme and within the limits of the Community framework for State aid for research and development⁽¹⁾, the Community financial contribution may take the following forms:

- (a) for networks of excellence, it shall take the form of a fixed grant for integration on the basis of the joint programme of activities. The amount of that grant shall be calculated taking into account the degree of integration, the number of researchers that all participants intend to integrate, the characteristics of the field of research concerned and the joint programme of activities. It shall be used to complement the resources deployed by the participants in order to carry out the joint programme of activities.

This grant shall be paid out on the basis of results, following the ongoing execution of the joint programme of activities, and on condition that its expenses, which are to be certified by an external auditor, or in the case of public bodies, a competent public officer, are greater than the grant itself;

- (b) for some actions to promote human resources and mobility and some specific support actions, except for the indirect actions covered by Article 9(2)(b), it may take the form of a lump sum payment;

⁽¹⁾ OJ C 45, 17.2.1996, p. 5.

(c) for integrated projects and the other instruments, except for those covered by points (a) and (b) and indirect actions covered by Article 9(2)(b), it shall take the form of a grant to the budget, calculated as a percentage of the budget established by the participants to carry out the indirect action, adapted according to the type of activity and taking into account the cost model used by the participant concerned.

The expenses needed to implement the indirect action have to be certified by an external auditor or, in the case of public bodies, a competent public officer.

2. Eligible expenses shall be defined in accordance with the first subparagraph of Article 12(2) and must meet the following conditions:

- (a) they must be actual, economic and necessary for the implementation of the indirect action;
- (b) they must be determined in accordance with the usual accounting principles of the individual participant;
- (c) must be recorded in the accounts of the participants; or, in the case of the resources of third parties referred to in the last subparagraph of Article 8(2), in the corresponding financial documents of those third parties;
- (d) they shall be exclusive of indirect taxes, duties and interest and may not give rise to profit.

By way of derogation from the actual cost principle and with the agreement of the participants, the contract may lay down average rates of Community financial participation by type of expenditure or pre-set lump sums, as well as a value by activity which shall be approximate to the expenses envisaged.

3. Costs for management of the consortium shall be reimbursed up to 100 % of the costs incurred and shall include the cost of audit certificates. In this case, legal entities which participate in the indirect action on an additional cost basis may claim the full costs they have incurred for management, in so far as they can produce detailed evidence of them. The contracts shall lay down a maximum percentage of management costs in relation to the Community contribution. A share of no more than 7 % shall be reserved for management costs by the consortium.

Article 15

Changes in consortium membership

1. A consortium may modify its membership on its own initiative and may in particular extend it to include any legal entity contributing to the implementation of the indirect action.

The consortium must notify any change of its membership to the Commission, which may object within six weeks of the notification. New participants shall accede to the contract in accordance with the terms of Article 12(2).

2. The joint programme of activities for a network of excellence or the implementation plan for an integrated project shall specify which changes in the membership of the consortium shall require the prior publication of a competitive call.

The consortium shall publish the competitive call and advertise it widely using specific information support, particularly Internet sites on the sixth framework programme, the specialist press and brochures.

The consortium shall evaluate offers in the light of the criteria which governed the evaluation and selection of the indirect action, defined according to the terms of Article 10(4) and (5), and with the assistance of independent experts appointed by the consortium on the basis of the criteria described in Article 11(2)(b).

Subsequent modification of the consortium shall follow the procedure established in the second subparagraph of paragraph 1.

Article 16

Additional financial contribution

The Commission may increase the Community financial contribution to an indirect action already under way in order to expand its scope to cover new activities which may involve new participants.

It shall do so in the case of the indirect actions referred to in Articles 9(1) and 9(2)(c) by way of a call for supplementary proposals, which the Commission shall publish and advertise in accordance with Article 9(4) and which may be restricted, if necessary, to indirect actions already under way. The Commission shall evaluate and select such proposals in accordance with Article 10.

Article 17

Consortium activities in favour of third parties

If the contract provides for the consortium to undertake all or some of its activities in favour of third parties, the consortium shall ensure that this is properly made public, in accordance, where applicable, with the contract.

The consortium shall evaluate and select any application received from third parties in accordance with the principles of transparency, fairness and impartiality and also with the terms of the contract.

*Article 18***Scientific, technological and financial monitoring and audits**

1. The indirect actions to which the Community contributes shall be periodically evaluated by the Commission on the basis of progress reports which will also cover the implementation of the plan for the use or dissemination of knowledge, submitted by the participants in accordance with the terms of the contract.

In monitoring the networks of excellence, the integrated projects and, where necessary, other indirect actions, the Commission shall be assisted by independent experts appointed in accordance with the provisions of Article 11(2).

The Commission shall ensure that all the information, which it receives on pre-existing know-how and on knowledge expected or acquired during the course of an indirect action, is treated with confidentiality.

2. In accordance with the contract, the Commission shall take any useful steps to ensure that the objectives of the indirect action are achieved with proper regard for the financial interests of the Community. The Commission may, where necessary for the sake of these interests, adjust the Community financial contribution or suspend the indirect action if the terms of this Regulation or of the contract have been infringed.

3. The Commission, or any representative authorised by it, shall have the right to carry out scientific, technological and financial audits on the participants, in order to ensure that the indirect action is being or has been performed under the conditions claimed and in accordance with the terms of the contract.

The contract shall specify the conditions under which the participants may object to a technological audit of the use and dissemination of the knowledge being carried out by certain authorised representatives of the Commission.

4. Pursuant to Article 160C of the Treaty, the Court of Auditors may verify the use of the Community's financial contribution.

*Article 19***Information made available to Member States and associated States**

The Commission shall make available to any Member State or associated State, upon request, its useful information on knowledge arising from work carried out in an indirect action provided that such information is relevant to public

policies, unless the participants provide a reasoned case against doing so.

Under no circumstances shall such availability transfer any rights or obligations of the Commission and the participants, in terms of intellectual property rights, to Member States or associated States receiving such information.

Unless such general information becomes public or is made available by the participants or has been communicated without any confidentiality restrictions, Member States and associated States shall comply with the Commission's obligations on confidentiality as established by this Regulation.

*Article 20***Protection of the financial interests of the Community**

The Commission shall ensure that, when indirect actions are implemented, the financial interests of the Community are protected by effective checks and by deterrent measures and, if irregularities are detected, by penalties which are effective, proportionate and dissuasive, in accordance with Council Regulations (EC, Euratom) No 2988/95 and (EC, Euratom) No 2185/96⁽¹⁾ and Council Regulation (Euratom) No 1074/1999⁽²⁾.

CHAPTER III

SPECIFIC RULES FOR PARTICIPATION IN R&TD ACTIVITIES UNDER THE PRIORITY THEMATIC AREA 'FUSION ENERGY RESEARCH'*Article 21***Scope**

The rules set out in this Chapter apply to R&TD activities under the priority thematic area 'Fusion Energy Research'. In the event of any conflict between the rules set out in this Chapter and those set out in Chapters II and III, the rules set out in this Chapter shall apply.

*Article 22***Procedures**

R&TD activities under the priority thematic area 'Fusion Energy Research' may be implemented on the basis of procedures set out in the following frameworks:

- (a) contracts of association with Member States, associated States, or legal entities established in those States;
- (b) the European Fusion Development Agreement (EFDA);

⁽¹⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

⁽²⁾ Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ L 136, 31.5.1999, p. 8).

- (c) any other multilateral agreement concluded by the Community with associated legal entities;
- (d) legal entities which may be set up after the consultative committee for the fusion programme referred to in Article 6(2) of the specific programme (Euratom) for research and training on nuclear energy has given its opinion;
- (e) other contracts of limited duration with non-associated legal entities established in Member States or associated States;
- (f) international agreements relating to cooperation with third countries, or any legal entity which may be established by such an agreement.

Article 23

Community financial contribution

1. The contracts of association referred to in Article 22(a) and contracts of limited duration referred to in Article 22(e) shall establish the rules relating to the Community financial contribution to the activities they cover.

The annual base rate for the Community financial contribution shall not exceed 20 % over the duration of the sixth framework programme.

2. After consultation of the consultative committee for the fusion programme referred to in Article 6(2) of the specific programme (Euratom) for research and training on nuclear energy, the Commission may finance:

- (a) at a uniform rate not exceeding 40 %:
 - (i) the capital related expenditure of specifically defined projects to which priority status has been awarded by the consultative committee; priority status will

concentrate on actions of direct relevance to the Next Step / ITER, except in the case of projects which have already been awarded priority status during earlier framework programmes;

- (ii) expenditure for participation in specifically defined projects enhancing the mutual cooperation between associations, arising from contracts of association referred to in Article 22, up to an annual ceiling in Community support of EUR 100 000 per association;

(b) specifically defined multilateral activities carried out under the European Fusion Development Agreement or by any legal entity established for this purpose, including procurements.

3. In the case of projects and activities receiving a financial contribution above the annual base rate referred to in the second subparagraph of paragraph 1, all the legal entities referred to in Article 22(a), (b), (c), (d) and (e) shall have the right to take part in the experiments carried out on the equipment concerned.

4. The Community financial contribution to activities carried out within the framework of an international cooperation agreement referred to in Article 22(f) shall be defined in it or by any legal entity established by it.

The Community, together with legal entities associated in the programme, may create any appropriate legal entity to manage its participation and its financial contribution to such an agreement.

Article 24

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.

Done at Brussels, 5 November 2002.

For the Council

The President

T. PEDERSEN

COUNCIL DIRECTIVE 2002/89/EC**of 28 November 2002****amending Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community**

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 ⁽¹⁾,Having regard to the opinion of the European Parliament ⁽²⁾,Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas:

- (1) Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ⁽⁴⁾ sets out the Community plant health regime, specifying the phytosanitary conditions, procedures and formalities to which plants and plant products are subjected when introduced into, or moved within, the Community.
- (2) With respect to the procedures and formalities, to which plants and plant products are subjected when introduced in the Community, certain clarifications should be provided and further detailed provisions are required in certain areas.
- (3) The phytosanitary procedures and formalities should be completed before customs clearance takes place. Since consignments of plants or plant products do not necessarily undergo phytosanitary procedures and formalities in the same Member State as that in which customs clearance takes place, a system of cooperation in communication and information among the responsible official bodies and the customs offices should be established.
- (4) In order to improve the protection against the introduction into the Community of organisms harmful to plants or plant products, Member States should intensify the checks required. Those checks should be effective and carried out in a harmonised manner throughout the Community.
- (5) The fees charged for such checks should be based on a transparent cost calculation and aligned in all Member States as much as possible.
- (6) In the light of experience, several other provisions of Directive 2000/29/EC should be completed, clarified or amended in the light of developments.
- (7) Since the implementation of the conditions of the internal market, phytosanitary certificates as established in the International Plant Protection Convention (IPPC) of the Food and Agriculture Organisation (FAO) are no longer used for the marketing of plants or plant products within the Community. It is however important to keep standardised certificates issued by Member States under the IPPC.
- (8) Some of the functions of the 'single authority' of each Member State for coordination and contact in the practical operations of the Community plant health regime require specific scientific or technical knowledge. It must therefore be made possible, to delegate specific tasks to another service.
- (9) The current provisions on the procedure for the amendment of the Annexes of Directive 2000/29/EC by the Commission and for the adoption of derogation decisions include some procedural conditions which are no longer necessary or justified. It is also necessary to base amendments to the Annexes, more explicitly, on a technical justification consistent with the pest risk involved. The procedure for the adoption of emergency measures does not provide the possibility for a rapid adoption of interim measures consistent with the level of emergency in specific cases. The provisions on these three procedures should therefore be amended accordingly.
- (10) The list of tasks in respect of which the Commission may organise plant health checks under its authority, should be extended, to take into account the widening of the field of plant health activities through new practices and experiences.
- (11) It is appropriate to clarify certain aspects of the procedure for the refunding of the Community Phytosanitary contribution.

⁽¹⁾ OJ C 240 E, 28.8.2001, p. 88.

⁽²⁾ OJ C 53 E, 28.2.2002, p. 179.

⁽³⁾ OJ C 36, 8.2.2002, p. 46.

⁽⁴⁾ OJ L 169, 10.7.2000, p. 1. Directive as last amended by Commission Directive 2002/36/EC (OJ L 116, 3.5.2002, p. 16).

- (12) Some provisions of Directive 2000/29/EC (first, second and fourth subparagraphs of Article 3(7)), as well as Articles 7, 8 and 9 have been superseded by other provisions since 1 June 1993, and have therefore become redundant since then. They should consequently be deleted.
- (13) Under Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), the Community must recognise, under certain conditions, the equivalence of phytosanitary measures of other Parties to that Agreement. The procedures for such recognition in the field of plant health should be specified in Directive 2000/29/EC.
- (14) The measures necessary for the implementation of Directive 2000/29/EC 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⁾,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2000/29/EC is hereby amended as follows:

1. Article 1 shall be amended as follows:

- (a) in the second subparagraph of paragraph 1, the following point shall be added:

‘(d) the model of “Phytosanitary Certificates” and “phytosanitary certificates for Re-export” or their electronic equivalent issued by Member States under the International Plant Protection Convention (IPPC).’;

- (b) Paragraph 4 shall be replaced by the following:

‘(4) The Member States shall ensure a close, rapid, immediate and effective cooperation between themselves and the Commission in relation to matters covered by this Directive. To this end, each Member State shall establish or designate a single authority, which shall be responsible, at least, for the coordination and contact in relation to such matters. The official plant protection organisation set up under the IPPC shall preferably be designated for this purpose.

This authority and any subsequent change shall be notified to the other Member States and to the Commission.

In accordance with the procedure referred to in Article 18(2) the single authority may be authorised to assign or delegate tasks of coordination or contact, insofar as they relate to distinct plant health matters covered by this Directive, to another service.’;

2. Article 2(1) shall be amended as follows:

- (a) point (a) shall be amended as follows:

- (i) the first subparagraph shall be replaced by the following:

‘plants shall be considered to mean: living plants and specified living parts thereof, including seeds.’

- (ii) The second subparagraph shall be amended as follows:

— the following seventh indent shall be inserted after the sixth indent:

‘— leaves, foliage,’

— the existing seventh indent shall become the eighth indent,

— the following ninth indent shall be added:

‘— live pollen’

— the following tenth indent shall be added:

‘— bud-wood, cuttings, scions’

— the following eleventh indent shall be added:

‘— any other part of plants, which may be specified in accordance with the procedure referred to in Article 18(2).’;

- (b) point (e) shall be replaced by the following:

‘(e) *harmful organisms* shall be considered to mean: any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products’;

- (c) in point (f), third subparagraph, the terms ‘Article 8’ shall be replaced by ‘Article 18(2)’;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

(d) point (g), shall be amended as follows:

(i) In the first subparagraph, in point (i), the word 'services(s)' shall be replaced by the word 'organisation(s)'.

(ii) The fifth subparagraph shall be replaced by the following:

'The single authority referred to in Article 1(4) shall inform the Commission of the responsible official bodies in the Member State concerned. The Commission shall forward that information to the other Member States.';

(e) in point (h), third subparagraph, in the second sentence and in the fifth subparagraph, the words 'in writing' shall be inserted between the words 'notified' and 'to the Commission';

(f) in point (i), first subparagraph, the first indent shall be replaced by the following:

'— by representatives of the official national plant protection organisation of a third country or, under their responsibility, by other public officers who are technically qualified and duly authorised by that official national plant protection organisation, in the case of statements or measures related to the issuing of the phytosanitary certificates and phytosanitary certificates for re-exports, or their electronic equivalent';

(g) the following points shall be added:

(j) *point of entry* shall be considered to mean: the place where plants, plant products or other objects are brought for the first time into the customs territory of the Community: the airport in the case of air transport, the port in the case of maritime or fluvial transport, the station in the case of railway transport, and the place of the customs office responsible for the area where the Community inland frontier is crossed, in the case of any other transport;

(k) *official body of point of entry* shall be considered to mean: the responsible official body in a Member State in charge of the point of entry;

(l) *official body of destination* shall be considered to mean: the responsible official body in a Member State in charge of the area where the "customs office of destination" is situated;

(m) *customs office of point of entry* shall be considered to mean: the office of the point of entry as defined in (j) above;

(n) *customs office of destination* shall be considered to mean: the office of destination within the meaning of Article 340b(3) of Commission Regulation (EEC) No 2454/93 (*);

(o) *lot* shall be considered to mean: a number of units of a single commodity, identifiable by its homogeneity of composition and origin, and forming part of a consignment;

(p) *consignment* shall be considered to mean: A quantity of goods being covered by a single document required for customs formalities or for other formalities, such as a single phytosanitary certificate or a single alternative document or mark; a consignment may be composed of one or more lots;

(q) *customs-approved treatment or use* shall be considered to mean: the customs-approved treatments or uses referred to in point 15 of Article 4 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (**) (hereafter referred to as the Community Customs Code);

(r) *transit* shall be considered to mean: the movement of goods which are subject to customs supervision from one point to another within the customs territory of the Community as referred to in Article 91 of Regulation (EEC) No 2913/92.

(*) OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2787/2000 (OJ L 330, 27.12.2000, p. 1).

(**) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council (OJ L 311, 12.12.2000, p. 17).;

3. Article 3 shall be amended as follows:

(a) paragraph 3 shall be replaced by the following:

'3. Paragraphs 1 and 2 shall not apply in accordance with conditions which may be determined in accordance with the procedure referred to in Article 18(2), in the case of slight contamination of plants other than those intended for planting by harmful organisms listed in Annex I, Part A, or in Annex II, Part A, or in the case of appropriate tolerances established for harmful organisms listed in Annex II, Part A, Section II as regards plants intended for planting which have previously been selected in agreement with the authorities representing the Member States in the field of plant health, and based on a relevant pest risk analysis.';

(b) paragraph 7 shall be replaced by the following paragraphs 7, 8 and 9:

'7. In accordance with the procedure referred to in Article 18(2), implementing provisions may be adopted to lay down conditions for the introduction into the Member States and the spread within the Member States of:

- (a) organisms which are suspected of being harmful to plants or plant products but are not listed in Annexes I and II;
- (b) organisms, which are listed in Annex II, but which occur on plants or plant products other than those listed in that Annex, and which are suspected of being harmful to plants or plant products;
- (c) organisms, which are listed in Annexes I and II, which are in an isolated state and which are considered to be harmful in that state to plants or plant products.
8. Paragraphs 1 and 5(a) and paragraph 2 and 5(b) and paragraph 4 shall not apply, in accordance with the conditions which shall be determined pursuant to the procedure referred to in Article 18(2), for trial or scientific purposes and for work on varietal selections.
9. After the measures provided for in paragraph 7 have been adopted, that paragraph shall not apply, in accordance with the conditions which shall be determined pursuant to the procedure referred to in Article 18(2), for trial or scientific purposes and for work on varietal selections.;
4. Articles 7, 8 and 9 shall be deleted;
5. Article 10 shall be amended as follows:
- (a) paragraph 1 shall be amended as follows:
- (i) in the first subparagraph, the words 'instead of the phytosanitary certificates referred to in Articles 7 or 8' shall be deleted;
- (ii) the following subparagraph shall be inserted after the first subparagraph:
- 'However, in the case of seeds mentioned in Article 6(4), a plant passport need not be issued, where it is ensured in accordance with the procedure referred to in Article 18(2) that the documents issued in accordance with the Community provisions applicable to the marketing of officially certified seed provide evidence for the compliance with the requirements referred to in Article 6(4). In such case, the documents shall be considered for all purposes to be plant passports within the meaning of Article 2(1)(f).';
- (b) in paragraph 2, in the first subparagraph, before the words 'may not be moved' and in the second subparagraph, before the words 'may not be introduced' the words 'and seeds mentioned in Article 6(4)' shall be inserted;
6. In Article 11(2), the following shall be added at the end of the paragraph:
- 'and a plant passport may be used.'
7. Article 12 shall be replaced by the following:
- 'Article 12
1. Member States shall organise official checks to ensure compliance with the provisions of this Directive, in particular with Article 10(2), which shall be carried out at random and without any discrimination in respect of the origin of the plants, plant products or other objects, and in accordance with the following provisions:
- occasional checks, at any time and at any place where plants, plant products or other objects are moved,
 - occasional checks on premises where plants, plant products or other objects are grown, produced, stored or offered for sale, as well as on the premises of purchasers,
 - occasional checks at the same time as any other documentary check, which is carried out for reasons other than plant health.
- The checks must be regular in premises listed in an official register in accordance with Article 10(3) and Article 13c(1b), and may be regular in premises listed in an official register in accordance with Article 6(6).
- The checks must be targeted if facts have come to light to suggest that one or more provisions of this Directive have not been complied with.
2. Commercial purchasers of plants, plant products or other objects shall, as final users professionally engaged in plant production, retain the related plant passports for at least one year and enter the references in their records.
- Inspectors shall have access to the plants, plant products or other objects at all stages in the production and marketing chain. They shall be entitled to make any investigation necessary for the official checks concerned, including those related to the plant passports and the records.
3. The Member States may be assisted in the official checks by the experts referred to in Article 21.

4. Where it is established, through the official checks carried out in accordance with paragraphs 1 and 2, that plants, plant products or other objects present a risk of spreading harmful organisms, they shall be the subject of official measures in accordance with Article 11(3).

Without prejudice to the notifications and information required under Article 16, Member States shall ensure, where the plants, plant products or other objects concerned come from another Member State, that the single authority of the receiving Member State informs immediately the single authority of that Member State and the Commission of the findings and of the official measures which it intends to take or has taken. In accordance with the procedure referred to in Article 18(2), a standardised information system may be set up.;

8. Article 13 shall be replaced by the following Articles 13, 13a, 13b, 13c, 13d and 13e:

'Article 13

1. Member States shall ensure, without prejudice to:

— the provisions of Article 3(3), 13b(1), (2), (3), (4) and (5),

— the specific requirements and conditions laid down in derogations adopted pursuant to Article 15(1), in equivalency measures adopted pursuant to Article 15(2), or in emergency measures adopted pursuant to Article 16, and

— specific agreements concluded on matters dealt with in this Article between the Community and one or more third countries,

that plants, plant products or other objects, listed in Annex V, Part B, which come from a third country and are brought into the customs territory of the Community, shall, from the time of their entry, be subject to customs supervision pursuant to Article 37(1) of the Community Customs Code and also to supervision by the responsible official bodies. They may only be placed under one of the customs procedures as specified in Article 4(16)(a), (d), (e), (f), (g) of the Community Customs Code, if the formalities as specified in Article 13a have been completed in accordance with the provisions of Article 13c(2), such as to conclude, as a result of these formalities and as far as can be determined:

(i) — that the plants, plant products or other objects are not contaminated by harmful organisms listed in Annex I, Part A, and

— in the case of plants or plant products listed in Annex II, Part A, that they are not contaminated

by the relevant harmful organisms listed in that Annex, and

— in the case of plants, plant products or other objects listed in Annex IV, Part A, that they comply with the relevant special requirements indicated in that Annex, or, where applicable, with the option declared in the certificate pursuant to Article 13a(4)(b), and

(ii) that the plants, plant products or other objects are accompanied by the respective original of the required official "phytosanitary certificate" or "phytosanitary certificate for re-export" issued in accordance with the provisions laid down in Article 13a(3) and (4), or, where relevant, that the original of alternative documents or marks as specified and permitted in implementing provisions accompany, or are attached to, or otherwise put on, the object concerned.

Electronic certification may be recognised, provided that the respective conditions specified in implementing provisions are met.

Officially certified copies may also be recognised in exceptional cases which shall be specified in implementing provisions.

The implementing provisions referred to in (ii) above may be adopted in accordance with the procedure referred to in Article 18(2).

2. Paragraph 1 shall apply, in cases of plants, plant products or other objects intended for a protected zone, in respect of harmful organisms and of special requirements listed in Annex I, Part B, Annex II, Part B and Annex IV, Part B respectively, for that protected zone.

3. Member States shall provide that plants, plant products or objects other than those referred to in paragraph 1 or 2, which come from a third country and are brought into the customs territory of the Community, may, from the time of their entry, be subject to supervision by the responsible official bodies, in respect of the first, second or third indent of paragraph 1(i). These plants, plant products or objects include wood in the form of dunnage, spacers, pallets or packing material, which are actually in use in the transport of objects of all kinds.

Where the responsible official body makes use of that faculty, the plants, plant products or objects concerned shall remain under the supervision referred to in paragraph 1, until the relevant formalities have been completed such as to conclude, as a result for these formalities and as far as can be determined, that they comply with the relevant requirements laid down in or under this Directive.

Implementing provisions as regards type of information and the means of transmission thereof to be supplied by importers, or their customs representatives, to the responsible official bodies, as regards the plants, plant products or objects including the different types of wood, as referred to in the first subparagraph, shall be adopted in accordance with the procedure referred to in Article 18(2).

4. Without prejudice to Article 13c(2)(a) Member States shall, if there is a risk of spread of harmful organisms, also apply paragraphs 1, 2 and 3 to plants, plant products or other objects being placed under one of the customs-approved treatments or uses as specified in Article 4(15)(b), (c), (d), (e) of the Community Customs Code or under the Customs procedures as specified in Article 4(16)(b), (c) of that Code.

Article 13a

1. (a) The formalities referred to in Article 13(1) shall consist of meticulous inspections by the responsible official bodies on at least:

- (i) each consignment declared, under the customs formalities, to consist of or to contain plants, plant products or other objects, referred to in Article 13(1), (2) or (3) under the respective conditions, or
- (ii) in the case of a consignment which is composed of different lots, each lot declared, under the customs formalities, to consist of, or to contain, such plants, plant products or other objects.

(b) The inspections shall determine whether:

- (i) the consignment or lot is accompanied by the required certificates, alternative documents or marks, as specified in Article 13(1)(ii) (documentary checks),
- (ii) in its entirety or on one or more representative samples, the consignment or lot consists of, or contains the plants, plant products or other objects, as declared on the required documents (identity checks), and
- (iii) in its entirety or on one or more representative samples, including the packaging and, where appropriate, the transport vehicles, the consignment or lot or their wood packing

material comply with the requirements laid down in this Directive, as specified in Article 13(1)(i) (plant health checks), and whether Article 16(2) applies.

2. The identity checks and plant health checks shall be carried out at reduced frequency, if:

- activities of inspection on plants, plant products or other objects in the consignment or lot were already carried out in the consignor third country under technical arrangements referred to in Article 13b(6), or
- the plants, plant products or other objects in the consignment or lot are listed in the implementing provisions adopted for this purpose pursuant to paragraph 5(b), or
- the plants, plant products or other objects in the consignment or lot came from a third country for which in or under comprehensive international phytosanitary agreements based on the principle of reciprocal treatment between the Community and a third country, provision for a reduced frequency of identity and plant health checks is mentioned,

unless there is a serious reason to believe that the requirements laid down in this Directive are not complied with.

The plant health checks may also be carried out at reduced frequency, if there is evidence, collated by the Commission and based on experience gained from earlier introduction of such material of the same origin into the Community as confirmed by all Member States concerned, and after consultation within the Committee referred to in Article 18, to believe that the plants, plant products or other objects in the consignment or lot comply with the requirements laid down in this Directive, provided that the detailed conditions specified in implementing provisions pursuant to paragraph 5(c) are met.

3. The official "phytosanitary certificate" or "phytosanitary certificate for re-export" referred to in Article 13(1)(ii) shall have been issued in at least one of the official languages of the Community and in accordance with the laws or regulations of the third country of export or re-export which have been adopted, whether a contracting party or not, in compliance with the provisions of the IPPC. It shall be addressed to the "Plant Protection Organisations of the Member States of the European Community" as referred to in Article 1(4), first subparagraph, last sentence.

The certificate shall not have been made out more than 14 days before the date on which the plants, plant products or other objects covered by it have left the third country in which it was issued.

It shall contain information in accordance with the models specified in the Annex to the IPPC, irrespective of its format.

It shall be in one of the models determined by the Commission pursuant to paragraph 4. The certificate shall have been issued by authorities empowered to this effect on the basis of laws or regulations of the third country concerned, as submitted, in accordance with the provisions of the IPPC, to the Director General of FAO, or, in the case of third countries non-party to the IPPC, to the Commission. The Commission shall inform the Member States of the submissions received.

4. (a) In accordance with the procedure referred to in Article 18(2), the acceptable models as specified in the different versions of the Annex to the IPPC shall be determined. In accordance with the same procedure, alternative specifications for the "phytosanitary certificates" or "phytosanitary certificates for re-export" may be laid down for third countries non-party to the IPPC.

(b) Without prejudice to Article 15(4), the certificates, in the case of plants, plant products or other objects listed in Annex IV Part A section I or Part B, shall specify, under the heading "Additional Declaration" and where relevant, which special requirement out of those listed as alternatives in the relevant position in the different parts of Annex IV have been complied with. This specification shall be given through reference to the relevant position in Annex IV.

(c) In the case of plants, plant products or other objects, to which special requirements laid down in Annex IV, Part A, or Part B apply, the official "phytosanitary certificate" referred to in Article 13(1)(ii) shall have been issued in the third country in which the plants, plant products or other objects originate (country of origin).

(d) However, in the case where the relevant special requirements can be fulfilled also at places other than that of origin, or where no special requirement applies, the "phytosanitary certificate" may have been issued in the third country where the plants, plant products or other objects come from (consignor country).

5. In accordance with the procedure referred to in Article 18(2), implementing provisions may be adopted to:

(a) lay down procedures for the carrying out of plant health checks referred to in paragraph 1(b), point (iii), including minimum numbers and minimum sizes of samples,

(b) establish lists of plants, plant products or other objects on which plant health checks shall be carried out at reduced frequency pursuant to paragraph 2, first subparagraph, second indent,

(c) specify the detailed conditions for the evidence referred to in paragraph 2, second subparagraph, and the criteria for the type and level of reduction of the plant health checks.

The Commission may include guidelines in respect of paragraph 2 in the recommendations referred to in Article 21(6).

Article 13b

1. Member States shall ensure that consignments or lots which come from a third country, but are not declared, under the customs formalities, to consist of, or to contain plants, plant products or other objects listed in Annex V, Part B are also inspected by the responsible official bodies, where there is serious reason to believe that such plants, plant products or other objects are present.

Member States shall ensure that whenever a customs inspection reveals that a consignment or lot coming from a third country consists of or contains non-declared plants, plant products or other objects listed in Annex V, Part B, the inspecting customs office shall immediately inform the official body of its Member State, under the cooperation referred to in Article 13c(4).

If, at the outcome of the inspection by the responsible official bodies, doubts remain in respect of the identity of the commodity, in particular concerning the genus or species of plants or plant products or their origin, the consignment shall be considered to contain plants, plant products or other objects as listed in Annex V, Part B.

2. Provided that there is no risk of harmful organisms spreading in the Community:

(a) Article 13(1) shall not apply to the entry, into the Community, of plants, plant products or other objects which are moved from one point to another within the Community passing through the territory of a third country without any change in their customs status (internal transit),

(b) Article 13(1) and Article 4(1) shall not apply to the entry, into the Community, of plants, plant products or other objects which are moved from one point to another within one or two third countries passing through the territory of the Community under appropriate customs procedures without any change in their customs status.

3. Without prejudice to the provisions of Article 4 in respect of Annex III, and provided that there is no risk of harmful organisms spreading in the Community, Article 13(1) need not apply to the entry, into the Community, of small quantities of plants, plant products, foodstuffs or animal feedingstuffs as far as they relate to plants or plant products, where they are intended for use by the owner or recipient for non-industrial and non-commercial purposes, or for consumption during transport.

In accordance with the procedure referred to in Article 18(2) detailed rules may be adopted specifying the conditions for the implementation of this provision, including the determination of "small quantities".

4. Article 13(1) shall not apply, under specified conditions, to the entry, into the Community, of plants, plant products or other objects for use in trials, for scientific purposes or for work on varietal selections. The specified conditions shall be determined in accordance with the procedure referred to in Article 18(2).

5. Provided that there is no risk of harmful organisms spreading in the Community, a Member State may adopt a derogation that Article 13(1) shall not apply in specified individual cases to plants, plant products or other objects which are grown, produced or used in its immediate frontier zone with a third country and introduced into that Member State in order to be worked in nearby locations in the frontier zone of its territory.

When granting such a derogation, the Member State shall specify the location and the name of the person working it. Such details, which shall be updated regularly, shall be made available to the Commission

Plants, plant products and other objects which form the subject of a derogation under the first subparagraph shall be accompanied by documentary evidence of the location in the relevant third country from which the said plants, plant products and other objects originate.

6. It may be agreed, in technical arrangements made between the Commission and the competent bodies in

certain third countries and approved in accordance with the procedure referred to in Article 18(2), that activities referred to in Article 13(1)(i) may also be carried out under the authority of the Commission and in accordance with the relevant provisions of Article 21 in the consignor third country, in cooperation with the official plant protection organisation of that country.

Article 13c

1. (a) The formalities as specified in Article 13a(1), the inspections as provided for in Article 13b(1) and the checks for compliance with the provisions of Article 4 in respect of Annex III shall be carried out in connection with, as specified in paragraph 2, the formalities required for the placing under a customs procedure as referred to in Article 13(1) or Article 13(4).

They shall be carried out in compliance with the provisions of the International Convention on the Harmonisation of Frontier Controls of Goods, in particular Annex 4 thereof, as approved by Council Regulation (EEC) No 1262/84 (*).

(b) Member States shall provide that importers, whether or not producers, of plants, plant products or other objects, listed in Annex V, Part B, must be included in an official register of a Member State under an official registration number. The provisions of Article 6(5), third and fourth subparagraphs, shall apply accordingly to such importers.

(c) Member States shall also provide that:

(i) importers, or their customs representatives, of consignments consisting of, or containing, plants, plant products or other objects, listed in Annex V, Part B, shall make reference, on at least one of the documents required for the placing under a customs procedure as referred to in Article 13(1) or Article 13(4) to such composition of the consignment by means of the following information:

— reference to the type of plants, plant products or other objects, in using the code of the "Integrated tariff of the European Communities (Taric)",

- statement “This consignment contains produce of phytosanitary relevance”, or any equivalent alternative mark as agreed between the customs office of point of entry and the official body of point of entry,
- reference number(s) of the required phytosanitary documentation,
- official registration number of the importer, as referred to in (b) above;

(ii) airport authorities, harbour authorities or either importers or operators, as arranged between them, give, as soon as they are aware of the imminent arrival of such consignments, advance notice thereof to the customs office of point of entry and to the official body of point of entry.

Member States may apply this provision, *mutatis mutandis*, to cases of land transport, in particular where the arrival is expected outside normal working hours of the relevant official body or other office as specified in paragraph 2.

2. (a) “Documentary checks” and also the inspections as provided for in Article 13b(1) and the checks for compliance with the provisions of Article 4 in respect of Annex III must be made by the official body of point of entry or, in agreement between the responsible official body and the customs authorities of that Member State, by the customs office of point of entry.
- (b) “Identity checks” and “plant health checks” must be made, without prejudice to (c) and (d) below, by the official body of point of entry in connection with the customs formalities required for placing under a customs procedure as referred to in Article 13(1) or Article 13(4), and either at the same place as these formalities, on the premises of the official body of point of entry or at any other place close by and designated or approved by the customs authorities and by the responsible official body, other than the place of destination as specified under (d).
- (c) However, in case of transit of non-Community goods, the official body of point of entry may decide, in agreement with the official body or bodies of destination, that all or part of the “identity checks” or “plant health checks” shall be made by the official body of destination, either on

its premises or at any other place close by and designated or approved by the customs authorities and by the responsible official body, other than the place of destination as specified under (d). If no such agreement is made, the entire “identity check” or “plant health check” shall be made by the official body of the point of entry at either of the places specified in (b).

(d) In accordance with the procedure referred to in Article 18(2), certain cases or circumstances may be specified in which “identity checks” and “plant health checks” may be carried out at the place of destination, such as a place of production, approved by the official body and customs authorities responsible for the area where that place of destination is located, instead of the aforesaid other places, provided that specific guarantees and documents as regards the transport of plants, plant products and other objects are complied with.

(e) In accordance with the procedure referred to in Article 18(2), implementing provisions shall be laid down concerning:

- the minimum conditions for the carrying out of the “plant health checks” under (b), (c) and (d),
- the specific guarantees and documents as regards the transport of the plants, plant products or other objects to the places specified in (c) and (d), to ensure that there is no risk of harmful organisms spreading during transport,
- together with the specification of cases under (d), specific guarantees and minimum conditions concerning the qualification of the place of destination for storage and concerning the storage conditions.

(f) In all cases, the plant “health checks” shall be considered to be an integral part of the formalities referred to in Article 13(1).

3. Member States shall lay down that the respective original, or the electronic form of the certificates or of the alternative documents other than marks, as specified in Article 13(1)(ii), which is produced to the responsible official body for “documentary checks” in accordance with the provisions of Article 13a(1)(b)(i), upon inspection shall be marked with a “visa” of that body, together with its denomination and the date of presentation of the document.

In accordance with the procedure referred to in Article 18(2), a standardised system may be set up to ensure that information included in the certificate, in case of specified plants intended for planting, shall be forwarded to the official body in charge of each Member State or area where plants from the consignment are to be destined or planted.

4. The Member States shall forward to the Commission and the other Member States in writing the list of places designated as points of entry. Any changes to this list shall also be forwarded in writing without delay.

The Member States shall establish a list of the places as specified under 2(b) and 2(c) and places of destinations as identified under 2(d) under their respective responsibility. These lists shall be accessible to the Commission.

Each official body of point of entry, and each official body of destination carrying out identity or plant health checks, must satisfy certain minimum conditions in respect of infrastructure, staffing and equipment.

In accordance with the procedure referred to in Article 18(2), the aforesaid minimum conditions shall be laid down in implementing provisions.

In accordance with the same procedure, detailed rules shall be laid down concerning:

- (a) the type of documents required for the placing under a customs procedure, on which the information specified in paragraph 1(c)(i) shall be made,
- (b) the cooperation between:
 - (i) the official body of point of entry and the official body of destination,
 - (ii) the official body of point of entry and the customs office of point of entry,
 - (iii) the official body of destination and the customs office of destination, and
 - (iv) the official body of point of entry and the customs office of destination.

Those rules shall include model forms of documents to be used in that cooperation, the means of transmission of these documents, the procedures for exchange of information between the official bodies and offices above, as well as the measures which must be taken to maintain the identity of the lots and consignments and to safeguard against the risk of spreading harmful

organisms, in particular during transport, until the completion of the required customs formalities.

5. There shall be a Community financial contribution to Member States in order to strengthen inspection infrastructures in so far as they relate to plant health checks carried out in accordance with paragraph 2(b) or (c).

The purpose of this contribution shall be to improve the provision, at inspection posts other than those at the place of destination, of the equipment and the facilities required to carry out inspection and examination and, where necessary, to carry out the measures provided for in paragraph 7, beyond the level already achieved by complying with the minimum conditions stipulated in the implementing provisions pursuant to paragraph 2(e).

The Commission shall propose the entry of suitable appropriations for that purpose in the general budget of the European Union.

Within the limits set by the appropriations available for these purposes, the Community contribution shall cover up to 50 % of expenditure relating directly to improving equipment and facilities.

Detailed rules concerning the Community financial contribution shall be laid down in an implementing Regulation adopted in accordance with the procedure referred to in Article 18(2).

The allocation and the amount of the Community financial contribution shall be decided in accordance with the procedure referred to in Article 18(2), in the light of the information and documents submitted by the Member State concerned and, where appropriate, of the results of investigations carried out under the Commission's authority by the experts referred to in Article 21, and depending on the appropriations available for the purposes concerned.

6. Article 10(1) and (3) shall apply *mutatis mutandis* to plants, plant products or other objects referred to in Article 13 insofar as they are listed in Annex V, Part A, and where it is considered, on the basis of the formalities referred to in Article 13(1), that the conditions laid down therein are fulfilled.

7. Where it is not considered on the basis of the formalities referred to in Article 13(1), that the conditions laid down therein are fulfilled, one or more of the following official measures shall be taken immediately:

- (a) refusal of entry into the Community of all or part of the consignment,

- (b) movement, under official supervision, in accordance with the appropriate customs procedure, during their movement within the Community, to a destination outside the Community,
- (c) removal of infected/infested produce from the consignment,
- (d) destruction,
- (e) imposition of a quarantine period until the results of the examinations or official tests are available,
- (f) exceptionally and only in specific circumstances, appropriate treatment where it is considered by the responsible official body of the Member State that, as a result of the treatment, the conditions will be fulfilled and the risk of spreading harmful organisms is obviated; the measure of appropriate treatment may also be taken in respect of harmful organisms not listed in Annex I or Annex II.

Article 11(3), second subparagraph, shall apply *mutatis mutandis*.

In the case of a refusal referred to in (a) or movement to a destination outside the Community referred to in (b) or of a removal referred to in (c), the Member States shall lay down that the phytosanitary certificates or the phytosanitary certificates for re-export, and any other document which have been produced when the plants, plant products or other objects were submitted for introduction into their territory, be cancelled by the responsible official body. Upon cancellation, the said certificates or documents shall bear on their face and in a prominent position a triangular stamp in red, marked "certificate cancelled" or "document cancelled" from the said official body, together with its denomination and the date of refusal, of the start of the movement to a destination outside the Community or of removal. It shall be in capital letters, and in at least one of the official languages, of the Community.

8. Without prejudice to the notifications and information required under Article 16, Member States shall ensure that the responsible official bodies inform the plant protection organisation of the third country of origin or consignor third country and the Commission of all cases where plants, plant products or other objects coming from the relevant third country have been intercepted as not complying with the plant health requirements, and the reasons of the interception, without prejudice to the action which the Member State may take or has taken in respect of the intercepted consignment. The information shall be given as soon as possible so that the plant protection organisations concerned and, where appropriate, also the Commission, may study the case with a view, in particular, to taking the steps necessary to prevent further occurrences similar to

the intercepted one. In accordance with the procedure referred to in Article 18(2), a standardised information system may be set up.

(*) OJ L 126, 12.5.1984, p. 1.

Article 13d

1. Member States shall ensure the collection of fees (Phytosanitary fee) to cover the costs occasioned by the documentary checks, identity checks and plant health checks provided for in Article 13a(1), which are carried out pursuant to Article 13. The level of the fee shall reflect:

- (a) the salaries, including social security, of the inspectors involved in the above checks;
- (b) the office, other facilities, tools and equipment for these inspectors;
- (c) the sampling for visual inspection or for laboratory testing;
- (d) laboratory testing;
- (e) the administrative activities (including operational overheads) required for carrying out the checks concerned effectively, which may include the expenditure required for pre- and in-service training of inspectors.

2. Member States may either set the level of the Phytosanitary fee on the basis of a detailed cost calculation carried out in accordance with paragraph 1, or apply the standard fee as specified in Annex VIIIa.

When, pursuant to Article 13a(2), for a certain group of plants, plant products or other objects originating in certain third countries, identity checks and plant health checks are being carried out at reduced frequency, Member States shall collect a proportionally reduced Phytosanitary fee from all consignments and lots of that group, whether subjected to inspection or not.

In accordance with the procedure referred to in Article 18(2), implementing measures may be adopted to specify the level of this reduced Phytosanitary fee.

3. When the Phytosanitary fee is set by a Member State on the basis of the costs borne by the responsible official body of that Member State, the Member States concerned shall communicate to the Commission reports specifying the method for calculating the fees in relation to the elements listed in paragraph 1.

Any fee imposed in accordance with the first subparagraph shall be no higher than the actual cost borne by the responsible official body of the Member State.

4. No direct or indirect refund of the fees provided for in this Directive shall be permitted. However the possible application by a Member State of the standard fee as specified in Annex VIIIa shall not be considered an indirect refund.

5. The standard fee as specified in Annex VIIIa is without prejudice to extra charges to cover additional costs incurred in special activities relating to the checks, such as exceptional travelling by inspectors or waiting periods of inspectors due to delays in the arrival of consignments out of schedule, checks carried out outside normal working hours, supplementary checks or laboratory testing required in addition to those provided for in Article 13 for confirmation of conclusions drawn from the checks, special phytosanitary measures as required under Community acts based on Articles 15 or 16, measures taken pursuant to Article 13c(7), or the translation of required documents.

6. Member States shall designate the authorities empowered to charge the Phytosanitary fee. The fee shall be payable by the importer, or his customs representatives.

7. The Phytosanitary fee shall replace all other charges or fees levied in the Member States at national, regional or local level for the checks referred to in paragraph 1, and the attestation thereof.

Article 13e

“Phytosanitary certificates” and “phytosanitary certificates for re-export”, which Member States issue under the IPPC shall be in the format of the standardised model given in Annex VII.

9. In Article 14, the second subparagraph shall be amended as follows:

- (a) the terms ‘Article 17’ shall be replaced by the terms ‘Article 18(2)’;
- (b) in point (c), the words ‘in agreement with the Member State concerned’ shall be replaced by ‘in consultation with the Member State concerned’;
- (c) point (d) shall be replaced by the following: ‘(d) any amendment to the Annexes to be made in the light of developments in scientific or technical knowledge, or when technically justified, consistent with the pest risk involved’;

(d) the following point (e) shall be added:

‘(e) “amendments to Annex VIIIa”.’.

10. Article 15 shall be amended as follows:

(a) in paragraph 1, the introduction to, and the first two indents of the first subparagraph shall be replaced by the following:

‘1. In accordance with the procedure referred to in Article 18(2), derogations may be provided for:

— from Article 4(1) and (2) with regard to Annex III, Part A and Part B, without prejudice to the provisions of Article 4(5), and from Article 5(1) and (2) and the third indent of Article 13(1)(i) with regard to requirements referred to in Annex IV, Part A, Section I and Annex IV, Part B,

— from Article 13(1)(ii) in the case of wood, if equivalent safeguards are ensured by means of alternative documentation or marking,’

(b) paragraphs 2 and 3 shall be replaced by the following paragraphs 2, 3 and 4:

‘2. In accordance with the procedures referred to in the first subparagraph of paragraph 1, phytosanitary measures adopted by a third country for export into the Community shall be recognised as equivalent to the phytosanitary measures laid down in this Directive, in particular to those specified in Annex IV, if that third country objectively demonstrates to the Community that its measures achieve the Community’s appropriate level of phytosanitary protection and if this is confirmed by the conclusions resulting from findings made on the occasion of reasonable access of the experts referred to in Article 21 for inspection, testing and other relevant procedures in the relevant third country.

Upon request by a third country, the Commission will enter into consultations with the aim of achieving bilateral or multilateral agreements on recognition of the equivalence of specified phytosanitary measures.

3. Decisions providing for derogations pursuant to the first subparagraph of paragraph 1 or recognition of equivalence pursuant to paragraph 2, shall require that compliance with the conditions laid down therein has been officially established in writing by the exporting country for each individual case of use, and shall set out the details of the official statement confirming compliance.

4. Decisions referred to in paragraph 3 shall specify whether or in what manner Member States shall inform the other Member States and the Commission of each individual case of use or groups of cases of use.;

11. Article 16 shall be amended as follows:

(a) in paragraph 1, in the first sentence of the first subparagraph, the words 'in writing' shall be inserted between the words 'notify and' the 'Commission';

(b) in paragraph 2, in the first sentence of the first and third subparagraphs, the words 'in writing' shall be inserted between the words 'notify' and 'the Commission';

(c) in paragraph 3, in the third sentence, the words 'based on a pest risk analysis or a preliminary pest risk analysis in cases referred to in paragraph 2' shall be inserted between 'measures' and 'may be adopted', and the terms 'Article 19' shall be replaced by 'Article 18(2)';

(d) the following paragraph 5 shall be added:

'5. If the Commission has not been informed of measures taken under paragraphs 1 or 2, or if it considers the measures taken to be inadequate, it may, pending the meeting of the Standing Committee on Plant Health, take interim protective measures based on a preliminary pest risk analysis to eradicate, or if that is not possible, inhibit the spread of the harmful organism concerned. These measures shall be submitted to the Standing Committee on Plant Health as soon as possible to be confirmed, amended or cancelled in accordance with the procedure referred to in Article 18(2).';

12. Article 17 shall be deleted;

13. Article 18 shall be replaced by the following:

'Article 18

1. The Commission shall be assisted by the Standing Committee on Plant Health instituted by Council Decision 76/894/EEC (*) hereafter referred to as "the Committee".

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

(*) OJ L 340, 9.12.1976, p. 25.;

14. Article 19 shall be deleted;

15. Article 21 shall be amended as follows:

(a) paragraph 3 shall be replaced by the following:

'3. The checks referred to in paragraph 1 may be carried out in respect of the following tasks:

— monitoring examinations pursuant to Article 6,

— carrying out the official checks pursuant to Article 12(3),

— monitoring or, within the framework of the provisions laid down in the fifth subparagraph of paragraph 5, carrying out in cooperation with the Member States inspections pursuant to Article 13(1),

— carrying out or monitoring the activities specified in the technical arrangements referred to in Article 13b(6),

— making the investigations referred to in Article 15(1), 15(2) and Article 16(3),

— monitoring activities required under the provisions establishing the conditions under which certain harmful organisms, plants, plant products or other objects may be introduced into, or moved within, the Community or certain protected zones thereof, for trial or scientific purposes or for work on varietal selection referred to in Articles 3(9), 4(5), 5(5) and 13b(4),

— monitoring activities required under authorisations granted pursuant to Article 15, under measures taken by Member States pursuant to Article 16(1) or (2), or under measures adopted pursuant to Article 16(3) or (5),

— assisting the Commission in the matters referred to in paragraph 6,

— carrying out any other duty assigned to the experts in the detailed rules referred to in paragraph 7;;

(b) in paragraph 5, in the second subparagraph, the following sentence shall be added after the third sentence:

'This provision shall not apply to expenses resulting from the following types of requests made on the occasion of the participation of the said experts in the Member States' import inspections: laboratory testing and sampling for visual inspection or for laboratory testing, and already covered by the fees referred to in Article 13d.;

16. In Article 24(3), the following subparagraph shall be added:

'The amounts to be refunded under paragraph 3 shall be fixed in accordance with the procedure referred to in Article 18(2).;

17. In Articles 25 and 26, the respective references to 'Article 13(9)' shall be replaced by 'Article 13c(5).;

18. In Annex VII, Part B shall be amended as follows:

(a) The title shall be replaced by the following:

'B. Model phytosanitary certificate for re-export'.

(b) In box 2 of the model certificate, the words 'REFORWARDING PHYTOSANITARY CERTIFICATE' shall be replaced by 'PHYTOSANITARY CERTIFICATE FOR RE-EXPORT'.

19. The following Annex VIIIa shall be inserted in the Directive after Annex VIII:

'ANNEX VIIIa

The standard fee referred to in Article 13d(2) shall be set at the following levels:

<i>(in EUR)</i>			
Item	Quantity	Price	
(a) for documentary checks	Per consignment	7	
(b) for identity checks	Per consignment		
	— up to a size of a truck load, a railway wagon load or the load of a container of comparable size	7	
	— bigger than the above size	14	
(c) for plant health checks, in accordance with the following specifications:			
	— cuttings, seedlings (except forestry reproductive material), young plants of strawberries or of vegetables	Per consignment	
		— up to 10 000 in number	17,5
		— for each additional 1 000 units	0,7
		— maximum price	140
	— shrubs, trees (other than cut Christmas trees), other woody nursery plants including forest reproductive material (other than seed)	Per consignment	
		— up to 1 000 in number	17,5
		— for each additional 100 units	0,44
		— maximum price	140
	— bulbs, corms, rhizomes, tubers, intended for planting (other than tubers of potatoes)	Per consignment	
		— up to 200 kg of weight	17,5
		— for each additional 10 kg	0,16
	— maximum price	140	
— seeds, tissue cultures	Per consignment		
	— up to 100 kg of weight	7,5	
	— for each additional 10 kg	0,175	
	— maximum price	140	

Item	Quantity	Price
— other plants intended for planting, not specified elsewhere in this table	Per consignment	
	— up to 5 000 in number	17,5
	— for each additional 100 units	0,18
— cut flowers	— maximum price	140
	Per consignment	
	— up to 20 000 in number	17,5
— branches with foliage, parts of conifers (other than cut Christmas trees)	— for each additional 1 000 units	0,14
	— maximum price	140
	Per consignment	
— cut Christmas trees	— up to 100 kg of weight	17,5
	— for each additional 100 kg	1,75
	— maximum price	140
— leaves of plants, such as herbs, spices and leafy vegetables	Per consignment	
	— up to 1 000 in number	17,5
	— for each additional 100 units	1,75
— fruits, vegetables (other than leafy vegetables)	— maximum price	140
	Per consignment	
	— up to 100 kg of weight	17,5
— tubers of potatoes	— for each additional 10 kg	1,75
	— maximum price	140
	Per consignment	
— wood (other than bark)	— up to 25 000 kg of weight	17,5
	— for each additional 1 000 kg	0,7
	Per lot	
— soil and growing medium, bark	— up to 25 000 kg of weight	52,5
	— for each additional 25 000 kg	52,5
	Per consignment	
— grain	— up to 100 m ³ of volume	17,5
	— for each additional m ³	0,175
	Per consignment	
— other plants or plant products not specified elsewhere in this table	— up to 25 000 kg of weight	17,5
	— for each additional 1 000 kg	0,7
	— maximum price	140
— other plants intended for planting, not specified elsewhere in this table	Per consignment	
	— up to 25 000 kg of weight	17,5
	— for each additional 1 000 kg	0,7
— other plants intended for planting, not specified elsewhere in this table	— maximum price	700
	Per consignment	
	— up to 25 000 kg of weight	17,5
— other plants intended for planting, not specified elsewhere in this table	— for each additional 1 000 kg	0,7
	— maximum price	700
	Per consignment	
— other plants intended for planting, not specified elsewhere in this table	— up to 25 000 kg of weight	17,5
	— for each additional 1 000 kg	0,7
	— maximum price	700

Where a consignment does not consist exclusively of products coming under the description of the relevant indent, those parts thereof consisting of products coming under the description of the relevant indent (lot or lots) shall be treated as separate consignment.'

20. When in any provision other than those amended in paragraph 1 to 18 reference is made to 'in accordance with the procedure laid down in Article 17' or to 'in accordance with the procedure laid down in Article 18', these words shall be replaced by the words 'in accordance with the procedure referred to in Article 18(2).'

Article 2

Member States shall adopt and publish before 1 January 2005, the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply those provisions from 1 January 2005.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 28 November 2002.

For the Council

The President

M. FISCHER BOEL
