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Information and Notices

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I

(Information)

COUNCIL

List of members of the Management Board of the European Centre for the Development of Vocational Training*(for the period 17 December 1985 to 16 December 1988) following the Decision by the Council of the European Communities on 17 December 1985*

(85/C 351/01)

I. GOVERNMENT REPRESENTATIVES

Belgium	Mr Alphonse VERLINDEN
Denmark	Ms Birgit BUDUDU
Germany	Mr Alfred HARDENACKE
Greece	Mr Yakovos YAKOVIDIS
France	Mr André RAMOFF
Ireland	Mr Arthur P. O'REILLY
Italy	Mr Giuseppe CACOPARDI
Luxembourg	Mr Norbert HAUPERT
Netherlands	Mr Th. de KEULENAAR
United Kingdom	Mr J. K. FULLER

II. REPRESENTATIVES OF EMPLOYERS' ORGANIZATIONS

Belgium	Mr Alfons DE VADDER
Denmark	Mr Preben KRISTIANSEN
Germany	Mr Helmut BRUMHARD
Greece	Mr Evangelos BOUMIS
France	Miss Marie-José MONTALESCOT
Ireland	Mr Anthony BROWN
Italy	Mr Vincenzo ROMANO
Luxembourg	Mr Eugène MULLER
Netherlands	Mr J. B. DE LEEUWE
United Kingdom	Mr Tony JACKSON

III. REPRESENTATIVES OF WORKERS' ORGANIZATIONS

Belgium	Mrs Anne-Françoise THEUNISSEN
Denmark	Mr Christian Aagaard HANSEN
Germany	Mr Felix KEMPF
Greece	Mr Georgios DASSIS
France	Mr Michel TISSIER
Ireland	Mr Tom McGRATH
Italy	Mr Carmelo CEDRONE
Luxembourg	Mr Jean REGENWETTER
Netherlands	Mr G. A. CREMERS
United Kingdom	Mr Fred JARVIS

List of the members and alternate members of the Committee of the European Social Fund
(for the period 12 December 1985 to 11 December 1987) following the Decision by the
Council of the European Communities on 12 December 1985

(85/C 351/02)

I. GOVERNMENT REPRESENTATIVES

	(a) <i>Members</i>		(b) <i>Alternates</i>
Belgium	Mr J. DENYS	Mr M. ANDRE	Mr P. CHEVREMONT
Denmark	Mrs B. KONDRUP	Mr H. BOSERUP	Mrs D. N. ANDERSEN
Germany	Mr O. SCHULZ	Mr SOMMER	Mr G. FAUST
Greece	Mr A. BOUGAS	Mrs M. PATOULA	Mrs V. STAVRIANOPOULOU
France	Mr BUREAU	Mr M. THEROND	Mr R. COTTAVE
Ireland	Mr P. LEONARD	Mr M. SHERLOCK	Mrs M. CULLINAN
Italy	Mr G. CACOPARDI	Mr L. DE ANGELIS	Mr L. TASSONI
			ESTENSE
			DI CASTELVECCHIO
Luxembourg	Mr R. SCHINTGEN	Mr Y. MERSCH	Mr P. WISELER
Netherlands	Mr A. B. VAANDRAGER	Mrs M. E. VANRIJN-VAN DER TAS	Mr J. W. S. PABON
United Kingdom	Mr J. S. LAMBERT	Mr R. H. NIBLETT	Mr J. M. CURRIE

II. REPRESENTATIVES OF EMPLOYERS' ORGANIZATIONS

	(a) <i>Members</i>		(b) <i>Alternates</i>
Belgium	Mr D. DE NORRE	Mr J. BELLEFROID	Mr G. OTTENBOURGH
Denmark	Mr N. J. HANSEN	Mrs B. JOHANSEN	Mr H. MØRKEBERG
Germany	Mr G. PREUSS	Mr R. EBERT	A. F. Prinzessin zu SCHOENAICH-CAROLATH
Greece	Mr M. TANES	Mr A. SYMEONOGLOU	Mr I. STASINOPOULOS
France	Mr J.-F. RETOURNARD	Mr D. DELAGE	Mr C. AMIS
Ireland	Mr J. F. O'BRIEN	Mr C. POWER	Mr A. O'BOYLE
Italy	Mr F. MONDELLO	Mr G. CAPO	Mr M. MASELLI
Luxembourg	Mr L. JUNG	Mr M. SAUBER	Mr A. ROBERT
Netherlands	Mrs C. HAK	Mr S. J. H. HUIJBEN	Mr B. J. VAN DER TOOM
United Kingdom	Mr H. M. L. MORTON	Mr A. MOORE	Mr N. PARKIN

III. REPRESENTATIVES OF WORKERS' ORGANIZATIONS

	(a) <i>Members</i>		(b) <i>Alternates</i>
Belgium	Mr VAN DEPOELE	Mr J. C. VANDERMEEREN	Mr A. VAN DER HAEGEN
Denmark	Mr N. J. HILSTRØM	Mr P. KARLSEN	Mr H. HINRICH
Germany	Mr F. KEMPF	Mr O. SEMMLER	Mr H.-H. RUBBERT
Greece	Mr P. EVSTATHIOU	Mr G. MAVRIKIOS	Mr G. MARTZOS
France	Mr G. COSYNS	Mr B. DIZIER	Mr A. FAESCH
Ireland	Mr W. A. ATTLEY	Mr D. NEVIN	Mr D. MURPHY
Italy	Mr G. DI PALMA	Mr G. COCCO	Mr A. SERGI
Luxembourg	Mr R. PIZZAFERRI	Mr H. DUNKEL	Mr A. GROBEN
Netherlands	Mrs K. ADELMUND	Mr G. A. CREMERS	Mr H. WEGGELAAR
United Kingdom	Mr W. H. KEYS	Mr K. GRAHAM	Mr F. A. BAKER

COURT OF JUSTICE

Judgment of the Court of 11 December 1985

in Case 110/84 (reference for a preliminary ruling made by the Hoge Raad der Nederlanden): Municipality of Hillegom v. Cornelius Hillenius ⁽¹⁾
(Directive 77/780/EEC — Obligation to maintain professional secrecy of persons employed by authorities empowered to authorize and supervise credit institutions)
(85/C 351/03)

(Language of the Case: Dutch)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 110/84: reference to the Court under Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the proceedings pending before that court between the Municipality of Hillegom and Cornelius Hillenius — on the interpretation of Article 12 of Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions — the Court, composed of Lord Mackenzie Stuart, President, U. Everling, K. Bahlmann and R. Joliet (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, Y. Galmot and T. F. O'Higgins, Judges; Sir Gordon Slynn, Advocate-General; D. Loutermann, Administrator, acting as Registrar, gave a judgment on 11 December 1985, the operative part of which is as follows:

1. Article 12 (1) of Directive 77/780/EEC, which states that the obligation to maintain professional secrecy imposed on persons now or in the past employed by the competent authorities means that the confidential information which they receive in the course of their duties may not be divulged to any person or authority except by virtue of provisions laid down by law, also applies to statements which such persons make as witnesses in civil actions.
2. The provisions laid down by law under which confidential information may be divulged in accordance with Article 12 (1) cited above comprise general provisions not specifically intended to lay down derogations from the prohibition against divulging the kind of information envisaged by the Directive but which define the limits set by the maintenance of professional secrecy to the obligation to give evidence.

⁽¹⁾ OJ No C 132, 19. 5. 1984.

Judgment of the Court (Second Chamber) of 12 December 1985

in Case 208/84 (reference for a preliminary ruling made by the College van Beroep voor het Bedrijfsleven): Vonk's Kaas Inkoop en Productie Holland BV v.1. Minister van Landbouw en Visserij and 2. Produktschap voor Zuivel ⁽²⁾
(Monetary compensatory amounts — Cheese waste)
(85/C 351/04)

(Language of the Case: Dutch)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 208/84: reference to the Court under Article 177 of the EEC Treaty by the College van Beroep en Bedrijfsleven (Administrative Court of Last Instance in Matters of Trade and Industry) for a preliminary ruling in the proceedings pending before that court between Vonk's Kaas Inkoop en Productie Holland BV and 1. Minister van Landbouw en Visserij (Minister of Agriculture and Fisheries) and 2. Produktschap voor Zuivel (Dairy Board) — on the validity of the provisions contained in Note (5) of Part 5 of Annex I to Commission Regulation No 1245/83 of 20 May 1983 fixing the monetary compensatory amounts and rates required for their application (Official Journal 1983, No L 135, p. 3), as successively amended by Commission Regulations (EEC) No 3281/83 of 18 November 1983, (Official Journal 1983, No L 322, p. 36) and (EEC) No 270/84 of 1 February 1984 (Official Journal 1984, No L 31, p. 15) — the Court (Second Chamber), composed of K. Bahlmann, President, T. Koopmans and O. Due, Judges; M. Darmon, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 12 December 1985, the operative part of which is as follows:

Examination of the question referred to the Court for a preliminary ruling has disclosed no factor of such a nature as to affect the validity of Commission Regulation (EEC) No 3281/83 of 18 November 1983, amending Regulation (EEC) No 1245/83 in respect of the monetary compensatory amounts applicable to cheese rinds and wastes, or Commission Regulation (EEC) No 270/84 of 1 February 1984, amending the same as regards certain monetary compensatory amounts in the cereals and milk and milk products sectors.

⁽²⁾ OJ No C 252, 19. 9. 1984, p. 4.

II

(Preparatory Acts)

COMMISSION

Amended proposal for a first Council Directive to approximate the laws of the Member States relating to trade-marks ⁽¹⁾*COM(85) 793 final**(Submitted by the Commission to the Council pursuant to the second paragraph of Article 149 of the EEC Treaty on 17 December 1985)*

(85/C 351/05)

ORIGINAL PROPOSAL

THE COUNCIL OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,
Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas:

The trade-mark laws at present applicable in the Member States contain disparities which may impede the free movement of goods and freedom to provide services, may distort competition within the common market and may therefore directly affect the establishment and functioning of that market.

It does not appear to be necessary at present to undertake full-scale harmonization of the trade-mark laws of the Member States. It will be sufficient if approximation is limited to those national provisions of law which most directly affect free movement of goods and services. It follows that this Directive does not deprive Member States of the right to continue to protect trade-marks acquired through use but takes them into account only in regard to the relationship between them and trade-marks acquired by registration, the only marks which it covers. It is, further, important not to disregard the solutions and advantages which the Community trade-mark system affords to undertakings wishing to acquire trade-marks. Under this system there is no point in requiring the Member States, *inter alia*, to authorize the registration of additional categories of signs or to recognize service marks. For the same reason, there is no justification for increasing the protection of marks which enjoy a particular reputation.

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN COMMUNITIES,
Unchanged

Having regard to the proposal from the Commission ⁽²⁾,
Having regard to the opinion of the European Parliament ⁽³⁾,

Having regard to the opinion of the Economic and Social Committee ⁽⁴⁾,

Whereas:

Unchanged

It does not appear to be necessary at present to undertake full-scale harmonization of the trade-mark laws of the Member States. It will be sufficient if approximation is limited to those national provisions of law which most directly affect free movement of goods and services. This Directive does not deprive Member States of the right to continue to protect trade-marks acquired through use but takes them into account only in regard to the relationship between them and trade-marks acquired by registration. It is, further, important not to disregard the solutions and advantages which the Community trade-mark system affords to undertakings wishing to acquire trade-marks. Under this system there is no point in requiring the Member States, *inter alia*, to authorize the registration of additional categories of signs or to recognize service marks.

⁽¹⁾ OJ No C 351, 10. 12. 1980, p. 1.

⁽²⁾ OJ No C 351, 31. 12. 1980, p. 1.

⁽³⁾ OJ No C 307, 14. 11. 1983, p. 60.

⁽⁴⁾ OJ No C 310, 30. 11. 1981, p. 22.

ORIGINAL PROPOSAL

This Directive excludes the application to trade-marks of other rules of law of the Member States, such as the provisions relating to fair competition. Moreover, as it only partially approximates the laws of the Member States, Article 36 of the Treaty continues to apply.

Attainment of the objectives at which this approximation of laws is aiming requires that the conditions for obtaining and continuing to hold a trade-mark are, in general, identical in all Member States.

In order to reduce the total number of trade-marks registered and protected in the Community and, consequently, the number of conflicts which arise between them, it is essential that the trade-marks be actually used.

The principal purpose of the Directive is to ensure that henceforth trade-marks enjoy uniform protection under the legal systems of all the Member States.

The protection afforded by the trade-mark is bound up with the concept of similarity of signs, similarity of goods and services and the possibility of confusion arising therefrom. The purpose of protection is to guarantee the trade-mark's function as an indicator of origin. It is essential to give strict interpretation to the abovementioned concepts so as not to impede the free movement of goods and the freedom to provide services beyond the limits required for the protection of trade-marks. The current case law in several of the Member States affords to trade-marks a degree of protection which is to some extent inconsistent with the specific purpose of trade-mark law. The Directive therefore requires that the case law be examined. It is necessary, in particular, that by simultaneous comparison of signs, goods and services it be certain in each case that customers are likely to be confused as to the goods or services which are identified by the signs. Where a trade-mark consists of several elements, it must be considered in its entirety in determining whether the sign which is alleged to infringe it is so similar to it that the sign may be confused with the trade-mark. It is no longer possible, in determining whether, in a particular Member State, two verbal signs are homophones or are, at any rate, phonetically similar, to disregard the existence of the Community and the fact that the public is increasingly aware of the correct pronunciation of words in the languages which are spoken therein.

AMENDED PROPOSAL

This Directive does not exclude the application to trade-marks of other rules of law of the Member States such as the provisions relating to fair competition. Moreover, as it only partially approximates the laws of the Member States, Article 36 of the Treaty continues to apply.

Attainment of the objectives at which this approximation of laws is aiming requires that the conditions for obtaining and continuing to hold a registered trade-mark are, in general, identical in all Member States.

In order to reduce the total number of trade-marks registered and protected in the Community and, consequently, the number of conflicts which arise between them, it is essential that the registered trade-marks be actually used.

The principal purpose of the Directive is to ensure that henceforth registered trade-marks enjoy uniform protection under the legal systems of all the Member States.

The protection afforded by the registered trade-mark is bound up with the concept of similarity of a sign and the goods and services in connection with which it is used, to the registered trade-mark and the goods or services for which it is registered, and with the possibility of confusion between the sign and the registered trade-mark. The purpose of protection is to guarantee the trade-mark's function as an indicator of origin. It is essential to give strict interpretation to the abovementioned concepts so as not to impede the free movement of goods and the freedom to provide services beyond the limits required for the protection of registered trade-marks. The current case law in several of the Member States affords to trade-marks degrees of protection which may to some extent go beyond the specific subject matter of trade-marks. The Directive therefore requires that the case law be examined. It is necessary, in particular, by simultaneous comparison of the sign and the goods or services in connection with which it is used and the registered trade-mark and the goods or services for which it is registered, to establish clearly in each case that customers are likely to be confused as to the sign and the goods and services which are identified by the sign on the one hand and the registered trade-mark and the goods or services for which it is registered on the other. Where a trade-mark consists of several elements it must be considered in its entirety in determining whether the sign which is alleged to infringe it is so similar to the registered trade-mark that it is clear that the sign is likely to be confused with the registered trade-mark. It is no longer possible, in determining whether, in a particular Member State, two verbal signs are homophones or are, at any rate, phonetically similar, to disregard the existence of the Community and the fact that the public is increasingly aware of the correct pronunciation of words in the languages which are spoken therein.

ORIGINAL PROPOSAL

The function of indicating origin which is fulfilled by a trade-mark implies that it is not, in principle, possible to prohibit its use by a third party in respect of goods marketed within or outside the Community under the trade-mark by the proprietor or with his consent, or to prohibit its use, for reasons based on trade-mark law, by a licensee supplying goods or providing services under the trade-mark outside the territory covered by the licence.

It is necessary for the functioning of the common market to approximate national procedural rules only in so far as this will contribute to the settlement of disputes between the proprietors of trade-marks or between the latter and holders of other private rights. For the present, provision is made for an amicable settlement procedure only. It may, however, be proper at some later stage, depending in particular on the degree of integration then achieved by the Community, to contemplate new measures which would enable such conflicts to be resolved more easily.

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive applies to every trade-mark in respect of goods or services which is the subject of an application in a Member State for registration as an individual trade-mark, a collective mark or a guarantee mark, or which is the subject of an international registration having effect in a Member State.

Article 2

1. Trade-marks shall be refused registration or shall be invalidated if, on the date of application therefor, they consist of signs which, under the law of the Member State concerned, cannot constitute a trade-mark or be held as such by the applicant, or if, on that date, they are devoid of distinctive character in a Member State, and in particular:

- (a) those which consist solely of signs or indications which in trade may be requisite for the purpose of showing the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the service or other characteristics of the goods or service, unless those marks have acquired distinctive character in consequence of the use made of them;
- (b) those which consist solely of signs or indications which are customarily used to designate the goods or service in the current language of the trade or in the *bona fide* and established practices thereof.

2. Trade-marks shall also be refused registration or shall be invalidated if, on the date of application therefor,

AMENDED PROPOSAL

It follows from the principle of free flow of goods that the proprietor of a registered trade-mark must not be entitled to prohibit its use by a third party in relation to goods which have been put on the market in the Community, under that trade-mark, by him or with his consent, nor to prohibit its use, for reasons based on trade-mark law, by a licensee who supplies the goods or services under the trade-mark outside the territory covered by the licence.

It is necessary for the functioning of the common market to approximate national procedural rules only in so far as this will contribute to the settlement of disputes between the proprietors of trade-marks or between the latter and holders of other private rights. Consequently, provision is made for an amicable settlement procedure only.

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive applies to every trade-mark in respect of goods or services which is the subject of registration or of an application in a Member State for registration as an individual trade-mark, a collective mark or a guarantee mark, or which is the subject of an international registration having effect in a Member State.

Article 2

1. Trade-marks shall be refused registration or shall be invalidated if, on the date of application therefor, they consist of signs which, under the law of the Member State concerned, cannot constitute a trade-mark or be held as such by the applicant, or if, on that date, they are devoid of distinctive character in that Member State, and in particular:

- (a) Unchanged.

- (b) Unchanged.

2. Trade-marks shall also be refused registration or shall be invalidated if, on the date of application therefor,

ORIGINAL PROPOSAL

- (a) they consist of a shape which is determined by the nature of the goods or which has some technical consequence, or they consist of the shape of the goods and this affects their intrinsic value, to the extent that, in the Member State concerned, a shape may constitute a trade-mark;
 - (b) they include signs or indications liable to mislead the public, particularly as to the nature, quality or geographical origin of the goods or services;
 - (c) they are contrary to public order or to accepted principles of morality or are covered by Article 6 ter of the Paris Convention for the Protection of Industrial Property, hereinafter referred to as the 'Paris Convention'.
3. A trade-mark shall also be invalidated where the goods for which it is registered in the Member State concerned have been marketed in another Member State under another trade-mark by the proprietor or with his consent, unless there are legitimate grounds which justify the use of different marks for those goods in those Member States; but this provision shall not apply if the proprietor decides to surrender, in respect of the goods in question, the trade-mark that exists in the other Member State and furnishes proof, within the period laid down by the authority to which the application for invalidation is submitted, that the trade-mark has been properly surrendered.
4. Trade-marks for which application has been made prior to the date laid down in Article 18 (1) or which are registered before that date shall be invalidated if any of the grounds specified in paragraphs 1 to 3 apply to them.

Article 3

1. The trade-mark confers on the proprietor thereof an exclusive right. That right entitles him to prohibit any third party from using, without his consent, in the course of trade a sign which is identical with or similar to the trade-mark in relation to goods or services identical with or similar to those in respect of which application was made, where such use creates a serious likelihood of confusion on the part of the public.

AMENDED PROPOSAL

- (a) Unchanged.
 - (b) they are liable to mislead the public, particularly as to the nature, quality or geographical origin of the goods or services;
 - (c) they are contrary to public policy or to accepted principles of morality, or have not been authorized by the competent authorities and are to be refused or invalidated pursuant to Article 6 ter of the Paris Convention for the Protection of Industrial Property, hereinafter referred to as the 'Paris Convention'.
3. Deleted.
4. Deleted.

Article 3

1. The registered trade-mark confers on the proprietor exclusive rights therein. The proprietor shall be entitled to prohibit any third party from using in the course of trade, save with his consent:

- (a) any sign which is identical with the trade-mark in relation to goods or services which are identical with those for which the trade-mark is registered;
- (b) any sign which is identical with the trade-mark in relation to goods or services which are similar to those for which the trade-mark is registered, where, because of the similarity of the goods or services, such use involves a likelihood of confusion between the sign and the trade-mark on the part of the public;
- (c) any sign which is similar to the trade-mark in relation to goods or services which are identical with or similar to those for which the trade-mark is registered, where, because of the similarity of the sign and the identity or similarity of the goods or services, such use involves a likelihood of confusion between the sign and the trade-mark on the part of the public.

ORIGINAL PROPOSAL

2. Where the conditions specified in paragraph 1 are satisfied, the following types of use, in particular, may be prohibited:

- (a) affixing the sign to the goods or to the packaging thereof;
- (b) putting the goods on the market under that sign, or supplying services thereunder;
- (c) using the sign on business correspondence or invoices.

3. The Member States shall determine under what conditions compensation may be obtained for loss or damage caused by the acts mentioned in paragraph 1, and the rules of procedure which are to apply.

Article 4

1. The publisher of a dictionary, encyclopaedia or similar work shall ensure that any reproduction of a trade-mark therein is accompanied by an indication that an application has been made for registration of the trade-mark.

2. Where the publisher fails to comply with the requirements of paragraph 1 he shall, at the request of the proprietor of the trade-mark, correct the matter at his own expense in the next edition of the publication.

Article 5

The trade-mark shall not entitle the proprietor thereof to prohibit a third party from using, in the course of trade,

- (a) his surname or address;
- (b) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the service or other characteristics of the goods or service;
- (c) the trade-mark for the purpose of indicating the intended purpose of accessories or spare parts;

provided he does not use them as a trade-mark.

Article 6

1. The trade-mark shall not entitle the proprietor thereof to prohibit its use in relation to goods which have been put on the market under that trade-mark by the proprietor or with his consent.

AMENDED PROPOSAL

2. Where the conditions specified in paragraph 1 are satisfied, the following in particular may be prohibited:

- (a) Unchanged.
- (b) Unchanged.
- (c) Using the sign on business papers.

3. Unchanged.

4. Where, under the law of the Member State, the use of an identical or similar sign in relation to similar goods could not be prohibited before the date referred to in Article 18 (1), the rights conferred by the trade-mark may not be relied on to prevent the continued use of the sign in relation to the goods concerned.

Article 4

1. The publisher of a dictionary, encyclopaedia or similar work shall ensure that any reproduction of a trade-mark therein is accompanied by an indication that the trade-mark is registered, where the reproduction of this trade-mark in such works gives the impression that it constitutes the generic name of the goods or services for which the trade-mark is registered.

2. Unchanged.

Article 5

The trade-mark shall not entitle the proprietor thereof to prohibit a third party from using, in the course of trade,

- (a) his own name and address;
- (b) Unchanged.
- (c) the trade-mark where it is necessary to indicate the intended purpose of a product or service, in particular accessories or spare parts,

provided he uses them in accordance with honest industrial or commercial practice.

Article 6

1. The trade-mark shall not entitle the proprietor thereof to prohibit its use in relation to goods which have been put on the market in the Community under that trade-mark by the proprietor or with his consent.

ORIGINAL PROPOSAL

2. Paragraph 1 shall not apply:

- (a) where there are legitimate grounds for opposing importation into the Community of goods put on the market outside it;
- (b) where the condition of the goods is changed or impaired after they have been put on the market;
- (c) where the goods are repackaged by a third party.

Article 7

The trade-mark may be invoked against a licensee only if he contravenes a limitation with regard to a part of the goods or services in respect of which application has been made for registration of the trade-mark, or contravenes the proprietor's instructions concerning the quality of the goods or services.

Article 8

1. A trade-mark shall be refused registration or shall be invalidated:

- (a) on the ground that an earlier trade-mark exists where those marks are likely to create confusion within the meaning of Article 3 (1);
- (b) on the ground that some other exclusive prior right exists, where there is a serious likelihood of confusion on the part of the public between the trade-mark and that right, unless the latter is a portrait, a surname or a work protected by copyright or by an industrial design or model.

2. Paragraph 1 (b) shall also apply to prohibition of the use of a trade-mark based on the existence of another exclusive prior right.

AMENDED PROPOSAL

2. Paragraph 1 shall not apply where the condition of the goods is changed or impaired after they have been put on the market.

- (a) Deleted.
- (b) Deleted.
- (c) Deleted.

Article 7

The rights conferred by a trade-mark may be invoked against a licensee only if he contravenes the limits on his licence with regard to its duration or to the licensed scope of the goods or services for which the trade-mark is registered or does not comply with the proprietor's instructions in respect of the quality of the goods or services.

Article 8

1. Unchanged.

- (a) if it is identical with an earlier right, and the goods or services are identical with those for which the earlier right was registered in the cases referred to in paragraph 2 (a) or (b), or has been used in the cases referred to in paragraph 2 (c) or (d);
- (b) if it is identical with an earlier right, and the goods or services are similar to those for which the earlier right was registered in the cases referred to in paragraph 2 (a) or (b) or has been used in the cases referred to in paragraph 2 (c) or (d), with the result that there arises a likelihood of confusion between the trade-mark applied for and the earlier right on the part of the public in the territory in which the earlier right has effect;
- (c) if it is similar to an earlier right, and the goods or services are identical with or similar to those for which the earlier right was registered in the cases referred to in paragraph 2 (a) or (b) or has been used in the cases referred to in paragraph 2 (c) or (d), with the result that there arises a likelihood of confusion between the trade-mark applied for and the earlier right on the part of the public in the territory in which the earlier right has effect.

2. An 'earlier right' means:

- (a) trade-marks of the following kinds in respect of which the date of application for registration preceded the date of application for registration of the trade-mark, taking account, where appropriate, of the priorities claimed in respect of those trade-marks:

ORIGINAL PROPOSAL

AMENDED PROPOSAL

- Community trade-marks,
 - trade-marks registered in the Member State,
 - trade-marks registered under international arrangements which have effect in the Member State;
- (b) application for the trade-marks referred to in (a), subject to their registration;
- (c) trade-marks which, on the date of application for registration of the trade-mark, are well known in the Member State, in the sense in which the words 'well known' are used in Article 6b of the Paris Convention;
- (d) any signs used in the business world before the application for registration of the trade-mark which, under the law of the Member State governing them, confer on their proprietor the right to prohibit the use of subsequent trade-marks;
- (e) any signs containing:
- the name of a third person, where use of this name in relation to the goods or services for which the trade-mark is applied for is liable to cause serious detriment to the honour, reputation or credit of that person,
 - a portrait of a third person,
 - a work of a third person protected by copyright or by an industrial model or design,

so, however, that in any opposition, based on such a sign, to the registration of the trade-mark or in proceedings to invalidate the trade-mark the likelihood of confusion does not need to be established.

Article 9

1. Where, in the course of proceedings to oppose registration of a trade-mark or to invalidate a trade-mark or to prohibit the use of a trade-mark, the authority seized of the matter considers that the conflict between that trade-mark and another trade-mark or other right is capable of being resolved amicably, it shall submit proposals to the parties for the purpose of imposing conditions on the use of the trade-mark or of the other right in such manner that there will be no serious likelihood of confusion on the part of the public.

2. Where the proprietor of the trade-mark or of the other right is not party to the proceedings, the authority seized of the matter may order that he be summoned.

Article 10

1. Where the proprietor of a trade-mark or other exclusive right has for three consecutive years acquiesced in the use in a Member State of a later trade-mark which is likely to create confusion with his trade-mark or right, he shall not be entitled to apply for invalidation of the later trade-mark or cause its use to be prohibited in that Member State or in another Member State except where the application for the later trade-mark was made in bad faith.

Article 9

1. Where, in the course of proceedings to oppose registration of a trade-mark or to invalidate a trade-mark or to prohibit the use of a trade-mark, the authority seized of the matter considers that the conflict between that trade-mark and another trade-mark or other right is capable of being resolved amicably, it shall submit proposals to the parties for the purpose of imposing conditions on the use of the trade-mark or of the other right in such manner that there will be no likelihood of confusion on the part of the public.

2. Unchanged.

Article 10

1. Where, in a Member State, the proprietor of a registered trade-mark or of any other earlier right referred to in Article 8 (2) (a) to (d) has acquiesced in the use of a later registered trade-mark in that Member State for a period of three successive years, being aware of such use, he shall not be entitled either to apply for a declaration that the later trade-mark is invalid or to oppose the use of the later trade-mark in respect of the goods or services for which the later trade-mark has been used, unless the later trade-mark was applied for in bad faith.

ORIGINAL PROPOSAL

2. Paragraph 1 shall be without prejudice to the right of the proprietor of a trade-mark which is well known in a Member State within the meaning of Article 6 bis of the Paris Convention to apply for the invalidation of a later trade-mark or to cause its use to be prohibited in that State, within five years after the date of registration of the later trade-mark.

Article 11

1. A trade-mark shall be put to serious use in the Member State concerned, consistently with the terms of this Directive, in connection with the goods or services in respect of which it is registered, unless there exist legitimate reasons for not doing so.

2. Circumstances arising independently of the will of the proprietor of a trade-mark are alone sufficient to constitute legitimate reasons for not using it.

3. Use of a trade-mark by a licensee, by a person who is associated economically with the proprietor or by a person who is entitled to use a collective mark or guarantee mark shall be deemed to constitute use by the proprietor.

4. In relation to trade-marks for which application was made in the Member State concerned before the date laid down in Article 18 (1), the provisions of this Article shall apply with effect from that date only.

Article 12

Where the law of a Member State provides that the existence of a trade-mark may be averred in opposition to the registration of a later trade-mark, it shall provide that, at the request of the applicant for registration or the competent authority, the party opposing registration shall furnish proof that the earlier trade-mark has been used in the manner required by Article 11 during the five years preceding publication of the application for the later trade-mark, on condition that on that date the earlier trade-mark has been registered for not less than five years. In the absence of such proof, the opposition shall be rejected. Where the earlier trade-mark has been used only in respect of part of the goods or services for which it was registered, it shall, for the purposes of examining the opposition, be deemed to be registered in respect only of that part of the goods or services.

AMENDED PROPOSAL

2. Unchanged.

Article 11

1. If, within a period of five years following registration, the proprietor has not put the trade-mark to genuine use in the Member State in connection with the goods or services in respect of which it is registered, or if such use has been suspended during an uninterrupted period of five years, the trade-mark shall be subject to the sanctions provided for in this Directive, unless there exist legitimate reasons for non-use.

The following shall also constitute use for the purposes of paragraph (1):

- (a) use of the trade-mark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered;
- (b) affixing of the trade-mark to products or to packaging thereof in the Member State solely for export purposes.

2. Unchanged.

3. Use of the trade-mark with the consent of the proprietor or by a third party who is entitled to use a collective mark or guarantee mark shall be deemed to constitute use by the proprietor.

4. Unchanged.

Article 12

Where the law of a Member State provides that the existence of a trade-mark may be averred in opposition to the registration of a later trade-mark, it shall provide that, at the request of the applicant for registration or the competent authority, the party opposing registration shall furnish proof that, during the period of five years preceding the date of publication of the later trade-mark application, the earlier trade-mark has been put to genuine use in the Member State in connection with the goods or services in respect of which it is registered, or that there exist legitimate reasons for non-use, provided the earlier trade-mark has at that date been registered for not less than five years. In the absence of proof to this effect, the opposition shall be rejected. If the earlier trade-mark has been used in relation to part only of the goods or services for which it is registered, it shall, for purposes of the examination of the opposition, be deemed to be registered in respect only of that part.

ORIGINAL PROPOSAL

Article 13

1. Renewal of registration of a trade-mark shall be subject to the production of a declaration of user, indicating the goods or services in respect of which the trade-mark has been used in a manner required by Article 11 during the five years preceding expiry of the registration.
2. Where the declaration of user is produced in respect of only part of the goods or services for which the trade-mark is registered, registration shall be renewed only for that part of the goods or services.
3. The laws of the Member States shall determine the procedure for presenting the declaration of user and the penalties applicable where a false declaration is made.

Article 14

1. A trade-mark shall be invalidated if it has not been used in a manner required by Article 11 for an unbroken period of five years; but a trade-mark is not to be invalidated where, between the expiry of that period and the date on which the validity of the trade-mark is contested it has been used in good faith and in a manner required by Article 11.
2. A trade-mark shall also be invalidated if, after the date on which it was registered,
 - (a) it has become, in consequence of acts of the proprietor, the common name for a product or service in respect whereof it is registered;
 - (b) it is liable, in consequence of the use made of it in respect of the goods or services for which it is registered, to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

Article 15

Where a ground for refusal of registration or for invalidation of a trade-mark exists in respect of only part of the goods or services for which that mark has been applied for or registered, refusal of registration or invalidation shall cover only the goods or services concerned.

Article 16

Without prejudice to Article 8, Member States whose laws authorize the registration of collective marks or guarantee marks may provide that such marks be refused registration, or shall be invalidated, on other grounds than those specified in Articles 2 and 14 where the function of those marks so requires.

AMENDED PROPOSAL

Article 13

1. Deleted.
2. Deleted.
3. Deleted.

Article 14

1. A trade-mark shall be invalidated if, within an uninterrupted period of five years, it has not been put to genuine use in the Member State in connection with the goods or services in respect of which it is registered, unless there exist legitimate reasons for non-use; but a trade-mark shall not be invalidated where, after the expiry of that period and before the date on which the validity of the trade-mark is contested, use of the trade-mark has been started or resumed in good faith.
2. Unchanged.
 - (a) in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service in respect of which it is registered;
 - (b) Unchanged.

Article 15

Unchanged.

Article 16

Unchanged.

ORIGINAL PROPOSAL

Article 17

The laws of the Member State shall determine the procedure for registration and for invalidation of trade-marks and the effects of invalidation. They may further provide that a trade-mark to which one of the grounds for invalidation mentioned in this Directive applies shall not be capable of defeating the claims of third parties.

Article 18

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than... They shall immediately inform the Commission thereof.
2. The 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 19

This Directive is addressed to the Member States.

AMENDED PROPOSAL

Article 17

Unchanged.

Article 17a

The symbol composed of a capital letter R contained within a circle, thus ®, may be used to indicate a registered trade-mark.

Article 18

1. Unchanged.
2. Unchanged.

Article 19

Unchanged.

Amended proposal for a Council Directive prohibiting the use in livestock farming of certain substances having a hormonal action ⁽¹⁾

COM(85) 832 final

(Submitted by the Commission to the Council pursuant to the second paragraph of Article 149 of the EEC Treaty on 18 December 1985)

(85/C 351/06)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the administration to farm animals of certain substances having a hormonal action is at present regulated in different ways in the Member States; whereas while their immediate effect on animals from the farmer's point of view is clear, assessments of their effect on human health vary and this is reflected in the regulations governing their use; whereas this divergence distorts the conditions of competition in products that are the subject of common

market organizations and is a serious barrier to intra-Community trade;

Whereas this distortion of competition and barrier to trade should be removed by ensuring that all consumers should be able to buy the products in question under identical conditions of supply and these products should, to meet their anxieties and expectations, be in the best possible state; whereas such a course of action is bound to bring about an increase in consumption of the product in question;

Whereas the use of hormonal substances for fattening purposes should therefore be prohibited; where the use of certain substances for therapeutic purposes may be authorized but must be strictly controlled in order to prevent any misuse of them;

Whereas, since it would be difficult to be certain of correct operation of the scheme as a whole if animals so treated and the meat from such animals were to be traded, this should

⁽¹⁾ OJ No C 313, 4. 12. 1985, p. 4.

as a general rule be prohibited; whereas derogations from this rule may be allowed where satisfactory guarantees can be provided;

Whereas, as part of the adoption of harmonized rules in the Community, arrangements for importation from third countries that offer equivalent guarantees should be introduced; whereas these guarantees can be required under Directives 72/462/EEC ⁽¹⁾ and 85/358/EEC ⁽²⁾,

Whereas, in order to ensure that the provisions of this Directive can be implemented effectively, the latest date for introduction of the provisions of Directive 85/358/EEC should be made to fall before that for introduction of the provisions of this Directive; whereas Community control measures should be involved in order to ensure uniform application in the Member States of the rules applicable on administration of substances having a hormonal or thyrostatic action,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of implementation of this Directive the definitions of meats and of farm animals given in Article 1 of Directive 81/602/EEC shall apply.

For the purposes of implementation of this Directive and of Directive 81/602/EEC 'therapeutic treatment' shall mean the administering to an individual farm animal of any of the substances referred to in Article 3 to treat a fertility problem diagnosed, on examination, by a veterinarian. Such treatment shall remain prohibited for animals intended for fattening.

Article 2

Without prejudice to the provisions of Article 4 of Directive 81/602/EEC, Member States may not authorize any derogation from the provisions of the abovementioned Directive.

Article 3

For the purposes of implementation of Article 4 of Directive 81/602/EEC

- (a) there shall be established, after the Committee on Veterinary Medicines has given its opinion on the measures provided for in the first two indents, and in accordance with the procedure laid down in Article 8,
- a list of the products satisfying the relevant principles and criteria of Directives 81/851/EEC and 81/852 EEC that may be authorized by the Member States for the treatments mentioned in Article 4 of Directive 81/602/EEC,
 - the conditions of use of these products, in particular, the delay period necessary and detailed provisions concerning the control of these conditions of use,

⁽¹⁾ OJ No L 302, 31. 12. 1972, p. 28.

⁽²⁾ OJ No L 191, 23. 7. 1985, p. 46.

— the means of identification of animals.

However, any decision on inclusion of products based on trenbolone and zeranol may be taken only on the basis of authorization by the Council acting by a qualified majority in response to a proposal from the Commission.

Until each of the decisions provided for above has been applied, pharmaceutical specialities which have already received authorization to be placed on the market will continue to be authorized.

Products on the list mentioned at (b) shall be subject to the rules of Articles 24 to 50 of Directive 81/851/EEC, excluding those rules dealing with national authorizations on marketing.

- (b) Products used for therapeutic purposes must be injected by a veterinarian and the animal must be clearly identified. The dose must be recorded and the animal may not be slaughtered before expiry of the waiting period fixed in implementation of the provisions set out at (a).

Article 4

The Member States will prescribe that undertakings producing substances having a thyrostatic action, oestrogen, androgen and gestagen and those authorized for whatever purpose to market those substances, and undertakings producing pharmaceutical and veterinary products based on those substances, must keep a register detailing, in chronological order, quantities produced or acquired and those sold or used for the production of pharmaceutical and veterinary products.

Article 5

Member States must ensure that no animals are dispatched from their territory to that of another Member State that have had administered to them in any way whatsoever substances with a thyrostatic or with an oestrogenic, androgenic or gestagenic action, and that no meat from such animals is dispatched. They shall reserve the Community stamp for meat from untreated animals.

Until 31 December 1987 Member States prohibiting use of the substances mentioned in Article 5 of Directive 81/602/EEC for fattening may restrict entry into their territory to untreated animals and meat from untreated animals.

Article 6

1. Member States shall prohibit importation from third countries of animals and of meat from animals to which have been administered in any way whatsoever substances with a thyrostatic or with an oestrogenic, androgenic or gestagenic action.

2. To this end, the decisions to be taken for implementation of Directive 72/462/EEC, taking account of Article 13 of Directive 85/358/EEC in the case of meat, and

of the equivalent guarantee in the case of live animals, must be adopted before 1 January 1988.

3. Member States shall ensure that imported fresh meat coming from approved slaughterhouses in third countries in respect of which a decision within the meaning of paragraph 2 has been taken is, without prejudice to animal health measures, circulated in the Community in accordance with Article 25 of Directive 72/462/EEC.

4. National rules on substances with a hormonal action dealing with imports from third countries shall remain applicable, subject to respect for the general provisions of the Treaty, until each of these decisions comes into application.

5. As from 1 January 1988, Member States will suspend imports coming from third countries in respect of which no decision within the meaning of paragraph 2 has been taken.

6. For the purposes of application of the above provisions, the Commission shall draw up a list of the products authorized by third countries for the treatments mentioned in Article 4 of Decision 81/602/EEC.

Article 7

The Council, acting by a qualified majority in response to a proposal from the Commission, may adopt derogations from Articles 5 and 6 in respect of trade in treated animals and meat of such animals in the framework of the provisions of Article 4 of Directive 81/602/EEC, where satisfactory guarantees are given.

Article 8

1. Where the procedure laid down in this Article is to be used, matters shall without delay be referred by the chairman, either on his own initiative or at the request of a Member State, to the Standing Veterinary Committee (hereinafter called 'the Committee') set up by the Council Decision of 15 October 1968.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be adopted. The

Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by a majority of 45 votes, the votes of the Member States being weighted as provided for in Article 148 (2) of the Treaty. The Chairman shall not vote.

3. The Commission shall adopt the measures and implement them immediately where they are in accordance with the opinion of the Committee. Where they are not in accordance with the opinion of the Committee or if no opinion is delivered, the Commission shall immediately submit to the Council a proposal on the measures to be taken. The Council shall act by a qualified majority.

If within three months of the date on which a matter was referred to it the Council has not adopted any measures, the Commission shall adopt the proposed measures and implement them immediately, save where the Council has decided against the measures by a simple majority.

Article 9

Measures necessary to ensure a smooth transition to the arrangements laid down in this Directive may be adopted in accordance with the procedure laid down in Article 8. Their maximum duration shall be one year.

Article 10

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

— with Directive 85/358/EEC, by 1 January 1987 at the latest,

— with this Directive, by 1 January 1988 at the latest.

They shall immediately inform the Commission thereof.

Article 11

This Directive is addressed to the Member States.

Proposal for a Council Directive on the protection of animals used for experimental and other scientific purposes

COM(85) 637 final

(Submitted by the Commission to the Council on 20 December 1985)

(85/C 351/07)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas a European Convention for the Protection of Vertebrate Animals used for Experimental and Other Scientific Purposes was adopted by the Committee of Ministers of the Council of Europe on 31 May 1985;

Whereas certain provisions of the Convention could affect certain common rules laid down in particular by Council Directives 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine ⁽¹⁾, 75/318/EEC of 20 May 1975 on the approximation of the laws of Member States relating to analytical, pharmaco-toxicological and clinical standards and protocols in respect of the testing of proprietary medicinal products ⁽²⁾, 79/831/EEC of 18 September 1979 amending for the sixth time Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽³⁾, 81/852/EEC of 28 September 1981 on the approximation of the laws of the Member States relating to analytical, pharmaco-toxicological and clinical standards and protocols in respect of the testing of veterinary medicinal products ⁽⁴⁾, and 83/228/EEC of 18 April 1983 on the fixing of guidelines for the assessment of certain products used in animal nutrition ⁽⁵⁾ and Commission Directive 84/449/EEC of 25 April 1984 adapting to technical progress for the sixth time Council Directive 67/548/EEC ⁽⁶⁾;

Whereas the European Convention for the protection of vertebrate animals used for experimental and other scientific purposes is open to signature by the Member States; whereas the Convention is also open for signature by the European Communities;

Whereas, however, Community measures on the subject should be adopted without delay;

Whereas there exist between the national laws at present in force for the protection of animals used for experimental purposes disparities affecting the functioning of the common market;

Whereas the Community should also take action to avoid in general all forms of cruelty to animals;

Whereas, in order to eliminate these disparities, the laws of the Member States should be harmonized; whereas that would accordingly enable action to be taken at Community level to protect animals used for experimental purposes from unnecessary pain and suffering,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive is concerned with the animals used for experimental and other scientific purposes. It is aimed to ensure that the number of animals used for experimentation is reduced to a minimum, that such animals are properly taken care of and that no pain or suffering is inflicted unnecessarily.

2. Experimentation using experimental animals shall be undertaken only for one or more of the following purposes and subject to the restrictions laid down in this Directive.

- (a) (i) the avoidance or prevention of disease, ill-health or other abnormality, or their effects, in humans, vertebrate or invertebrate animals or plants, including the production and the quality, effectiveness and safety testing of drugs, substances or products;
- (ii) the diagnosis or treatment of disease, ill-health or other abnormality, or their effects, in humans, vertebrate or invertebrate animals or plants;
- (b) the assessment, detection, regulation or modification of physiological conditions in humans, vertebrate and invertebrate animals or plants;
- (c) the protection of the environment;
- (d) scientific research;
- (e) education and training;
- (f) forensic inquiries.

Article 2

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

⁽¹⁾ OJ No 121, 29. 7. 1964, p. 1977/64.

⁽²⁾ OJ No L 147, 9. 6. 1975, p. 1.

⁽³⁾ OJ No L 259, 15. 10. 1979, p. 10.

⁽⁴⁾ OJ No L 317, 6. 11. 1981, p. 16.

⁽⁵⁾ OJ No L 126, 13. 5. 1983, p. 23.

⁽⁶⁾ OJ No L 251, 19. 9. 1984, p. 1.

- (a) '*animal*' unless otherwise qualified, means any live non-human vertebrate, including foetuses and free living larval and/or reproducing larval forms; and invertebrates of the Phylum *mollusca*, Class *cephalopoda*.
- (b) '*experimental animals*' means animals used or to be used in required or approved experimentation;
- (c) '*bred animals*' means animals specially bred in facilities approved by the authority;
- (d) '*experimentation*' or '*experiment*' means all tests, demonstrations and procedures carried out on an animal which may cause it pain, suffering, distress or lasting harm, including any course of action intended to, or liable to, result in the birth of an animal in any such condition, but excluding the least painful methods accepted in modern practice (i.e. 'humane' methods) of killing or marking an animal; an experiment starts when an animal is first prepared for use and ends when no further observations are to be made for that experiment; the elimination of pain, suffering, distress or lasting harm by the successful use of anaesthesia or analgesia or other methods does not place the use of an animal outside the scope of this definition;
- (e) '*authority*' means the authority designated by each Member State as being responsible for supervising the practice of experimentation within the meaning of this Directive;
- (f) '*competent person*' means any person who is considered by a Member State to be competent to perform the relevant function described in this Directive;
- (g) '*establishment*' means any installation, building, group of buildings or other premises and may include a place which is not wholly enclosed or covered and mobile facilities;
- (h) '*breeding establishment*' means an establishment where animals are bred with a view to their use in experiments;
- (i) '*supplying establishment*' means an establishment, other than a breeding establishment, from which animals are supplied with a view to their use in experiments;
- (j) '*user establishment*' means an establishment where animals are used for experiments.

Article 3

Each Member State shall ensure that experimentation using animals considered as endangered species by Council Regulation (EEC) No 3626/82 ⁽¹⁾ or under national legislation of the Member State shall be prohibited.

Article 4

Member States shall ensure that, as far as the general care and accommodation of animals is concerned:

⁽¹⁾ OJ No L 384, 31. 12. 1982, p. 1.

- all experimental animals shall be adequately housed, fed, and cared for;
- any restriction on the extent to which an experimental animal can satisfy its physiological and ethological needs shall be limited only as permitted by the provisions set out in Annex II;
- the environmental conditions in which experimental animals are bred, kept or used must be checked daily;
- the well-being and state of health of animals shall be observed by a competent person to prevent pain or avoidable suffering, distress or lasting harm;
- arrangements are made to ensure that any defect or suffering discovered is corrected as quickly as possible.

Article 5

1. Each Member State shall designate an authority responsible for supervising the practice of experimentation within the meaning of this Directive.
2. The designated authority shall have responsibility for authorizing competent persons to undertake or to supervise the practice of experimentation in registered or approved establishments.
3. The designated authority should, in discharging its functions under this Directive, have access to the advice of interested parties, including scientific, industrial and animal welfare interests.

Article 6

1. An experiment shall not be performed if another scientifically satisfactory method of obtaining the result sought, not entailing the use of an animal, is reasonably and practicably available.
2. When an experiment has to be performed, the choice of species shall be carefully considered and, where required, shall be explained to the responsible authority. In a choice between experiments, those which use the minimum number of animals, cause the least pain, suffering, distress or lasting harm and which are most likely to provide satisfactory results shall be selected.

3. All experiments shall be designed to avoid distress and unnecessary pain to the experimental animals, using whenever appropriate general or local anaesthesia. They should be subject to the 'anaesthesia condition' laid down in Annex III and to the 'pain condition' laid down in Annex IV. The measures set out in Annex V shall be taken in all cases.

Article 7

Member States shall ensure that all personnel handling experimental animals have received training or instruction in animal welfare appropriate to his/her function.

Article 8

1. Details of experiments must be notified 30 days in advance to the authority, which shall have the possibility of disallowing the experiment, or of requiring changes thereto, within the said 30 days.
2. All decisions disallowing an experiment, requiring changes to an experiment or refusing authorization to conduct an experiment should indicate the reasons on which they are based and should provide for the possibility of an appeal.
3. Each experiment shall be performed in all respects in accordance with any directions given under paragraph 1, and in conformity with the animal well-being aspects of good laboratory practice and in conformity with all provisions of this Directive.
4. All experiments on non-human primates shall be subject to prior authorization. Such experiments shall be authorized only where there is a justification and where they are essential to solve a serious medical problem or where they are necessary to comply with Community measures for the protection of public health.
5. Notifications made pursuant to this Article may also cover a programme of work involving experiments of a similar nature, using standard testing procedures, where the experiment is not expected to cause pain, distress or equivalent suffering of more than trivial severity.
6. The provisions of this Article shall not preclude the performing of experiments required by existing Community Directives or recommendations.

Article 9

1. On the basis of requests for authorization and notifications received, and on the basis of the reports made, the authority in each Member State shall:
 - ensure that unnecessary duplication of experimentation is avoided as far as possible,
 - collect, and as far as possible make publicly available, the statistical information on the use of animals in experiments set out in Annex VI.
2. Member States shall take all necessary steps to ensure that the confidentiality of commercially sensitive information communicated pursuant to this Directive is protected.

Article 10

1. Member States shall ensure that experimentation for teaching purposes is carried out as far as possible on bred animals and following authorization by the authority. Whenever possible audio-visual or other suitable methods should be used instead of carrying out experiments.
2. Experiments shall not be permitted in secondary schools or other institutions of education and training of

equivalent or lower level, except where the course of education or training concerned is specifically directed to preparing for a career involving the performance of experiments or the treatment or care of animals and the experiments entail no severe or enduring pain or severe or enduring suffering.

Article 11

Breeding and supplying establishments shall be registered with the authority and shall comply with the requirements of Articles 4 and 7. A supplying establishment shall not obtain any animal from any source other than a breeding establishment unless the supplier can demonstrate that the animal has been obtained from another supplying establishment and is not a feral or stray animal, or has been lawfully imported.

Article 12

The registration provided for in Article 11 shall specify the competent person in charge of the establishment who shall administer or arrange for suitable care of the animals of the species bred or kept in the establishment.

Article 13

1. Breeding and supplying establishments shall record the number and the species of animals sold or supplied, the dates on which they are sold or supplied, and the name and address of the recipient and the number and species of animals dying while in the breeding or supplying establishment in question.
2. Each authority shall prescribe the records which are to be kept and made available to it by the person in charge of the establishments mentioned in paragraph 1; such records shall be kept for a minimum of three years from the date of the last entry and shall be subject to periodic inspection by officers of the authority.

Article 14

1. Each dog and cat in any breeding or supplying establishment shall be permanently marked with a unique individual identification in the least painful manner before it is weaned, except for cases provided for under paragraph 3.
2. Where an unmarked dog or cat is taken into an establishment as referred to in paragraph 1 for the first time after it has been weaned it shall be marked as soon as possible.
3. Where a dog or cat is transferred from one establishment as referred to in paragraph 1 to another before it is weaned and it is not practicable to mark it beforehand, a full documentary record, specifying in particular its mother, must be maintained by the receiving establishment until it can be so marked.
4. Particulars of the identity and source of each dog or cat shall be entered in the records of all establishments as referred to in paragraph 1.

5. In no case shall feral or stray cats and dogs be used for experiments.

Article 15

1. User establishments shall be registered with or otherwise approved by the authority. Provisions should be made at user establishments for installations and equipment appropriate to the species of animals used and the performance of the experiments conducted there, the design, construction and functioning of which shall be such as to ensure that the experiments are performed as effectively as practicable, with the object of obtaining consistent results with the minimum number of animals and the minimum degree of pain, suffering, distress or lasting harm.

2. In each user establishment:

- (a) a competent person working full-time in the establishment who is responsible for the care of the animals and the functioning of the equipment used in the experiment shall be identified and shall have the authority to terminate experiments, if he is reasonably convinced that the experiment is not being properly conducted;
- (b) sufficient trained persons shall be provided;
- (c) adequate arrangements shall be made for the provision of veterinary advice and treatment and the names of veterinarians responsible for the welfare of animals shall be specified;
- (d) only competent persons shall undertake experimentation, or supervise the undertaking of experimentation. Such persons shall have received instruction in a scientific discipline relevant to the experimental work being undertaken, and in the requisite skills of laboratory animal handling and care and shall have satisfied the responsible authority that they have attained a satisfactory standard in relation to those matters.

3. In user establishments only animals supplied from breeding or supplying establishments shall be used. Bred animals should be used whenever possible.

4. User establishments shall maintain records of all animals used and make them available as required by the responsible authority. In particular, these records shall show the number of species of all animals acquired, from whom they were acquired and their date of arrival. Such records shall be made available as required by the responsible authority. User establishments shall be subject to periodic inspection by officers of the authority.

Article 16

1. Animals of the species listed in Annex I which are used in experiments shall be acquired only from a breeding establishment or a supplying establishment.

2. The list set out in the Annex may be modified in accordance with the procedure set out in Article 18.

Article 17

1. A Committee responsible for adapting the Annexes of this Directive to technical progress (hereinafter referred to as 'the Committee') is hereby set up. It shall consist of representatives of the Member States and be chaired by a representative of the Commission.

2. The Committee shall draw up its own rules of procedure.

Article 18

1. Where the procedure laid down in this Article is to be followed, matters shall be referred to the Committee by the Chairman, either on his/her own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be adopted. The Committee shall deliver its opinion on the draft within a time limit which may be determined by the Chairman according to the urgency of the matter. It shall decide by a majority of 45 votes, the votes of the Member States being weighted as provided for in Article 148 (2) of the Treaty. The Chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged where these are in accordance with the opinion of the Committee.

(b) Where the measures envisaged are not in accordance with the opinion of the Committee, or in the absence of an opinion, the Commission shall forthwith submit a proposal to the Council on the measures to be adopted. The Council shall act by a qualified majority.

(c) If the Council does not act within three months of the proposal being submitted to it, the measures proposed shall be adopted by the Commission.

Article 19

1. In order to avoid unnecessary duplication of experiments for the purposes of satisfying national or Community legislation on health and safety, Member States shall recognize the results of experiments carried out in the territory of another Member State, unless further testing is necessary in order to protect public health and safety and the Member State concerned gives detailed reasons justifying its decision to require further testing to the person seeking to market the product concerned, and to the Commission.

2. Member States shall, without prejudice to the requirements of existing Community Directives, furnish information to the Commission on their legislation and administrative practice relating to experimentation, including requirements to be satisfied prior to the marketing of products, as well as factual information on all experiments carried out in their territory, and on authorization or any other administrative particulars pertaining to these experiments.

Article 20

This Directive shall not restrict the right of the Member States to apply or adopt stricter measures for the protection of animals used in experiments or for the control and restriction of the use of animals for experiments.

Article 21

1. Member States shall take the measures necessary to comply with this Directive within 12 months following notification. They shall inform the Commission thereof.

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

summary of the information collected under the provisions of Article 9, second indent, and the Commission shall prepare a report to the Council and the European Parliament.

*Article 23**Article 22*

Member States shall inform the Commission every three years of the measures taken in this area provide a suitable

This Directive is addressed to the Member States.

 ANNEX I

Genus and species of experimental animals covered for the purposes of Article 16

— Mouse	<i>Mus musculus</i>
— Rat	<i>Rattus norvegicus</i>
— Guinea Pig	<i>Cavia porcellus</i>
— Golden hamster	<i>Mesocricetus auratus</i>
— Rabbit	<i>Oryctolagus cuniculus</i>
— Chicken	<i>Gallus gallus</i>
— Non-human primates	
— Dog	<i>Canis familiaris</i>
— Cat	<i>Felis catus</i>
— Quail	<i>Coturnix coturnix</i>
— Frog	<i>Anura</i>

ANNEX II

Housing, feeding and care of experimental animals; the conduct of experiments, training of persons, etc.

1. *The physical facility*
 - 1.1. Functions and general design
 - 1.2. Holding rooms
 - 1.3. Laboratories and special purpose rooms
 - 1.4. Service rooms
2. *The environment in the holding rooms and its control*
 - 2.1. Ventilation
 - 2.2. Temperature
 - 2.3. Humidity
 - 2.4. Lighting
 - 2.5. Noise
 - 2.6. Alarm systems

3. *Care*
 - 3.1. Health
 - 3.2. Trapping
 - 3.3. Packing and transport
 - 3.4. Reception and unpacking
 - 3.5. Quarantine, isolation and acclimatization
 - 3.6. Caging
 - 3.7. Feeding
 - 3.8. Water
 - 3.9. Bedding
 - 3.10. Exercising and handling
 - 3.11. Cleaning
 - 3.12. Humane killing of animals
4. *Conduct of experiments*
5. *Training of persons*
6. *Other*

ANNEX III

The anaesthesia condition

1. Where the performance of an experiment may be expected to cause an animal pain or suffering unless the animal is properly anaesthetized, the person or persons authorized to conduct the experiment shall ensure that:
 - (i) the animal is properly anaesthetized before the experiment begins and remains so until it is concluded;
 - (ii) the animal is relieved from any post-operative pain or suffering by the administration of analgesics or other appropriate treatment; and
 - (iii) if it is not practicable to provide that relief, the animal is immediately and humanely killed.
 2. This condition shall be dispensed with in cases where application of anaesthesia is considered, by a veterinarian, to be more distressing for the animal than the experiment.
 3. In cases where the animal is to be subjected to pain, suffering, distress or lasting harm which cannot practicably be relieved by the use of anaesthetics, analgesia or other pain-relieving techniques shall be applied to alleviate all suffering, in compliance with the provisions of Annex II.
 4. The animal shall be properly anaesthetized throughout the whole experiment, except in the case of trivial surgical experiments of less severity than superficial venesection, as set out in Annex II.
 5. Special authorization may be given for dispensation with the anaesthesia condition where the application of anaesthesia would frustrate the object of the experiment. No such dispensation shall be given in the case of a surgical experiment. Where dispensation is granted, the experiment shall remain subject to the pain condition (Article 5).
 6. 'Properly anaesthetized' means deprived of sensation by methods of anaesthesia (whether local or general) at least as effective as those used in good veterinary practice.
 7. 'Humanely killed' means the killing of an animal with a minimum of physical and mental suffering appropriate to the species.
-

ANNEX IV**The pain condition**

1. Where in accordance with the provisions of this Directive an animal is not properly anaesthetized, it shall not be subjected to pain, distress or equivalent suffering which is of more than momentary duration.
2. Exemptions from the pain condition may be granted by the responsible authority in the case of:
 - (i) any emergency presenting an imminent threat to public health;
 - (ii) tests and investigations necessary for compliance with requirements of regulatory bodies; and
 - (iii) specific research projects where the responsible authority, having taken advice in accordance with Article 5 (3), deems the research to be of sufficient value and importance to justify the exemption.
3. Where such an exemption has been granted, an experiment shall be conducted only under constant veterinary surveillance, and if the veterinarian exercising constant surveillance considers that an animal is suffering severely (whether or not in consequence of the experiment) he and the person or persons authorized to conduct the experiment shall ensure that:
 - (i) the animal is given immediate relief by the administration of analgesics or other appropriate and effective treatment; or
 - (ii) it is immediately killed by a humane method.

ANNEX V**Measures to be taken at the end of an experiment**

1. At the end of any experiment, it shall be decided whether the animal shall be kept alive or killed by a humane method, subject to the condition that it shall not be kept alive if, even though it has been restored to normal health in all other respects, it is likely to remain in lasting pain or distress.
2. The decisions referred to in paragraph 1 of Annex III shall be taken by a veterinarian.
3. Where at the end of an experiment:
 - (a) an animal is to be kept alive, it shall receive the care appropriate to its state of health and be placed under the supervision of a veterinarian or other competent person and shall be kept under conditions conforming to the requirements of Article 4. The conditions laid down in this subparagraph may, however, be waived where, in the opinion of a veterinarian, the animal would not suffer as a consequence of such exemption;
 - (b) an animal is not to be kept alive or cannot benefit from the provisions of Article 4 for its well-being, it shall be killed by a humane method as soon as possible.
4. No animal which has been used in an experiment entailing severe or enduring pain or suffering, irrespective of whether an anaesthetic or an analgesic was employed, shall be used in a further experiment.

ANNEX VI**Information (Article 9)**

Information shall be collected in respect of:

- (a) the number and kinds of animals used in experiments;
 - (b) the number of animals, by category, used in experiments directly concerned with medicine and in teaching and learning;
 - (c) the number of animals, by category, used in experiments for the protection of man and his environment;
 - (d) the number of animals, by category, used in experiments required by legislation.
-

Proposal for a Council Regulation (EEC) laying down the general rules governing the system of 'accession' compensatory amounts applicable to certain processed cereal products, by reason of the accession of Spain

COM(85) 824 final

(Submitted by the Commission to the Council on 26 December 1985)

(85/C 351/08)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the opinion of the European Parliament,

Having regard to the proposal from the Commission,

Whereas Article 72 of the Act of Accession of Spain and Portugal ⁽¹⁾ provides for the introduction of a mechanism for compensating for differences in price levels in trade between the Community of Ten and Spain, and between Spain and third countries: whereas Article 111 (3) provides that, in the cereals sector, for the products referred to in Article 1 (c) of Council Regulation (EEC) No 2727/75 of 29 October 1975, on the common organization of the market in cereals ⁽²⁾, the 'accession' compensatory amounts shall be derived from the compensatory amounts applicable to the cereals to which they are related, with the help of coefficients to be determined; whereas this provision covers only a very limited number of processed products, namely wheat flour, meslin and rye and wheat groats and meal; whereas this provision does not cover the majority of the processed products referred to in section (d) of the abovementioned Article and which are listed in Annex A of the Regulation in question;

Whereas the reason for introducing the abovementioned system of compensation was the difference in price levels for basic products recorded, on the one hand, in Spain and, on the other hand, in the rest of the Community; whereas such a system must necessarily be extended to products obtained from the processing of basic cereals at the risk of

causing, on the one hand, harmful imbalances in trade between Spain and the Community of Ten and, on the other hand, serious risks of deflection of trade with non-member countries; whereas, accordingly, compensatory amounts should be introduced for these products, to be derived from the amounts applicable to the basic cereals used for the processing in question,

HAS ADOPTED THIS REGULATION:

Article 1

1. In trade between the Community of Ten and Spain, and between Spain and third countries, the products referred to in Article 1 (d) of Regulation (EEC) No 2727/75 shall be subject to the application of 'accession' compensatory amounts derived from those applicable to the cereals to which they are related, with the help of coefficients to be determined in accordance with the procedure laid down in paragraph 3.

2. The Council, acting by a qualified majority on a proposal from the Commission, shall decide the general rules governing the application of this Article.

3. The Commission shall decide upon the detailed rules of application of this Article in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75.

Article 2

This Regulation shall enter into force on 1 March 1986.

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

⁽¹⁾ OJ No L 302, 15. 11. 1985, p. 39.

⁽²⁾ OJ No L 281, 1. 11. 1975, p. 1.

Second amended proposal for a Council Directive concerning the annual accounts and consolidated accounts of banks and other financial institutions ⁽¹⁾

COM(85) 755 final

(Submitted by the Commission to the Council pursuant to the second paragraph of Article 149 of the EEC Treaty on 26 December 1985)

(85/C 351/09)

FIRST AMENDED PROPOSAL

First amended proposal

Amended proposal for a Council Directive concerning the annual accounts of banks and other financial institutions

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Council Directive 78/660/EEC ⁽²⁾ concerning the annual accounts of limited companies need not be applied to banks and other financial institutions, hereinafter referred to as 'credit institutions', pending subsequent coordination; whereas, in view of the central importance of these undertakings in the Community, such coordination cannot be delayed any longer following implementation of Directive 78/660/EEC;

Whereas such coordination has also become urgent because more and more credit institutions are operating across national frontiers; whereas, for creditors, debtors and members and for the general public, improved comparability of the annual accounts of these institutions is therefore of crucial importance;

SECOND AMENDED PROPOSAL

Second amended proposal

Second amended proposal for a Council Directive concerning the annual accounts and consolidated accounts of banks and other financial institutions

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission ⁽³⁾,

Having regard to the opinion of the European Parliament ⁽⁴⁾,

Having regard to the opinion of the Economic and Social Committee ⁽⁵⁾,

Whereas Council Directive 78/660/EEC ⁽⁶⁾, as last amended by Directive 84/564/EEC ⁽⁷⁾, concerning the annual accounts of limited companies need not be applied to banks and other financial institutions pending subsequent coordination; whereas, in view of the central importance of these undertakings in the Community, such coordination cannot be delayed any longer following implementation of that Directive;

Whereas Council Directive 83/349/EEC ⁽⁸⁾ on consolidated accounts provides for derogations for credit institutions only until expiry of the deadline imposed for the application of this Directive; whereas this Directive must therefore also contain provisions specific to credit institutions in respect of consolidated accounts;

Whereas such coordination has also become urgent because more and more credit institutions are operating across national frontiers; whereas, for creditors, debtors and members and for the general public, improved comparability of the annual accounts **and consolidated accounts** of these institutions is therefore of crucial importance;

⁽¹⁾ OJ No C 83, 24. 3. 1984, p. 6.

⁽²⁾ OJ No L 222, 14. 8. 1978, p. 11.

⁽³⁾ OJ No C 130, 1. 6. 1981, p. 1 and No C 83, 24. 3. 1984, p. 6.

⁽⁴⁾ OJ No C 163, 10. 7. 1978, p. 60; OJ No C 242, 12. 9. 1983, p. 33.

⁽⁵⁾ OJ No C 112, 3. 5. 1982, p. 17.

⁽⁶⁾ OJ No L 222, 14. 8. 1978, p. 11.

⁽⁷⁾ OJ No L 314, 4. 12. 1984, p. 28.

⁽⁸⁾ OJ No L 193, 18. 7. 1983, p. 1.

FIRST AMENDED PROPOSAL

Whereas, in virtually all the Member States of the Community, institutions of differing legal forms are in competition with one another in the credit sector; whereas it is therefore appropriate not to confine coordination to the legal forms covered by Directive 78/660/EEC, but to choose a scope which is in line with that of Council Directive 77/780/EEC ⁽¹⁾ relating to the taking up and pursuit of the business of credit institutions;

Whereas the link with the coordination of legislation relating to credit institutions is also important because aspects of the provisions governing annual accounts will inevitably have an impact on other areas of such coordination, such as authorization requirements and the indicators used for supervisory purpose;

Whereas, although in view of the specific characteristics of credit institutions, it appears appropriate to propose a separate Directive on annual accounts for such undertakings, this must not result in a set of standards being established which is separate from Directive 78/660/EEC; whereas such separate standards would be neither appropriate nor consistent with the principles underlying the coordination of company law, since, given the central place which they occupy, credit institutions cannot be excluded from the framework of standards devised for undertakings generally; whereas, for this reason only the particular characteristics of credit institutions are taken into account, and this Directive therefore deals only with exceptions to the rules contained in Directive 78/660/EEC;

Whereas in each Member State an essential characteristic of credit institutions is the difference in structure and content of their balance sheets; whereas this Directive must therefore lay down the same structure and the same item designations for the balance sheets of all credit institutions in the Community;

Whereas, if the annual accounts are to be comparable, a number of basic questions regarding the presentation of certain transactions in the balance sheet must be settled;

Whereas, in the interests of greater comparability, it is also necessary that the content of certain balance sheet items be determined precisely;

Whereas the same also applies to the composition and definition of certain items in the profit and loss account;

SECOND AMENDED PROPOSAL

Whereas, in virtually all the Member States of the Community, institutions of differing legal forms are in competition with one another in the credit sector; whereas it is therefore appropriate not to confine coordination to the legal forms covered by Directive 78/660/EEC, but to choose a scope which **includes all companies or firms as defined in the second paragraph of Article 58 of the Treaty, where these are credit institutions within the meaning of Council Directive 77/780/EEC ⁽²⁾ relating to the business of credit institutions or financial institutions within the meaning of Council Directive 83/350/EEC ⁽³⁾ relating to the supervision of credit institutions on a consolidated basis;**

Whereas the link with the coordination of legislation relating to credit institutions is also important because aspects of the provisions governing annual accounts and **consolidated accounts** will inevitably have an impact on other areas of such coordination, such as authorization requirements and the indicators used for supervisory purposes;

Whereas, although in view of the specific characteristics of credit institutions, it appears appropriate to propose a separate Directive on the annual accounts **and consolidated accounts** of such undertakings, this must not result in a set of standards being established which is separate from **Directives 78/660/EEC and 83/349/EEC**; whereas such separate standards would be neither appropriate nor consistent with the principles underlying the coordination of company law, since, given the central place which they occupy in the economy of the Community, credit institutions cannot be excluded from the framework of standards devised for undertakings generally; whereas, for this reason, only the particular characteristics of credit institutions are taken into account, and this Directive therefore deals only with exceptions to the rules contained in **Directives 78/660/EEC and 83/349/EEC**;

Unchanged.

Whereas, if the annual accounts **and consolidated accounts** are to be comparable, a number of basic questions regarding the presentation of certain transactions in the balance sheet must be settled;

Unchanged.

Unchanged.

⁽¹⁾ OJ No. L 322, 17. 12. 1977, p. 30.

⁽²⁾ OJ No L 322, 17. 12. 1977, p. 30.

⁽³⁾ OJ No L 193, 18. 7. 1983, p. 18.

FIRST AMENDED PROPOSAL

Whereas the comparability of figures in the balance sheet and profit and loss account also depends crucially on the values at which assets or liabilities are entered in the balance sheet; whereas, in view of the principle of prudence and the need to maintain confidence in the stability of the credit industry, it is necessary to allow credit institutions some flexibility in the valuation of loans and advances; whereas credit institutions should also be permitted to show in the profit and loss account only the balance resulting from the set-off between charges corresponding to value adjustments in respect of certain items and income from the writing-back of such value adjustments;

Whereas, in view of the special nature of credit institutions, certain changes are also necessary with regard to the notes on the annual accounts;

Whereas, in line with the intention to cover as many credit institutions as possible, as was the case with Council Directive 77/780/EEC, derogations are not provided for small and medium-sized credit institutions, such as are provided for under the terms of Directive 78/660/EEC; whereas, nevertheless if, in the light of experience, such derogations prove necessary, it will be possible to provide for them in a subsequent measure of coordination;

Whereas, taking account of the importance of banking networks which extend beyond national frontiers and their constant development, it is important that the annual accounts of a credit institution having its head office in one Member State should be published in all the Member States where it is established;

Whereas the examination of problems which arise in connection with the present Directive, notably concerning its application, require the cooperation of representatives of the Member States and the Commission in the form of a Contact Committee; whereas, in order to avoid the proliferation of such committees, it is desirable that the said cooperation be achieved by means of the committee provided for in Article 52 of Directive 78/660/EEC; whereas, nevertheless, when examining problems concerning credit institutions, the committee will be appropriately constituted;

SECOND AMENDED PROPOSAL

Unchanged.

Unchanged.

Whereas, in line with the intention to cover as many credit institutions as possible, as was the case with Directive 77/780/EEC, derogations are not provided for small and medium-sized credit institutions, such as are provided for under the terms of Directive 78/660/EEC; whereas, nevertheless if, in the light of experience, such derogations prove necessary, it will be possible to provide for them in a subsequent measure of coordination; **whereas for the same reasons, the scope allowed Member States under Directive 83/349/EEC to exempt parent undertakings from the consolidation requirement if the undertakings to be consolidated do not together exceed a certain size has not been extended to credit institutions;**

Whereas the specific application of the provisions on consolidated accounts to credit institutions requires a number of adjustments to some of the general rules applicable to all industrial and commercial companies; whereas accordingly specific rules have been provided for in the case of mixed groups and exemption from sub-consolidation is made subject to an additional condition;

Whereas, taking account of the importance of banking networks which extend beyond national frontiers and their constant development, it is important that the annual accounts **and consolidated accounts** of a credit institution having its head office in one Member State should be published in all the Member States where it is established;

Unchanged.

FIRST AMENDED PROPOSAL

Whereas, in view of the complexity of the matter, the credit institutions covered by this Directive must be allowed a longer period than usual to implement the provisions thereof; whereas, pending subsequent coordination, the Member States should also be allowed to defer the application of certain provisions of this Directive to certain specialized credit institutions where immediate application would cause major adjustment problems,

HAS ADOPTED THIS DIRECTIVE:

Articles 1 to 41 unchanged.

SECOND AMENDED PROPOSAL

Unchanged.

SECTION 9a

Provisions relating to consolidated accounts

Article 41a

The credit institutions referred to in Article 2 shall draw up consolidated accounts and a consolidated annual report in accordance with Directive 83/349/EEC, in so far as this section does not provide otherwise.

Article 41b

Directive 83/349/EEC shall apply subject to the following provisions:

1. Articles 4, 5, 6, 15 and 40 shall not apply.
2. The requirement or option provided for in Articles 7, 8 and 11 whereby Member States shall or may exempt a parent undertaking governed by their national laws which is a credit institution, and is also a subsidiary undertaking, from the requirement of drawing up consolidated accounts and a consolidated annual report, shall apply only if its own parent undertaking has in addition declared that it guarantees the commitments entered into by the credit institution. The declaration shall be published by the credit institution in accordance with Article 38.
3. The information referred to in the first two indents of Article 9 (2), namely:
 - the amount of the fixed assets,
 - the net turnover,of shall be replaced by:
 - the sum of items 1 to 3 and 6 in Article 29 or B.1 to 3 and 6 in Article 30 of this Directive.
4. Where the parent undertaking is a credit institution, Article 13 (3) (c) shall not apply if shares in a subsidiary undertaking which is a credit institution or a financial institution are temporarily held as a result of a financial assistance operation with a view to the reorganization or rescue of the undertaking in question.

FIRST AMENDED PROPOSAL

SECOND AMENDED PROPOSAL

5. Article 14, with the exception of paragraph 2 thereof, shall apply subject to the following provision:

Where the parent undertaking is a credit institution and where one or more subsidiary undertakings to be consolidated do not have that status, such subsidiary undertakings may not be excluded from the consolidation if their activities are a direct extension of banking activities or concern services ancillary to banking activities such as leasing, factoring, the management of unit trusts, the management of data-processing services or any other similar activity.

6. For the purposes of the layout of consolidated accounts

- (a) the reference in Article 17 to Articles 9 and 10 (balance sheet) and 23 to 26 (profit and loss account) of Directive 78/660/EEC shall be deemed to be a reference to Articles 4 (balance sheet) and 29 and 30 (profit and loss account) of this Directive. Articles 3, 5 to 28 and 31 to 35 of this Directive shall also apply;
- (b) the reference in Article 17 to Article 15 (3) of Directive 78/660/EEC shall apply to the items deemed to be fixed assets pursuant to Article 36 of this Directive.

7. For the purpose of valuing assets and liabilities to be included in consolidated accounts, the reference in Articles 29 and 33 to Articles 31 to 42 and 60 of Directive 78/660/EEC shall be deemed to be a reference to those Articles as amended in their application by Articles 36 to 38 of this Directive.

8. Concerning Article 34 relating to the consolidated accounts:

- (a) In place of the information required in point 6, credit institutions shall in the notes on the consolidated accounts state separately for each of the Assets items 4 (b) and 5 and the Liabilities items 1 (b), 2 (b) and (c) and 3 (b) the amounts of those loans and advances and liabilities on the basis of their remaining maturity as follows:

- not more than three months,
- more than three months but not more than one year,
- more than one year but not more than five years,
- more than five years.

For Assets item 5, the following shall also be shown:

- indefinite-period accounts in credit

- (a) repayable on demand;
- (b) other.

FIRST AMENDED PROPOSAL

SECOND AMENDED PROPOSAL

If loans and advances or liabilities involve payments by instalments, the remaining maturity shall be the period between the balance sheet date and the date on which each instalment falls due.

However, for five years after the date referred to in Article 44 (2), Member States may require or permit the listing by maturity of the assets and liabilities referred to in this Article to be based on the originally agreed maturity or period of notice. In that event, where a credit institution has acquired an existing loan not represented by a certificate, the Member State shall require classification of that loan to be based on the remaining maturity as at the date on which it was required. For the purposes of this subparagraph, the originally agreed maturity for loans shall be the period between the date of first drawing and the date of repayment; the period of notice shall be deemed to be the period between the date on which notice is given and the date on which repayment is to be made; if loans and advances or liabilities are redeemable by instalments, the agreed maturity shall be the period between the date on which such loans and advances or liabilities arose and the date on which the last instalment falls due.

- (b) In addition, credit institutions shall, in respect of the consolidated balance sheet items specified in subparagraph (a) and also in respect of Assets item 6 (debt securities held in portfolio) and Liabilities item 3 (a) (debt securities issued) indicate what proportion of assets and Liabilities with an original maturity of five years or more will become due within one year of the consolidated balance sheet date.
- (c) Member States may stipulate that the information referred to in (a) and (b) be given in the consolidated balance sheet.
- (d) The notes on the consolidated accounts shall in addition include information on the assets which have been pledged as security for the consolidating credit institution's own liabilities (including contingent liabilities); the information should be in sufficient detail to indicate for each item below the line, the total amount of the assets pledged as security.
- (e) Where the information referred to in point 7 has to be provided in items below the line, it need not be repeated in the notes on the consolidated accounts;

FIRST AMENDED PROPOSAL

SECOND AMENDED PROPOSAL

- (f) In place of the information required in point 8, credit institutions shall, in the notes on the consolidated accounts, indicate their operating income (items 1 to 3 and 6 of Article 29 or items B.1 to B.3 and B.6 of Article 30) broken down into geographical markets in so far as, taking account of the manner in which the credit institution is organized, these markets differ substantially from one another.
 - (g) The reference in point 10 to Articles 31 and 34 to 42 of Directive 78/660/EEC shall be deemed to be a reference to those Articles as amended in their application by Articles 36 to 38 of this Directive.
 - (h) By way of derogation from point 13, credit institutions need indicate only the amounts of advances and credits granted to the members of the administrative, managerial and supervisory bodies of the parent undertaking by that undertaking or by one of its subsidiary undertakings and the commitments entered into on their behalf by way of guarantees of any kind with an indication of the total for each category.
9. Member States shall require credit institutions to give the following further information in the notes on the consolidated accounts:
- (a) a breakdown of the securities included in Assets items 6, 8, 9 and 9a into listed and unlisted securities and into securities which, pursuant to Article 36 of this Directive, were or were not considered fixed assets;
 - (b) the value of leasing transactions apportioned between the relevant items in the consolidated balance sheet;
 - (c) a breakdown of Assets item 14, Liabilities item 4, items 11 and 15 in the vertical layout or A.7 and 9 in the horizontal layout and items 6 and 14 in the vertical layout or B.6 and 8 in the horizontal layout of the consolidated profit and loss account into their main component amounts, where such amounts are important for the purpose of assessing the consolidated accounts, as well as explanations of their nature and amount;
 - (d) the amounts of interest which the undertakings included in the consolidation have received for subordinated assets in the year under review, or have expended for subordinated liabilities.

FIRST AMENDED PROPOSAL

SECTION 10

Publication

Article 42

1. The properly authorized annual accounts of credit institutions, together with the annual report and the opinion of the person responsible for auditing the accounts shall be published in the manner required by the legislation in each Member State in accordance with Article 3 of Council Directive 68/151/EEC ⁽¹⁾.

2. However, where the credit institution which drew up the annual accounts is not established as one of the types of company listed in Article 1 (1) of Directive 78/660/EEC and is not required by its national law to publish the documents referred to in paragraph 1 in the same manner as prescribed in Article 3 of Directive 68/151/EEC, it must at least make them available to the public at its head office. It must be possible to obtain a copy of such documents on request. The price of such a copy must not exceed its administrative cost.

3. The annual accounts of a credit institution shall be published in each Member State where the credit institution has branches, as defined by Article 1, third indent, of Directive 77/780/EEC. Such Member States may require that the publication of these documents be made in their official language.

SECOND AMENDED PROPOSAL

SECTION 10

Publication

Article 42

1. The duly approved annual accounts of credit institutions, together with the annual report and the opinion submitted by the person responsible for auditing the accounts shall be published as laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC ⁽²⁾.

The laws of a Member State may, however, permit the annual report not to be published as stipulated above. In that case, it shall be made available to the public at the company's registered office in the Member State concerned. It must be possible to obtain a copy of all or part of any such report upon request. The price of such a copy must not exceed its administrative cost.

(1a) Paragraph 1 shall also apply to the duly approved consolidated accounts, the consolidated annual report and the opinion submitted by the person responsible for auditing the accounts.

2. However, where a credit institution which has drawn up annual accounts or **consolidated accounts** is not established as one of the types of company listed in Article 1 (1) of Directive 78/660/EEC and is not required by its national law to publish the documents referred to in **paragraphs 1 and 1a** in the same manner as prescribed in Article 3 of Directive 68/151/EEC, it must at least make them available to the public at its head office. It must be possible to obtain a copy of such documents on request. The price of such a copy must not exceed its administrative cost.

3. The annual accounts **and consolidated accounts** of a credit institution must be published in every Member State in which the credit institution has branches, within the meaning of the third indent of Article 1 of Directive 77/780/EEC. Such Member States may require that the publication of those documents be effected in their official language.

4. Member States shall provide for appropriate sanctions for failure to comply with the publication obligations imposed in this Article.

Articles 43 to 45 unchanged.

⁽¹⁾ OJ No L 65, 14. 3. 1968, p. 8.

⁽²⁾ OJ No L 65, 14. 3. 1968, p. 8.

Proposal for a Council Regulation (EEC) opening for 1986, as an autonomous measure, a special import quota for high quality, fresh, chilled or frozen beef falling within subheadings 02.01 A II a) and 02.01 A II b) of the Common Customs Tariff

COM(85) 841 final

(Submitted by the Commission to the Council on 26 December 1985)

(85/C 351/10)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 113 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas, in view of the market situation for beef both within and outside the Community, provision should be made for the opening for 1986, as an autonomous measure, of a special Community import tariff quota for 12 000 tonnes, at a duty of 20 %, of high quality fresh, chilled or frozen beef falling within subheadings 02.01 A II a) and 02.01 A II b) of the Common Customs Tariff;

Whereas equal, continuous access for all operators concerned in the Community to the said quota and the uninterrupted application of the rate laid down for that quota to all imports of the products concerned in all the Member States until the volume provided for is exhausted should in particular be ensured; whereas, to this end, a system for utilizing the Community tariff quota, based on the presentation of a certificate of authenticity guaranteeing the type, provenance and origin of the products is required;

Whereas rules for the application of these provisions should be adopted in accordance with the procedure laid down in Article 27 of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal ⁽¹⁾ as last amended by the 1979 Act of Accession,

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

HAS ADOPTED THIS REGULATION:

Article 1

1. A special Community tariff quota for high quality, fresh, chilled or frozen beef falling within subheadings 02.01 A II a) and 02.01 A II b) of the Common Customs Tariff is hereby opened for 1986.

The total amount of this quota shall be 12 000 tonnes expressed in weight of the product.

2. The applicable duty for this quota in the Common Customs Tariff shall be fixed at 20 %.

Article 2

In accordance with the procedure laid down in Article 27 of Regulation (EEC) No 805/68, the rules for the application of this Regulation, and in particular:

- (a) provisions guaranteeing the type, provenance and origin of the products;
- (b) provisions relating to the recognition of the document enabling the guarantees provided for in (a) to be ascertained;

shall be determined.

Article 3

This Regulation shall enter into force on 1 January 1986.

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

Proposal for a Council Directive on water quality objectives for chromium

COM(85) 733 *final*

(85/C 351/11)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas, in order to protect the aquatic environment of the Community from pollution by certain dangerous substances, Article 7 of Council Directive 76/464/EEC ⁽¹⁾ provides for the establishment by the Member States of programmes to reduce pollution by the substances in List II in the Annex thereto; whereas Article 7 (7) provides for comparison of the national programmes for the purpose of coordinating their implementation and for Commission proposals in this connection;

Whereas chromium is included in List II;

Whereas the national programmes to reduce pollution must include quality objectives for water and set deadlines for their implementation;

Whereas it is necessary to specify a reference method of measurement for chromium to ensure sufficient comparability of the results of these programmes communicated to the Commission;

Whereas the Commission should report regularly on the implementation of this Directive by the Member States;

Whereas the quality objectives for water intended for human consumption and for surface water intended for the abstraction of drinking water have already been laid down in Council Directives 80/778/EEC ⁽²⁾ and 75/440/EEC ⁽³⁾ respectively; whereas these waters can therefore be excluded from the scope of this Directive;

Whereas groundwater is the subject of Council Directive 80/68/EEC ⁽⁴⁾ and can therefore be excluded from the scope of this Directive;

Whereas the Treaty has not provided certain of the necessary powers,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive, in pursuance of Article 7 of Directive 76/464/EEC, lays down the procedures for coordination of

national programmes to reduce chromium pollution of water.

2. This Directive shall apply to the waters referred to in Article 1 of Directive 76/464/EEC, with the exception of groundwater, water intended for human consumption and surface water intended for the abstraction of drinking water.

Article 2

For the purposes of this Directive,

(a) '*chromium*' means:

- elemental chromium,
- any chromium compound;

(b) '*dissolved chromium*' means water containing chromium able to pass through a 0,45 micrometre pore-size filter;

(c) '*programmes*' means the programmes established by the Member States to reduce chromium pollution of water, as provided for by Article 7 (1) of Directive 76/464/EEC.

Article 3

1. The national programmes must contain quality objectives which are at least as strict as the requirements listed in Annex I.

2. The reference method of measurement to be used in determining the presence of chromium is given in Annex II. Other methods may be used provided that the limits of detection, precision and accuracy of such methods are at least as exacting as those laid down in Annex II (3).

Article 4

Member States shall adapt their programmes in accordance with this Directive by 15 September 1986. Implementation of the programmes shall be completed by 15 September 1991.

Article 5

1. Member States shall communicate to the Commission summaries of programmes pursuant to Article 7 (6) of Directive 76/464/EEC with respect to chromium by 15 September 1986.

2. Member States shall communicate to the Commission the results of the implementation of the programmes pursuant to Article 7 (6) of Directive 76/464/EEC with respect to chromium by 15 September 1992.

3. The Commission shall examine the implementation of national programmes on the basis of the information

⁽¹⁾ OJ No L 129, 18. 5. 1976, p. 23.

⁽²⁾ OJ No L 229, 30. 8. 1980, p. 11.

⁽³⁾ OJ No L 194, 25. 7. 1975, p. 26.

⁽⁴⁾ OJ No L 20, 26. 1. 1980, p. 43.

received and shall make periodic reports to the Council and the European Parliament beginning in 1993 and at nine-yearly intervals thereafter. If it sees fit, the Commission may submit relevant proposals to the Council in the light of these reports.

2. Member States shall communicate to the Commission without delay the text of the provisions of national law which they adopt in the field governed by this Directive.

Article 6

1. Member States shall take the measures necessary to comply with this Directive by 15 September 1986.

Article 7

This Directive is addressed to the Member States.

ANNEX I

The programmes to reduce chromium pollution of water shall include quality objectives for the waters specified below:

The competent authority shall select from among the quality objectives listed in paragraphs 1, 2 and 3 the objective or objectives that it deems appropriate having regard to the intended use of the area in question.

1. The concentration of dissolved chromium in fresh water capable of supporting fish life and other aquatic fauna and flora shall not exceed the following values, depending on water hardness:

Water hardness (mg/l CaCO ₃)	Up to 50	50 to 100	100 to 200	Over 200
Dissolved Chromium (µg/l)	5	10	20	50

2. In order to protect marine fauna and flora, the concentration of dissolved chromium in seawater must not exceed 15 µg/l.
3. The content of chromium in fresh water and/or seawater sediments and/or shellfish must not increase significantly in the course of time.

With the exception of the quality objective indicated in paragraph 1, all concentrations relate to the arithmetic mean of the results obtained over one year.

ANNEX II

Reference method of measurement

1. The definitions included in Council Directive 79/869/EEC concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water in the Member States ⁽¹⁾ shall apply in the framework of this Directive.
2. The reference method of measurement used for determining the chromium content of waters is atomic absorption spectrophotometry after preservation and suitable treatment of the sample.
3. The limits of detection shall be such that the chromium concentration can be measured to an accuracy of 30 % and a precision of 20 % at a concentration of 5 µg/l or one-tenth of the chromium concentration specified in the quality objective, whichever is the greater.

⁽¹⁾ OJ No L 271, 29. 10. 1979, p. 44.

Proposal for a Council Directive on information to be published when major holdings in the capital of a listed company are acquired or disposed of

COM(85) 791 final

(85/C 351/12)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas a policy in the securities field aimed at keeping investors properly informed is likely to enhance investor protection, to increase investor confidence in securities markets and thus to ensure that securities markets function correctly;

Whereas coordination of that policy at Community level, by making such protection more equal, is likely to make for greater interpenetration of Member States' securities markets and therefore help to establish a true European capital market;

Whereas to that end investors should be informed of changes in major holdings in the capital of Community companies whose shares are officially listed on a stock exchange situated or operating within the Community;

Whereas it is to achieve that objective that Schedule C, point 5 (c) of Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing ⁽¹⁾ stipulates that a company whose shares are officially listed on a Community stock exchange must inform the public of any changes in the structure (shareholders and breakdown of holdings) of the major holdings in its capital as compared with information previously published on that subject as soon as such changes come to its notice;

Whereas if that requirement is to be applied in an effective manner coordinated rules should be laid down concerning its detailed content and the procedure for its application;

Whereas companies whose shares are officially listed on a Community stock exchange can inform the public of changes in the structure of the major holdings in their capital only if they have been informed of such changes;

Whereas most Member States do not require investors to inform companies of acquisitions or disposals made by them of major holdings in the capital of such companies; whereas there are appreciable differences between the Member States in which there is such a requirement;

Whereas coordinated rules should therefore be adopted at Community level in this field,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive shall apply to persons who acquire or dispose of major holdings, as defined in Article 3, in the subscribed capital of a company which is incorporated in a Member State and whose shares are officially listed on a stock exchange situated or operating within a Member State.

2. Where the acquisition or disposal of major holdings is carried out by means of certificates representing shares, this Directive shall apply to the bearers of those certificates, and not to the issuer.

Article 2

Member States may subject the persons and companies respectively referred to in Articles 1 and 8 to stricter requirements than those provided for by this Directive, or to additional requirements, provided that they are generally applicable.

Article 3

Where a person acquires or disposes of shares in a company as referred to in Article 1 and where, following that acquisition or disposal, the percentage of subscribed capital held by that person in that company reaches or exceeds the thresholds of 10 %, 20 %, 33.33 %, 50 %, 66.66 % or 90 % of the subscribed capital or goes below those thresholds, he shall notify the company within seven calendar days of the percentage of subscribed capital he holds following that acquisition or disposal.

Article 4

1. In order to assess whether a person acquiring or disposing of holdings is required to make the declaration provided for in Article 3, account shall be taken of shares held by other persons in their own name but on behalf of the person acquiring or disposing of the holdings.

2. Where the person acquiring or disposing of holdings is an undertaking, shares held by a subsidiary or shares held

⁽¹⁾ OJ No L 66, 16. 3. 1979, p. 21.

by other persons in their own name but on behalf of a subsidiary shall also be deemed to belong to the person acquiring or disposing of the holdings.

Article 5

1. For the purpose of this Directive, 'subsidiary' means any undertaking in which another undertaking:

- (a) has a majority of the shareholders' or members' voting rights; or
- (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder or member; or
- (c) is a shareholder or member and controls alone a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the undertaking (subsidiary).

2. For the purposes of paragraph 1, the parent undertaking's rights as regards voting, appointment and removal shall have added to them the rights of any other subsidiary and those of persons acting in their own name but on behalf of the parent undertaking or any other subsidiary.

Article 6

1. For the purposes of Article 3, where persons act in concert, the holdings of each one of such persons shall be added together. In this case, the obligation to make the declaration provided for in Article 3 shall fall upon each one of them. This declaration shall indicate the percentage of subscribed capital held by the person making the declaration and the percentages of such capital held by the persons with whom he is acting in concert.

2. 'Persons acting in concert' means persons who have concluded an agreement which may lead to their adopting a common policy in respect of a company.

Article 7

Member States may exempt acquisitions or disposals of major holdings made by a market maker in the pursuit of his activity from the declaration provided for in Article 3.

Article 8

1. A company which has received the declaration referred to in Article 3 shall in turn notify it to the public in each of the Member States in which its shares are officially listed on a stock exchange not later than seven calendar days following receipt of that information

2. Should the percentage of subscribed capital held by the person making the declaration provided for in Article 3 differ from the percentage of voting rights actually held by that person, the company which has received the declaration shall notify the public of both percentages.

3. The information shall be made available to the public in accordance with the rules of Article 17 of Directive 79/279/EEC.

Article 9

The competent authorities referred to in Article 10 may exempt the persons and companies respectively referred to in Articles 1 and 8 from the requirement to notify, as defined in Articles 3 and 8 respectively, where those authorities consider that the disclosure of such information would be against the public interest or would seriously harm those persons or companies, provided that the absence of such notification would not mislead the public in its assessment of the shares concerned.

Article 10

1. Member States shall designate the competent authority or authorities and shall inform the Commission accordingly, specifying any division of duties between those authorities. They shall, moreover, ensure that this Directive is applied.

2. Member States shall ensure that the competent authorities have such powers as may be necessary for the exercise of their duties.

3. The competent authorities in the Member States shall cooperate wherever necessary for the purpose of carrying out their duties and shall exchange any information required for that purpose.

Article 11

The Contact Committee set up by Article 20 of Directive 79/279/EEC shall also have as its function:

- (a) to permit regular consultations on any practical problems which arise from the application of this Directive and on which exchanges of view are deemed useful;
- (b) to facilitate consultations between Member States on the stricter or additional requirements which they may lay down in accordance with Article 2, so that the requirements imposed in all the Member States may finally be brought into line, in accordance with Article 54 (3) (g) of the Treaty;
- (c) to advise the Commission, if necessary, on any additions or amendments to be made to this Directive.

Article 12

1. Member States shall take the measures necessary to comply with this Directive not later than 1 January 1991. They shall forthwith inform the Commission thereof.

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

Article 13

This Directive is addressed to the Member States.

Amended proposal for a Council Regulation (EEC) on a Community aid scheme for non-documentary cinema and television co-productions ⁽¹⁾

COM(85) 800 final

(85/C 351/13)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas economic, social and cultural considerations require that the Community should have a healthy audio-visual industry;

Whereas demand from the audio-visual media for non-documentary programmes is already on the increase and is likely to increase even further; whereas the opportunities created by the expansion of the audio-visual media can best be exploited by promoting and developing the European programme industry to make it stronger and more competitive;

Whereas a first step in this process would be to increase the number of mass-audience cinema and television co-productions involving nationals of more than one Member State, including Member States whose audio-visual output is comparatively small;

Whereas the financing of international co-productions is a high-risk undertaking which may be beyond the capacity of the partners involved;

Whereas since co-productions are an effective element of a more positive trend, those meeting various specific criteria should be given Community aid to supplement national contributions;

Whereas such aid is necessary to attain a number of Community objectives in the context of the operation of the common market; whereas the Treaty has not provided the necessary powers;

Whereas Community aid should not be such as to affect its compatibility with the EEC Treaty rules on competition, the free movement of workers or freedom to provide services,

HAS ADOPTED THIS REGULATION:

Article 1

A Community aid system for non-documentary cinema and television co-productions is hereby established.

Aid shall be directed to the promotion and development of the European audio-visual programme industry to enable it to meet the growing demand for high-quality material attractive to a mass audience.

One of the objectives of the aid scheme shall be to foster co-productions involving partners from Community countries whose output of cinema and/or television productions is small in comparison to that of other Community countries because of the structural weaknesses of their audio-visual industry and/or the limited area in which their language is spoken.

Article 2

The following shall be eligible for aid:

- natural or legal persons subject to the public or private law of a Member State of the Community and engaged in the production of cinema films and/or television programmes,
- cinema or television directors who are nationals of a Member State of the Community.

Article 3

1. Co-productions involving at least three partners from three different Member States of the Community shall qualify for aid.

As an exception, aid may also be granted to co-productions involving only two partners from two countries of the Community, provided that the language of the countries in question is not the same.

2. A co-production shall not qualify for aid unless arrangements for its production comply with the Treaty rules on competition.

3. The co-production partners shall designate one of their number to assume responsibility for administration of the aid and its repayment in accordance with the provisions of Article 6 and 7.

The Community, represented by the Commission, shall conclude with the person so designated a contract jointly and severally binding all the co-production partners, hereinafter referred to as 'contract beneficiaries'.

⁽¹⁾ OJ No C 125, 22. 5. 1985. p. 13.

4. The contribution of each co-production partner, from public or private sources, shall not be less than 10 % or more than 60 % of the co-production costs.

5. Community co-production partners may enter into association with one or more co-production partners who are nationals of non-member countries.

6. The total contribution put up by co-production partners who are nationals of non-member countries shall not exceed 30 % of the co-production costs.

Article 4

1. Applicants for aid shall apply to the Commission.

At the same time they shall inform the relevant national authorities of their application and its contents.

2. They shall produce evidence that distribution or broadcasting of the co-production in respect of which the application is made is guaranteed at least in the countries of which they are nationals.

3. Such evidence shall take the form of legally binding undertakings by film distributors or television companies to distribute or broadcast the co-produced material.

Broadcasting guarantees may relate both to public television companies and to private, nationally authorized television companies.

4. The Commission shall define procedures for filing aid applications and shall specify the nature and form of the documentary evidence to be included in the application papers.

Article 5

1. Aid shall be allocated in two parts, one for the production and the other for the distribution or broadcasting of the co-produced material.

2. The production aid shall range from 10 % to 25 % of the co-production costs.

3. The distribution or broadcasting aid shall be determined case by case having regard to the nature of the co-produced material.

It shall contribute to the cost of making copies, sub-titling and/or dubbing, and of various forms of promotion, as indicated in the aid application.

It shall not, however, exceed 50 % of those costs.

Article 6

1. In the case of co-productions primarily intended for the cinema and those made for television by co-production partners which do not broadcast the co-produced material, aid shall take the form of an advance on earnings.

2. The earnings of co-productions primarily intended for the cinema shall comprise in the first place, the percentage of box-office earnings taken by the co-production partners (the 'producers' percentage'), and

secondly, the proceeds of sales to television companies and the video industry.

The earnings of the television co-productions referred to in paragraph 1 shall comprise the proceeds of sales to television companies and the video industry together with the percentage of any cinema box-office earnings taken by the co-production partners.

3. The advance shall be repayable to the Community and shall bear interest.

The rate of interest and the terms of repayment shall be laid down in a Commission Regulation.

Article 7

1. In the case of television co-productions to be broadcast by the co-production partners, the proportion of aid corresponding to broadcasting by each co-production partner shall take the form of interest-free loan repayable to the Community.

2. The loan to each co-production partner shall be repaid one year after the co-produced material is broadcast by that partner.

However, the Commission may authorize repayment over a period of from two to five years.

3. Sales of the co-produced material to the video industry and to television companies not involved in its production, together with any cinema box-office earnings accruing to the co-production partners, shall give rise to repayment with interest of a proportion of the loan.

This proportion of the loan shall be regarded as an advance on earnings to which the provisions of Article 6 (3) shall apply.

Article 8

The Commission shall grant advances on earnings and interest-free loans to projects in line with selection criteria which it shall establish and after consulting the multinational expert group set up under Article 9.

Article 9

1. A multinational expert group is hereby established.

2. It shall comprise two full members and two deputies representing each of the following: scriptwriters, directors, producers, distributors, cinema operators and television programme executives.

3. The Commission shall appoint the members of the group, after consulting the relevant national authorities, from a list submitted by the unions or professional organizations which are most representative at Community level.

The above list shall contain three times as many names as there are full members and deputies to be appointed.

In addition, however, the Commission may appoint suitably qualified leading figures at any time.

4. In appointing members of the group the Commission

shall ensure that at least one national of each Member State of the Community may attend its meetings.

5. Members of the group shall be appointed for three years. The appointment may be renewed.

Article 10

The Commission shall monitor performance of each contract.

Contract beneficiaries shall notify the Commission immediately in writing of any important fact relating to performance of the contract. They shall submit progress reports periodically. They shall comply with all requests for information or inspection at the place of performance, in accordance with the terms of the contract.

Article 11

The Commission may cancel a contract where one of the contract beneficiaries fails to implement all or part of its provisions or has intentionally or negligently supplied false information in applying for aid or where one of the contract beneficiaries has failed to comply with the terms of the contract regarding utilization of the aid, co-production schedules, submission of reports or supervision. In this event the balance of the sum repayable shall fall due immediately, without prejudice to possible legal action for the recovery of damages.

Where a contract beneficiary has intentionally supplied false information either in applying for aid or in performance of the contract, and has thereby obtained aid in excess of the appropriate sum, the Commission may choose not to exercise its right to cancel the contract, but may demand repayment of the sum wrongly obtained together with interest at the market rate.

Article 12

Appropriations to finance the aid scheme shall be entered on the expenditure side of the general budget of the European Communities each year.

Scheduled repayments shall be entered on the revenue side of that budget.

Article 13

The Commission shall report annually to Parliament and the Council on the implementation of this Regulation.

Article 14

Contracts shall stipulate that the Court of Justice of the European Communities has jurisdiction in the event of disputes between the contracting parties in connection with the said contracts.

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